

BEFORE THE ARBITRATOR

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the	:	
Arbitration Between	:	
	:	
DODGE COUNTY COURTHOUSE,	:	Case 122
OFFICE BUILDING AND LIBRARY	:	No. 38338 ARB-4294
EMPLOYEES LOCAL 1323-G,	:	Decision No. 24586-A
AFSCME, AFL-CIO	:	
	:	
and	:	
	:	
DODGE COUNTY	:	
	:	

APPEARANCES:

James L. Koch, Union Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Dodge County Courthouse, Office Building and Library Employees, Local 1323-G, AFSCME, AFL-CIO.

Garland G. Lichtenberg, Administrative Secretary, Dodge County Board of Supervisors, appearing on behalf of Dodge County.

ARBITRATION HEARING BACKGROUND AND JURISDICTION:

On August 3, 1987, the undersigned was notified by the Wisconsin Employment Relations Commission of appointment as arbitrator under Section 111.70(4)(cm)6 and 7 of the Municipal Employment Relations Act in the matter of impasse between the Dodge County Courthouse, Office Building and Library Employees, Local 1323-G, AFSCME, AFL-CIO, hereinafter referred to as the Union, and Dodge County, hereinafter referred to as the Employer or the County. Pursuant to statutory requirement, a hearing was held on October 1, 1987 in Juneau, Wisconsin. During the hearing, the Union and the County were given full opportunity to present relevant evidence and make oral argument. Briefs and reply briefs were filed with the arbitrator, the last of which was received on November 6, 1987. Notice that the Union would not file a reply brief was provided on November 16, 1987.

THE FINAL OFFERS:

The remaining issues at impasse between the parties concern wages and additional compensation for certain individuals. The final offers of the parties are attached as Appendix "A" and "B".

STATUTORY CRITERIA:

Since no voluntary impasse procedure regarding the above-identified impasse was agreed upon between the parties, the undersigned, under the Municipal Employment Relations Act, is required to choose all of one of the parties' final offer on the unresolved issues after giving consideration to the criteria identified in Section 111.70(4)(cm)7, Wis. Stats.

POSITIONS OF THE PARTIES:

According to the Union, its proposal is primarily aimed at correcting wage inequities for the social workers and achieving a wage adjustment for the bilingual employee, night shift differentials for the maintenance employees and readjusting the building check overtime rates to comply with the Fair Labor Standards Act requirements. In that regard, it references increased work load assumed by the bilingual employee as justification for an increase in pay beyond that received by other employees identified as performing similar services, the night shift differential paid the Sheriff's Department as an internal comparison supporting its proposal regarding the night shift differentials for the maintenance employees and argues the current rates provided for building checks, overtime work, violate the Fair Labor Standards Act requirements.

Relying upon comparisons as support for its proposal concerning the increase in wage rates for social workers, the Union urges comparisons between Dodge County and those counties which it contends are contiguous and/or similar and rejects the comparisons proposed by the County stating that while they may be similar in population, some are in excess of 200 miles from Dodge County and do not compete with the job market for the employees within Dodge County. Based upon a review of rates paid among its comparables, the Union argues the comparisons demonstrate a need for "catch up" in the social workers' pay. According to the Union, comparisons between the average and the actual wages paid social workers indicates that the social workers in its bargaining unit are paid approximately 13.37% less than the average and anywhere from 28% to 40% below the actual rates paid at the maximums among the comparables. In addition, the Union maintains that when this disparity is contrasted with the competitive position compared to the average among the comparables maintained by the non-professional support staff, the need for "catch up" is even more evident.

The Union continues that not only are social worker rates behind the comparable and competitive county rates, but they are also less than rates paid positions in the private sector which require no formal college education. Comparing the rates paid the social workers with those paid laborers and construction workers, the Union concludes additional proof of need for increasing social worker rates is evidenced by the fact that their rates are between 12% and 48% less than the rates paid these workers who have little, if any, college education.

