

BEFORE THE MEDIATOR-ARBITRATOR

DEC 11 1986  
 11:00 AM  
 STANLEY H. MICHELSTETTER II  
 MEDIATOR-ARBITRATOR

In the Matter of the Petition of  
 FOND DU LAC COUNTY  
 (DEPARTMENT OF SOCIAL SERVICES)  
 To Initiate Mediation-Arbitration  
 Between Said Petitioner and  
 FOND DU LAC COUNTY SOCIAL  
 SERVICES ASSOCIATION

Case 99  
 No. 36866 MED/ARB 3879  
 Decision No. 23704-A  
 Stanley H. Michelstetter II  
 Mediator-Arbitrator

Appearances:

Richard Celichowski, Personnel Director, appearing on behalf of the Employer.  
Judith Kuhn, Attorney at Law, appearing on behalf of the Association.

MEDIATION-ARBITRATION AWARD

Fond du Lac County (Department of Social Services), herein referred to as the "Employer" and Fond du Lac County Social Services Association, herein referred to as the "Association", "Association," having jointly petitioned the Wisconsin Employment Relations Commission to initiate Mediation-Arbitration pursuant to Section 111.70 (4)(cm), Wis. Stats. 1/ , and the Commission having appointed the Undersigned as Mediator-Arbitrator on June 25, 1986; and the Undersigned having conducted mediation followed by hearing in Fond du Lac, Wisconsin, on August 19, 1986; the parties having filed briefs and reply briefs the last of which was received September 22, 1986

ISSUES

The sole issue in dispute between the parties for their calendar, 1986 collective bargaining agreement is wages. The final offers of the parties are attached hereto and incorporated by reference (Employer Appendix A, Association Appendix B.) The following is a comparison of the parties' positions for three positions which I have determined are representative of this dispute.

Elig Consult I

	start	6mo.	12mo.	18m	24mo.	36mo.	60mo.
Er 1/1/86	5.70	5.80	5.90	6.00	reclass to two		
6/29/86							
Ass'n. 1/1/86	5.70	5.90	6.21	reclass to two			

Elig. Consult II

Er 1/1/86	6.21	6.61	6.98	7.36	7.72
6/29/86	6.21	6.61	7.01	7.41	7.81
Ass'n. 1/1/86	6.61	7.01	7.41	7.81	same

Eligibility Specialist

Er. 1/1/86	6.61	6.98	7.36	7.72	8.09
6/29/86	6.61	7.01	7.41	7.81	8.21
Ass'n. 1/1/86	6.61	7.01	7.41	8.21	8.21 <u>2/</u>

Clerk Typist I

Er. 1/1/86	5.30	5.54	5.76	5.99	5.99	6.23
6/29/86	5.30	5.54	5.78	6.02	6.02	6.26
Ass'n.	5.30	5.78	6.02	6.26	6.26	6.26

Clerk Typist III

Er. 1/1/86	6.23	6.45	6.69	6.91	7.13
6/29/86	6.26	6.50	6.74	6.97	7.21
Ass'n. 1/1/86	6.26	6.50	6.74	6.97	7.21

1/ Section 111.70, Wis. Stats., has since been amended, but the amendment is not effective for this dispute.

2/ The parties agreed to permit the Association to amend its final offer with respect to this position.

Both parties propose the same maximum rate for each position in dispute. The Employer's proposal delays a small portion of that increase until the June 29, 1986 (mid-year). The Association reduces the current 60 month schedule to 36 months in all classifications. In some positions the parties disagree as to the initial starting rate.

The central issue framed by the arguments of the parties is whether, under the facts of this case, unit employees are entitled to an adjustment in addition to the general increase to rectify an alleged inequity in the unit's wage progression schedules?

