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EMPLOYMENT
COMMISSION

BEFORE THE MEDIATOR/ARBITRATOR

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In the Matter of the Petition of :
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DISTRICT 1199W/UNITED :
PROFESSIONALS FOR QUALITY :
HEALTH CARE :
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To Initiate Mediation-Arbitration :
Between Said Petitioner and :
:
ROCK COUNTY :
:
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Case 194
No. 34424 Med/Arb-3151
Decision No. 22588-A

APPEARANCES: Laurence S. Rodenstein, Organizer, appearing on behalf of the Union.

Bruce K. Patterson, Consultant, appearing on behalf of the County.

ARBITRATION AWARD

Rock County, Wisconsin, hereinafter referred to as the County or Employer, and District 1199W/United Professionals for Quality Health Care, hereinafter referred to as the Union, were unable to voluntarily resolve certain issues in dispute in their negotiations on behalf of public health nurses, over provisions to be included in a new Collective Bargaining Agreement to replace the parties' 1983-1984 Collective Bargaining Agreement, which expired on December 31, 1984. The Union, on January 7, 1985, petitioned the Wisconsin Employment Relations Commission (WERC) for the purpose of initiating mediation/arbitration pursuant to the provisions of Section 111.70(4)(cm) 6. of the Wisconsin Statutes. The WERC investigated the dispute and, upon determination that there was an impasse which could not be resolved through mediation, certified the matter to mediation/arbitration by Order dated April 25, 1985. The parties selected the undersigned from a panel of mediator/arbitrators submitted to them by the WERC and the WERC issued an Order dated June 3, 1985, appointing the undersigned as mediator/arbitrator. A meeting was scheduled for August 8, 1984 for the purpose of mediating and, if mediation was unsuccessful, conducting an arbitration hearing in the dispute. At the outset of the meeting, the undersigned endeavored to mediate, but both parties agreed that mediation by the mediator/arbitrator would be fruitless and waived further efforts in that regard. Both parties indicated that they did not desire to withdraw their final offer and agreed that the arbitration hearing should proceed. The parties completed the presentation of their evidence at the hearing and post-hearing briefs were filed and exchanged on October 14, 1985. Full consideration has been given to the evidence and arguments presented in rendering the award herein.

ISSUES IN DISPUTE

During the negotiations, the Union proposed that the parties enter into a two-year agreement and the County proposed that the agreement be of one-year's duration. Agreement was reached on minor modifications in the wording of the provision

dealing with medical insurance by inserting the current dollar amounts which reflect the full premium for single or family coverage. The wording of the provision, which provides that the County will pay any increases during the term of the agreement, otherwise remains unchanged according to the stipulation of agreed upon items entered into by the parties on April 16, 1985.

In its final offer, which is also dated April 16, 1985, the Union proposes to make these same modifications in the medical insurance provision; adding additional language to the provision dealing with retirement contributions to impose an obligation on the County to pay the full amount of the employee's share of contributions to the Wisconsin Retirement System "equal to six percent" of gross earnings subject to such contributions effective January 1, 1986; making appropriate modifications in one of the clauses dealing with duration (Article XXI, Section C) to reflect the two-year duration it proposes; and modifying Appendix A, dealing with the salary schedule, to reflect the increases in wage rates which it proposes during the two-years covered by its offer. The salary schedule itself covers the wage rates for public health nurses I (PHN I) and two different categories of public health nurses II (PHN II), those who advance to the PHN II classification from the PHN I classification and those PHN II's who are hired as new employees in that classification. There are three rates for PHN I's (start, six months, and eighteen months); three rates for PHN II's "advanced" (start, twelve months, and twenty-four months); and four rates for PHN II's "new" (start, six months, eighteen months, and thirty months). The Union proposes four increases which it describes in its final offer as follows:

- "A. Effective June 11, 1985 increase each cell of the salary schedule by 4.5%.
- B. Effective December 31, 1985 increase only the cells of the PHN II advanced from PHN I Rock County schedule and the cells of the PHN II new employee in Rock County schedule by 4.0%.
- C. Effective March 1, 1986 increase each cell of the salary schedule by 4.0%.
- D. Effective December 31, 1986 increase only the cells of the PHN II advanced from PHN I Rock County schedule and the cells of the PHN II new employee schedule by 4.5%."

In its final offer, the County proposes an across-the-board increase of 3% in all hourly rates covered by the agreement. Its final offer reads in its entirety as follows:

"The Employer makes the following final offer on all issues in dispute for a successor Agreement to begin January 1, 1985.

- 1. All provisions not modified by this final offer or a Stipulation of Agreed Upon Items, if any, of the 1984 Agreement between the Union and the County shall be continued.
- 2. Wages: Increase all hourly rates on the Wage Appendix by 3%."

