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WISCONSIN GOVERNMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE INTEREST ARBITRATOR

In The Matter Of The Petition of
ADAMS COUNTY COURTHOUSE EMPLOYEES
UNION, LOCAL 1168, AFSCME
To Initiate Arbitration Between
Said Petitioner And
ADAMS COUNTY (COURTHOUSE)

Daniel Nielsen, Arbitrator
Decision No. 25126-A
Date of Appointment: 03/17/88
Date of Hearing: 04/11/88
Record Closed: 06/05/88
Date of Award: 07/29/88

Appearances:

Hollman & Pollex, Attorneys at Law, 313 Main Street, Friendship
WI 53934-0098, by Mr. Charles A. Pollex, appearing on behalf
of Adams County.

Wisconsin Council 40, AFSCME, AFL-CIO, Post Office Box 516,
Plover WI 54467, by Mr. David White, Staff Representative,
appearing on behalf of Local 1168.

ARBITRATION AWARD

The Adams County Courthouse Employees Union, Local 1168, AFSCME (hereinafter referred to as the Union) is the exclusive bargaining representative for a unit consisting of all regular fulltime and regular part-time employees of Adams County (hereinafter referred to as the County) employed in the Courthouse and Courthouse Annex, including non-professionals in the Social Services Department, excluding elected officials, professional employees, supervisors, law enforcement personnel and all other employees of the County. The last collective bargaining agreement between the Union and the County expired on December 31, 1986. Following four bargaining sessions, the Union, on August 12, 1987, petitioned the WERC for interest arbitration. A Commission Investigator conducted an investigation on November 16, 1987, and the parties submitted final offers to the Investigator by January 4, 1988. The investigation was closed on January 28, 1988, and the Commission issued an Order requiring Arbitration on February 3, 1988.

On March 17, 1988, the undersigned was appointed as Arbitrator. A mediation was conducted on April 11. The dispute was not resolved, and a hearing was conducted on that same date at the Adams County Courthouse in Friendship, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits and arguments as were relevant to the dispute. Briefs and reply briefs were submitted. On June 5, 1988, the undersigned was notified that he should close the

record.

Now, having considered the testimony, exhibits, arguments of the parties and the record as a whole, the undersigned makes the following Arbitration Award.

I. ISSUE/FINAL OFFERS

The sole issue in this arbitration is the wage increase for each of two years, 1987 and 1988. The Union proposes a 24¢ per hour across the board increase in 1987 and 3.5% across the board in 1988. The County, on the other hand, proposes 20¢ per hour across the board in both years.

II. STATUTORY CRITERIA

This dispute is governed by the provisions of Section 111.70(4)(cm)7, Wis. Stats., the Municipal Employment Relations Act ("MERA"). A copy of the relevant portion of the statute is attached hereto as Exhibit "A". While some subsections of the statute are not extensively discussed in this Award, each has been considered in arriving at the ultimate conclusion.

III. POSITIONS OF THE PARTIES

A. The Brief Of The Union

The Union asserts that its position on the wage dispute is supported by both internal and external comparables, is more equitable than the County's offer in that it does not discriminate against female employees, and is more consistent with the cost-of-living.

The Union notes that employees of the County's Sheriff's Department negotiated a wage increase of 3.5% for both 1987 and 1988. This is identical to the Union's Final Offer in this case. The Highway Department employees received a negotiated increase of 3.4% in 1987, a mere 0.1% less than the Union offer. This increase was generated by a cost of living provision. While the Highway employees were not settled for 1988 at the time of

the hearing in this case, the Union asserts that it is reasonable to assume a similar increase from the CQLA clause in 1988. This assumption is buttressed by the fact that the first quarter of 1988 yielded an increase of 14¢ per hour for highway workers, as compared to 10¢ in the first quarter of 1987.

