STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of

WALWORTH COUNTY
(HIGHWAY DEPARTMENT)

To Initiate Mediation-Arbitration
Between Said Petitioner and

WALWORTH COUNTY HIGHWAY DEPARTMENT
EMPLOYEES LOCAL 1925, AFSCME, AFL-CIO

Case 77
No. 36306 MED/ARB-3768
Decision No. 23615-A

Appearances:

Lindner and Marsack, S. C., Attorneys at Law, by Messrs. Eugene J. Hayman and James S. Clay, appearing on behalf of the Employer.

Messrs. Robert M. Chybowski and David Ahrens, Staff Representatives, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

ARBITRATION AWARD:

On June 19, 1986, the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator, pursuant to 111.70 (4) (cm) 6.b. of the Municipal Employment Relations Act, in the matter of a dispute existing between Walworth County (Highway Department), referred to herein as the Employer, or the County, and Walworth County Highway Department Employees Local 1925, AFSCME, AFL-CIO, with respect to certain issues as specified below. Pursuant to the statutory responsibilities, the undersigned conducted mediation proceedings with the Employer and the Union on August 8, 1986, at Elkhorn, Wisconsin, however, said mediation failed to resolve the matters in dispute between the parties. At the conclusion of the mediation proceedings, the Employer and the Union waived the statutory provisions of 111.70 (4) (cm) 6.c. which require the Mediator-Arbitrator to provide written notice of intent to arbitrate and to establish a time frame within which either party may withdraw its final offer. Arbitration proceedings were held on October 7, 1986, at Elkhorn, Wisconsin, at which time the parties were present and given full opportunity to present oral and written evidence, and to make relevant argument. The proceedings were transcribed, and briefs were filed in the matter. The reply brief of the Union was received on January 18, 1987. No reply brief was filed by the Employer.

THE ISSUES:

The issues joined by the final offers of the parties are as follows:

EMPLOYER FINAL OFFER:

1. Duration. Two year agreement, commencing January 1, 1986.
2. The employer shall pay the retirement benefit adjustment contribution of 1% of earnings, as specified under Wisconsin Act 141, Laws of 1983, beginning with all wages paid on and after January 1, 1986.
3. Effective 1-1-86 all wage rates shall be increased by two percent (2%). Effective 1-1-87 all wage rates shall be increased by two percent (2%).
4. Effective January 1, 1986, hours worked on a holiday shall be paid at one and one-half times, plus receiving holiday pay.
5. A lump-sum payment of $200 shall be paid to employees on 11-1-86 and another lump-sum payment of $200 paid on 11-1-87. The bonus shall be paid to all

employees actively employed on such date and shall be pro-rated for part-time employees and for new hires during the calendar year.

UNION FINAL OFFER:

1. Duration: Amend the Agreement throughout to provide for two years Duration, commencing January 1, 1986.
2. Wages: Effective January 1, 1986, increase all wage rates for all employees by 4%; effective January 1, 1987, increase all wage rates another 4%.

DISCUSSION:

The statute directs that the Mediator-Arbitrator, in considering which party's final offer should be adopted, give weight to the factors found at 111.70 (4) (cm) 7, a through h. The undersigned, in evaluating the parties' offers, will consider the offers in light of the foregoing statutory criteria, based on the evidence adduced at hearing and the arguments advanced by the parties in their briefs.

Initially, the undersigned finds it necessary to attempt to equate the differences in the final offers of the parties. Employer offers 2% on wages, and a cash bonus at the end of each year of the two year Contract, in the amount of $200, which equates to approximately an additional 1%, though it does not get applied to the wage rate under the Employer's offer. In addition, the Employer offers 1% increase on the Wisconsin Retirement Fund funding. The Union's financial offer is 4% on wages for each of the two years. Therefore, with respect to wages only, if one were to consider the $200 bonus offer on the part of the Employer to be a wage offer, it is obvious that the parties are 1% apart, or approximately $200 per employee apart for the 47 employees in this collective bargaining unit. The foregoing comparison is clouded, however, when one considers the Wisconsin Retirement Fund proposal of the Employer and the Union in this dispute. The Employer offers to pick up an additional 1% on the part of employees, making a total of 6% contribution. The Union is silent with respect to any improvement on Wisconsin Retirement Fund contributions on the part of the Employer. The predecessor Agreement provides, with respect to Wisconsin Retirement Fund, the following:

> ARTICLE XI - RETIREMENT:
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> 11:02 County Contribution: The County agrees to pay the employee's share of his gross earnings to the Wisconsin Retirement Fund in addition to the County's share.