#### POSITIONS OF THE PARTIES

The Association takes the position that the main issue is salary progression. It denies that Employer wage comparisons are valid and relies on its own external comparisons to the same counties used by the Employer for the proposition that unit employees are substantially under paid. Additionally, it notes it takes unit employees longer to reach comparable wage rates than in other counties and unit employees receive comparatively fewer holidays. It notes that the current wage progression for unit employees is 60 months and for current non represented employees is 24 months. Even though the County adopted a 42 month progression for non represented employees, it grandfathered existing employees in the old system. It offers testimony indicating that supervisory people have suggested that unit employees would receive the benefit, if they dropped the union. It takes the position that income eligibility workers are underpaid by comparison to comparable, non represented general relief workers employed by the County in that the duties of the income eligibility workers are more complex. It denies the Employer lacks the ability to pay or has any difficulty in paying the small amounts involved in this case. In any event, it notes that the County has the lowest effective tax rate among comparable counties. Further, it notes that hard economic times in Fond du Lac County mean an increase in work load for unit employees without a corresponding increase in staff. Finally, given the high turn over in staff it takes the position that the public interest supports better pay in order to retain staff and save training costs and inefficiency expenses.

The Employer takes the position that the primary issue involved in this dispute is the length of time it takes to reach maximum. The other issues are effective date of wage increase and starting rate for certain classifications of Eligibility Consultant Specialist, Eligibility Consultant II, Social Services Aide II, Home Consultant II, and Energy Assistant Worker II. It takes the position that it is offering this unit the same percentage general increase which it has given all other represented and non represented employees of the County. Further, it takes the position that the percentage increase which it is offering is more comparable to that afforded by comparable counties. It takes the position that the appropriate comparison counties are those selected by Arbitrator Zeideler in a prior award between the parties, Fond du Lac County (Dec. no. 29038, 8/82). They are: Dodge, Manitowoc, Outagamie, Sheboygan, Washington and Winnebago. In its view, of these counties, Fond du Lac has the least ability to pay. It ranks fifth of seven in equalized value, yet in either fourth or fifth in population and second in land area. It ranks sixth in equalized value per person and six population per acre. Further, it notes that the equalized value of Fond du Lac County dropped \$100,000,000 since 1985, and outstanding taxes has doubled from nearly four years ago. This represents two problems for the County: first, that local taxpayers cannot afford the taxes and second, that the County must underwrite the uncollected taxes for all taxing entities in its borders. Finally, it notes the County is faced with a decrease in federal revenue and a freeze in state revenue. It notes that while it might appear that things are better in the urban areas, the fact is that many urban dwellers are faced with gloomy job prospects. It has included many articles showing that major area employers are having economic difficulties. In its view, the Employer is already paying wage rates higher than average among its comparables and its proposed general wage increase of

3.02% is generous in comparison to comparable counties', particularly those which have settled in 1986. It believes the Association's total cost of 4.95% is unreasonable in any event, but when given the current economic circumstances of the Employer, is unthinkable. It also argues the Association's allocation of increases is unreasonable in that while the county pays at least comparably or better in all classifications, the Association seeks 7 to 9% increases in the starting wage rate for several classifications while no comparable county has increased any classification more than 4.9%. It argues that the only appropriate internal wage rate comparisons are between unit Clerk Typist classifications in the unit and Clerk Steno classifications in the unrepresented unit. It demonstrates that the total individual income over a six year period in each unit is the same under the Employer's wage proposal between unit employees and employees hired after January 1, 1986 in the Employer's newly revised non represented wage schedule. It also notes that the professional social workers who withdrew from the Association have accepted the Employer's 3% wage offer and retained the current 60 month wage schedule. Finally, it notes that its 3.02% wage proposal is consistent with the wage increase implemented for non represented employees.

