STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Stipulation of LAFAYETTE COUNTY (HIGHWAY DEPARTMENT) and TEAMSTER'S LOCAL UNION NO. 579 To Initiate Arbitration Between Said Parties	Case 32 No. 38166 ARB-4241 Decision No. 24548-A

APPEARANCES:

Marianne Goldstein Robbins, Attorney at Law, Goldberg, Previant, Uelman, Gratz, Miller & Brueggeman, S.C., on behalf of the Union

Howard Goldberg, Attorney at Law, Dewitt, Porter, Huggett, Schumacher & Morgan, S.C., on behalf of the District

BACKGROUND

On January 16, 1987 Lafayette County (Highway Department) (hereinafter "the County") and Teamsters Local No. 579 (hereinafter "the Union") filed a stipulation with the Wisconsin Employment Relations Commission (WERC) alleging that an impasse existed between them in their collective bargaining concerning a successor agreement to the parties' collective bargaining agreement which expired on December 31, 1986 (hereinafter "the prior Agreement"), and further requesting the WERC to initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA).

On June 5, 1987, the WERC found that an impasse existed within the meaning of Section 111.70(4)(cm)6 of MERA and ordered that Arbitration be initiated. On June 22, 1987, after the parties notified the WERC that they had selected the undersigned, the WERC appointed him to serve as arbitrator to resolve the impasse pursuant to Section 111.70(4)(cm)(6)(b-g). No citizen's petition pursuant to Section 111.70(4)(cm)(6)(b) was filed with the WERC.

On July 29, 1987, the undersigned met with the parties at the Lafayette County Court House to arbitrate the dispute. At the arbitration hearing, which was without transcript, the parties were given a full opportunity to present evidence and

oral arguments. Post hearing briefs were submitted by both parties on September 15, 1987, and reply briefs were submitted by the County and Union on September 24 and October 5, 1987, respectively.

This arbitration award is based upon a review of the evidence, exhibits and arguments, utilizing the statutory criteria set forth in Section 111.74(4)(cm)(7).

ISSUES

The parties are in agreement that the successor agreement should have a term of two years, commencing January 1, 1987 through December 31, 1988, and have reached agreement on various other matters. The issues which have not been resolved voluntarily by the parties, and which have been placed before the Arbitrator, are as follows:

1. The Wage Increase in 1987. Should the successor agreement incorporate the 1.9% across-the-board wage increase effective January 1, 1987 for the first year of the new agreement as proposed by the County, or should the successor agreement incorporate the 3% wage increase effective as of that date as proposed by the Union. (Both parties propose a wage increase of an additional 3% effective January 1, 1988 for the second year of the agreement.)

2. Vacation Benefits. Should the successor agreement incorporate new language proposed by the Union which would provide employees three weeks of paid vacation after eight years of employment, and four weeks of vacation after fifteen years of employment? The language of the present Agreement, which the County would leave unchanged, provides employees three weeks of vacation after ten years of employment, and four weeks after eighteen years of employment.

3. Warning Before Imposing Discipline. Should the successor agreement incorporate new language in Article IV of the Agreement proposed by the Union which would read:

   "Article IV. Employee Discipline
   (A) Employees shall not be disciplined, suspended, disciplinarily demoted or discharged without just cause, but in respect to discharge or suspension, the employee shall be given at least one (1) warning letter before disciplinary action can be taken.

Except no warning letter need be given in the following:

(1) dishonesty
(2) theft
(3) drug or alcohol abuse
(4) fighting
(5) drug use

(B) All warning letters remain in effect for nine months only and shall not be used for further disciplinary action after nine (9) months date."

The language of Article IV of the present Agreement, which the County would leave unchanged, reads: "Employees shall not be disciplined, suspended, disciplinarily demoted or discharged without good cause. Written notice of the suspension, discipline, disciplinary demotion or discharge and the reason or reasons for the action shall be given to the employee with a copy to the local Union."

DISCUSSION

I. THE WAGE INCREASE IN 1987

The Union's Position

The Union argues that the Arbitrator should accept its proposal for a 3% increase in 1987 because:

1. A comparison of wage rates in Lafayette County with wage rates in comparable counties shows that the Union's 3% proposal is more reasonable than the County's 1.9% proposal. The Union believes that the appropriate counties for purposes of comparability are Richland, Iowa, Green, Dodge, Walworth and Sauk Counties. It argues that Lafayette County Highway Department employees are presently among the most poorly paid of highway department employees when Lafayette County is compared with these comparable counties, and that the County's proposal will cause them to fall behind all of their counterparts, whereas the Union's proposal will bring them up to the level of at least the lower of the comparable counties, such as Sauk and Iowa counties.

