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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of		
Between		
BROWN COUNTY ATTORNEY'S ASSOCIATION		Case 278 No. 36563 MED/ARB-3839
To Initiate Mediation-Arbitration Between Said Petitioner, And		Decision No. 23609-A
BROWN COUNTY		

APPEARANCES

On Behalf of the County: Kenneth J. Bukowski, Corporation Counsel

On Behalf of the Association: R. Paul Mohr, Attorney at Law - McKay, Mohr and Beinlich, S. C.

I. BACKGROUND

On November 14,1985, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement which expired 12/31/85. Thereafter, the Parties met on six occasions in efforts to reach an accord on a new collective bargaining agreement. Subsequently, the Association filed a petition requesting that the Commission initiate Mediation-Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On March 26, 1986, a member of the Commission's staff conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and, by April 29, 1986, the Parties submitted to the Investigator their final offers, as well as a stipulation on matters agreed upon, and thereupon the Investigator notified the Parties that the Investigation was closed and advised the Commission that the Parties remain at impasse.

On May 5, 1986, the Commission ordered the Parties to select a Mediator-Arbitrator. On August 6, 1985, the Commission notified the undersigned of his appointment. A meeting was held on September 17 between the Parties for the purposes of mediation and, if necessary, arbitration. Mediation was unsuccessful and an arbitration hearing was held during which testimony and exhibits were presented. Both Parties submitted post hearing briefs and the Association filed a rebuttal brief which was transmitted to the Employer on December 2, 1986. The following award is based on the evidence, the arguments of the Parties and the relevant statutory criteria.

II. ISSUES

The only issue before the Arbitrator is whether to add an additional step (9th year) to the salary schedule. The salary schedules for 1986 under the final offers relative to 1985 are as follows:

	1986 Employer Offer	1985 Rates	1986 Assoc. Offer
Start	$22,708	$19,950	$22,708
After six months	23,708	21,525	23,708
One year	25,708	23,993	25,708
Two years	27,708	26,093	27,708
Three years	29,708	28,193	29,708
Four years	31,708	30,293	31,708
Five years	33,708	32,918	33,708
Six years	35,708	34,335	35,708
Seven/one-half years	37,674	36,225	37,674
Nine years			39,500

It is noted that there are six employees in the bargaining unit. Five of the six attorneys have been in service over seven and a half years which is the final step in the current contract. Four of these attorneys will reach the ninth anniversary during the year 1986. Thus, the cost impact of the Association's wage offer on the Employer amounts to a 5.7% increase over the County's 1985 wage bill and the Employer's offer amounts to a 4% offer on wages.

The Parties also stipulated to several changes in the agreement. They are attached as Appendix A and involve sick leave/emergency pay, beeper pay and retirement.

III. ARGUMENTS OF THE PARTIES

A. The Association

The Association believes a most important criteria in this case is comparisons with employees doing similar work. They direct attention to the rates of pay for attorneys in the Public Defenders office in Brown County, which they note even in 1984 exceeded those proposed by the Association in 1986.

The Association also takes exception to the County's contention that Manitowoc, Winnebago, Outagamie and Sheboygan Counties are comparable public employers. They note that the population of each of these four comparable counties is anywhere from 50 to 70 percent of that of Brown County. Moreover, it was also conceded that none of the counties contained urban areas that are in any way comparable to Brown County. Moreover, they note that most, if not all, of these counties have no collective bargaining unit. The only similarity is geographic. Population size in their opinion is a most important comparability factor. In that regard, Brown County is the fourth most populous county in the state and is almost identical in population to Racine County. In the exhibts offered by the Association, a comparison has been made between the second, third and fifth most populous counties which are Dane, Waukesha and Racine. It is also significant, in their estimation, that Arbitrator Kessler found Brown County and Racine County comparable to Dane County in a case involving Assistant District Attorneys. Additionally, these counties most approximate Brown in population and all but Waukesha contain a large urban area. Another basis of comparability, in their opinion, is workload and they direct attention to the fact that Brown county has both the least number of assistants for the total population and is decidedly less than any other comparable county within the state.

Against these comparables and the evidence they presented, the Association asserts a comparison of these units shows that the Assistant District Attorneys in Brown County are paid far less than any other unit with which they have been previously compared. Moreover, the total number of steps in their salary scale is much fewer than any of the other comparable units and at almost every level is lower in pay than the comparable units. This is true even though they compare the 1986 proposed Brown County contract with the 1984 and 1985 contracts in these other units.

The next statutory criteria addressed by the Association relates to the wages of attorneys in the private sector. Based on a 1983 Wisconsin State Bar survey they draw attention to the fact that attorneys in metropolitan areas the size of Green Bay had a median income of $41,050.00 in 1983. Moreover, attorneys with 9 to 13 years practice experience such as that sought by the ninth anniversary step in the Association proposal had a median income of $48,400.00 in 1983.

