BEFORE THE ARBITRATOR

In the Matter of the Petition of

DOOR COUNTY HIGHWAY DEPARTMENT EMPLOYEES, LOCAL 1658, AFSCME, AFL-CIO

TO Initiate Arbitration Between Said Petitioner and

DOOR COUNTY (HIGHWAY DEPARTMENT)

Case 64
No. 40394 INT/ARB-4874
Decision No. 25426-A
Stanley H. Michelstetter II
Arbitrator

Appearances:
Davis & Kuelthau, S.C., Attorneys at Law, by Clifford B. Buelow and Lon D. Moeller, appearing on behalf of the Employer.
David Ahrens, Research Director and Michael J. Wilson, District Representative, appearing on behalf of the Union.

ARBITRATION AWARD

Door County Highway Department Employees, Local 1658, AFSCME, AFL-CIO, herein referred to as the "Union" having petitioned the Wisconsin Employment Relations Commission to initiate Arbitration, pursuant to Sec. 111.70(4)(cm), Wis. Stats., between it and Door County (Highway Department), herein referred to as the "Employer," concerning an impasse with respect to the parties' calendar 1988 and 1989 agreement; and the Commission having appointed the Undersigned as Arbitrator on May 19, 1988; and the Undersigned having conducted a hearing in Sturgeon Bay, Wisconsin on September 15, 1988; and the Union having moved to reopen the hearing in this matter and the Undersigned having by order dated November 14, 1988, denied the motion; and the parties having thereafter agreed to the submission of a substantial number of post hearing exhibits; and the parties having each submitted posthearing briefs and reply briefs, the last of which was received February 16, 1989.

ISSUES

The issues are defined by the final offers of the parties. I summarize them as follows:

1. WAGES: The union proposes a 30¢ per hour across-the-board increase effective January 1, 1988 and 31¢ across the board effective January 1, 1989. The Employer proposes no general increase for 1988; however, it has proposed a 2% across-the-board wage increase for 1988 as a "buy out" for its proposed amendment to Article VIII listed below 1/. For 1989, it proposes a 2%

1/ During hearing, the Employer requested that its first year wage proposal be considered solely as a buy out for the proposed change in Article VIII and not as a general increase. This is discussed more in the text of the award.

across-the-board increase. The Employer, also, proposes that the wage schedule of the agreement be amended to include hourly, biweekly and annual wage rates. Currently, the agreement specifies hourly wage rates.

2. STARTING TIME: The Employer proposes to add the underlined language to Article VIII - Work Day and Work Week, Section C; "A starting time of 7:00 a.m., means that all employees report to the shop ready to work. The quitting time of 3:30 p.m., or the termination of the work day, shall be construed to mean that all employees shall be back at the shop at 3:30 p.m. Effective May 1st through October 31st, a starting time of 7:00 a.m. means that all employees shall report to the job site at 7:00 a.m., ready to work.

POSITIONS OF THE PARTIES

The Union relies heavily on the internal pattern of settlements to support its offer, all of which were the results of arbitration awards in which the arbitrators2/ selected the final offer of the unions therein over final offers of the Employer therein, all of which cases resulted in general increases equal to, or greater than, the increase the Union seeks herein (except, paramedics discussed below.) In its view, the arguments of the employer in this case are the same as the arguments in the other cases and the Union does not see why they should be any more persuasive here.

The Association denies that the Employer's offer of 2% increase in the first year is an adequate quid pro quo exchange for eliminating county paid transportation to work sites. It notes that the Employer has not demonstrated a need for a change in this tweny year practice. It denies that the Employer has even demonstrated that its cost is reasonably related to the work time. It, also, believes the Employer has failed to demonstrate that its proposal "effectively" addresses the problems it seeks to correct.

It argues that Arbitrator Petrie has found that the establishment of hourly rates, etc. is only a secondary issue and that that issue should, therefore, also not be controlling in this case. The Union has not presented any other argument on

2/Door County Board of Supervisors (Sheriff's Department) (Dec. No. 25570-A) (Gundermann, 1/89)[employer, 0%, 1988, 2%, 1989; union, 2% 1/1/88, 2% 7/1/88, 2% 1/1/89, 2% 7/1/89); Door County (courthouse unit) Int/Arb-4746, (Petrie, 12/88) (employer, 0%, 1988, 2%, 1989; union, 25¢ per hour or 3%, whichever is greater, 1/1/1988; 26¢ per hour or 3%, whichever is greater, 1/1/89); Door County (Ambulance) Int/Arb-4872 (Petire, 1/21/89) (The parties have a calendar 1988-89 agreement. There was a major reduction in hours in this unit without a reduction in pay. The Employer proposed no increase, the union proposed 3% May 1, 1989); Door County (Social Services) Int/Arb-4873 (Briggs, 12/88)(employer, 0%, 1988, 2%, 1/1/89; union 25¢ per hour or 3% whichever is greater, 1/1/88, 26¢ per hour or 3% whichever is greater, 1/1/89).

this issue.