Referring to the County's argument that its offer is supported by the cost of living criterion, the Union urges that the 1986 Consumer Price Index data provided by the County be rejected since the dispute has progressed well past that date in time. Providing what it considers the most current CPI rates, the Union posits that its offer is more closely supported by the 3.5% increase in the CPI for non metro areas and the 4.7% increase for small metro areas as well as by the increases which are projected for 1988.

Addressing the ability to pay criterion, the Union posits that nowhere in the record does it reflect that the County has an inability to pay. It argues, instead, that the record supports just the opposite if the earlier proposal offered by the County is considered. Referring to prior negotiations, the Union declares that the tentative agreement rejected by the Union for other reasons offered the social workers the "catch up" rates sought by the Union which it maintains is an indication that the County has the ability to pay for the increases proposed by the Union. The Union also declares that further evidence of the County's ability to pay is evidenced by its failure in the past to secure State and Federal subsidies which have been available to it.

Rejecting the County's argument that it has attempted to provide increases in social worker compensation in the past, the Union argues that all attempts by the County to increase the pay scale for social workers have "had catches" attached to them. According to the Union, pay cuts to other employees, changes in the seniority language, changes in the lay off language and other concessionary items have accompanied the County's offer to improve the pay scale for the social workers and that the Union has been unable to accept such adjustments for only 16% of the work force.

Continuing that the employees are entitled to "catch up", the Union relies upon the low pay received by the social workers, the comparison of the work load assumed by these workers with the work load assumed by other social workers in comparable counties and internal comparisons as additional support for its position. Comparing the work load assumed by the social workers in this unit compared with the load assumed by others in comparable counties, the Union declares that not only are the social workers the lowest paid among the comparables, but they also have the least amount of personnel per 10,000 population to carry out its functions. Also referring to the internal settlements reached by the County, the Union argues that because the court house unit already has the lowest average rate among the employees in the County, acceptance of the same percentage offered the other units will result in less overall compensation for its bargaining unit members which would cause "further and continued inequities."

Finally, the Union contends that its offer should be implemented since there is little difference between the two offers and the difference which does exist is justified since the social workers have experienced such gross wage inequities. In this respect, it notes that the difference between the wage

rate sought by the Union and that sought by the County is less than a penny and that the overall cost of the packages is also minimally different, four cents in each of the two years. In conclusion, the Union posits that since no new ground is being sought and that it only is attempting to narrow the inequities which exist within the County's Social Services Department its offer should be implemented.

The County, on the other hand, maintains the Union is trying to get too much in one contract. Stating that its offer is equal to or greater than any of its other settlements, the County argues that the Union is seeking a higher across-the-board increase than that offered by the County which will not only cost more but will result in a higher base for future contracts. According to the County, the Union's offer will cost the County \$20,000 more than the County's offer over the two year term of the contract.

According to the County, two issues are involved in this dispute: how much new money should the bargaining unit receive and how the money should be distributed. With respect to the new money issue, the County argues it has offered more to this bargaining unit than it did to any other bargaining unit within the County and an amount comparable to that which employees in other counties have received. With respect to the second issue, the County urges the question should be resolved in negotiations. As support for this position, the County maintains it has tried to address the issues raised by the Union but that the Union has thwarted its efforts by being unwilling to redistribute money the way the County has proposed.

Referring to the cost of living criterion, the County argues that its wage and benefit package which provides a 3.9% cost and a 4.1% lift in 1987 and a 3.7% cost and a 3.9% lift in 1988 compares favorably with the Consumer Price Index and is far more than the 1986 All Urban Consumers increase of 1.1%. In addition, the County rejects the Union effort to compare the package costs with actual 1987 figures or with any projections for 1988.