Thus, a review of the parties' final offers and the stipulation of agreed upon items, reflects that the parties are in agreement that most provisions of the expired 1983-1984 Collective Bargaining Agreement should be continued without substantial modification, but that the provisions of Article XIII, Section A dealing with medical insurance should be modified as described above. The offers also reflect the following issues in dispute:

1. Duration of the Agreement.
2. Whether the Employer's contribution toward payment of the employee's share of Wisconsin State Retirement System payments should be increased to 6% if the agreement is to be of more than one year's duration.
3. Wage increases to be granted during the term of the agreement.

At the hearing, the Union asserted that there exists in this case an additional issue in dispute with regard to whether the Employer's offer, as worded, is so defective as to require its rejection. According to the Union, the offer contains an ambiguity which cannot be clarified at this point because the offer is final -- the lack of an expiration date or any indication that it was intended to be a one-year proposal. In its brief, the Union makes certain additional arguments in this regard, which are described more fully below.

UNION'S POSITION

The Union divides its arguments between the two issues it views as being in substantial dispute: wages and duration. The Union characterizes its proposal to require the Employer to contribute 6% toward the employee's share of retirement payments beginning in January 1986 as a proposal to "maintain the existing practice of the Employer making a full contribution," and not as a separate issue in dispute.

In support of its wage proposals the Union argues that there exists a substantial need for catchup adjustments for the employees covered by the agreement; the proposed adjustment is both gradual and reasonable; the County has benefited unfairly in its role as a successor employer to the former Janesville Department of Public Health; even the Employer's "preselected" comparables establish a clear and convincing case for catchup; the Employer's arguments about agricultural economic conditions are not germane to this dispute; and the Union's offer would merely continue the current practice of providing full County pension contributions.

In support of its argument regarding the need for catch-up adjustments the Union makes the following points:

1. The most comparable municipal employers for purposes of comparison are the ten most populous Wisconsin counties, exclusive of Milwaukee County. In that group Rock County is fifth in population, sixth in per capita income and fifth in median household income. Even so, it is the lowest taxed in terms of full value tax rates and its industrial production workers are paid near the highest wage rates. Only in Rock County does the industrial production base rate actually exceed the maximum hourly rate for public health nurses employed in the same county. While unemployment is sometimes high in

Rock County, it is also in that area that it sometimes ranks below the other counties in question.

2. While the economic and demographic data establish that Rock County's position has generally been "above" the median of this group, its relative rates of pay and relative rates of total compensation have been "egregiously inferior." The Employer's offer for 1985 would further erode the County's last place position. Its maximum hourly rate, which was 89.8% of the median in 1984 (\$10.30 divided by \$11.47) will drop to 89.2% under the County's offer in 1985. In 1984 total compensation for Rock County was only 89.1% of the median, or \$2.70 per hour or \$5,616.00 per year below the median of the Union's comparables.

3. Even the County's exhibits demonstrate that there was a marked deterioration in wage rates for public health nurses within County employment. During the period from 1976 through 1984 members of the bargaining unit lost relative position, dropping from fourth place to sixth place, and also lost ground in terms of the percentage of median wages earned, dropping from 107.4% to 102.6% of the median. The explanation for this lost ground, according to the Union, lies in the County's practice of differential wage settlements over the years for the employees in the various bargaining units. The absence of pattern bargaining within the County has fallen disproportionately upon the small unit involved in this proceeding, it argues. The differences are particularly dramatic when comparisons are drawn to the deputy sheriffs.

4. Numerous interest arbitrators, cited and quoted in the Union's brief, have held that "catchup" settlements are appropriate to restore losses in relative ranking over time.

The Union alleges that its proposed catchup adjustment is both gradual and reasonable. Under the terms of its proposal a total of 8.5% catchup would occur over a two-year period, 4.5% of which would not occur until the last day of the agreement. By delaying the annual adjustments until June 11 in the first year and March 1 in the second year, the cost of the Union's proposal is substantially reduced during each of the two years. These delayed implementation dates, which were offered in an effort to induce a voluntary settlement, help to partially "fund" the 8.5% catchup provided in the Union's offer. In 1985 the cost of the Union's offer would be less than that of the Employer (3.47% versus 4.8%) and the actual wage increase cost during the second year, exclusive of the retirement pickup of 1%, would only be 3.8%. According to the Union, the effect of its offer is to have the Union's own members help fund the catchup at a cost of 2% in 1985 and .7% in 1986.