#### DISCUSSION

Pursuant to Section 111.70(4)(cm), Wis. Stats., it is the responsibility of the mediator-arbitrator to select the final offer of one party or the other. The mediator-arbitrator may not compromise, but must select the offer which is deemed by him or her to be more appropriate after giving consideration to statutory criteria to be applied in making that judgment. The statutory criteria in effect for this dispute are the following: (Section 111.70) (4)(cm):

"7. Factors considered. In making any decision under the arbitration procedures authorized by this subsection, the mediator-arbitrator shall give weight to the following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.
- e. The average consumer prices for goods and services, commonly known as the cost-of-living.
- f. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

While the statutes specify the factors to be applied it does not specify the weight to be attached to any particular factor in

a specific dispute. That matter is left to the mediator-arbitrator. In this case the factors which are applicable are a., b., c., d., f. and h.

### Comparisons

#### External

The parties each agreed to the appropriate primary comparison counties. They are Sheboygan, Dodge, Manitowoc, Winnebago, Outagamie and Washington Counties. The parties agreed to the benchmark positions to be compared and the corresponding positions in comparable counties, except with respect to Clerk Typist III positions. The Association excluded Washington County because it had not settled for 1986, while the Employer hypothesized a 3.5% annual increase for Washington County in its figures. The instant unit consists of 32 full time equivalent positions of which the most numerous position is Income Eligibility Consultant II and the remaining positions are evenly divided.

Neither party submitted costing figures for either parties' proposal. The Employer has consistently alleged that its wage increase represents a 3.02% wage increase, and the Association's represents a 4.95% wage increase. The Association has not challenged these figures. The Employer offered the following wage increase comparisons in the agreed comparable counties for 1986:

<u>County</u>	<u>per cent increase</u>	<u>date agreement reach</u>
Sheboygan	4.	April 9, 1985
Dodge	3.5 to 4.9 *	April 9, 1985
Manitowoc	3.17to 4.48	March 20, 1986
Winnebago	3.0	May 29, 1986
Outagamie	3.0	July 21, 1986
Washington	not settled for 1986	
Av. w/o Wash	3.33to 3.88	

\* as per stipulated correction

By any comparison, the offer of the Employer is closer to the average general wage increase in other counties.

The principal issue in this case is the wage progression. The parties each offered comparisons to different aspects of the plans of comparable counties. I have developed the following comparisons for the principal positions of Eligibility Consultant I and II, Eligibility Specialist, and Typist I and III which I find are the most representative positions of this unit. The following comparisons are made to positions in other counties which both parties deem comparable, except typist positions. While the Association has alleged that its clerical positions are equivalent to computer operator positions in other counties, no evidence was presented as to the nature of the jobs in comparable counties. While that argument may be correct the Employer offered comparisons based on its perception of comparable positions. These were not supported either, but I have assumed these are correct solely for the purpose of decision. I have used the earning rate at the below-specified benchmark dates. It should be noted that in some cases progression to the specified rate occurred some months prior to benchmark month. Although Washington County is a comparable county, the Employer produced only limited data which indicates that Washington County pays substantially less than any of the other counties with respect to Eligibility Consultant I and II. At the maximum rate, Washington County is 76¢ below the minimum and \$1.63 behind the maximum (the entire group deviates only 87¢ per hour). I have excluded consideration of Washington County for the following independent reasons: 1. the Employer failed to produce this evidence which tends to favor its position, 2. the available evidence suggests Washington County is disproportionately low, 3. the final offers of both parties tend to mirror the average of the remainder of comparable counties at maximum rates. The following comparisons all tend to illustrate that the Employer's current progression is less favorable than comparable counties:

1986 Eligi I and Eligi II\*

County	Start	12mo.	24mo.	36mo.	48mo.	max.
Sheboygan	6.44	6.94	7.77	8.08	8.40	8.40
Winnebago	6.29	6.67	7.26	7.54	7.82	7.82
Dodge	6.117	6.657	7.268	7.427	7.587	7.746
Manitowoc	5.83	6.43	7.39	7.39	7.70	7.70
Outagamie	5.662	6.052	6.996	7.305	7.533	7.533
AV. w/o FdL & Wash Co.	6.07	6.55	7.34	7.55	7.81	7.84
Ass'n. 1/1/86	5.70	6.21	7.41	7.81	7.81	7.81
Er. 1/1/86	5.70	5.90	6.98	7.36	7.36	7.72
6/29/86	5.70	5.90	7.01	7.41	7.41	7.81

\* assumes Eligibility Consultants in all counties progress from level I to II at 24 month.