Objecting to the Union's use of Waukesha County as a comparable, the County questions why the Union would include Waukesha County among its comparables and exclude Dane County since both are contiguous counties which are much larger than Dodge County and concludes that the Union's inclusion of one and exclusion of the other is "suspiciously selective." It adds that it also finds it strange that the Union would select Manitowoc and Ozaukee Counties as comparables which are not adjacent but oppose the County's inclusion of Eau Claire, Wood and Walworth Counties. Stating it believes it is necessary to seek additional information on four of the five issues in arbitration which reflect increases for single employees or groups of employees, the County argues that a larger group of comparables is needed and for that reason it has selected five counties which are larger and five which are smaller and urges adoption of those counties as the comparables.

More specifically, referring to its across-the-board wage offer and stating that it would be "a strategic error affecting the bargaining of future contracts to give the highest across-the-board wage settlement to the last bargaining unit to settle," the County argues the internal pattern of settlements has been set and should be given considerable weight in determining the reasonableness of the offers. In addition, the County maintains that direct comparisons with settlements for bargaining units in comparable counties will be difficult to make since the composition of this bargaining unit is so different than that of bargaining units in the comparable counties. Stating the unit contains both clerical and professional employees in the Social Services department and several other departments, the County declares that the other counties are all organized in different ways and therefore less consideration should be given to these comparables.

Continuing to address the diversity of membership in the bargaining unit, the County urges consideration of the fact that historically the social workers have been underpaid and the entry level clerical and maintenance employees have been overpaid relative to their counterparts in other counties. Given this fact, the County argues that in order for any offer to be reasonable it must attempt to redistribute the money to those members of the unit who are underpaid and not seek larger increases than those which exist among the comparables for those who are overpaid. The County also maintains that the historically low level of wages for the social workers is justified in part by the lower level of State Community Aids which the County receives in comparison to other counties which causes its taxpayers to pay a greater share of the wages and all of any increase.

As additional support for its offer, the County cites the overtime language attained by the social workers in this unit and declares that this benefit is one which is substantially better than those enjoyed by employees in comparable positions in comparable counties. Comparing the overtime language in this unit with that which exists in Jefferson, Washington and Fond du Lac Counties, the County declares its social workers get far more overtime compensation than do the social workers in the other three counties since they are considered exempt employees in those counties.

Finally, the County rejects the Union's effort to secure additional compensation for the bilingual employee, to secure an increase in the night shift premium for maintenance employees and to change the compensation for checking buildings on weekends. In that respect, the County argues that the Union has demonstrated no compelling need for the changes and without proof that there is need, no change should occur.

In reply to Union arguments, the County rejects the Union's arguments concerning the work load assumed by the bilingual employee and states the Union's reliance upon a policy concerning compensation for interpreters which it contends is the County's is misplaced. The County acknowledges that such compensation does exist but notes that it is the policy of the County's Circuit Court and is paid for by the State.

The County also rejects the Union's position regarding clarification of existing practices concerning overtime for building checks. In this regard, the County maintains that there are many instances when no excess compensation is due since the employee does not work in excess of forty hours due to the use of sick leave, vacation, holidays, etc. and argues, therefore, that a change in the language which requires overtime pay for all hours worked on the weekends or holidays would cause additional costs to the County.

Finally, with respect to the night shift differential, the County declares the Union's reliance upon a comparison with the Sheriff's Department night shift differential is inappropriate since they do substantially different work. Instead, the County urges that it is more appropriate to compare the maintenance employees with other maintenance employees and if this is done, the night shift premium paid maintenance employees is far less than that paid the Sheriff's Department.

In regard to compensation for the social workers, the County agrees social worker rates should be increased. It does not agree, however, with the Union's argument that because the social workers are underpaid, they are entitled to "catch up." It argues, instead, that if "catch up" is to be justified, the Union must demonstrate that the social workers are losing ground and not just that they are underpaid. Further, while it acknowledges the social workers should receive more pay, the County argues that it should not be at the expense of putting up extra money beyond what is a reasonable settlement in order to appropriately compensate the social workers. Consequently, it concludes its offer should be implemented.

