

RECEIVED

MAR 25 1987

EDWARD B. KRINSKY, MEDIATOR-ARBITRATOR

	:	WISCONSIN EMPLOYMENT
	:	RELATIONS COMMISSION
In the Matter of Mediation-Arbitration	:	
Between	:	
	:	
WALWORTH COUNTY (DEPARTMENT	:	
OF SOCIAL SERVICES)	:	Case 80
	:	No. 36309
and	:	MED/ARB-3771
	:	Decision No. 23627-C
WALWORTH COUNTY SOCIAL SERVICES	:	
EMPLOYEES LOCAL 1925-C, WCCME,	:	
AFSCME, AFL-CIO	:	
	:	
	:	

Appearances:

Lindner & Marsack, Attorneys at Law, by Mr. Eugene J. Hayman, (with Mr. James S. Clay on the brief), for the County.
Mr. Robert Chybowski, Staff Representative, for the Union.

On August 18, 1986, the undersigned was appointed by the Wisconsin Employment Relations Commission as mediator-arbitrator in the above-captioned matter. A brief mediation session took place at Elkhorn, Wisconsin, on November 19, 1986, followed immediately thereafter by an arbitration hearing. None of the issues were resolved in mediation.

At the arbitration hearing the parties had the opportunity to present evidence, testimony and arguments. A transcript of the proceedings was made. Both parties submitted post-hearing briefs, and the Union submitted a reply brief. The record was completed on March 4, 1987, with receipt of the Union's reply brief.

The issues in dispute in this case involve wages and retirement benefits to be paid in 1986 and 1987 to the approximately 42 employees in this bargaining unit. The parties' final offers are appended to this Award.

The parties agree that the duration of their proposed Agreement is two years, covering calendar years 1986 and 1987. The Union proposes a 4% wage increase at the beginning of each year. The County offers a 2% increase at the beginning of each year, and offers an additional cash bonus in the last month of the Agreement. The County offers a retirement benefit. The Union's offer is silent with regard to retirement, but the Union argues that it already is entitled to the benefit.

The statute requires that the arbitrator award in favor of one offer or the other in its entirety. The statute at Section 111.70(4)(cm)7 requires that the arbitrator give weight to several factors.

There is no dispute with respect to the application of several of the factors. There is no issue involving: (a) lawful authority of the employer; (b) stipulations of the parties; that part of (c) pertaining to "the financial ability of the unit of government to meet the costs of any proposed settlements"; and (g) changes in circumstances during the pendency of the arbitration proceedings.

The arbitrator's analysis, presented below, will thus concentrate on the remaining factors.

Comparables

The parties differ about what weight, if any, to place on what other counties pay their Social Workers. They recognize, however, that one of the decision-making criteria in the statute, factor (d), deals with comparability. It is important then, regardless of what weight attaches to comparability, to identify the counties which should be viewed as comparable.

The Union notes that the County has been involved in two prior arbitration proceedings in disputes involving its Sheriffs. It argues that consistency should dictate use of the same group of comparable counties in the present dispute. In the first case, decided by Arbitrator Zeidler in 1983, the County argued that the comparable group should be limited to Jefferson, Rock and Washington Counties. Zeidler, while finding those three counties to be comparable, also added Waukesha, Kenosha and Racine Counties to the list. He stated, at page 8, "the County has not made a case for its four county comparables as compared to the seven comparables, since the data dividing urban from rural does not support the distinction being made, as long as Rock County is included." While not finding them to be in the same comparability group, Zeidler included data from Milwaukee and Dane Counties, which he viewed as "illuminating."

In 1984 Arbitrator Grenig used the same comparable group used by Zeidler, but he added Milwaukee and Dane Counties to the list. He gave no explanation for his selection of the comparability group.

The County argues that whatever the comparability group, it should exclude Dane and Milwaukee Counties because of their economic characteristics, especially their very high population and full value of property. It views the

remainder of the Zeidler comparables as appropriate but adds Dodge and Ozaukee Counties to the list. It then divides the group into two "tiers," finding the first tier to be more appropriate than the second tier. In the first tier it places Washington, Dodge, Ozaukee and Jefferson Counties. The remainder (Waukesha, Racine, Rock and Kenosha) are in the second tier. Having prepared its exhibits using these counties "merely for consistency purposes," the County states in its brief that it ". . . did not and does not acknowledge that all nine counties (including Walworth) are comparable."