The Association acknowledges that a major argument brought forward by the County is their argument that the cost of living has increased approximately 4 percent. In their opinion, the problem with this argument is that it ignores the entire benefit package. They assert the net effect is that the 4 percent increase that the County has offered to the district attorneys is, in fact, really a 3 percent increase when spread over the entire benefit package. This compares to a total package impact of their offer of 4.2 to 4.3 percent which approximates the cost of living.

Last, they believe the bargaining history of the Parties supports their position. They suggest that an examination of the contracts from 1980 to the present would indicate that the steps in the anniversary system have been gradually increased from the third step anniversary to the present seven and a half step anniversary. This has been in constant recognition in that the attorneys currently practicing in Brown County have approached these anniversary steps and that the experience and expertise that they bring to their work requires recognition by the County by increased steps. The practice of the County throughout all of these contracts has been to increase the anniversary steps as the assistant district attorneys reach those steps. This has continued even through the most recent contract that was entered in 1984 and 1985.

B. The Employer

The County emphasizes at the outset its exhibits which show that the impact of the Association's offer is significantly higher over a term of years than is the County's offer. Obviously, whatever pay raise is granted for 1986 will have an impact for all the rest of the years involved in the bargaining process. They estimate this to be 15% over the three years subsequent to this bargain.

In addition to the 4% increase under the County's offer they note other benefit increases have been granted by the County. These increases include a 1% increase in the County's contribution to the Wisconsin Retirement Fund for the Assistant District Attorneys. In addition, Social Security benefits will increase and the dental plan increase for the County amounted to 10%. In terms of the new sick leave plan, the County feels that the testimony at the arbitration hearing clearly indicated that the new plan was bargained and agreed to by the Association. The new plan, in fact, is of greater benefit to the Assistant District Attorneys than was the old plan, since they now are eligible to receive three-fourth's pay for six months of sick time, and that thereafter they are able to obtain two-third's pay on a disability plan. The health insurance beneifts were not changed at all by the County for the year 1986.

In this same vein, the Employer notes the Parties agreed to give beeper pay. They emphasize that this is a benefit available only to the Brown County Association and no evidence indicates that any other District Attorney units receive this benefit.

Additionally, the Employer believes their 4% offer is more reasonable because it is consistent with the 4% increase agreed to by all other county bargaining units.

In terms of other counties, based on other arbitration awards in Brown County and recruiting practices they believe the comparable employers to be those in the Fox River Valley and Northeastern Wisconsin which include Manitowoc, Winnebago, Outagamie, Sheboygan counties. They presented exhibits detailing wage rates for these employers which show generally that Brown County compares favorably.

Last, they note an arbitration award submitted as an exhibit by the Association. This was Arbitrator Kessler's decision involving Dane County and the Dane County Attorneys Association. They call the Arbitrator's attention specifically to page 6 of this decision wherein Arbitrator Rice is quoted by Arbitrator Kessler as follows:

> "Salary schedules are not something with which an arbitrator should tamper and ordinarily any changes are left to the parties to make through bargaining."

In addition, the second last paragraph on that page would also be true of the Brown County situation, in that no evidence was offered at the hearing to show a loss of senior level attorneys in Brown County because of dissatisfaction with salary. In fact, the Union went out of its way to indicate that quite the contrary was true, that is attorneys for Brown County were staying with the County and not leaving their jobs as Assistant District Attorneys for Brown County. Thus, as Arbitrator Kessler indicated, no problem has been demonstrated which the Association offer would solve. It is the County's position that this same reasoning would apply in the Brown County situation now before this arbitrator.

IV. OPINION AND DISCUSSION

The question presented here is whether the appropriate wage level for Assistant District Attorneys with nine years experience should be $37,674 or $39,500, since during the term of this contract 4 of the 6 Assistant District Attorneys will have acquired 9 years experience.

In the Arbitrator's opinion, a most important consideration in this case is the fact that all the other bargaining units internal to Brown County received 4% wage adjustments. Arbitrators often attach a special significance to the "internal pattern." Where a consistent pattern of bargaining groups have accepted similar or identical increases, strong arguments based on internal equity arise. In this case, the record reflects that twelve of the fourteen represented bargaining units have accepted a 4% increase. Only this unit and one other have not accepted the pattern.

Such a clear "internal pattern" should not be broken except for compelling reasons. One such circumstance which would justify breaking an internal pattern is where the acceptance of the internal pattern would result in wage levels which are too divergent with wage levels paid by similar employers to employees doing similar duties. In other words, in this case the clear internal pattern should prevail unless adherence to that pattern causes the Assistant District Attorneys wage level to fall too far behind Assistant District Attorneys in comparable counties. Thus, while the internal pattern is quite an important consideration, an employer cannot hope to blindly apply it to all bargaining units without assuring that a reasonable balance between internal wage increases and external wage rates/levels exist.