DISCUSSION:

The parties to this dispute disagree over which counties should be considered comparable for purposes of applying the statutory criteria. Accordingly, Fond du Lac, Jefferson, Washington, Manitowoc and Ozaukee Counties were selected as the comparables since they were the five counties mutually included in each party's set of comparables and sufficient evidence to determine the reasonableness of the parties' offers was available for them.

This dispute is an unusual one in that there is little difference between the offers proposed by the parties. The offers are approximately a half a percent apart and the primary cost difference between the two proposals lies in the proposed wage increase for the social workers. In addition, the Union seeks improvement in wages for a bilingual employee, a change in the night shift differential for maintenance employees and a change in the overtime language which affects those maintenance employees who do building checks on weekends. The cost impact of these three proposals is a little over a tenth of a percent.

In this dispute, the parties agree the social workers are underpaid and entitled to wage improvement. The major difference, however, lies in the extent to which there should be an increase in social worker compensation. The County has proposed a 20 cent increase in addition to the percentage increase

granted the remaining bargaining unit members for the social workers in each of two years while the Union has proposed a 40 cent increase in addition to the percentage increase granted the remaining bargaining unit members in each of two years. According to the Union, its proposed increase is needed in order to provide "catch up." The County, on the other hand, argues that if "catch up" is to occur, it should not be an additional cost to the county but the result of a redistribution of monies among the bargaining unit.

A persuasive argument for "catch up" is made. As noted below, the evidence available concerning compensation for social workers indicates that among the comparables, the social workers in this county are not only the lowest paid employees performing this type of work but that they are paid far less than the next lowest paid employees performing this type of work and they are far below the average established among the comparables. Further, under either proposal, even though some "catch up" occurs, the rates paid the social workers will remain substantially lower than the average and the next lowest paid employees performing this type of work among the comparables.

COMPARISON OF RATES PAID COMPARABLE SOCIAL WORKERS DURING 1986

Social Worker	I	II	III	IV	V
Fond du Lac	10.55	11.06	12.23		
Jefferson	10.34	11.55	13.57		
Washington	10.33	12.42			
Manitowoc	9.88	10.62	11.47	12.31	13.19
Ozaukee	10.53	12.86			
Average	10.33	11.70	12.42	12.31	13.19
Dodge	8.60	9.46	10.31	10.81	

COMPARISON OF RATES PAID COMPARABLE SOCIAL WORKERS DURING 1987*

Social Worker	I	II	III	IV	V
Fond du Lac	10.81	11.33	12.54		
Jefferson	10.44	11.67	13.71		
Washington	10.67	12.83			
Manitowoc	10.21	10.97	11.85	12.72	13.63
Ozaukee	10.85	13.25			
Average	10.60	12.01	12.70	12.72	13.63
Employer's Offer	9.01	9.89	10.80	11.27	
Union's Offer	9.22	10.10	11.01	11.48	

*Rates determined by applying the 1987 settlement percentages to the 1986 rates.

COMPARISON OF RATES PAID COMPARABLE SOCIAL WORKERS DURING 1988*

Social Worker	I	II	III	IV	V
Fond du Lac	11.20	11.73	12.98		
Jefferson	Not Available				
Washington	Not Available				
Manitowoc	10.55	11.33	12.24	13.14	14.08
Ozaukee	Not Available				
Employer's Offer	9.47	10.38	11.31	11.80	
Union's Offer	9.90	10.80	11.74	12.22	

*Rates determined by applying the 1988 settlement percentages to the 1986 and 1987 rates.

Need for "catch up" does not occur just because a certain group of employees are underpaid or paid the lowest among the comparables. Neither does it occur because it is presumed that all employees considered comparable will be paid the same or the average. The need for "catch up" exists when it is apparent that the wages paid a certain group of employees performing similar services differ substantially from the range of rates set by the prevailing practice of comparable employers and there is no established basis for such a pay differential.