The County then examines a large number of economic variables using this group of comparable counties. The arbitrator concurs with the County's judgment that the first tier is more comparable with Walworth than the second tier on such measures as: 1985 population size; total part-time and full-time 1984 employment; average income of employees and proprietors based on part-time and full-time 1984 employment; percentage of rural vs. urban housing in 1980.

The two tier distinction is less clear on other measures. For example, the second tier counties are arguably just as comparable with Walworth County as the first tier when comparing farm vs. non-farm employment and Aggregate Full Value. All eight counties are arguably comparable in terms of Full Value Per Capita. It is the arbitrator's conclusion that there is no more reason to use the County's first tier comparables than there is to use the second tier or both tiers together.

The County then spends several pages of its brief demonstrating that Walworth County is unique, not really comparable to any of the so-called comparable counties. It states, at page 12, ". . . when one looks at employment and average income figures, it is evident that Walworth County is not actually comparable even with those governmental units which the County has selected for analysis."

It summarizes its position on comparability as follows:

What this analysis demonstrates is that just because the governmental units are in close geographic proximity, have substantially similar populations and equalized valuation does not mean that they are comparable. It surely does not demonstrate that they have substantially equivalent per capita incomes, are paying substantially equivalent per capita property tax, have substantially equivalent tax bases and are receiving equal amounts of State shared revenues. In fact, as the data shows, Walworth County with the highest equalized valuation per capita is very near the lowest in the annual per capita income.

This is caused by the simple fact that nonresident owners of property with high equalized valuation are not counted in per capita income figures. At the same time, Walworth County is near the top in per capita property tax, spends more than any county for governmental services on a per capita basis, but receives the lowest amount of State shared revenue than any of the cited governmental units. The County argues that these facts make comparability pursuant to 111.70(4)(cm)7d less than relevant in the determination of the reasonableness of the parties' final offers. While arbitrators have traditionally relied upon comparables and under the statute are not free to ignore that data, in this instance the County contends that fundamental fairness dictates that this data be given only minimal consideration.

As stated earlier, the question of what weight should be given to comparability is a different question from the identification of the comparables. The weight will be considered below. The arbitrator is satisfied that the comparables identified by Zeidler (Jefferson, Rock, Washington, Waukesha, Kenosha and Racine) are appropriate comparables, as are the two additional counties which the County has proposed (Dodge and Ozaukee). These are all the geographically contiguous counties, plus three counties adjacent to the contiguous ones to the north. The arbitrator has not found it useful to distinguish among these counties in the two-tier manner suggested by the County, and he will consider them all as a single group. He notes that none of these counties is a perfect match to Walworth County, and some are much more comparable by some measures than by others. Together, they form an appropriate group, in his view, and he does not support the argument made by the County which is to say that Walworth County is so different and unique that it should not have its collective bargaining affected by that which occurs in so-called "comparable counties." The arbitrator does not view Milwaukee and Dane Counties as appropriate comparables and he has not included them in the analysis below.

Interests and Welfare of the Public

Statutory factor (c) directs the arbitrator to consider the "interests and welfare of the public." The County argues that this factor weighs heavily in its favor. The Union disagrees. The County does not make an "ability to pay" argument. Rather, while acknowledging that "it would have the ability to pay if it wished to engage in the 'tax and spend' syndrome," it argues that an award which would require it to further increase its taxation is not in the best interests of its citizens.

Among other measures, the County cites the fact that among the comparable counties, it has the highest full value of property per capita and the third highest average property tax per capita. It had the highest net county tax levy per capita. The County notes that in terms of average income for all employment in the County, it ranked lowest among the comparable counties. The County argues that as a percentage of personal income on a per capita basis its citizens pay the highest percentage of their income for property taxes among the comparable counties. The County argues also that it ranks lowest among the comparables on the "dependency index," that is, the relationship of State shared revenue received for every dollar of property tax levied.