Finally, it argues that settlements of other municipal bargaining units in Door County support its position and should be given weight in this case. These are Southern Door, Sturgeon Bay, Gilbralter and Sevastopol school districts; City of Sturgeon Bay Firefighters, D.P.W. and Police. Further, it believes the finding of other arbitrators that Door County private sector comparisons and cost of living criteria support the labor position in those cases, should be given weight herein.

The Employer takes the position that Door County is a unique economic entity which defies traditional comparability analysis. It relies upon the fact that the county is a pennisula with about forty percent of its population living in Sturgeon Bay. It heavily relies upon its offered evidence indicating that the economy of Door County is made up of three sectors; 1 tourism 18%, 2, agriculture 22% and 3, manufacturing 35%. It notes that the manufacturing sector is much larger than the national average, accounts for the highest wage jobs of all sectors and is almost totally dependent upon the two major ship builders in the area. It, also, argues that its evidence establishes that Door County's agricultural sector is different than other counties because it is largely made up of fruit rather than dairy or traditional crops. Finally, it argues that this county's tourism industry is significantly different than other possibly comparable counties' Based upon the foregoing, the Employer argues that there are no comparable counties from which to make a comparison and the arbitrator should not rely upon comparison to other counties' with similar employees.

In the alternative, the Employer argues that Kewaukee, Langlade, Marinette, Oconto, Shawano and Waupaca Counties are the closest possible comparisons, based upon population, revenues and expenditures. The Employer urges the arbitrator to reject the Union's offered comparable counties of Manitowoc and Brown because both are substantially larger than Door County. Further, the County denies that the Union's comparisons to other, less comparable counties with high unemployment are relevant because the counties are less comparable and because the unemployment rate in Door County is significantly higher. The Employer argues that if any comparison were to be made to non comparable counties with high unemployment, the county to select would be Kenosha County. It argues that the magnitude of events here is rivaled only by the magnitude of the Chrysler plant closing in Kenosha. On that analogy, it argues that the two year pacakges settled by the jail staff and nurses units in Kenosha County with zero increases in one of two years demonstrates the appropriate response to this type of crisis. Further, it points to the Kenosha school settlement by the service employees who accepted a wage freeze for both 1988-89 and 1989-90 and the teacher's settlement which was below state avaerage and contains a wage reduction provision if unemployment is above certain levels.

The Employer argues that even if comparisons are used in general,

there is a lack of settlements for 1989 among the comparisons and, therefore, the arbitrator should rely on the other factors. The Employer relies heavily on the argument that the depressed economic conditions of Door County make it in the pulbic interest to award the Employer's offer. In support of this position, the Employer primarily relies upon analogy to Arbitrator Vernon's award in School District of Sevastopol (Dec. No. 24910-A) (1988) and similar awards elsewhere that local economic conditions can justify fiscal restraint and lower settlements.

It argues that the depression and collapse of the shipbuilding industry which comprised the manufacturing sector of Door County taken with the difficult year Door County Cherry growers experienced certainly constitutes depressed local econmic conditions requiring fiscal restraint. The Employer provides specific statistics and information about each of its shipbuilding businesses economic situation. It highlights the situation at Bay Shipbuilding in which Bay Shipbuilding delivered the last large ocean going commerical vessel to be built in the United States and reduced it workforce from it December 4, 1986 high of 1,812 to 128 total employees as of December, 1987. Bay Shipbuilding has no liklihood of further business and, thus, the Employer argues that this is not merely cyclical, but a permanent change in the local economy. Because approximately 65% of Bay Shipbbuilding employees lived in Door County, the impact on this county is, in the Employer's view, overwhelming as demonstrated by local unemployment statistics and economic studies. It emphasizes that this situation is not merely cyclical changes in an industry, but the permanent shut down of the major local industry. While it concedes Peterson Builders, Inc. does have a brighter future because it builds ships for the United States Navy, it has laid off 30% of its employees and plans to lay off another 10 to 20% of its employees when it finishes its next contract in December, 1988. P.B.I. implemented a wage freeze for its employees in 1986 which remains in effect. However, its future is not very secure because most navy work is let to ocean port ship yards, those with nuclear handling capacity, neither of which P.B.I. has.