As noted on the previous page, it is apparent that the wages paid social workers in Dodge County differ substantially from the wages paid other comparable employees and from the average and clearly do not fall within the range of rates established by the comparables. As reason for this pay differential, the County has cited the diversity of membership in the bargaining unit and an overtime compensation benefit which it states is better than that enjoyed by other employees performing similar services in comparable counties. Neither of these factors, however, establish persuasive reason for such a large pay differential. While it is true that the bargaining unit membership is very diverse and some of the bargaining unit members are paid above the average established by their comparables, this, in itself, is not sufficient reason to pay social workers within the unit far less than employees performing comparable work in comparable counties. Further, while the overtime benefit is a plus for the social workers, the degree to which they are compensated for overtime does not negate the need to be paid comparable wages for services performed since there is no evidence that the overtime compensation substantially increases the compensation for social workers in this county. For these reasons, the "catch up" argument is found persuasive.

Since the County has argued that the Union is trying to get too much in one contract, the merits of the remaining issues were considered. In that respect, it is determined that both offers are equally reasonable in regard to the overall wage rate increases for both the professional and non-professional employees, including the social workers. Since the offers are less than a tenth of a percent apart, which by the parties' own admission is less than a penny an hour difference, the offers are considered negligibly different and the arguments advanced concerning the reasonableness of the offers as relates to the cost of living criterion and the pattern of settlements both internally and externally are considered moot.

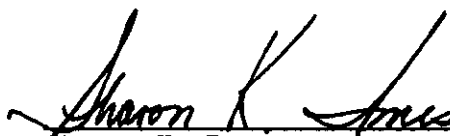
The only other area in which the Union's offer could be considered unreasonable relates to its proposals concerning the bilingual employee, the night shift differentials and the overtime compensation for maintenance employees. While each of the three issues has a financial impact upon the Employer, the total impact is minimal (slightly over a tenth of a percent) and none of the three is of such significance as to be determinative of the dispute, thus, this dispute is decided upon the reasonableness of the offers as they pertain to the wage increase for the social workers and the wage increase for the other professional and non-professional employees. In that respect, since both offers were quite similar, except for the extent to which the social worker pay rates would be increased, and since the need for "catch up" was established, it is found that the Union's offer is more reasonable and should be implemented.

Based upon the discussion in the foregoing pages, the following award is issued:

AWARD

The final offer of the Union, attached as Appendix "A", together with the stipulations of the parties which reflect prior agreements in bargaining, as well as those provisions of the predecessor agreement which remained unchanged during the course of bargaining, shall be incorporated into the 1987-88 collective bargaining agreement as required by statute.

Dated this 28th day of December, 1987 at La Crosse, Wisconsin.



Sharon K. Imes
Arbitrator

Name of Case: Dodge County Case #122, ARB-4294

The following, or the attachment hereto, constitutes our final offer for the purposes of arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me. Further, we ~~we~~ (do not) authorize inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted to the Commission.

June 9, 1987
(Date)

James L. Koch
(Representative)

On Behalf of: Dodge County Court House Employees
Local 13236 AFSCME AFL-CIO

UNION FINAL OFFER

2:53 P

1. ALL AGREED ITEMS
2. 6.9. Emma Hamilton the bilingual employee shall receive .05¢ per hour in addition to her regular pay and benefits
3. 13.8 Change to: Maintenance Employees who check the buildings on Saturdays, Sundays and Holidays shall receive time and one half (1½) for all hours worked
4. 13.9 Maintenance employees working night shift for any reason will receive fifteen cents (15¢) per hour premium for all hours worked
5. CATCH UP FOR ALL SOCIAL WORKERS

Jan 1 1987	20¢
July 1 1987	20¢
Jan 1 1988	20¢
July 1 1988	20¢
6. WAGE INCREASES ALL CLASSIFICATIONS

Jan 1 1987	2.5% 2.5%
Jan 1 1988	3% 3%

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June 9, 1987
(Date)

Warren D. Zilber
(Representative)

On Behalf of: Dodge County