2. The County's 1.9% wage increase proposal for 1987 is also below the wage increases provided or proposed in other comparable counties, and would increase the disadvantage of Lafayette County employees relative to similar employees in comparable counties. The Union's proposal of 3% is much closer to these other settlements or offers.

3. While internal comparisons cannot as yet be determined with precision, they do not contradict the Union position. While the Lafayette County Courthouse unit has not yet settled, the Union is proposing staggered increases of 1% in February 1987 and 2% in August 1987 for a net increase of 3%. In place of an across-the-board wage increase, the Law Enforcement unit obtained a step increase which will provide senior employees 3.4% to 3% depending upon their wage bracket, with lower increases provided for those with shorter tenure. The settlement with the hospital unit, while summarized by the County as a 1.9% increase, is in the Union's view higher.

4. A comparison of Lafayette County's fringe benefit package with those of comparable counties shows that Lafayette County has, on the whole, no greater fringe benefits than other comparable counties. Thus, it does not provide longevity, sick leave accumulation is average and pension contributions are more limited. The Union argues in particular that the County's position that its Highway Department workers receive a special benefit by their retention within the Teamsters life and medical insurance plan is unwarranted, since that plan is in reality less costly.

The County's Position

The County argues that the Arbitrator should accept its proposal for a 1.9% increase in 1987, rather than the Union's 3% proposal, because:

1. A comparison of wage rates in Lafayette County with those in comparable counties show that the County's proposal is the more reasonable. The County urges that the counties traditionally lumped together for comparison purposes with Lafayette County are Grant, Green, Richland and Iowa; it argues that the additional counties the Union would include--Dodge, Walworth and Sauk--are not adjacent or in the same general geographic area, do not share common economic or population trends, and should not be considered as comparables. The evidence shows that none of these five comparable counties has agreed to a wage increase of as much as 3% for 1987. Moreover, if the additional contribution being offered by the Employer for the Employee's portion of the State Retirement Fund is considered a wage increase, as the County believes it should be, then the County's proposal is in excess of the wage increases obtained in all of the counties listed by the Union. Finally, Lafayette County picks up the entire cost of employees medical insurance premiums whereas all the other comparable counties pay less than all of the premium.

2. The County's proposal is also more reasonable because it is more comparable to wage increases being granted by the County to other bargaining units in the County. The evidence shows that the Law Enforcement employees have settled for a zero percent wage increase for 1987 and a 3% wage increase for 1988, together with a longevity step bonus which could not cost the county more than the granting of a 1.9% wage increase for 1987. The County Hospital employees have settled for a one year contract calling for a wage increase of 1.9%. The only other bargaining unit is the Courthouse employees, for whom the contract is not yet settled. The County has offered 1.9% for 1987 and 3% for 1988, as here, and the Union (AFSCME) has asked 1% as of February 1, 1987, an additional 2% as of August 1, 1987, and 3% for 1988; the County argues that both parties have agreed that the actual cost to the County of the Union's staggered proposal would be less than the cost of the 1.9% increase offered by the County.

Discussion

The parties arguments concerning the wage increase issue have centered principally on their different positions concerning external and internal comparability.

With respect to external comparability, the parties differ on the threshold question as to the counties the Arbitrator should appropriately use for purposes of comparison with Lafayette County. The County urges that the Arbitrator use only Grant, Green, Richland and Iowa counties. The Union would exclude Grant (whose Highway Department employees apparently are unrepresented), but, in addition to Richland, Iowa and Green Counties, would also include Dodge, Walworth and Sauk Counties. The County justifies its choice by pointing to what it argues is their commonality of resources and populations, and by reference to a State Department of Development, Bureau of Research, document which classifies "The South West Region" of Wisconsin, consisting of Lafayette, Grant, Richland, Iowa and Green Counties, as one of nine distinct regional economies in Wisconsin, noting that is the most rural and least populated of those economies. The County also points out that this part of the state is depressed because of the difficult times faced by farmers, so the counties immediately surrounding Lafayette County are likely to furnish the best comparison. Finally, the County notes that Arbitrator Rice, in a recent decision involving Iowa County (Dec. No. 23941, 5/87) determined that the five counties proposed by the Employer, plus Sauk County, were to be considered comparable counties for comparison purposes. The Union on its part argues that Dodge, Walworth and Sauk Counties should be included because they are also agricultural and similar in size, although the County points out that each is geographically removed and economically different from Lafayette County. Neither of the parties has presented other detailed economic