The County anticipates Union arguments that in the 1987 budget it has reduced its property tax appropriation. The County has moved to "lessen the burden on the tax levy" by, in part, enacting a County sales tax. Without that tax, and the use of retained federal revenue sharing monies and funds from the general fund, the County argues that it would have had to raise the property tax appropriation by over 18% and the mil rate by about 24%.

In arguing that its offer better meets the interests and welfare of the public than does the Union's offer, the County states:

The pattern that emerges is that Walworth County has the highest equalized value, the lowest annual average income, is near the top in per capita annual property tax, is at the top in property tax levied for county purposes, has the highest percent of annual income devoted to property tax, but is at the bottom in State shared revenues. . . . Further, since a wage increase would, without staff reduction, require additional County funds, any allocation of this nature would not be in the best interest or welfare of the citizens of Walworth County.

The Union emphasizes that while the County has the fourth highest per capita full value in the state, its County tax rate is nearly the lowest. It argues that, "Walworth County is giving its property owners just about the best deal in all of Southeastern Wisconsin." The Union cites County data and urges a comparison of Walworth to the other counties in terms of the increase in per capita levy from 1984-85 to 1985-86. With the exception of Kenosha County, where there was a decrease, Walworth had the lowest increase, 4/10 of a percent, where the next lowest increase was 4.4% and the average was considerably higher.

The Union also makes the following arguments:

A more plausible (sic) analysis of the whole of the County's data is that people who own property in Walworth County are comparatively very wealthy; and many of these property owners do not reside in Walworth County or earn their incomes in Walworth County. . . . It is . . . misleading to compare the personal incomes of residents to the personal property values of those (who) own the property because many of the latter actually reside elsewhere. And it's the property tax the County is rightfully concerned about, and it's paid by every one who owns property, not just the residents of the County . . . Walworth County, which we admit must rely on property taxes to a considerable extent to function, can nevertheless easily afford the Union's Final Offer of 4% each year.

In the arbitrator's opinion, the most significant measures of the County's financial picture for the period in dispute are those which deal with its taxing efforts. The arbitrator does not agree with the County that great weight should attach to the fact that the County has very high equalized value and per capita annual property tax and low shared revenues. It is acknowledged that these measures are what they are because there is a great deal of very valuable property in Walworth County. In deciding whether the interests and welfare of the public are on the side of the County, as it argues, to keep property taxes from increasing further, attention must be focused on the County's taxing efforts.

The mil rate in 1984 was .0031. Of the comparable counties, five had a higher mil rate, and three had a lower rate. The per capita levy in 1984-85 was \$125 in Walworth County. For 1985-86 it was \$125.48, an increase of less than half of one percent. With one exception, all of the comparable counties raised their levy per capita by significant amounts during that period. The County's 1987 tax levy is reduced to \$121, a reduction of 3.2%. The 1987 figure must be viewed in the context of the County's new sales tax which is budgeted to produce revenue of 1.35 million dollars, or about \$18.70 per capita. If this amount were raised from the property tax levy, the 1987 levy would be about \$140 and would represent a 12 percent increase over 1986, a significant increase. The parties did not present data for the 1987 tax levies in the comparable counties, and thus there is not a basis for the arbitrator to know how the County's taxing efforts for 1987 compare to the other counties.

The conclusion that the arbitrator draws from this data is that in 1987 the County has made a very substantial taxing effort, which is in sharp contrast to what it did in 1986 when it increased the levy by less than one-half a percent. The arbitrator is also mindful of the fact that if the Union's final offer was implemented and also given to all other County employees, there might be the need for additional significant tax increases. However, the arbitrator does not view the County's arguments as persuasive that the interests and welfare of the public require that its offer, and not the Union's be implemented. The 1987 tax increase was a large one, but the 1986 increase was not, and the arbitrator is not persuaded by the available data either that there has been an unduly heavy burden placed on the County's taxpayers in recent years by the County in absolute terms or in comparison to other counties. The arbitrator does not view the "interests and welfare of the public" factor as weighing heavily in favor of one party's offer over the other.

Comparability

Factor (d) directs the arbitrator to look at comparisons. One set of comparisons is with ". . . wages, hours and conditions of employment of other employees performing similar services . . ." Both parties presented wage data comparing Walworth with the comparable counties. There is no agreement with respect to which classifications to use in making these comparisons. The arbitrator will review each party's data rather than attempt to reconcile them and use one common set of numbers.