Under both parties' proposals the Eligibility Consultants are among the lowest paid at the start and 12 month points. At the 24 month points, unit employees will rival lowest under the Employer plan, while they will be second highest under the Association's plan. At 48 months the Employer plan would leave them lowest, while the Association's plan would place them close to second highest and at an average wage rate. On these facts, these comparisons strongly favor change in progression and slightly favor the Association's position.

1986 Eligibility Specialist

County	start	12mo.	24mo.	36mo.	48mo.	max
Sheboygan	7.48	8.08	8.40	8.74	9.08	9.08
Winnebago	6.83	7.31	7.74	7.90	8.19	8.19
Dodge	6.87	7.41	7.569	7.728	7.887	8.046
Manitowoc	7.16	7.69	7.94	7.94	8.24	8.24
Outagamie	6.513	6.881	7.207	7.533	7.76	7.76
av w/o FdL, Wash	6.97	7.47	7.77	7.97	8.23	8.26
Er. 1/1/86	6.61	6.98	7.36	7.72	7.72	8.09
6/29/86	6.61	7.01	7.41	7.81	7.81	8.21
Ass'n. 1/1/86	6.61	7.01	7.41	8.21	8.21	8.21

These comparisons slightly tend to favor the Association.

1986 Typist I

Sheboygan	5.79	6.21	6.44	6.67	6.94	6.94
Manitowoc	5.53	5.93	6.15	6.15	6.43	6.43
Dodge	5.640	6.180	6.339	6.498	6.657	6.816
Outagamie	5.151	5.587	5.933	6.276	6.554	6.554
Winnebago	5.35	5.71	6.15	6.40	6.64	6.64
av w/o Sheb. and Wash.	5.42	5.85	6.14	6.33	6.57	6.61
av w/o Wash.	5.49	5.92	6.20	6.40	6.64	6.68
Er. 1/1/86	5.30	5.54	5.76	5.99	5.99	6.23
6/29/86	5.30	5.54	5.78	6.02	6.02	6.26
Ass'n.	5.30	5.78	6.02	6.26	6.26	6.26

1986 Typist III

County	Start	12mo.	24mo.	36mo.	48mo.	max.
Sheboygan	6.21	6.67	6.94	7.19	7.48	7.48
Manitowoc	6.52	7.01	7.23	7.23	7.56	7.56
Dodge	6.339	6.880	7.039	7.197	7.358	7.517
Outagamie	5.911	6.260	6.517	6.759	6.962	6.962
Winnebago	5.66	6.06	6.31	6.60	6.80	6.80
av w/o Sheb. and Wash.	6.11	6.55	6.77	6.95	7.17	7.21
av w/o Wash.	6.13	6.58	6.81	7.00	7.23	7.26
Er. 1/1/86	6.23	6.45	6.69	6.91	6.91	7.13
6/29/86	6.26	6.50	6.74	6.97	6.97	7.21
Ass'n. 1/1/86	6.26	6.50	6.74	6.97	7.21	

With respect to Typist positions, employees tend to be hired at Typist I and progress to higher classifications during their career. On this basis, heavy emphasis is placed on the starting rates of Typist I and ending rates of Typist III. Based upon the Employer comparisons, Typist I's would be the lowest paid employees in the comparison group (start and 12 month). Whereas, under the Association's proposal, they would start low, but move into the middle of the group. With respect to Typist III's, under the Employer offer they would be roughly average at 36 months, drop to rivalling second last at 48 months and rise to average at 60 months. Under the Association's proposal, they would rival first at 36 months, become average at 48 months. These comparisons clearly indicate that improvement in progression is warranted. While the Association's position over corrects the inequity, it is closer to appropriate.