evidence in support of its particular grouping. In the absence of persuasive evidence otherwise, the Arbitrator is inclined to rely for purposes of comparability primarily on the counties proposed by the County because: (1) the County's evidence indicates that the Department of Development, at least, considers Lafayette, Green, Iowa, Grant and Richland Counties as economically similar; (2) Grant, Iowa and Lafayette Counties are also contiguous to Lafayette County; (3) both parties would include Richland County, as well as Iowa and Green Counties.

The Union argues that the wages of the Lafayette County Highway Department are low compared with comparable counties. This finds some support in evidence presented by the Union as to wages in other Highway Departments in Richland, Iowa and Green Counties, although some of the figures given for these other counties are apparently 1987 figures as compar ed with 1986 figures for Lafayette County. The evidence suggests that the County's fringe benefits are at least comparable to those in Iowa, Green and Richland Counties, and more generous with respect to the County's full payment of health insurance. The County points out that the members of this Unit have elected to join a health plan managed by the Union rather than the regular County health plan, and has presented evidence which it believes shows that the County's costs for this special plan are higher than for other units and represent an additional benefit. (The Union argues that its health plan, at least in the past, has been less costly, particularly considering its broader coverage.)

With respect to wage increases, the Union presented evidence that the 1987-over-1986 increase in Iowa County was 2.7% and that in Richland County 2.5%. At the time of this arbitral hearing, the Green County increase was not determined. There is some question as to whether only two settlements can be said to set a pattern which should influence the result here. But in any case, the Union's 3% offer is in terms somewhat closer to the Iowa and Richland County offers than is the County's offer. However, the County argues persuasively that the Arbitrator should also give weight to the fact that the County will pick up an additional contribution for the employees portion of the State Retirement Fund and already picks up the entire cost of the employees' medical insurance. With these included, it is difficult to say which of the parties' offers is closer to the Iowa-Richland settlements; each seems within a reasonable range.

With respect to internal comparables, the parties agree as to the terms of the County's settlements or negotiations with other units, but not as to their economic impact.

The evidence is that the Law Enforcement unit has settled for a zero percent wage increase in 1987 and 3% in 1988, with the addition of a step system which will give existing employees benefits for seniority. The County argues persuasively that the maximum effective cost of the step system will be 1.9%, assuming no turnover of employees--and that turnover is in fact likely.

The Union argues that the cost is considerably higher--as much as 3.1-3.2%. The Arbitrator finds the County's data pointing to a cost of not much more than 1.9% persuasive. The County Hospital employees have settled for a one year contract calling for a wage increase of 1.9%. The County has not yet reached an agreement with the Courthouse employees. The County has offered 1.9% for 1987 and 3% for 1988, and the Union (AFSCME) has asked 1% as of February 1, 1987, an additional 2% as of August 1, 1987 and 3% for 1988. The County computes the cost of the Union's offer for 1987 as 1.42%.

Summing up with respect to internal comparables, the County's settlements with other units either are--or in the case of the negotiation with the Courthouse employees, are likely to be--much closer to the County's 1.9% offer than the Union's 3% offer.

Other than certain additional data presented by the County showing that the Union's proposal would involve substantial additional cost for the County, the parties have presented little evidence concerning other possibly relevant factors, such as cost-of-living increases or ability to pay.

Putting this all together, the evidence is to the effect that (1) wages paid by the County to this Unit are somewhat lower than in at least several comparable counties; (2) in view of uncertainties as to the exact economic impact and weight appropriately to be given to non-wage benefits such as the County's contribution to retirement and 100% contribution to the Unit's health plan, the Arbitrator cannot say with confidence which of the proposals is the closest to the few other wage settlements in comparable counties introduced in evidence; and (3) the County's proposal is closer to settlements reached or likely to be reached with other bargaining units within the County than is the Union's proposal.

In this context, the Arbitrator is of the opinion that, in the absence of other factors pointing clearly one way or the other, considerable weight should be given to the factor of internal comparability, which favors the County. Thus, while the balance is close, the Arbitrator believes that the County's position on this issue is the more persuasive.