The Union makes no proposed modification to the foregoing language, contending that the foregoing language automatically requires the County to assume the additional 1% WRF which has been adopted under Wisconsin Act 141, Laws of 1983. It is a matter of record in these proceedings that the Union has grieved the County's failure to pick up the additional 1% under the foregoing language, contending that the County violated the Agreement when it failed to do so. As the Employer notes in his brief, if the Union offer is adopted in these proceedings, and if the County prevails in the grievance arbitration raised over the interpretation of the language found at Article XI, Section 11.02 of the Agreement, then the employees will be required to pay the additional 1% retirement funding, rather than the Employer, throughout the course of this two year Agreement. Therefore, if the Union were to prevail in these proceedings and lose the pending grievance arbitration, the value of the Union offer here would stand at 4% as compared to the value of the Employer offer, which stands at 4%. Conversely, if the Union offer were accepted in this matter, and the Union were to prevail in the grievance arbitration, then the Union offer in these proceedings would be valued at 5%, the 4% wage increase plus the 1% retirement contribution increase on the part of the Employer, as compared to the 4% offer of the Employer.

The undersigned makes no findings or conclusions with respect to whether the predecessor Collective Bargaining Agreement was violated by the Employer at Article XI, Section 11.02. This Arbitrator has no jurisdiction to make that kind of determination, since the grievance is not before him. For the purpose of these proceedings, however, the undersigned will proceed as though the Union offer would in-

corporate the retirement increase contribution, just as the Employer offer does, because it is manifestly clear that that is the intent of the Union. The question as to whether the existing language of the Contract would require that payment remains a matter of controversy and contest between the parties to be resolved in a grievance arbitration or by settlement between the parties in the event the Union offer is adopted. It is clear, from the foregoing, then, that the undersigned, for the purposes of these proceedings, consider the proposal of the Union to be valued at 5% as compared to a wage offer on the part of the Employer of 4%, inclusive of bonus and retirement contribution. In addition to the monetary issue described in the preceding paragraphs, there is the Employer proposal that time worked on holidays be paid at one and one-half times, plus holiday pay, rather than two times, plus holiday pay as provided for in the predecessor Agreement. The Arbitrator will consider this issue separately.

Having determined the parameters of the dispute, it remains to be determined which offer is favored under the statutory criteria.

The Employer urges this Arbitrator to adopt its offer, contending that the internal comparables (i.e. settlements made with other bargaining units of this same Employer) compel a finding for the Employer offer here. The record evidence establishes that the Employer bargains collectively with other collective bargaining units, including Deputy Sheriffs' Association, Mental Health Prof Association, and Lakeland Hospital Retail Clerks. The record also establishes that the Employer has entered into agreements with Local 1925 A and B of AFSCME at Lakeland Nursing Home. However, by the parties' agreement the Lakeland Nursing Home settlements are not germaine to the instant proceedings.

In bargaining with the deputy sheriffs, the Employer agreed to a one year Agreement for 1986, settling at 2% and a $175 bonus paid on September 1, 1986. In bargaining with the Mental Health Prof Association, the Employer agreed to a two year Agreement for 1986-87 with 2% wage increases each of the two years, and a $100 bonus paid on December 1, 1987. With the retail clerks at Lakeland Hospital, the Employer entered into a one year Agreement for 1986 with a 2% increase, and a $165 bonus payment December 1, 1986. Therefore, the Employer settlements in the foregoing situations squares with the Employer final offer in the instant proceedings. There is no doubt, therefore, that among the settlements entered into with the Employer and its other unions covering approximately 265 employees, the Employer's offer is to be favored, since the Employer offer here mirrors those settlements. The question remains, however, as to whether the other criteria such as the wages paid in comparable communities and settlement patterns established in comparable communities would militate for the Union offer in this dispute, particularly since the unsettled contracts of this Employer with AFSCME units representing court house, social services and counseling centers, as well as the instant highway department unit, total approximately 239 employees, almost equal in number to the number of employees who have settled (not including the AFSCME locals at Lakeland which the parties agree are not germaine to the instant dispute).