The Union's analysis uses Jefferson, Kenosha, Racine, Rock, Washington and Waukesha Counties. It does not present data for Dodge or Ozaukee Counties.

It presents 1986 data for professional and non-professional social service workers. The following percentage increases are shown:

	Professional 1986	Non-Professional 1986
Jefferson	4.4	4.4
Kenosha	4.0	4.0
Racine	2.5	2.8
Rock	3.5	3.65
Washington	3.75*	3.75*
Waukesha	3.0	3.0

* Washington County is still in negotiations. The employer's offer is 3.75%, and thus that figure is used because the resulting figure will be 3.75% or higher.

These data suggest that the Union's 4.0% offer for 1986 is closer to what was granted in the comparison counties than is the County's offer of 2.0%.

The Union also presented hourly wage data for 1985 for various classifications in these counties. The arbitrator has presented the maximum rates paid to each classification, showing the Walworth County rate, the median rate for the other counties, and the relationship of Walworth to that median.

	Walworth County	Comparison Median	Comparison of Walworth to Median
Clerk-Typist II	6.56	6.66	(-.10)
Social Worker III	10.58	12.08	(-\$ 1.50)
Social Worker II	9.70	12.13	(-\$ 2.43)
Social Worker I	9.43	10.34	(-.91)
Homemaker I	6.56	7.09	(-.53)
Income Maintenance Worker	8.03	7.31	+ .72

These data suggest that in 1985 the County wage rates for these classifications were below the median in five of the six classifications, and by substantial amounts in some cases.

The County argues as follows concerning the meaningfulness of comparisons between counties:

Comparing the final offers as they relate to employees performing similar work in comparable counties is extremely difficult. In 1986 Jefferson County restructured job classifications in what Walworth County titles Clerk III, Income Maintenance Worker, and Social Worker - Bachelors (Co. Exs. 5-7). In addition, Jefferson and Racine Counties do not have a Social Worker - Masters classification (Co. Ex. 8). Waukesha County eliminated that classification, replacing it with a limited educational incentive program (Co. Ex. 8). It can be assumed that in those counties employees classified as Social Worker - Bachelors perform the same work as Social Worker - Masters in Walworth and other counties which still maintain that wage classification. Rock County also restructured its social services department classifications in 1986 (Co. Exs. 5-8). As Brian Wexler, Director of the County's Department of Social Services, testified, the structure of social services departments varies

from county to county (TR 57) as well as the job functions which individual employees perform in those departments (TR 57-59). Thus, achieving an accurate wage comparison is difficult. Notwithstanding that fact, the County's final offer is reasonable when compared with other governmental units and should be adopted by the Arbitrator

The County presents the following wage data. The percentages shown represent the increase from 1985 to 1986 in the maximum rates for the classification.

County	Clerk III	Income Maintenance Worker	Social Worker Bachelors	Social Worker Masters
Waukesha	4.0	4.0	4.0	4.0
Racine	2.5	2.5	2.5	2.5
Rock	3.9	3.5	3.3	3.5
Kenosha	4.0	4.0	4.0	4.0
Dodge	3.9	3.7	4.9	4.5

The data for Washington County are not shown because there are negotiations in progress.

The County also presented data for Jefferson and Ozaukee Counties which show wage decreases. In Jefferson County, according to the County, there was a restructuring of classifications. There is no explanation concerning Ozaukee County. The arbitrator has no knowledge of what arrangements, if any, were made in these counties concerning the wage status of employees who were at the maxima of their classifications prior to the restructuring. The data supplied by the County demonstrate that the Union's offer for 1986 is much closer than is the County's offer to the increases given in the comparable counties.

The County argues that its offer maintains or improves the relative ranking of the County in relationship to the other counties. The County's relative ranking is low, and the Union argues that even if the Union's offer is implemented, the rankings will remain at the bottom in comparison to the other counties. There is no obvious reason why Walworth County's wage levels should fall further behind those of comparable counties for employees performing similar work. Given this situation, the arbitrator views it as significant that, using either the County's or Union's data,

the Union's offer provides increases much closer to the median increase given in the comparable counties in percentage terms in 1986.