II. VACATION BENEFITS

The Union's Position

The Union argues that the Arbitrator should accept its proposal for an improvement in vacation benefits for more senior employees (three weeks of paid vacation after eight rather than ten years, and four weeks of paid vacation after fifteen rather than eighteen years) because:

1. Its proposal would bring Lafayette County more clearly into line with the vacation benefits offered by other

comparable counties, such as Richland, Walworth, Sauk, Dodge and Green. Only Green County has vacation benefits at the level provided in the present contract, at which they would be left by the County's final offer.

2. Internal comparisons also support the Union's proposal. In negotiations for the 1987 labor agreement, the County has agreed to provide Law Enforcement employees with three weeks of vacation after eight years of service and four weeks of vacation after fifteen years of service.

The County's Position

The County argues that the Arbitrator should not accept the Union's proposal for improved vacation benefits because:

1. As shown by the prior 1984-86 Agreement for this unit, the parties agreed to improved vacation benefits for each of the last three years.

2. The evidence shows that the existing Lafayette County vacation schedule is better than that of any other comparable counties with the exception of Richland County.

3. The existing vacation schedule of the Highway Department is the same as that of every other bargaining unit in the County except for the Law Enforcement Unit, and no other unit has proposed such a change. The County did adopt for the Law Enforcement Unit the same improved schedule as now proposed by the Union, but that was in exchange for the Union's agreement that the County could hire from outside the Law Enforcement unit if necessary to handle the workload while an employee was on vacation, thus eliminating substantial amounts of overtime wages paid in the past. However, the Union has offered no similar kind of set-off in connection with its proposal for the Highway Department.

Discussion

The parties' arguments and evidence on the issue of the Union's proposal to improve vacation benefits rest wholly on comparability.

In terms of external comparables, the evidence presented by the County indicates that the County's present vacation allowance is equal to or better than most of the counties the Arbitrator has previously regarded as comparable. Thus, the County's vacation allowance is about the same as that provided the Iowa County Highway Department (1987), and is equal or better than

that provided the Green County Highway Department (1986). The County's vacation allowance is also at least as generous as allowances provided by Iowa, Green and Grant counties to most of their other bargaining units. The most important exception is Richland County, which in its 1987-88 agreement covering its Highway Department, provides employees 3 weeks vacation after 6 years employment and 4 weeks vacation after 12 years employment.

The Union has introduced evidence of vacation allowances more in line with its proposal in Walworth, Sauk and Dodge Counties. As previously discussed, the Arbitrator believes that the more appropriate group of counties for purposes of comparability comprises Lafayette, Grant, Richland, Iowa and Green Counties. However, even if these other counties are included for purposes of comparison, the County's vacation allowances appear to be not out of line.

With respect to internal comparisons, it is uncontroverted that the existing schedule of the Highway Department is the same as that of every other bargaining unit in the County except for the Law Enforcement unit and that no other unit has proposed such a change. As the County notes, the unit's vacation benefits were progressively improved in the last contract. While the County has provided in its agreement with the Law Enforcement unit the same improved schedule the Union now proposes, the County introduced evidence that this improvement was in exchange for a specific agreement by the Union under which the County could hire from outside the unit to handle the workload while an employee was on vacation, rather than having to pay unit employees not on vacation overtime. This concession by the Union would permit the County to eliminate substantial payments of overtime in the past. The County points out that the Union has offered no similar kind of set-off or quid pro quo in exchange for its proposed improvement of benefits for the Highway Department.

The Arbitrator considers the County's arguments on this issue more persuasive. The County's existing vacation schedule appears more in line both with that of other units within the County and in surrounding comparable counties than would be the improved schedule proposed by the Union. The evidence is convincing that the improved schedule provided by the County in its agreement with the Law Enforcement Unit is distinguishable as the result of a bargain struck between the parties to meet a special problem of that unit and in exchange for a substantial concession by the Union in that case--a quid pro quo not offered by the Union here.

III. WARNING BEFORE IMPOSING DISCIPLINE

The Union's Position

The Union argues that the Arbitrator should accept its proposal for additional language in Article IV requiring advance warning before an employee could be disciplined, except in certain egregious circumstances, and further providing that any

warning notice placed in an employee's personnel file could not be used for further discipline after nine months, because:

1. The Union's proposed language conforms with the parties' longstanding practice that an employee receive a warning prior to the imposition of suspension or discharge. Indeed, the Union has proposed this language only because of an incident in 1987 in which the County failed to follow that established practice.