The Union reviews the County's takeover, on January 1, 1979, of the public health functions formerly performed by the Janesville Department of Public Health in support of its claim that the County has benefited unfairly in its role as successor employer by "devaluing" the work performed by nearly 50% of the bargaining unit positions. While only one of the former employees of the City of Janesville accepted employment with the County, all of the work was transferred to the County and has been performed at the lower County rates since 1979. The one employee who accepted employment with the County lost approximately \$1,200 in the first year and has received similar reduced wages in every year since. According to the Union,

the County's conduct on that occasion was contrary to the practice followed by most public sector employers in successorship situations and has produced a \$135,000 "windfall" for the County, based upon the projected wage losses suffered by the one employee who accepted employment with the County. Citing examples from the public sector and federal sector involving what the Union characterizes as employer injustices, the Union argues that public employers should be held to a higher standard of conduct. According to the Union, the County failed to meet that higher standard of conduct in 1979 when it devalued the work performed by public health nurses who had achieved first place position among comparable cities in 1978 and caused the work to be performed at rates which are now in "last place" among comparables of the County.

While challenging the appropriateness of the comparables selected by the Employer, the Union argues that the data provided by the Employer in relation to those comparables also provides clear and convincing evidence of the need for catch-up. According to the Union, the County's comparables are inappropriate because the median population for the counties selected was substantially lower than the median for the Union's comparables and because the median for the Union's comparables was much closer to the actual population of Rock County. Conspicuous absences from the Employer's comparables are Racine and Kenosha Counties which have very similar population levels, according to the Union. They also have similar industrial makeup and problems of cyclical unemployment, according to the Union. It contends that no explanation was provided for their exclusion.

Despite the omission of Racine and Kenosha Counties and the inappropriate reliance on "smallish, rural counties such as Jefferson, Walworth, Ozaukee, Washington, Eau Claire, La Crosse, and Manitowoc, which was designed to avoid a fair comparison, the Employer's data provides clear and convincing proof of the need for catchup, in the Union's view. While the County is the second largest among the Employer's comparables, it ranks twelfth among the fourteen on the basis of maximum rates for PHN II's. The median rate for the group is 7% above Rock County at \$10.99. Further, the relative position of Rock County will deteriorate further during 1985. In 1985 the maximum rate for Rock County public health nurses will be \$1.20 per hour less than the median of the Employer's comparables, if the Employer's offer is selected. While Rock County rates were 93.3% of the median in 1984, they will drop to 88.7% of the median for the other counties in 1985. On the other hand, under the Union's offer, the County's maximum rates would increase to 94.4% of the median rates for the Employer comparables in 1985. By way of example, the Union points out that Jefferson County, with half the population of Rock County, paid 5¢ per hour more than Rock County in 1984 and would pay 15¢ more per hour in 1985 under the Employer's offer. In summary, according to the Union, the Employer has been unable to find any counties of vaguely similar size which pay as "penuriously" as does Rock County. This in spite of the fact that the cost of the Union's proposed catchup during the two years in question is reasonable, according to the County's own calculations.

The Employer's arguments about agricultural economic conditions are not germane, according to the Union. While County exhibits demonstrate a five-year trend of increasing farm foreclosures and decline in farm land value in real dollar

terms (but not in current dollar terms) there has been a decline in agri business employment during 1984 and 1985 and the much larger employment sector of the County, non-agricultural employment, increased by 680 new jobs or 1.3% during the same period. According to the Union, Rock County is heavily industrialized and 79% of all employment is not associated with agriculture. The value of farm land increased rapidly after the 1960's but that increase, like the reduction of corn and soybean prices ought not be compared to the wage increases which should be granted to employees. The fact that there is an increasing rate of tax delinquency, by itself, is meaningless since the increasing rate may be due to political rather than economic causes. The fact remains, according to the Union, that the cost of the Union's offer is quite small, equalling 7¢ per year on a per capita resident basis for 1985. The total cost in 1985 amounts to less than .01% of the County's budget. On the other hand, according to the Union, its offer is consistent with sound public policy because the adjustment of wages to make them more consistent with other units of government of similar size and resources will foster employee morale and enhance the likelihood of productivity increases. The functions of public health nursing are important and some of the County's residents rely very heavily on the care provided. County policies which encourage turnover or discourage morale and productivity gains are contrary to these considerations, according to the Union.

With regard to its proposal to increase, by 1%, the contribution made by the County on behalf of the employees toward the Wisconsin Retirement Fund, the Union points out that such proposal would be consistent with the County's longstanding practice of paying 100% of such contributions. The increased contribution itself is necessary in order to maintain the fund's fiduciary requirements while accommodating the 1984 improvements in public employee pensions. Because the increase takes effect on January 1, 1986 and the Union's proposal is for a two-year agreement, the Union included this proposal in its offer. However, according to the Union, under the Employer's offer, which does not include an expiration date, employees would suffer a 1% decrease in wages on January 1, 1986, contrary to the County's longstanding practice of paying the full employee's share.