The undersigned, therefore, will look to the patterns of settlement among comparable communities, and the wages paid among comparable communities for work performed within the respective highway departments. The parties, however, are not in agreement as to what constitutes the comparable communities. The Employer urges at page 10 of its brief that the Arbitrator adopt a two tiered comparability analysis. The Employer suggests that the first tier of comparable counties should be Washington, Dodge, Ozaukee and Jefferson; and that the second tier of comparable counties should be Waukesha, Racine, Rock and Kenosha counties. The Employer urges that the first tier should be given great weight, and that little, if any, weight should be given to the second tier of comparables.

The Union, relying on arbitration awards between the same Employer and another union (Walworth County Deputy Sheriff's Association), urges that in addition to Walworth County the following counties be considered as comparable: Washington, Kenosha, Racine, Jefferson, Waukesha, Milwaukee, Dane and Rock County. The Union relies on the Zeidler Award involving the Walworth County deputies in establishing those comparables. The Union argues that if the foregoing counties are properly comparable for the deputies; it necessarily follows as the night the day that they are also equally comparable for highway department employees. The

undersigned agrees with the Union argument, and further, the undersigned is of the opinion that the parties are best served where, once comparables have been established for the purposes of bargaining, they are best left undisturbed so as to avoid the comparability shopping in which parties often engage. The undersigned, therefore, adopts the Zeidler comparables for the purpose of making comparisons to resolve this dispute. In so doing, the undersigned notes, however, that Zeidler did not find Milwaukee and Dane counties as comparables, but merely included them, because he found: "Data on Milwaukee and Dane Counties has been included as being illuminating." Since Zeidler did not find Milwaukee and Dane Counties as comparable counties, the undersigned will exclude them from his deliberations in this matter, because they are not "illuminating" in this dispute, in the opinion of the undersigned. Consequently, the Arbitrator finds the following counties to be comparable for the purpose of determining which party's final offer should be adopted: Washington, Kenosha, Racine, Jefferson, Waukesha and Rock.

In arriving at the foregoing, the undersigned has considered the Kessler Award cited by the Employer, in which he found in a Rock County case that Walworth County was not comparable to Rock County. Because the foregoing case cited by the Employer was not a case arising within the jurisdiction of Walworth County; and because the Zeidler determination of comparables involved a determination arising out of a case involving employees of Walworth County; the undersigned concludes that the adoption of the Zeidler comparables is the most appropriate for resolving this dispute.

Having determined the comparables, it remains to be determined which party's final offer is preferred, based on those comparables. The undersigned will first consider the rather unique portion of the Employer offer, where he proposes 1% of the increase to be paid to the employees not be put on the wage rate but be paid in the form of a bonus. The undersigned notes there is one other county which entered into such a settlement with its highway department. That county is Racine County, who has a one year term of agreement effective January 1, 1986, wherein the settlement called for a 2% wage increase and a $200 bonus. All of the remaining counties settled with a general wage increase placed on the wage structure itself. The settlements in the other counties are: a 3% wage increase in Washington County; a 4% wage increase in Kenosha County; a 4.3% wage increase in Jefferson County; a 3.5% wage increase in Rock County, plus a new dental insurance benefit. In addition, there is the final offers in Waukesha County [1] to be considered, where the Employer has offered 3% the first year and 4% the second year, and the Union has offered 4% for each year of a two year Agreement in 1986 and 1987. From all of the foregoing, the patterns of settlement, then, favor the Union offer, since the 4% offer of the Union more closely approximates the patterns of settlement than the 2% wage offer and $200 bonus proposed by the Employer.