2. By excluding certain serious offenses from the requirement of warning before penalty, the Union proposal strikes a reasonable balance between the Union's interest in protecting its members and the County's interest in maintaining discipline.

3. The proposal is similar to provisions in at least some comparable counties, such as Green, Grant and Iowa counties.

The County's Position

The County argues that the Arbitrator should not accept the Union's proposed new language mandating written warning because:

1. The County denies that there has ever been a policy in the Highway Department that the employer must issue a warning to an employee before it could impose discipline, or that warning letters will not be used for further discipline after nine months.

2. The Union has failed to provide evidence or exhibits showing similar language in agreements in any comparable counties, other than Green County and one particular combined unit in Iowa and Grant Counties.

3. None of the other bargaining units within the County have language in their contracts similar to what the Union has proposed here, and none have requested such a change.

4. The Union, as the moving party wishing to add to or change existing contract provisions, has failed to meet the burden of proof upon it to justify such a change. The Union's proposals appears related to a particular incident now subject to grievance and arbitration and appropriate for handling by that procedure.

5. The County urges that acceptance of the Union's proposal requiring prior warning would create chaos in the Department by effectively impeding the imposition of meaningful discipline for violation of rules; an employee would have one "free shot" at an offense, and could repeat this every nine months. The County argues

that there is no evidence of any abuse of power or prior problems sufficient to justify such an extreme limitation on its management rights and disciplinary authority.

Discussion

The prior agreement contains no provisions requiring warning before imposing discipline. Consequently, the Union's proposed new language makes a significant change in the agreement and in the procedures regarding discipline applicable to the unit. While the Union argues that its proposed new provisions requiring prior warning would simply codify a prior practice in this respect in the Department, the County and its Highway Commissioner have vigorously denied the existence of such a prior practice and, in the Arbitrator's view, the evidence is insufficient to establish such a prior practice.

The Arbitrator agrees with the County that, where one party--here, the Union--is proposing a significant addition to language in the Agreement--particularly one involving matters such as disciplinary procedures which may substantially affect management's or employee's rights--it has the burden of justifying such an addition.

With respect to external comparables, the Union has presented evidence showing warning provisions in agreements covering several units in Green County and a combined unit in Iowa and Grant County. But the County, on its part, has introduced evidence of some sixteen other agreements in other counties in Southwestern Wisconsin, including the Iowa, Richland and Grant County Highway Departments, which do not include provisions requiring warning before discipline. In the Arbitrator's view, the evidence fails to establish that most comparable County Highway Departments have such provisions in their agreements. As to internal comparables, the County's evidence that no other bargaining units in the County have language in the agreements similar to what the Union has here proposed, and that none has requested such an additional provision, is uncontradicted. Nor has the Union established a compelling present need for the substantial change it proposes. The evidence was that there have been few problems between the parties in this respect, other than a matter now in arbitration and on which it would be inappropriate to comment. The County Highway Commissioner testified to his belief that disputes as to the appropriateness of prior warning had been and could best be dealt with through the established arbitration procedures in the Agreement, and that inclusion of the language proposed by the Union would seriously impair the County's exercise of its management rights and maintenance of discipline within the unit.

Thus, in the Arbitrator's opinion, the evidence presented by the Union fails to establish either that prior warning provisions are generally included in agreements covering similar units,

either within the County or in comparable counties, or that there is a need or compelling justification for such additional language. For these reasons, the Arbitrator believes that, on this issue, the County's position is the more reasonable.

IV. Conclusion

I have concluded that the County's proposals are the more reasonable with respect to each of the issues--the Wage Increase in 1987, Vacation Benefit, and Warning Before Imposing Discipline. Consequently, I find that the County's final offer is the more reasonable.

AWARD

Based upon the statutory criteria contained in Section 111.70(4)(cm)(7), the evidence and arguments of the parties, and for the reasons discussed above, the Arbitrator selects the final offer of the County, and directs that it, along with all already agreed upon items, and those terms of the predecessor Collective Bargaining Agreement which remain unchanged, be incorporated into the parties 1987-88 collective bargaining agreement.

Madison, Wisconsin
October 30, 1987

Richard B. Bilder
Arbitrator