Finally, with regard to the duration issue, the Union argues that the County's omission of an expiration date in its certified final offer would result in the issuance of a defective award if the Employer's offer is selected. This is so because selection of the Employer's offer would result in an award which is not "final and complete."

The Union acknowledges that the County, at the hearing, indicated that the intent of its offer was to provide for an expiration date of December 31, 1985 in the new agreement. However, citing Section ERB 31.16(5) of the Wisconsin Administrative Code, the Union points out that the Employer is not entitled to amend its final offer without the written consent of the Union, which has not been given in this case. Therefore, according to the Union, the absence of an expiration date in the Employer's final offer means that it must be construed to contain no termination date, except that required by Section 111.70 (3) (a) 4. Wis. Stats., which provides that a collective bargaining agreement may not exceed three years in duration. Therefore, if the arbitrator is to issue a final and complete award in this case, the final offer of the Employer should be considered to expire as of December 31, 1987, according to the Union.

Citing the case of Goldman Trust v. Goldman, 26 Wis. 2d 141 (1965), the Union argues that the arbitrator has an obligation to issue a final and definite award covering all subject matters submitted to arbitration. Similarly, it cites the case of Garstka v. Russo, 37 Wis. 2d 146 (1967), to the effect that the validity of an award can turn on the question of whether it is complete and final and terminates the question submitted so as to be subject to complete enforcement by judgment or decree. According to the Union, arbitrators have ruled in favor of one of the two parties to the dispute where the other final offer fails to lend clarity to the agreement. It notes that in Coleman Schools, Decision No. 16770-A (8/79), Arbitrator Weisberger noted that the Association's offer, which the Employer refused to allow the Association to amend, included a class size proposal which could not be justified, based upon comparables and cost. Then in Frederic Schools, Decision No. 17486-A (5/80), Arbitrator Imes found an Employer's proposal on insurance to be less desirable, notwithstanding its assertion that it should be construed otherwise, because it contained an ambiguity which was likely to generate conflict concerning its meaning. For these reasons as well, the Union argues that the County's offer should be rejected in this case.

COUNTY'S POSITION

At the hearing, the County took the position that the Union's claim that the County's offer was "flawed" because it makes no specific reference to the termination date of the agreement is without merit because it was made clear during negotiations that the offer was for a one-year agreement. The final offers which were exchanged through the WERC investigator reflect that one of the differences between the parties relates to the question of whether there should be a one-year or two-year agreement. According to the Employer, the modification of the dates found in the expired agreement is a "housekeeping" matter that has traditionally be accomplished without any discussion in the past. According to the County, there is no basis in WERC decisions for the Union's position since the Union is beyond the point where it has the right to challenge the County's final offer. Consequently, according to the County, this claim should be viewed as a "false issue" and should not be given consideration in evaluating either of the final offers.

In its written arguments, the County outlines "five" issues in dispute. In addition to the issue of contract term or duration, the issue raised by the Union's retirement contribution proposal and the issue of wages, the County identifies the "health insurance" provision as raising a separate issue and the differences between the counties deemed comparable by the parties as a separate issue. According to the County, the Union's final offer in effect includes a demand that the County pay any additional premium payments which occur in 1985 or 1986. The County treats the question of which counties should be deemed most comparable within its arguments related to that particular statutory criterion.

The County's arguments are set out in relation to each of the eight statutory criteria set out at Section 111.70 (4) (cm) 7 . They can be summarized as follows:

Lawful Authority. According to the County, this criterion is not a factor in the instant dispute.

Stipulations of the Parties. The County contends that the stipulation of the parties is not a significant factor in this case.

Interest and Welfare of the Public and Financial Ability of the County to Meet Costs. According to the County, the "public interest" would best be served if the employees in this bargaining unit and all other County bargaining units receive the internally consistent 3% wage increase offered by the County in its final offer in this case and in the 11 other units now bargaining or arguing before arbitrators. The County points out that a 3% increase has already been authorized and implemented for all other County employees not covered by collective bargaining arrangements.

The basis for the County's argument in this regard can be found primarily in those County exhibits dealing with the agri business portion of Rock County's economy. According to the County, that evidence demonstrates that the agri business portion of the County's economy is "in trouble", based upon an alarming increase in the rate of mortgage foreclosures, a dramatic drop in prices for key crops (corn and soybeans) and a 260% increase in tax delinquencies over the last four years. In fact, according to the County, the "public interest of the County would best be served by no wage increase or tax increase at all." For this reason, it argues that its 3% offer should be viewed as very generous and reasonable under the circumstances. This is particularly true when consideration is given to the exorbitant cost impact that the Union's offer will have for 1987 (assuming no turnover of employees) of over 28% above the actual cost of salary, FICA and retirement in 1984. The County notes in this regard that there has been little turnover in this bargaining unit, consisting of one retirement during 1984 and one resignation when an employee moved out of the area with her family. It contends that those two positions were filled from a "generous field of applicants" and two of three new hires were Rock County residents. The essential point this evidence makes, according to the County, is that the present salary structure is adequate to recruit and retain competent employees to perform the requisite nursing work and that an increase of 3% is both reasonable and in the public interest.