The wage data for 1987 are incomplete, but those which have settled, where there is no restructuring, indicate that the 2% and year-end bonus offered by the County may be closer to the outcomes than the Union's 4%. The known settlements for 1987 are:

Waukesha 4.0%
Racine 2.5%
Rock 2.2 - 2.5% depending on classification
Kenosha 3%
Ozaukee, where there was apparently restructuring,
appears to have a 3.0% increase for 1987.

In summary, the comparison wage increases would appear to support the Union's position for 1986 and the County's for 1987. Over the two-year period, factoring the County's proposed bonus payment into the equation, the result would seem to be that the Union's offer is on the high side of the competition, and the County's is on the low side. On balance, it is the arbitrator's view that in comparison to other counties, the data support the Union's wage position slightly more than the County's over the two-year period.

Factor (d) directs the arbitrator to make comparisons with other employees in public employment in the same community. There are a total of 1,302 Walworth County employees. For purposes of the following analysis they are broken down as follows:

Deputy Sheriff's Association	67
Mental Health Professional Association	32
Lakeland Hospital - Clerks Unit	166
Non-Union	513
Union--settled, but stipulated as not being relevant to this case	285
Union--not settled (including Local 1925-C which represents 42 employees)	239

The non-union employees at Lakeland Nursing Home (111) received no wage increase for 1986-88. The County's other non-union employees (402) received a 2% increase for 1986.

The wage settlements for the unionized employees who have settled have been as follows: Deputy Sheriff's Association (67) have a one-year agreement for 1986, with a 2% increase plus \$175 paid on 9/1/86. The Mental Health

Professionals Association (32) have a two-year agreement for 1986-87. There is a 2% increase for 1986. For 1987 there is a 2% increase with an additional \$100 on 12/1/87. The Lakeland Hospital, Clerks unit (166) has a three-year agreement. In 1986 there is a 2% increase with an additional \$165 paid on 12/1/86. For 1987 there is a 2% increase with an additional \$165 paid on 12/1/87. For 1988 there is a 2% increase with an additional 1% on 9/1/88.

The County cites the fact that these settlements, plus the increases given to non-unionized employees, result in the fact that, ". . . the wages for 667 employees, or 74 percent of the work force have already been determined. All of these employees have settled and/or received annual wage increases of two percent. . . Except for the unrepresented employees, the wage settlements with all of the other bargaining units include a bonus payment." The County goes on to argue,

In the instant case, the Union demands 1986 and 1987 wage increases which are in most instances two times greater than the increases which other represented and unrepresented employees of the County will be receiving. There is absolutely no basis for the Union to ignore the settlements reached with other employee groups and to demand wage increases far in excess of those settlements. . .

The Union argues that in the past there has not been uniformity in wage settlements bargained within the County, and at present there is no uniformity in the settlements that have been reached for 1986. It states, ". . . of the three bargaining units settled, even the duration differs three ways. . . The 'lump-sum bonuses' are different, in amount and timing. . ."

Just over half of the unionized employees (not counting those at Lakeland in AFSCME units which the parties have stipulated are not relevant to this proceeding), have settled (265 out of 504). The arbitrator agrees with the Union that in determining whether there is an internal pattern, little or no weight should be given to the wages granted to non-union employees, since the County sets those rates unilaterally. Is there a pattern of settlements with those units that have settled? There is not a pattern in the sense of settlements being identical. They differ in terms of the amount of lump sum payments and when they are paid, and they differ in terms of duration. They do establish a pattern in terms of the magnitude of compensation given in 1986 and in 1987. In one case there is a 2% increase. In the other two

cases there is 2% plus cash bonus paid during the year. These increases are much closer to the County's 2% offer for 1986 than to the Union's 4% offer. The same is true when the analysis for 1987 is done.