The external comparables for Adams County were established by Arbitrator Imes in Adams County (Sheriff's Department), Dec. No. 22868-A, as Juneau County, Waushara County, Marquette County and the City of Adams. The Union argues that a review of these comparables compels selection of the Union offer. The negotiated settlements in comparable communities for the contract term are:

Juneau Co. (Courthouse/Soc. Serv.)	3% - 1987
	3.6% - 1988
Marquette Co. (Soc. Serv.)	2.7%-8.4% - 1987
	1.6%± - 1988
Marquette Co. (Courthouse)	2.4%±-9% - 1987
	1.6%± - 1988
City of Adams (Public Works)	5% - 1987
	3.5% - 1988
Waushara Co. (Soc. Serv.)	2.4%± - 1987
	3% - 1988

While the Waushara County settlement appears, on its face, to support the County's 1987 offer of 20¢ (2.9%), the Union notes that the employees there received an additional week of vacation after twenty years of service. The numerous adjustments in Marquette County easily brings employee increases there to a level in excess of both the Union and County offers in Adams County. The City of Adams, at 5%, also exceeds both offers. Even Juneau County, at 3%, has a higher settlement than offered by the County. In sum, the 1987 offer

of the County represents the lowest increase among the external comparables, while the Union's offer falls in the middle of the pack, slightly above Juneau County and Waushara County, and below Marquette County and the City of Adams.

In 1988, the County's offer exceeds only that of Marquette County (2.9% vs. 1.6±%). Marquette County employees, however, received a significant improvement in insurance in 1988, when the deductibles are reduced from \$300 single/\$600 family to \$100 single and \$300 family. This causes the nominal 1.6% increase in wages to have a significantly higher impact on real income. The Union's 3.5% wage increase proposal for 1988 is identical to that received by employees in the City of Adams, and slightly less than that in negotiated in Juneau County. As with the 1987 wage offers, the Union is in the middle of the pack, while the County falls near the bottom of the comparables. Clearly, the Union argues, the external comparables support its final offer when rate of increase is considered.

Actual wage rates among the comparables also buttress the Union's position. An examination of the wages paid to employees for six typical classifications shows that Adams County employees are paid less than their counterparts in comparable municipalities:

CLASSIFICATION	AVERAGE WAGE COMPARABLES	1986 ±	1987(U) ±	1988(U) ±	1987(C) ±	1988(C) ±
CLERK II	\$6.39 (1986)	+16¢	+20¢	+26¢	+16¢	+18¢
HOMEMAKER II	\$7.25 (1986)	-30¢	-30¢	-26¢	-34¢	-35¢
IM WORKER	\$7.49 (1986)	-54¢	-56¢	-52¢	-60¢	-61¢
DEP. TREASURER	\$6.94 (1986)	-07¢	-14¢	-10¢	-18¢	-19¢
DEP. CLERK	\$8.00 (1986)	-\$1.13	-\$1.11	-\$1.13	-\$1.15	-\$1.22
DEP. REG. DEEDS	\$6.94 (1986)	-07¢	-14¢	-10¢	-18¢	-19¢

The offer of the Union maintains or slightly decreases the disparity for those positions which lag behind, while the

County's proposal moves employees even further below the average area wage. The Union argues that these employees are entitled to some modest "catch-up" increase, or at least should be granted a wage increase that maintains their relative disadvantage. Since the Union offer better accomplishes this goal, the Union argues that it should be accepted.

The Union asserts that the County's offer violates public policy, in that it discriminates against this overwhelmingly female bargaining unit. While the other units have received negotiated increases roughly equal to the Union's final offer, the County seeks to impose a smaller increase on this unit. The male dominated highway and sheriff's deputies units already receive wages in their lowest classifications which are nearly \$2 an hour more than the average wage in this unit:

Sheriff's Dept. [Division I]	\$8.60
Highway Dept. [Class III].....	\$9.31
Courthouse/Social Services Average Wage:	\$6.78

The Union notes that a discriminatory effect, even if not intended, violates the Civil Rights Act. Plainly, an offer which exacerbates an already existing sex-based wage disparity should be disfavored in a statutory proceeding such as this.