Comparisons. According to the County, its comparables, particularly its internal comparables, support the reasonableness of its offer and the Union's comparables are inappropriate but nevertheless support the County's offer with regard to the appropriateness of internal wage relationships.

First, with regard to the County's internal comparisons, the County emphasizes that its offer to employees in this bargaining unit is identical to its offer to all other units with which it bargains. Citing its exhibit dealing with internal wage relationships, the County notes that each year it is faced with attempting to retain existing internal relationships with the various classifications of employees it employs and argues that the results shown by the exhibit are that an internally consistent pattern of wage settlements has occurred over the years. Further evidence of the County's effort to maintain internal consistency is also shown by the exhibit indicating the consistency of benefits offered to its various employees, according to the County. While benefits are not a major issue in this dispute, the County contends that it is greatly concerned about the "precedent" the awarding of

the Union's pension contribution demand would have on its 1986 bargaining with units representing over 800 other County employees. The Employer acknowledges that it has no voluntary settlements to support its arguments based upon internal comparisons, but nevertheless contends that its uniform offers to all bargaining units finds support in the decisions of numerous arbitrators. According to the Employer, many arbitration decisions have expressed a recognized need to encourage internally consistent settlements. It cites and quotes from a number of arbitration awards in support of this contention.

Turning to the comparables relied upon by the Union, the County argues that the Union has selected its comparables based upon "sheer convenience" for its position in this dispute. It notes that Dane County has a population 2.4 times larger than Rock County and that Waukesha County has a population 2 times larger than Rock County. It also points out that neighboring counties are ignored by the Union's approach. According to the Employer, the Union's reliance on Racine and Kenosha Counties is misplaced because they are "intensively urban counties" and all four counties (Dane, Kenosha, Racine and Waukesha) lack comparability based upon their level of "metropolitanism." Further, it argues that Dane County is strongly impacted upon by the location of the State Capitol in that county and that the other three counties all "fall under the influence of the Milwaukee metropolitan area."

An analysis of the internal relationship of five employee classifications, including that of public health nurse, at the maximum rate in the other five counties relied upon by the Union, provides further evidence of the weakness of the Union's comparability arguments, according to the County. Thus, when the rank of highway patrolmen, income maintenance worker, social worker, account clerk II, and public health nurse are analyzed within each of those counties (Brown, Marathon, Outagamie, Sheboygan and Winnebago), public health nurses generally are ranked number one or number two. The County points out that among those same classifications public health nurses rank number two in Rock County. Thus, according to the County, an analysis of the internal rate structure of these "comparable" counties supports the County's position in this case. Nevertheless, according to the County, too great a reliance on external comparables in this case would serve to destroy the internal salary structure relationship that the County has sought to maintain and "discourage meaningful collective bargaining."

Cost of Living. According to the County, its evidence under this criterion supports the reasonableness of its offer in two respects. First of all, the increase in the Consumer Price Index for "all urban consumers" in "small metropolitan areas" was 3% for calendar year 1984. This figure is consistent with the County's offer, it is noted. Secondly, the County points to the exhibit dealing with relative living costs for residents of Janesville in relation to various locales, based upon a national average of 100. Of all of the cities measured by that exhibit which are located in Wisconsin, Janesville had the lowest relative cost-of-living at 91.6 points. According to the County, this measurement as well serves to illustrate the reasonableness of its final offer.

Overall Compensation. Pointing to its exhibit setting out the numerous benefits which are generally consistently offered to all bargaining units the County deals with, the County

argues that the employees in this bargaining unit enjoy a comprehensive benefit package, including a fully paid health insurance and retirement program and numerous other benefits, including an extensive paid leave program.

Changes in the Foregoing. According to the County, there have been no changes in the circumstances relating to the foregoing criteria which have occurred prior to the filing of briefs in this case.

Other Factors. According to the County, "problems on the farm" constitute an appropriate factor which should be given great consideration in this case under this criterion. Referring to the data discussed above in connection with the criterion dealing with the public interest, the County argues that declines in farm employment, increases in farm foreclosures, diminishment of farm land values and the significant decline in farm prices combine to establish that County farmers have "reached the maximum load that they can bear." Based on a survey of financial institutions handling farm credit, the Employer determined that the rate of farm foreclosures for 1985 will increase substantially in the neighborhood of 300 to 400%. The combination of a heavy tax burden (evidenced by an increasing tax delinquency rate) and declining prices requiring farmers to sell crops and products at a loss, understandably lead to an increasing mortgage foreclosure rate, it argues. It was these types of economic problems that lead the County Board to request that its employees accept a 3% increase, which is significantly greater than increases being enjoyed elsewhere in the County, it argues.