Furthermore, the undersigned is concerned because aside from the fact that the $200 bonus comports to the form of the settlements entered into with the other settled units within the employ of this Employer, the Employer has adduced no evidence to support a wage payment which is not to be reflected in the wage schedule itself. The undersigned takes notice of the Grenig and Zeidler Awards involving the deputy sheriffs of this County, who entered into a voluntary agreement for 1986 for a bonus arrangement over and above the general 2% increase, the bonus not to be included in the wage structure. The undersigned notes that the deputy sheriffs in the employ of Walworth County are among the very highest paid in the area and in the state. Thus, there appears to be good, sensible reason for a bonus settlement not to be included in the wage rate itself involving deputies in the employ of this Employer. The undersigned also notes that the bonus settlement of $200 for highway department employees in Racine was entered into where the Racine Highway Department employees carry the second highest wage rate among the comparables, second only to Kenosha County. The high wage rates in Racine County appear

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1/ While Union Exhibit No. 12 reflects a 3% and 4% Waukesha County final offer for 1986 and 1987, Employer Exhibit No. 6 sets forth that in Waukesha County both the County and the Union have proposed 4% for each of two years for 1986-87.

to justify the inclusion of a $200 bonus rather than placing the equivalent of that money in the form of a wage increase on the wage schedule. Since the Employer has not established any significant reason, in the opinion of this Arbitrator, to establish a bonus payment not reflected in the wage schedule, the fact that such a bonus proposal is made weighs against the adoption of the Employer offer.

It remains to compare the actual wage rates paid to patrolmen and mechanics in the employ of comparable counties, and those proposed in the instant dispute. Employer Exhibit Nos. 6 and 7 establish the maximum rates paid to patrolworkers and to heavy equipment operators among the comparable counties as compared to the rates that would be established under both the County and Union final offers. Exhibit Nos. 6 and 7 establish that during 1985 the maximum rates paid in Walworth County for both patrolworkers and heavy equipment operators ranked them 5th among the 7 comparables established above. The evidence further establishes that irrespective of which party's final offer is selected, the relative ranking will remain the same, that is, Walworth County would remain 5th among the comparables for both patrolworker classification, as well as heavy equipment classification, irrespective of which party's final offer is selected. Therefore, on sheer ranking of wages paid among the 7 comparables, neither parties' final offer is preferred. Mere ranking, however, does not tell the entire story, because Employer Exhibit Nos. 6 and 7 establish that in 1985 patrolmen were paid 26¢ less per hour than those of Waukesha County, the County ranked 4th among the comparables, and 34¢ an hour more than Rock County, the County ranked 6th among the comparables. The evidence establishes that if the County's final offer is selected, the patrolman's relative position to the 4th and 6th ranked comparables will deteriorate in that the wage rate paid in Walworth County will be 46¢ per hour less than that paid in Waukesha County and 16¢ more than that paid in Jefferson County - Jefferson County now assuming the 6th position among the rankings for 1986. Comparatively, if the Union offer is accepted, the status quo with respect to the 4th and 6th position is almost maintained identically in that if the Union offer is adopted the patrolman hourly wage at the maximum is 27¢ per hour less than Waukesha and 35¢ per hour more than Jefferson, the 4th and 6th ranked counties respectively among the comparables.

Using the same type analysis with respect to heavy equipment operators, the same results are determined, in that in 1985 heavy equipment operators were paid 28¢ per hour less than the 4th ranked county, Waukesha, and the heavy equipment operators were paid 30¢ per hour more than the heavy equipment operators in the 6th ranked county, Jefferson County. In 1986, if the County offer is adopted, the equipment operators in Walworth County will be paid 48¢ per hour less than those in Waukesha County, the 4th ranked county, and 12¢ per hour more than those in Jefferson County, the 6th ranked county. Comparatively, if the Union offer is adopted, the status quo continues to prevail with respect to the rankings, in that the heavy equipment operator would be paid 29¢ per hour less than the heavy equipment operator in Waukesha County, and 27¢ per hour more than the heavy equipment operator in Jefferson County, the 4th and 6th ranked counties respectively. From the foregoing, it is clear that the Union's proposal more nearly mirrors and maintains the relative positions of the rankings that the parties enjoyed in 1985 than does that of the Employer and, therefore, the Union offer is preferred.

Having determined that the external comparables and patterns of settlements support the Union offer, it remains to be determined whether the other criteria of the statute supports the Employer or union offer.

The cost of living data clearly supports the Employer offer, in that both parties' offers clearly exceed the amount of cost of living increases over the years in question here. Consequently, the undersigned concludes that the cost of living criteria supports the final offer of the Employer in this matter.