The Union points to economic data on the relative prosperity of Adams, Marquette and Waushara County. All of the data supports the conclusion that Adams County, while not wealthy, enjoys an expanding and diverse economy. Adams County has been spared most of the ill effects of the troubled farm economy, and personal income has increased at a rate well in excess of that for the other comparable municipalities. The County is well able to pay the modest increases proposed by the Union, without any

adverse effect on the public welfare.

The County made much of a supposed 30% insurance rate increase in attempting to justify its final offer. The Union discounts this claim. First, the Union argues that insurance rates have actually decreased from their 1984 level of \$292 per month. Upon self funding in 1986, the rate for family coverage stayed at \$263.71, where it remained until January of 1988. The current rate is \$279.90, a modest 6% increase over three years.

The basis of the County's claim of an impending 30% boost is the testimony of Supervisor Russ Mowry. Mowry has been a member of the County's Insurance Committee for only two years, and can hardly be considered expert in the field. Indeed, Mowry incorrectly asserted that there had been two increases in insurance rates since self-funding in 1986, displaying his uncertain knowledge of the insurance system. Mowry claimed that the 30% figure was based upon experience and inflation. He admitted, however, that claims information for the insurance year is not generally available until July of each year. Thus the County's claim is based upon data they could not have possessed, either at the time their offer was made, or when the testimony was given.

The weight of the County's insurance argument is further diminished by consideration of the fact that all County employees are covered by the same insurance plan. No effort has been made, however, to change benefits in negotiations with any group, including unrepresented employees. Indeed, the County settled the Sheriff's Department contract after the final offers were certified in this dispute, at a higher rate than offered here and with no change in insurance. Insurance increases, if they are actually in the offing, did not motivate the County's

low final offer in this case. Instead, the Union claims, the insurance argument is an after the fact attempt to justify an unreasonably low offer. Beyond the settlement with the Sheriff's Department ignoring the supposed crisis in health costs, the proof of the County's insincerity lies with the timing of its offer relative to the notice of an insurance increase. The offer was submitted on December 11, 1987. The County Board Chairman, Casey Grabarski, testified that the County became aware that an increase might be necessary on approximately January 1st. Thus the County's economic proposal could not in any way have been related to insurance costs. The issue is nothing more than a smokescreen, the Union asserts, and should be discounted.

B. The Brief Of The County

The County takes the position that its final offer is fair and reasonable in light of economic conditions, health insurance costs, external and internal comparables and the cost of living. As such, it should be adopted.

The County ranks 68th out of 71 ranked counties in the state in per capita personal income. The adjoining counties of Marquette and Waushara are only slightly better off, ranking 60th and 63rd, respectively. Clearly the region is economically depressed, and is entitled to consideration of a somewhat more modest wage package than might be appropriate in more prosperous areas of the state.

Far and away the most important factor in favor of the County's final offer is the insurance coverage provided to employees, and its attendant cost. Adams County is alone among the comparables in providing a comprehensive and generous insurance plan without deductibles, and without any employee premium contribution. In order to maintain this high level of insurance coverage, the County

resorted to self-funding in 1986. This resulted in a short-term savings because of the predecessor carrier's obligation to cover certain costs. Increases have, however, become necessary. The increase in late 1987 amounted to \$.0996 per hour cost to the County. The much larger increase slated for August 1st will amount to \$.516 per hour. These cost increases to the County also represent real compensation increases for employees, and should be heavily weighted in considering the competing-offers. This is particularly true in light of the Union's persistent refusal to negotiate any modification of the insurance benefits. The time has come, the County asserts, for employees to bear part of the cost of insurance. In the case of these two offers, the cost is reflected by a somewhat more modest wage increase.

The County acknowledges that two of the comparables, the County's Highway Department and the City of Adams, appear to offer the same insurance benefits as are available to Courthouse employees, as well as wage increases in excess of the County's offer. The County distinguishes these two units, noting that the Highway Department increase is due to a cost of living provision. Negotiations with the Highway Department bargaining unit are at impasse, and the County has a proposal in place to require an insurance deductible. In the City of Adams, the City received a quid pro quo for its wage increase, obtaining language in the Management Rights Clause which arguably expands its right to subcontract work. Thus neither comparable truly supports the Union's position. Neither do the mixed results in other counties provide much guidance. All are relatively modest increases, more in line with the County's offer than that of the Union.