In summary the County argues as follows:

"The Union has placed before the Arbitrator an excessive demand that at the end of two years increases the County's cost for this bargaining unit by over 28%. (Cty. Ex. 5 & 6) The Union has used the mechanism of last contract day increases to create an illusion of minimal cost impact. In rare instances parties have agreed voluntarily to utilize this approach. Rock County has never used this device and believes, should the Union's position be awarded, it would have an extremely chilling impact on future bargaining between the County and its twelve certified bargaining units.

"The Union is relying on comparability to jurisdictions that are significantly larger and more metropolitan in character than is Rock County. The Union set forth no evidence relative to comparability of public health programs. When Beloit's population of 34,340 is removed from the Rock County's population, it can be seen that this unit only serves a population base of just over 100,000 Rock County residents. (Beloit has its own public health program) This weakens even further the Union's 'comparability' attempts to use the larger cities and counties. The relevance of the Union's comparables is highly suspect based on lack of scope of program evidence and population served.

"The County would offer one comment relative to Union Exhibit 20. For historical purposes the Union uses a wage level for public health nurses employed by the City of Janesville. It is interesting to note

that as the wage level accelerated, the City of Janesville opted to drop its public health nursing program in favor of a more efficiently operated County program.

"In summary the Union's demand is excessive (28%) and will set precedent in the pension area for 1986 bargaining with other County units (1% added amount paid by County) and is based on an inappropriate set of comparables.

. . .

"Rock County respectfully requests that the Arbitrator select the County final offer based on the following points:

- A. Preservation of internal salary structure relationship among Rock County Employees;
- B. Labor market economics rationale. Current salaries and benefits are sufficient for recruitment and retention of employees;
- C. Local economic conditions governing significant farm and sector ability to support continued tax increases;
- D. Based on the above items, the fact that the County is still offering a 3% increase for 1985."

DISCUSSION

The first matter which must be addressed in this proceeding is the Union's claim that the Employer's offer is defective or would result in a defective award.¹ If such claim is found to have merit, a serious question would arise as to what course of action should be taken by the undersigned.

One course of action, that urged by the Union, would be to give weight to such a conclusion in selecting between the two final offers. However, such consideration would have a controlling influence on the outcome of the proceeding even though none of the statutory criteria makes reference to such a consideration.² Another course of action would be to refer the matter back to the WERC for clarification. This course of action would appear to be more appropriate, given the absence of any explanation for the Union's failure to raise a timely objection as to the alleged defect at the time of the submission of the final offers to the WERC investigator.

There is a patent ambiguity in the wording of the Employer's offer, which speaks in terms of a "successor agreement to begin

¹ It is important to note that the Union's claim is not limited to the argument that the Employer's proposal is unclear in the sense that it might generate future grievances as to the proper interpretation and application of one of the provisions of the resulting agreement. Such problems are not uncommon in the case of language proposals and it would not be inappropriate to give consideration to such criticism under Section 111.70(4)(cm) 7.h., Wis. Stats.

² Section 111.70(4)(cm) 7.a., Wis. Stats., makes reference to the "lawful authority of the municipal employer," but the claim here is not that the Employer's offer is illegal or contains an illegal proposal.

January 1, 1985." As the Union notes, it is not possible to determine what the duration of the successor agreement will be, based upon the wording of the Employer's final offer. Reference to the "stipulation of agreed upon items" does not help resolve this ambiguity, since the parties did not include agreements to make appropriate "housekeeping" modifications in the various references to duration contained in the expired 1983-1984 agreement.³ They did agree to modify the dollar amounts included in the health insurance provision, to reflect the rates in effect for 1985, but the wording of that provision is broad enough to cover an agreement of any duration.

Notwithstanding this patent ambiguity, there is no indication in the record that the Union raised any question or objection about the wording of the Employer's offer until the hearing herein. Further, there is no question but that the Union was aware that it was the Employer's intent to make a one-year proposal, consistent with its position throughout negotiations and consistent with its position in its bargaining with all other bargaining units. There is nothing in the record to justify the Union's proposed interpretation to the effect that the intent of the offer was to enter into an agreement of the maximum legal duration.