Indeed, the external wage rates are a key element in the Union's case. They compare their wage rates and wage structure to Assistant District Attorneys in Racine, Dane and Waukesha. They also look at the public defenders salaries. In contrast, the Employer looks to Manitowoc, Winnebago, Outagamie and Sheboygan. Thus, the task facing the Arbitrator is first to

determine which employers should be considered comparable for comparison purposes. Next, the Arbitrator must determine if the wage levels/rates for Assistant District Attorneys in Brown County are divergent enough from this group to justify breaking the internal pattern to the extent of adding an additional step to the schedule which in turn raises the 1985 top rate by approximately 9% percent. As noted, the first year cost impact of this on the employer is 5.7%.

In developing a comparable group the Arbitrator concludes that certain groups should be dismissed as comparables. For instance, he believes that comparisons to other Assistant District Attorneys are more valid than to attorneys in public defender offices. Public Defenders are state employees and that bargaining reflects considerations that go beyond considerations that are more indigenous to county government. Additionally, the weight which can be given to Manitowoc, Sheboygan and Winnebago Counties is greatly diminished since Assistant District Attorneys there are unorganized and their wage rates are reflective only of unilateral wage levels and not those determined by collective bargaining. Last, strong comparisons cannot be made to attorneys in private practice.

This leaves the Arbitrator to fashion comparisons between the Brown County Assistant District Attorneys and those in Dane, Racine, Rock, Outagamie, Waukesha and Eau Claire Counties.[1] Even these comparisons are difficult to fully validate because of the great diversity in salary structures in size, geography and, in the case of Racine and Waukesha, proximity to Milwaukee. Strong comparisons are also difficult due to the fact that the record doesn't contain fully current rates for all the comparables.

For instance, Dane County isn't fully comparable to Brown County because of its size and the fact they must compete heavily with the state government in the Madison area in order to retain attorneys. This concentrated labor market would tend to push rates up. On the other hand, Outagamie County is to a much greater extent closer to the heart of the labor market for Assistant District Attorneys in Brown County but is smaller in size. Waukesha and Racine are close to Milwaukee County and is influenced by its size.[2] Moreover, Waukesha has a merit system which makes comparisons more difficult. In terms of Rock County, the information in the record makes it impossible to determine what the 1985 rates are. Eau Claire County, while similar in some respects (they are both regional urban centers and geographically removed from Madison and Milwaukee) is smaller than Brown County.

The net effect of such considerations is that based on this particular record, easy comparisons of wage levels are not at hand. This is not like a teacher case where there are several unionized school districts geographically proximite, similar in size and economic make-up with similar salary structures which in turn allow fairly strong, comparative inferences to be drawn. For instance, if Sheboygan, Manitowoc and Winnebago Assistant District Attorneys were organized it would be easier to develop a strong comparable group.

Instead, the comparables here because of their various diversities only serve to provide a rough guideline as to the appropriate wage levels for Assistant District Attorneys. In general, Brown County is probably more comparable to Outagamie and Eau Claire than it is Dane County, Waukesha or Racine. However, for reasons noted above, not fully so. Thus, Dane County, Racine and Waukesha can't be fully discounted.

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1. The Arbitrator asked the Parties to submit data from Eau Claire County which has unionized Assistant District Attorneys.

2. Arbitrators have often distinguished suburban Milwaukee employers based on the spillover effect.

Accordingly, the Arbitrator believes it reasonable to conclude that the rates for Assistant District Attorneys in Brown County ought to be somewhere between Dane-Racine-Waukesha and Outagamie-Eau Claire. Additionally, it is reasonable to conclude that they probably should be somewhat closer to than farther from the latter than the former. In this respect, the 1986 wage rates and wage structure for Outagamie and Eau Claire is noted below. [3]

	Outagamie	Eau Claire	Brown County
Start	$21,906	$24,708	$22,708
6 Months	--	25,731	23,708
1 year	24,044	26,929	25,708
2 years	26,183	28,641	27,708
3 years	28,319	30,353	29,708
4 years	30,455	32,451	31,708
5 years	32,591	--	33,708
6 years	34,729	--	35,708
7-1/2 years	--	--	37,674
9 years		(Union)	39,500

It is easily seen from this that the Assistant District Attorneys in Brown County would still enjoy a health differential under the County's offer above Outagamie and Eau Claire Counties. They would earn $2945 or 8.5% more than the highest paid Assistant District Attorney in Outagamie County and $5223 or 16% more than Assistant District Attorneys in Eau Claire County. This is a comfortable margin and serves to convince the Arbitrator that there is no compelling reason evidenced in this record, based on wage levels, that the Assistant District Attorneys unit should receive more of a wage increase that other county bargaining units.

AWARD

The Final Offer of the Employer is accepted.

Gil Vernon, Arbitrator

Dated this 16th day of March, 1987 at Eau Claire, Wisconsin.

3. Rates listed in the contract are hourly rates. For comparison purposes, they were converted to an annual basis (2080 hours).