The Employer has relied heavily upon criteria c, the interest and welfare of the public in the financial ability of the unit of government to meet the cost of any proposed settlement. The Employer has not introduced evidence into this record, nor made argument with respect to said evidence that it is unable to meet the Union's proposed cost of settlement. It is clear, however, that the Employer attempts to distinguish itself from all of the other comparable counties with respect to such things as geographic proximity, urbanization, population, employment opportunities, average income-employed persons, equalized value per capita,

dependency index, per capita property tax, per capita income, percentage of per capita income paid in property tax, county government expenditures, county levy per capita, delinquent tax per capita, when taken as a group consideration. The undersigned has considered all of the foregoing arguments of the Employer, and the many pages of argument with respect thereto contained in the Employer brief. While the data is well presented and impressive, the undersigned can find nothing in this record to explain why the Employer pays its deputy sheriffs the highest among the comparables and the ranking of its highway department employees is 5th out of 7. Given the foregoing dichotomy, and because the undersigned is of the belief that the disparity of conditions in Walworth County which the Employer argues compared to the surrounding counties existed previously when the relative ranking of wages was established through the free collective bargaining process; and because, if the Employer offer were adopted here relative position of the employees in the highway department unit would deteriorate with respect to its next most closely ranked comparable; the undersigned concludes that the Employer argument is unpersuasive with respect to the criteria of interest and welfare of the public.

The undersigned has further considered the Employer argument and the evidence it adduced at hearing with respect to the relative payment to its highway department employees compared to street department employees among the municipal employers in Walworth County. The evidence clearly establishes that Walworth County communities pay an average wage of $8.34 per hour, compared to an average wage of $9.36 in 1985 and $9.73 in 1986 for highway department employees. The evidence also establishes that the highway department employees have a superior vacation and fringe benefit program as compared to municipal employees of the municipal employers within Walworth County. Therefore, based on that comparison, the County offer is deemed sufficient.

The Employer has proposed to modify the terms of the predecessor Agreement with respect to overtime pay for holidays worked from two times to one and one-half times, plus holiday pay. The Employer has adduced evidence which satisfies the undersigned that one and one-half times overtime pay for work for holidays is the prevalent practice among the internal and external comparables. Consequently, this proposal of the Employer is acceptable if the remaining proposals of the Employer final offer are adopted. However, the overtime pay issue is a modification proposal by the Employer (the Union proposes the status quo), and is not an issue which will sway the outcome of this decision. Rather, the overtime issue will be decided on the basis of the outcome of the other disputed issues.

SUMMARY AND CONCLUSIONS:

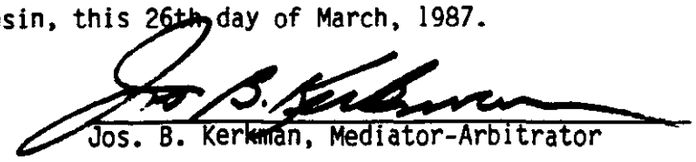
The undersigned has concluded that the internal comparables and cost of living favor the Employer offer, and the external comparables of wages and patterns of settlement favor the Union offer. The undersigned has further determined that the Employer's reliance on the criteria of interest and welfare of the public is unpersuasive, and that the overtime pay for holidays worked issue is not a determining factor in the dispute. The undersigned has considered all of the statutory criteria and especially those relied on by the parties. After careful deliberation, the undersigned now concludes that based on the evidence in this record the external comparables are more persuasive than the internal comparables and, therefore, the Union offer is preferred in its entirety over the offer of the Employer. Consequently, the undersigned will award the final offer of the Union in this matter.

Therefore, based on the record in its entirety, and the discussion set forth above, after considering the arguments of the parties, and the statutory criteria, the Arbitrator makes the following:

AWARD

The final offer of the Union, along with the stipulations of the parties, as well as the terms of the predecessor Collective Bargaining Agreement which remain unchanged through the bargaining process, are to be incorporated into the written Collective Bargaining Agreement of the parties.

Dated at Fond du Lac, Wisconsin, this 26th day of March, 1987.



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Jos. B. Kerkman, Mediator-Arbitrator