Finally, the County argues that the consumer price

index shows an increase across two years (1986 and 1987) of 5.5%. The County's offer for the succeeding years amounts to 5.75%. The offer thus protects employees from inflation, and increases their real wages. As such, it should be favored.

C. The Reply Brief Of The Union

The Union disputes several of the County's assertions. The claim that Adams County is economically depressed is based solely on per capita income. This is but one facet of an area's economy. Rate of growth in income, and per capita full value show that Adams County is an "up-and-coming" county with a long-run track record of steady growth.

Turning to the County's claim that Adams County provides the best insurance coverage in the area, the Union notes that the record is inadequate for any meaningful comparison of insurance benefits. With respect to the argument that large increases in insurance premiums are looming, the Union reiterates its view of the testimony as not credible and self-serving. Again, the Union points out, the County's offer was made before any information on insurance rates was available to the County.

While the County attempts to distinguish the Highway and City of Adams settlements, the Union maintains that these settlement are right on point. The fact that the County has proposed some insurance modifications in the Highway agreement is irrelevant. The changes have been neither agreed to by the parties, nor awarded by an arbitrator. Nor is the fact that the increases for highway employees are generated by a COLA clause of any relevance to this dispute. It is the amount of the increase, rather than the vehicle for the increase, which is of importance. The City of Adams concession cited by the

County as explaining the large wage increase is a modest addition to the Management Rights clause, protecting both parties. The change allows the City to subcontract work not "historically" performed by unit employees, so long as no layoffs result. It also specifies that there will always be a minimum number of employees in the unit. This is hardly a significant concession by the Union and, on its face, seems to in fact benefit the Union. The Union asserts that the County has completely failed to explain away or justify the low wage increase it has proposed relative to other comparable employees. The erosion of wages relative to comparable employees continues as compelling evidence of the unreasonableness of the County offer.

IV. DISCUSSION

A. The Welfare of the Public

Two issues are presented under the criterion mandating consideration of "the interests and welfare of the public". The Union suggests that the County's offer will have a discriminatory impact on this largely female bargaining unit in light of the larger increases granted to predominantly male bargaining units. While it is possible to view this criticism as going to the §111.70(4)(cm)7(a) "lawful authority" criterion, the Union has not made a direct claim of illegality, and it is more appropriate to weigh the matter as a policy argument under §2. The second issue considered under §2 is the County's claim that Adams County is an economically depressed area.

On the question of discriminatory impact, the record is inadequate to make the Union's case. It is true that discrimination may be found as a result of disparate impact, without a finding of intent. The simple assertion of a disparate impact, however, does not suffice to establish illegal discrimination. In this case, the

wages in the Courthouse/Social Services unit lag behind those of the Sheriff's Department and Highway Department. It may be that the skill levels required in the other units justify the greater rate of pay. It may simply be that the market for those employees is tighter than the market for non-professional white collar employees. The record does indicate that the Sheriff's Deputies, notwithstanding their higher rate of pay, were among the lower paid among their comparables. This suggests that there is a different market for those workers.

The proof shows that one unit of employees, performing different work and dominated by women, is paid less and has been offered a smaller increase than two other groups which are dominated by men. The Union has made no effort to prove that the work performed by the Courthouse unit is substantially equivalent to the work performed in the other units, nor has it shown that the County submitted its offer with an intent to discriminate. If the justifications offered by the County for the lower rate of increase in the female dominated unit prove to be a pretext, there might be some grounds for suspicion of their motives. That is hardly an adequate basis, however, for a determination that the County's offer violates public policy.