On the contrary, at the hearing, the Union did not dispute the Employer's position as to the intent of its offer. Nor did the Union claim that it was in any way misled by the wording of the Employer's offer. The Union's sole objection to the Employer's assertion as to the intent of its offer was to claim that it was then too late for the Employer to modify the wording of its offer. Under these circumstances, the undersigned is satisfied that the Employer's final offer contains a harmless ambiguity and that it is therefore unnecessary to refer the matter back to the WERC for clarification. The alleged defect in the Employer's offer is of no consequence since it is clear that the Union understood that the Employer's final offer was for a one-year agreement and that the Employer bargained with regard to a one-year agreement before submitting its final offer.⁴ While the selection of the Employer's offer might require the implementation of language to effectuate its intent, that problem does not constitute grounds for finding the offer to be defective.⁵

The parties also disagree as to the identity of the "issues in dispute." Resolution of that disagreement helps put their offers in proper perspective. As noted above, the undersigned finds that there are three issues in dispute within the meaning of Section 111.70(4)(cm)6.a., Wis. Stats.: duration of the agreement, whether the contribution to the Wisconsin Retirement Fund on behalf of employees should be increased to 6% if the agreement is to be of more than one-year's duration, and the wage increases to be granted during the term of the agreement. Absent the Union's proposal to increase the cap on the Employer's contribution toward the employees' share of retirement contributions, the Employer would only be obligated to contribute a maximum of 5% for 1986, if the Union's offer

³ The Union's final offer proposes to modify the wording of Article XXI, Section C, but does not propose to make any other "housekeeping" changes such as the modification of the reference to the duration of the agreement, contained in its preamble.

⁴ See Milwaukee Deputy Sheriff's Association vs. Milwaukee County, 64 Wis. 2d 651, 655-656 (1974) for the requirement that there be prior bargaining.

⁵ See City of Manitowoc v. Manitowoc Police Patrolmen's Local 731, 70 Wis. 2d 1006, 1013 (1975).

is selected. The stipulation with regard to the health insurance provision effectively removed the question of the Employer's contribution toward the cost of health insurance as a potential "issue in dispute." Of course, the 1985 cost and the potential 1986 cost of that agreement should be given appropriate consideration in selecting between the two final offers under the statutory criteria. Similarly, the question of which of the proposed comparables is deemed to be more persuasive is a matter which should be given appropriate consideration in connection with that particular statutory criterion.

An analysis of the issue as to the appropriate duration of the agreement is inseparable from the overall analysis of the reasonableness of the parties' offers. Therefore, only the retirement contributions and wages will be discussed separately.

Contribution to WRF

The Union contends that its proposal to require the Employer to contribute up to 6% toward the employees' share of Wisconsin Retirement Fund Contributions is merely a proposal to maintain the status quo. However, the language of the current agreement makes clear that this is not the case. The Union's proposal not only constitutes a change in the status quo, it represents a substantial improvement in an existing benefit, which will cost the Employer an additional 1% of payroll in 1986, over and above the Employer's "roll-up" cost of the improvements in the Wisconsin Retirement Fund enacted into law.

There is no evidence in the record to indicate what the other municipal employers relied upon as comparables by the Union or the Employer have agreed to for 1986 with regard to this particular issue. In addition, the County has reached no voluntary agreements with any of its bargaining units for 1986.

The County argues, persuasively in the view of the undersigned, that any agreement with this small bargaining unit that might result from this proceeding, should not be considered as a "pattern setting" agreement for purposes of its negotiations with other bargaining units for 1986. For this reason, and in view of the lack of any persuasive comparability data, the undersigned concludes that the County's offer with regard to this issue in dispute should be favored.

Wages

When wages are viewed as a separate issue under the comparability criterion, several findings emerge. First of all, there is no question but that the Union has presented a strong case in terms of the need for catch up under the comparability criterion. There are some weaknesses in the comparables selected by the Union, primarily relating to the relative lack of geographic proximity of some (Brown, Marathon, Outagamie, Sheboygan and Winnebago Counties) and the size and degree of urbanization of others (Dane, Kenosha, Racine and Waukesha). However, there are also some co-relative weaknesses in the comparables relied upon by the County, primarily relating to relative smaller size and lack of urbanization. It is not possible to avoid each of these weaknesses without substantial sacrifice to the number of comparisons drawn. Further, it might be expected that, notwithstanding these weaknesses, the wage rates paid by the Employer would be closer to the mid point, rather than at or near the bottom of the range.

Also, when the Employer's data concerning internal comparisons is analyzed, it lends further support to the Union's catch up argument. As the Union points out, the relative rank,

and percentage of median salary received by public health nurses, has eroded slightly over time, apparently because their salary increases in recent years have been granted in the form of percentages at or near the bottom. Thus, for example, in 1983 and 1984, public health nurses received percentage increases of 2.25% and 2.27% respectively, while some other County bargaining units received increases ranging up to 4% in 1983 and up to 5% in 1984.