The data suggest also that in previous years the wage increases bargained by the Union were identical or very close to what was bargained in the other unionized bargaining units. The wage increase to Local 1925 was identical to that given to the Deputy Sheriff's Association, in percentage terms, in 1983, 1984 and 1985, although in 1984 there was a reduction in the hours of the Deputies. In 1982, through arbitration, the Sheriff's received a 9.7% increase compared to 7% for Local 1925. The increase to Local 1925 was identical to that given to the Clerks unit at Lakeland Hospital in 1982, 1983 and 1985 in percentage terms. In 1984 the Clerks received a 2% wage increase, whereas there was no wage increase given to Local 1925.

In the arbitrator's opinion, the internal comparability factor strongly favors the County's final offer. Through voluntary collective bargaining and arbitration the County has sought to maintain approximately the same level of percentage increases to its various unionized employees, and it has largely succeeded.

Factor (d) also directs the arbitrator to look at comparable private sector data. Neither party presented data with respect to private sector employment, and thus the arbitrator has not given weight to this factor in making his decision.

Factor (d) also directs the arbitrator to make comparisons ". . . with other employees generally in public employment in the same communities." The Union has put into evidence a decision issued by Arbitrator Yaffe in the Lake Geneva School District in June 1986. Lake Geneva is in Walworth County. He had to choose between a District offer of a 7.02% wage increase and an 8.26% Association offer. He selected the Association's offer.

In arguing for consideration of the Lake Geneva Award, the Union states:

Teachers and social workers are comparable to the extent that both groups are professional public employees with comparable educational levels and responsibility levels.

. . .

We are not saying that social workers should be paid the same as teachers. But we argue that if

professional teachers in the greater Walworth County area can justify an average pay increase of 8.01% for a school year, meaning an average of \$1,836, the Walworth County professional social workers can certainly justify their 4% Final Offer, which will mean only \$811 for a Social Worker II working 2,080 hours in 1986.

The County views the Lake Geneva decision as "totally irrelevant" to this dispute. It argues:

Aside from the fact that the employees are professionals and may have similar educational backgrounds, the employer is not comparable and the work performed is not comparable. Aside from property tax, the source of revenue is dissimilar, i.e. different formulas. . . . Clearly, school districts are not confronted with the financial problems similar to those currently confronting Walworth County. . .

The Union also asks the arbitrator to consider the increases given to State employees of 6% in July 1985 and in July 1986, noting state facilities in Delavan and Whitewater.

It is the case that the increases cited by the Union among teachers and state employees favor its final offer more than the County's final offer. However, in the arbitrator's opinion, these comparisons are not as meaningful as the comparisons between Walworth County and other counties whose structures and finances are much more similar and whose employees perform similar duties to those at issue here, and the comparisons within the County where wage rates have been negotiated for 1986 and 1987.

In the arbitrator's opinion, the Union's wage offer is slightly favored when viewed against external comparisons, but the County's offer is strongly favored in the context of wages negotiated thus far with its other bargaining unit. There is no obvious reason why the employees of this unit should get percentage increases almost double the size of those given to the County's other unionized employees who have settled for 1986 and/or 1987. There is no evidence that the employees in this bargaining unit are worse off in relationship to employees working for comparable counties than are the other unionized employees in Walworth County in relationship to their counterparts in other counties. There is also no evidence to show that there has been a significant change in recent years in the wage relationship of this bargaining unit to counterparts in comparable counties, which would argue in favor of the Union's wage offer.

Cost of Living

The statute directs the arbitrator to consider factor (e), "the average consumer prices for goods and services." Data submitted by the parties indicate that from December 1984 to December 1985, the consumer price index (CPI) rose 3.8%. The County calculates the increase in total labor cost for 1986 under its proposal to be 2.8% while under the Union's proposal for 1986 the total labor cost increase is 4.7%. The County's offer for 1986 is below the 1985 increase in CPI by approximately the same amount that the Union's offer is above it.

The data show that the CPI increase from July 1985 to July 1986 was 1.2%. The County's total labor cost increase under its offer for 1987 is 2.0%, and it calculates the Union's to be 3.3%. For 1987 the County's offer appears to be more in line with the change in the CPI than does the Union's. Consideration of the change in the CPI since December 1984, measured against the parties' final offers shows that the County's offer for 1986-1987 more nearly reflects the CPI change than does the Union's offer.