#### Internal Comparisons

The Employer has alleged and the Association has not denied that it has not granted any inconsistent increases to any other non supervisory employees.<sup>3/</sup> Until recently, professional social workers were included in this bargaining unit. The sixty month pay plan has been in existence with that combined unit at all relevant times in the past. Recently, the professional unit collectively bargained a 3% across-the-board increase and retained its 60 month pay plan. For some time in the past, non unit unrepresented employees of the Employer have had a twenty-four month pay plan providing progression at steps six, twelve and twenty-four months. As a result of the Employer's unilateral pay plan for 1986, employees in that unit were granted a 3% general increase and a new 42 month pay plan was adopted; however, all employees employed before January 1, 1986 were grandpersoned and remain on the old pay plan. Apparently, included in that group are employees of equivalent skill, but dissimilar duties for the most part. Also included in that group is a number of clerical positions which are comparable to those in the unit. The only pay comparisons with respect to non represented employees were those offered by the Employer. These compare incomes of employees hired on, or after, January 1, 1986. The comparison concludes that over a six year period employees newly hired on, or after, January 1, 1986 would earn essentially the same amount as under the Employer final offer retaining a 60 month pay plan, as non represented employees in comparable positions would earn in six years in the 42 month pay plan. By comparison, employees hired on, or after, January 1, 1986, would receive about \$2,000.00 more over six years. While the old pay plan was not introduced into evidence, the Employer conceded by its position that the purpose of the new plan was to save money. During hearing the Employer distinguish the operation of the two plans on the basis of alleged differences in operation in that it alleged that unit employees received credit for prior service whereas non unit employees do not and unit employees automatically are reclassified to higher level positions as they become vacant whereas non unit employees must post for higher level positions. The evidence did not support the conclusion that unit employees were given credit for prior service. It does not appear that the difference in promotional pattern produces a substantial difference in operation of the plans. A considerable portion of the litigation in this case was devoted to the Association's assertion that the work of unit income eligibility consultants requires higher skill and is more demanding than that of the higher paid non unit general relief specialist.<sup>4/</sup> The Association is undertaking to get the general relief specialist in the unit. The general relief specialist is employed in the

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<sup>3/</sup> Some litigation was directed to larger increases given Supervisory/managerial employees in the department. The Employer gave all non represented employees including supervisory employees a 3% general increase. It made inequity adjustments for the director and deputy director in the department. No weight is given to this issue.

<sup>4/</sup> Now titled Para Legal Assistant

office of the Corporation Counsel. The current pay for the position is from \$15,366 to \$19,188 per year (\$7.88 to \$9.84 per hour), but the Employer is currently considering retitling the position "General Relief Supervisor" and increasing the pay range to \$20,313 to 23,898 per year. This would entail increasing the positions supervisory duties, apparently in an effort to exclude her from the collective bargaining unit as supervisory.<sup>5/</sup> By contrast, the Association's proposal for Eligibility Specialist would yield \$6.61 to \$8.21 per hour.

The general relief specialist also known as para legal assistant for Fond du Lac County operates under the general direction of the Corporation Counsel, but without immediate supervision. This specialist reports directly to the County Board's Social Service Committee. This specialist administers the County's general relief program. In this regard, the specialist must master the general rules for the program which govern her exercise of discretion in granting relief to individuals. This position involves less stress than the unit positions. The general relief specialist develops work sites for recipients to perform their work obligations in accordance with rules and policies therefor. The general relief specialist drafts pleadings and appears on behalf of the County in cases involving general relief. The specialist administers a budget of \$175,000. In this regard, the specialist drafts policies and rules for the program and submits them to the County Board. She also acts as liaison to municipalities within the County and assists them in drafting rules and policies for their general relief programs.

