

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MAY 13 1988

BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of the Arbitration Between )  
 BROWN COUNTY ATTORNEY'S ASSOCIATION )  
 and )  
 BROWN COUNTY )  
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Case 350  
 No. 39765  
 Dec. No. 25077-A  
 INT/ARB-4664

DECISION AND AWARD

Appearances: For the Association, R. Paul Mohr, Esq., Green Bay.

For the Employer, Kenneth J. Bukowski, Brown County Corporation Counsel, Green Bay.

On December 14, 1987, the Brown County Attorney's Association (referred to as the Association) filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting that the Commission initiate arbitration pursuant to §111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA) to resolve a collective bargaining impasse between the Association and Brown County (referred to as the Employer or County) concerning a successor agreement to the one which expired on December 31, 1986.

On January 15, 1988, the WERC found that an impasse existed within the meaning of §111.70(4)(cm)6. On February 16, 1988, after the parties had notified the WERC that they had selected the undersigned, the WERC appointed her to serve as arbitrator to resolve the impasse pursuant to §111.70(4)(cm)6 b-g. No citizens' petition pursuant to §111.70(4)(cm)6 was filed with the WERC.

On March 22, 1988, the undersigned held an arbitration hearing in Green Bay, Wisconsin. At the hearing, the parties were given a full opportunity to present evidence and make oral arguments. Post-hearing briefs were submitted by both parties.

ISSUES IN DISPUTE

There are only two issues in dispute. The Association's final offer contains an additional step ("After 9th anniversary"); it also contains a provision for "beeper pay." (A copy of the Association's final offer is attached as Exhibit A.) The County's final offer contains the same pay schedules for 1987 and 1988 as the Association except that it does not contain the 9-year step proposed by the Association; it also does not have any "beeper pay" improvement provision.

STATUTORY CRITERIA

Under §111.70(4)(cm)7, the arbitrator is required to 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities
- f Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities
- g The average consumer prices for goods and services, commonly known as the cost-of-living
- h The overall compensation presently received by the municipal employes, 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.
- i Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings
- j 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

## POSITIONS OF THE PARTIES

### The Association

The Association supports its addition to the salary schedule steps on the basis that it is needed to retain more experienced assistant district attorneys, particularly since assistant district attorneys in Brown County, unlike their counterparts in some other counties do not have outside private practices to supplement their County income. The Association argues that comparisons with the wages of other comparable attorneys, particularly those in the State Public Defender's Office (which represents defendants in many County cases handled by the District Attorney's office) and assistant district attorneys in Racine, Rock and Waukesha Counties (which are more comparable to Brown County in size and violent crimes statistics than are the Employer's comparables) are appropriate.

The Association next argues that because of recent staff turnover, the actual costs of implementing the Association's offer is significantly less than the 9.2% calculated for 1987 by the Employer. According to the Association's calculations, the difference between implementing the County's final offer and the Association's final offer in 1987 is \$8,465 or 3.26% (6.79% less 3.53%).

The Association rejects the County's comparisons as inappropriate given the population of Brown County and its crime rates and notes the turn-over in senior staff since the last contract negotiations.

As for the "beeper pay" issue, the Association notes that its cost is small, approximately \$3000 or 1% of total benefits and in keeping with the "beeper pay" provision for County social workers.

For all these reasons, the Association concludes that its proposal is fairer and should be adopted.

### The Employer

The County supports its pay offer (without the additional step) by noting its continuing cost impact. It also relies heavily upon a prior Arbitration Award by Arbitrator Gil Vernon dated March 16, 1987. That case involved the same parties and the County prevailed in that proceeding based upon the internal pattern of other Brown County bargaining unit settlements, the same situation which is present in this proceeding.

The County rejects the Association's comparables, particularly the Dane County Attorney's Association, as inappropriate and also notes that the Association's "beeper pay" proposal is not supported by any evidence of comparability with other units of assistant district attorneys.

Finally, the County argues that there are no other units of County employees who receive the step increases already received by assistant district attorneys.

The Employer concludes that, based upon the statutory criteria of MERA, the arbitrator should select its final offer.

### DISCUSSION

If "beeper pay" were the only issue in this proceeding, it is evident that the County would win because, as the County has argued, the Association presented no external comparability data on this issue. Moreover, the only comparable that the Association argued was the County's unit of social workers. This internal equity argument, however, was in direct contradiction to the Association's heavily reliance upon external pay comparables.