	1985	1986	1987	TOTAL
CPI Change	3.8 (Dec.)	1.2 (July)		5.0
County Offer		2.8	2.0	4.8
Union Offer		4.7	3.3	8.0

The Union argues that it got no wage increase in 1984 when it received dental insurance, and that its wages thus failed to keep up with the cost of living. The County presented data covering 1981-86 which suggest that wage increases alone have kept slightly ahead of the cost-of-living increases during that period for this unit. The arbitrator is not persuaded by the data that cost-of-living increases justify any kind of catch up pay to this unit. The most relevant statistics, in the arbitrator's opinion, are the 1985 and 1986 changes in the CPI, and they favor the County's final offer.

The statute directs the arbitrator to give weight to "overall compensation." The data submitted by the parties do not lead the arbitrator to conclude that either party's final offer is preferred to the other based on overall compensation.

Factor (h) directs the arbitrator to consider other factors normally taken into account in arbitration. The Union argues in this case that the arbitrator should find in its favor, in part, because the lump-sum bonus offered by the County is "inappropriate and unreasonable." The Union argues:

As can be seen on the basis of comparisons discussed above, a 'lump-sum bonus' is truly inappropriate and unreasonable in this situation. Walworth County social services employees can justify real wage rate increases. The County cannot justify stagnating wage rates which is the intent of compensating through a one-time 'bonus' scheme.

At best, the County's 'bonus' offer is tacit acknowledgement by the County that the social services employees are deserving of more pay than the County's 2% increases would generate.

There is no precedent for this type of pay package in the parties' collective bargaining relationship. There is no arbitral precedent for this unique form of compensation in cases like the instant where the employer cannot show an inability to pay wage rate increases.

It is conceivable that in certain situations parties to a collective bargaining agreement will voluntarily agree to lump-sum payments in lieu of added pay rate increases, where, for instance, existing wage rates are relatively high within an appropriate realm of coercive comparisons.

. . .

The lump-sum approach is also unfair and unreasonable because it will be denied to all employees who have to leave County employment prior to 'bonus day' which is December 1, 1987.

The lump-sum 'bonus' is a weak patch on a Final Offer full of leaks.

The County makes the following statements in defending its lump-sum offer:

. . . Although the Union objects to this form of remuneration, it does, in fact, put additional money into the employees' pockets and increases the

total cost to the County of operating a Department of Social Services. It should also be noted that some form of bonus was included in all of the relevant settlements with other County bargaining units. . .

In the arbitrator's opinion there is nothing unreasonable or illegal about the payment by an employer of a lump-sum payment as part of its wage offer, whether or not it is common practice to make payments in that manner. The existence of such an offer is not any reason for a conclusion by the arbitrator that the County final offer should not be accepted. The arbitrator understands that from the Union's viewpoint such an offer is not a desirable form of compensation when compared to payments made earlier in the contract period and made a permanent part of the wage rate. However, a lump-sum payment is not so unusual or abhorrent as to dictate selection of the Union's offer. The final offers must be evaluated in terms of the relative merits of the wage proposals, and those are discussed elsewhere in this Award.

Retirement

The County has included retirement language in its final offer. The Union has not. The existing contract language, at Section 11.02 of the Agreement states:

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.

Given the existence of this language, the Union states, "It is not clear what the County really intends with this part of its Final Offer." The Union's argument is as follows:

The present retirement language of the Agreement clearly sets forth that the County will pay the full cost of the retirement system; i.e., there is no dollar or percentage 'cap' that protects the County from paying increases caused by increases in gross earnings or increases in percentage amounts mandated by the legislature. The issue of who, the County or the employee, pays the increase of 1% set forth by the legislature was, as required by the

law, the subject of negotiations for the 1986-1987 Agreement. The County did not succeed in its effort to change the language of s. 11.02.

In the Union's view, the County must pay the increased cost of retirement funding, retroactive to 1 January 1986, regardless of who wins the present Med/Arb decision. If the County's only purpose is including this item in their Final Offer is to show that their retirement costs have gone up in an amount equal to 1% of gross earnings, we've little to complain about. Indeed, note that the County even counted a 1% increase in retirement in 1986 in its exaggerated estimate of the Union's Final Offer, which does not contain a retirement item (County Exhibit 3). The increase cost of retirement we acknowledge, but as a result of present contract language, not the Union's Final Offer.