The County asserts that Adams County is a depressed area. The data shows this to be true, relative to the rest of Wisconsin. The other comparable counties for which data was submitted, Marquette and Waushara, are similarly poor areas. Standing alone, however, a showing that the area is not wealthy does not lead to any helpful conclusion. Where the comparables are in the same economic boat, and have granted increases to their employees within the same range as those being sought by the County's employees, local economic conditions lose some of their persuasive

force. The negotiators in surrounding counties presumably took economic conditions into account in arriving at the settlements with their employees. The local economy will only support a somewhat lower offer where it distinguishes one county from its comparables, or where there is no pattern of settlements. The County's argument about local economic conditions loses all effect, however, where there are internal settlements in conflict with its offer. Local economic conditions cannot have changed drastically from November, when the Sheriff's Department received two 3.5% increases, until December, when the offers were submitted in this case. Similarly, the local economic conditions do not explain the estimated 3.4% increase for the Highway Department employees. Granting that the increase is being generated by a COLA clause in the existing expired contract, the fact remains that local economic conditions have not apparently led to a serious effort to remove or limit the effect of the clause.

Consideration of the "interests and welfare of the public" does not favor either final offer.

B. External Comparables

The external comparables are mixed. The 2.4% and 3% wage increases in Waushara County are supportive of the County's final offer. While the Union points to an extra week of vacation after 20 years as an additional economic benefit within that settlement, there is no evidence that this additional week has any significant impact in that unit. Likewise, the County's attempt to disparage the 5% and 3.5% increases in the City of Adams on the basis of the new subcontracting language is unsuccessful. The language might, as the County asserts "arguably" expand the right to subcontract, but it also guarantees the maintenance and expansion of unit work, and specifies a minimum level of employment within the unit. The language

on its face is even-handed, and not a concession that would explain the City settlement as being abnormally high.

Marquette County's employees received numerous wage adjustments in the first year of their 1987-88 agreement, ranging between 2.7% and 8.4% in the Social Services unit and between 2.4% and 9% in the Courthouse unit. In the second year, both units accepted 10¢ per hour, or 1.6%±. As the Union points out, this second year economic package is increased somewhat by change in health insurance deductibles from 600/300 to 300/100. If each employee were to use health insurance to the point of fully consuming the deductible, this benefit would range from 10¢ to 14¢ per hour in value. Although such an assumption is not realistic, it is fair to say that the change in deductibles increases the second year value of the settlement to Marquette County employees, likely putting it more in the range of the County's second year proposal.

Juneau County's settlement, at 3% and 3.6%, also provides mixed results. The first year is 0.1% more than the County offer, and 0.5% less than the Union's offer. The second year, on the other hand, exceeds the Union offer by 0.1%, and the County's offer by 0.75%.

On the basis of comparative rate of increase alone, the external comparables are not determinative. When a benchmark comparison is undertaken of actual wage rates between the County and the comparables, the Union's offer is preferred. The Union's offer more nearly preserves the wage differential between Adams County employees and those in other comparable courthouse and social services operations in the area. For Income Maintenance Workers, as an example, the 1986 wage differential was -54¢. The Union offer would put this differential at -56¢ and -52¢ in 1987

and 1988, respectively. The County offer, in contrast, would increase the differential in each year, first to -60¢, and then to -61¢. This general pattern is repeated at all classifications, except Clerk II, the only position in the bargaining unit which exceeds the average. There both offers increase the advantage those employees enjoy over their counterparts.

A comparison of wage rates across the comparables favors the Union offer. The County's argument that this advantage should be offset by the better insurance benefits in Adams County is unpersuasive, since the wage differentials in 1986 exist in light of those benefit differences. The Union's offer is not favored because of any conclusion that these employees are underpaid, but rather because the general expectation in bargaining is that wage differentials will be maintained.

C. Internal Comparables

The County has two other bargaining units. The Highway Department employees were, at the time of the hearing in this case, at impasse in their negotiations. The COLA clause in their contract however, was generating wage increases for 1987. In 1987, the amount of increase by virtue of the COLA clause was approximately 3.4%. The Union points to the inflation projections for 1988 and predicts a similar increase, an assertion not seriously disputed by the employer. The County seeks to distinguish the Highway increases from the Union's offer by pointing out that they are generated by the COLA. The undersigned sees no distinction. A wage increase is a wage increase, and the fact that the amount of increase is not a set and precise figure when negotiated does nothing to erase its comparative value once it is in place.