The Employer's effort to maintain uniform percentage increases in its negotiations with the various County bargaining units is understandable and deserving of consideration. However, a number of the arguments normally advanced in support of that position in arbitration are inapplicable to the facts in this case. First of all, no voluntary agreements have been reached with any of the bargaining units for 1985. Therefore, it cannot be said that a divergent outcome in this proceeding would necessarily disturb the collective bargaining process. Secondly, the argument here is not whether the Union should receive a 3% or a 4 to 5% increase in 1985, but whether the increase or increases granted to this bargaining unit should be so structured as to provide "catch up" in relation to the comparables, particularly the external comparables.

A review of the historical data with regard to increases granted to various County bargaining units in the past, demonstrates that disparate increases have been granted over the years to the various bargaining units with which the County bargains. The 3% offered to this bargaining unit would not have the affect of providing any "catch up", for external comparison purposes. This will remain true even if the Employer is successful in its other arbitration proceedings. As the Union's data demonstrates, the Employer's offer will cause a further slight erosion, since most established 1985 increases in the counties deemed comparable by the Union are in the range between 3% and 5%, with 4% being the most prevalent.

While these observations lead to the conclusion that the Union's 1985 wage offer ought to be favored over the Employer's offer on the basis of straight comparability analysis⁶, both years of its wage offer must be evaluated under the other statutory criteria and on an overall basis. It is on that level of analysis that the County's offer must be viewed as more reasonable than the Union's offer, in the view of the undersigned.

Overall Analysis

The cost of the Union's offer in the first year of the agreement would be less than the cost of the Employer's offer. This is due to the delayed implementation of the two increases proposed by the Union in the first year of the agreement. However, the base wage rates for the second year of the agreement would be 8.68% higher for most employees. In addition, a number of those employees will have advanced within the established salary schedules. In 1986, under the Union's offer, the base rates for most employees would be increased by another 4% and 4.5%. The total "lift" under the Union's

⁶ It should be noted that the undersigned does not find the Union's evidence and arguments with regard to the County takeover of the public health nursing function from the City of Janesville to be particularly persuasive. Several agreements have been entered into since that takeover and only one employee was affected by it. That employee's wages have since increased beyond any "red circle" rate which might have been negotiated at the time of the takeover.

proposal would be 18.12% for all employees covered by the PHN II schedules. Assuming no turnover, all but one of the current employees would be in those pay ranges at the end of the agreement's term.

The Union's final offer would also require the Employer to pick up the additional 1% Wisconsin Retirement Fund contribution required of employees as of January 1, 1986. This would be in addition to the increased Employer cost of this benefit. Also, based upon the stipulation of the parties, the County would be required to pick up the entire cost of any increase in health insurance premiums. This agreement could prove to be a very costly item. However, even if it is assumed that any increase in health insurance premiums would not affect the overall percentage cost of the Union's proposal, the Union's offer would impose very substantial cost increases on the Employer, as of 1987. Thus, utilizing the "cast forward" method of costing, which assumes no turnover, the County's cost for salary, FICA and retirement contributions would be approximately 28% higher in 1987 than it was in 1984. The conclusion is inescapable that the Union's offer is simply too ambitious notwithstanding the existence of the above described problems with the Employer's 1985 wage offer.

The Union's offer would generate permanent cost increases greatly in excess of the rate of inflation during 1984 and the current rate of inflation. It would do so at a time when the County is endeavoring to hold costs down for a significant portion of its property taxpayers who, in general, are suffering from considerable economic hardships. Considerations of wage equity are not necessarily limited to labor market considerations such as turnover and recruiting problems. However, in the view of the undersigned, the evidence that the Employer is not suffering from any such problems based upon its current wage levels, significantly detracts from the Union's offer, which would provide very dramatic catch up increases in a short period of time.

This would have been a much easier case to decide if the Employer's offer was slightly higher and/or included a modest element of "catch up." It doesn't. Nevertheless, given the statutory mandated choice between the two offers, the undersigned must conclude that the Employer's offer is the more reasonable offer under the statutory criteria. In reaching this conclusion, the fact that the Employer's offer is for one year only is of considerable significance. Even under the Union's offer, the 1985 wage increase would have been only slightly higher as a percentage (and slightly lower in terms of dollars in the pocket) for all but the last day of the agreement. Based upon the outcome here, the Union can still seek to achieve improvements in its relative wage rate standing in 1986 and thereafter.

For the above and foregoing reasons the undersigned enters the following

AWARD

The County's final offer is selected. The parties shall enter into a 1985 Collective Bargaining Agreement which includes the changes referred to in that offer, along with any changes required to reflect its one-year duration.

Dated at Madison, Wisconsin this 19th day of November, 1985.


George R. Fleischli
Mediator/Arbitrator