But if the County is attempting to change the contract's language in a way that might be construed as a 'cap' on its retirement costs, their (sic) asking for much more than can be justified on the basis of the record. They may be taking away a very important fringe benefit now set forth in the Agreement--an uncapped fully paid retirement benefit.

The County makes the following arguments concerning its retirement proposal:

The Union's position as it relates to the one percent retirement benefit adjustment increase is illogical. The Union takes a position that they are entitled to the one percent retirement benefit adjustment increase on other grounds. The basis of the Union's position is an arbitration pending between the parties that the 1985 collective bargaining agreement required the County to assume the additional one percent employee share of retirement payment. If the Union prevailed in that dispute or in a prohibitive practice action, the County will pay the one percent increase; if they do not prevail, the employees will assume that additional one percent cost. It is the County's position that the enabling legislation provided that the County assumption of the employees' increased retirement benefit payment was subject to negotiation. That is the manner in which the County has conducted itself in negotiations with all of the County's bargaining units in that one

percent benefit contribution was negotiated with the other settled units as part of the 1986 and in some instances 1987 agreements (Co. Ex. 1). . . . no matter how it is calculated, the County's assumption of that one percent payment is a direct and immediate benefit to the employees affected. Absent the County's assumption of that cost, it will be deducted from their after-tax pay, reducing their compensation by that amount. Should the Arbitrator adopt the County's final offer, the County makes the one percent employee contribution, no deduction is made from the employee's paycheck and the benefit experienced by the employee in actual in-pocket dollars is greater than the one percent which the retirement benefit represents. Third, the Union's position exposes the parties to additional litigation, which is both costly and time-consuming when the issue could be resolved in this case, or through the collective bargaining process as it was with the other bargaining units. . . . The County contends that the Arbitrator lacks jurisdiction to resolve the grievance between the parties and must only judge whether the County's final offer, which includes the one percent (1%) employee share of the retirement benefit adjustment, is more reasonable than the Union's, which does not.

The parties have not asked the arbitrator to resolve the pending grievance over the application of existing contract language to their dispute over the County's obligation or lack thereof to pay the additional 1% of retirement contribution. Both parties clearly intend that the County pay the 1%. The County has made that clear by including such payment in its final offer. The Union has not put it in its final offer, apparently because of its position in the pending grievance that the County has already obligated itself to pay the additional benefit.

If the arbitrator rules in the County's favor, the County is obligated to pay the 1%. If he rules in favor of the Union's final offer, which is silent with respect to retirement, the payment or non-payment of the benefit by the County will depend on the outcome of the pending grievance arbitration. Since ruling in favor of the County's offer would both resolve the issue during the term of this Agreement and provide the payment of the benefit, the arbitrator prefers the County's offer on this issue. However, it is the arbitrator's opinion that this issue is a relatively minor one in relationship to the wage issue which is central to the dispute. Given the relative weight of these issues, the arbitrator will decide the case based on the outcome of the wage issue.

Conclusion

In conclusion, the arbitrator has determined that the Union's offer is preferred based on comparisons with other counties, while the County's offer is preferred based on comparisons with the internally negotiated settlements with other unionized county employees, and in relationship to the increases in the cost of living. This is a close case, but as stated earlier, the arbitrator is obligated to choose one offer in its entirety.

Based on the above facts and discussion the arbitrator makes the following

AWARD

The County's final offer is selected.

Dated at Madison, Wisconsin, this 24th day of March, 1987.



Edward B. Krinsky
Mediator-Arbitrator

Walworth County

PERSONNEL
DIRECTOR

Thomas W Kenney

Room 111
County Courthouse



Phone 721 4900
Extension 290

Elkhorn, Wisconsin 53121-9989

April 30, 1986

COUNTY FINAL OFFER
Social services

Case 80 No. 36309 MED/ARB 3771

JMC
4-30-86

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. A lump sum payment of \$100.00 shall be paid to employees on 12-1-87. 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.

RECEIVED

APR 25 1986

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

UNION FINAL OFFER

DEPT. OF SOCIAL SERVICES MED/ARB-3771

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