The Sheriff's Deputies contract for 1987 and 1988 was submitted to the County Board on November 17, 1987

and thereafter ratified with increases of 3.5% in both years. This is essentially identical to the wage offer of the Union. The County asserted at hearing that this increase was premised upon the fact that these employees lagged behind their counterparts in other counties. The evidence suggests, however, that the same can be said of many of the classification in this unit. No argument was presented to buttress this point in the County's case, and the record evidence does not provide support for the distinction urged by the County. Considering only the factor of amount of increase, the internal comparables strongly support the Union's position.

The County asserts that the offers in this unit must be distinguished from the wage increases in the other units because of the pending boost in insurance costs. The Union has refused to consider any voluntary changes in the insurance package, and the time has come, the County claims, for employees to participate in the cost of benefits. This argument fails for several reasons.

The County has not proposed any co-pay, deductibles or employee contributions in its final offer. These measures might directly affect the cost of insurance, whereas a lower wage settlement will have no impact whatsoever on premiums. Certainly a lower wage increase for these employees will affect overall compensation costs, and to that extent would be logically tied to insurance increases, but it does not directly address the problem that the County claims to be concerned about.

More damaging to the County's claim is the fact that the settlement in the Sheriff's Department does not take the supposed crisis in insurance rates into account. That settlement was submitted to the County Board some three weeks before the final offer in this case was submitted

to the Investigator. The County asserted at hearing that the need for some increase in premiums was known at that time, but the magnitude of the increase was not yet clear. The claimed 30% increase was not projected, however, until early January, some 3 weeks after the County's final offer was submitted. The circumstances surrounding the Sheriff's settlement were therefore identical to those existing when the County determined to offer these employees 0.6% less than the deputies received. The lower offer in this unit could not have been premised upon insurance costs, because the costs were not known when the offer was submitted. It is clear from the record that the insurance argument of the County is an after-the-fact justification of a lower offer, rather than the reason for making the offer in the first place.

Finally, the 30% figure cited by the County for premium increases in August of 1988 does not appear to be based upon any actual calculation of claims experience for the insurance year, since that data is not available until the third week in July, while the projection was made in January. Instead, the figure is one repeated by a member of the County's Insurance Committee, who heard it from a consultant. No documentary evidence was introduced on this point, and the witness was unable to explain the basis of the projection in other than very broad terms. The undersigned does not question the honesty of this witness. He certainly reported what he was told. The quality of the evidence supporting the 30% claim, however, is not such that the undersigned can conclude that the figure is a reliable indication of what the actual increase will be.

D. Cost of Living

The cost of living figures for 1986-87 show a rise

in the consumer price index of 5.5%. The County asserts that its 5.75% offer is therefore more reasonable. While this is true in the abstract, the weight to be accorded CPI data in arriving at a settlement is best reflected in what other bargainers have done in light of the same information. The cost of living is not different between Adams County and the City of Adams, nor is it different for Courthouse employees and Sheriff's deputies. Where, as here, a pattern of settlements has emerged in support of one offer or another, the cost of living, as a constant across the comparables, will not support an offer at odds with the pattern of settlements. This is particularly true where the settlements relied upon are internal settlements between the same employer and other bargaining units.

V. CONCLUSION

Where an employer negotiates with several different bargaining units, all of them non-professional and none of them having an obvious advantage in bargaining power, a pattern of internal settlements is the most persuasive evidence of what a reasonable settlement should be in a given case. Here, the internal settlements mirror the Union's final offer, and there is no compelling reason to distinguish those bargaining units from the Courthouse/Social Services unit.

On the basis of the foregoing, and the record as a whole, the undersigned makes the following

AWARD

The final offer of the Union, together with the stipulations of agreement, shall be incorporated into the 1987-88 collective bargaining agreement.

Signed this 29th day of July, 1988 at Racine, Wisconsin:

Daniel Nielsen, Arbitrator