Unit eligibility specialists administer a variety of federal and state programs which take a considerable amount of time to master and remain current. These rules substantially limit their authority in making grants to individuals. These specialists work under highly stressful case load and other pressures. Clientelle have occasionally become threatening. There is substantial turnover in these positions. In processing applications specialists must work with computers. Specialists draft papers and make appearances in cases involving the programs they administer. It is unclear whether these involve the same level of complexity as the non unit position.

The preponderance of the available evidence indicates that the unit positions are of comparable complexity to the non unit position, and that the non unit position enjoys favored status, including with respect to wages.

On the basis of internal comparisons, I find the offer of the Employer is consistent with the general increase afforded comparable employees and the other bargaining unit with respect to wage increase, but the earnings of existing unit employees may be less than that of comparable non unit employees. No weight is assigned to the length of progression for professional social workers because those units tend to have substantially higher pay and, in my experience, tend to have lower turnover. On the basis of the available evidence, this factor favors the Employer, but given the existence of the inconsistency this factor is given less weight than external wage rate comparisons.

#### Public Interest

The interest of the public in paying wages is two prong. First, the public is interested in obtaining employee services at the lowest, reasonable cost. Second, the public is interested in obtaining, retaining, and encouraging qualified public employees. In this case, the Employer has maintained a different system of paying represented and non represented employees. Unit employees tend to receive substantially lower wages than comparable employees in other counties.

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<sup>5/</sup> It is not necessary to consider the proposed change other than as evidence of favored status.

In the eligibility consultant positions, there has been an annual turnover rate of about 30 to 50%. Thus, the facts of the case justify some inequity justment to bring employees in line with a reasonable progression schedule. While the cost of this exceeds the percentage increase for other employees, the cost is not so great as to be significant factor in the Employer's budget. In any event, in view of the ineficiency created by turn over in positions requiring a substantial amount of training time, it is likely the Employer will make some savings in this area. Accordingly, the need to encourage or retain qualified employees, under the facts of this case, outweighs the difficulty the Employer has in paying at this time. Accordingly, this factor tends to favor the position of the Association.

#### Other Considerations

Section 111.70(3)(a)3, makes it a prohibited practice for an employer to: "To encourage or discourage a membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment ...." The Wisconsin Employment Relations Commission is the forum for the resolution of complaints of prohibited practice. Among the factors for consideration by mediator-arbitrators is "such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining... or otherwise between the parties...." The motivation for the maintenance of differences in wages, hours, and working conditions of different groups of employees of the same employer is a "other factor" which is ordinarily considered in voluntary collective bargaining and interest arbitration. Shirley Sneider testified that a non unit supervisory person Deputy Director of Social Services, Ed Shilling, told unit employees that it was too bad that they had not decertified the Association, because if they had they would also be grandfathered like non unit employees in a twenty-four month pay progression plan. Although present at the hearing Ed Schilling did not deny the statement. This is evidence that the Employer's purpose in maintaining the progression is at least partly for discriminatory reasons. In view of the history of voluntary collective bargaining in this unit, this factor is given less than determinative weight.

#### Weight

The principal issue in this case is wage progression. The Employer has offered an appropriate general increase which would continue the existing progression, whereas the Association asks for a greater than ordinary increase to correct an alleged inequity in the progression. The evidence indicates that the wage progression of unit employees is less favorable than that of non unit employees. It further indicates that by comparison to comparable counties, unit employees are paid less than appropriately in the early stages of the Employer proposed progression. Accordingly, some adjustment is warranted, and I conclude that the offer of the Association is closer to the appropriate offer. This is not to say that the offer of the Association is entirely appropriate. In some cases the wage rates proposed are excessively high. As discussed above, the public interest in this case favors the Association's position. Accordingly, the final offer of the Association is adopted.

#### AWARD

That the offer of the Association be, the same hereby is adopted.

Dated at Milwaukee, Wisconsin this 9th day of December, 1986.

Stanley H. Michelstetter II