For the parties and the arbitrator, the "beeper pay" issue is secondary to the salary schedule dispute. Accordingly, a decision regarding the Association's proposal to add an additional step (9th year) to the salary schedule is determinative in this proceeding since the Association has presented the additional step as the key to making the unit's salary schedule attractive enough to retain senior staff members, a key policy issue for both parties.

As the Employer points out, Arbitrator Gil Vernon's March 16, 1987 Arbitration Award resolved a dispute between these same parties

which raised most of the same issues which are present in this dispute. The Association looks to external comparables (particularly units of assistant district attorneys in comparable counties) while the Employer emphasizes internal consistency and equity.

The resignations of several senior assistant district attorneys since the last contract, however, cannot be ignored. Using Arbitrator Vernon's terminology, these resignations are "compelling reasons" which justify breaking the internal pattern. Indeed, the undersigned believes that Arbitrator <sup>Vernon</sup> probably would have reached a different result in the prior arbitration of the 1986 salary schedule if the record in the prior proceeding contained similar evidence of loss of senior district attorneys for Brown County\*. Thus, unlike the prior case, in this proceeding the Association was able to demonstrate that it was offering a solution to a real, existing problem.

Because the undersigned has concluded that Arbitrator Vernon's prior analysis which led to his selection of the Employer's final offer, now leads to the selection of the Association's final offer, she does not find it necessary to choose between the parties' very different approaches to determining appropriate comparables.

Before concluding, however, she would like to comment on several arguments made by the parties in this proceeding. First, the County strongly argued against the Association's salary offer because it conflicted with the "internal pattern." This is only partly true. For all existing steps in the salary schedule, both the Association and County agree that 3%, the "internal pattern," is appropriate. It is only when the cost of the additional step is spread across the entire unit that the "internal pattern" is broken. Most members of the bargaining unit will be treated for salary purposes similarly to other County bargaining unit members. Second, the Association insists the cost of its package is only the actual costs which take into account the turnover in the bargaining unit including periods before a particular position is filled. This calculation permits the Association to conclude that "the contract proposed by the Association has no true added cost to the County over the 1986 contract." Although that statement is literally true, it is only true because of unique circumstances - the resignations of senior attorneys and their eventual replacement by more junior attorneys. The Association may have reason to object to the County's costing method which assumes a static bargaining unit and gives no recognition to the loss of two senior attorneys. The Association's costing method, however, is similarly incomplete because it ignores completely the economic implications of changes in base rates.

#### AWARD

Based upon the statutory criteria contained in §111.70(4)(cm)7. the evidence and arguments of the parties, and for the reasons dis-

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\* The record contains two affidavits submitted by the Association which state that two former senior assistant district attorneys left County employment because the County failed to provide "any increases based upon merit or seniority."

cussed, the arbitrator selects the final offer of the Association and directs that it, along with all already agreed upon items, be incorporated into the parties' collective bargaining agreement for 1987 and 1988.

Madison, Wisconsin  
May 10, 1988

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June Miller Weisberger  
Arbitrator

Wages

Increase wages 3% in 1987 (12/28/86) and 3% in 1988 (12/27/87) and a 9-year step effective 12/28/86 to read as follows:

	<u>1987</u> (eff. 12/28/86)	<u>1988</u> (eff. 12/27/87)
Starting Salary	\$23,389.	\$24,091.
After 6 months	\$24,419.	\$25,152.
After 1st anniversary	\$26,479.	\$27,274.
After 2nd anniversary	\$28,539.	\$29,395.
After 3rd anniversary	\$30,599.	\$31,517.
After 4th anniversary	\$32,659.	\$33,639.
After 5th anniversary	\$34,719.	\$35,761.
After 6th anniversary	\$36,779.	\$37,883.
After 7½ anniversary	\$38,804.	\$39,968.
After 9th anniversary	\$40,685.	\$41,906.

Beeper Pay

Members of the Association assigned by the District Attorney to carry a beeper at any time shall be compensated according to the following formula:

- a. \$100.00 per weekend (defined as 4:30 P.M. on Friday through 8:00 A.M. on Monday)
- b. \$20.00 per day for any evening during the work week of Monday through Thursday (defined as 4:30 P.M. through 8:00 A.M. the following day)
- c. \$50.00 for any holiday which falls during the work week (defined as 4:30 P.M. the evening prior to the holiday through 8:00 A.M. the day following the holiday)

EXHIBIT A-