The Employer, also, emphasizes that a major crop in Door County is cheeries. Due to a national oversupply most of the 1987 crop was not harvested, in 1988, growers suffered from the drought and because Door County now lacks processing facilities, the over supply continues.

The Employer argues that other public sector settlements clearly support its position. In this regard, the Employer characterizes its final offer as 2% across the board in the first year 3/ It notes that the City of Sturgeon Bay won its position

3/ At hearing the Employer characterized its final offer as 0% the first year and 2% the second year with a 2% first year buy out of the starting time benefit.

of 2% for 1988 and 2% for 1989 in its city employee, fire and police units. It notes that this offer compares more favorably with the County and less favorably with the Union. It, also, notes that the City made its offer of 2% the first year more than two months before Bay Shipbuilding announced its layoffs. In its view, if the City had been aware of the impact that the layoffs would have on the economy, they would not have even offered that much. It notes that the Sturgeon Bay Utilities Commission proposed a total 1988-89 wage increase of 3.5% (1.5% in 1988 and 2% in 1989) after the announced layoffs. It, also, refers to the voluntary settlement with the Sturgeon Bay fire unit in which they received their first wage increase since their 1983-84 agreement, a year in which the fire unit's income was greatly increased due to Fair Labor Standards Act overtime payment requirements. It, also, notes that this unit received a 1% greater increase than the City of Sturgeon Bay units in 1987.

The Employer argues that private sector settlements support its offer. It argues that Bay Ship and Peterson Builders, Inc. have traditionally exerted great influence on the entire labor market in Door County. Thus, in its view, the most relevant settlements are the 0% increase at Bay Ship and the 18% wage cut at PBI. It notes the next two largest employers, Emerson Electric and Palmer Johnson did not report salary settlements for 1988. Emerson Electric had a wage freeze in 1987 and a 2% increase in 1986. It, also, discontinued the annual 5% Christmas bonus. The Employer, also, argues that other area settlements weighted on the basis of number of employees employed and including PBI and Bay Ship indicate that the average increase in the area is 1.46% weighted and -.05% unweighted for 1988. The Employer alleges that the national private sector trend is for settlements less than the rate of inflation.

The Employer, also, argues that its offer is supported by the fact that this unit received a settlement for its last contract in excess of that received by comparable public employees and substantially in excess of the consumer price index. Thus, in its view, it is entitled to ofset this against this year's increase.

The Employer supports its position for including bi-weekly and annual wage rates by comparisons with other relevant employee groups. It supports its position with respect to the elimination of paid travel time to the work site on the basis of 1. the fact that the local economic crisis requires the Employer to obtain cost savings; 2. local municipal officials which maintain contracts with the county for road repairs have complained about the lack of productivity and 3 is supported by comparisons to other comparable counties.

In reply, the Union argues that the Employer's arguments are a "rehashing" of its arguments to other arbitrators and, therefore, the arbitrator herein should follow the result of the awards in other units. It notes that the issue as to revising unit starting times is a new issue, as is the set of comparables

offered for the highway department. It relies upon the arbitrators' awards in Door County (Sheriff's Department), (Dec. No. 25570-A) Door County (Social Services Department), Decision No. 25427-A and Door County (Ambulance Services), (Decision No. 25429-A) for the proposition that the Employer is merely unwilling to pay and that local economic conditions should not be given determinative weight without reference to other criteria.

It denies that the City of Sturgeon Bay's offer of 2% should be discounted as a primary comparison because it was made shortly before the timing affected the decision to lay off employees and cease ship building operations at Bay Ship was announced. In its view the subsequent conduct of the City of offering 2% or more to its unrepresented employees after the announcement discredits that position of the Employer herein.

The Union, also, notes that the external public sector comparables relied upon by the Employer have granted annual increases supporting the position of the Union in each of the contract years. It argues the cost of living supports its position by any argument. Finally, it argues that private sector comparison other than Bay Ship and Peterson support its position. Since the Employer has argued that everyone was laid off at Bay Ship, Bay Ship has not reached agreement with its unions and Peterson is non union, it doesn't see these as comparisons.

The Union, also, argues that the Employer's proposal to change reporting time proceedures is without support in the record. It argues that the practice is of more than twenty years duration. It appears to argue that a prime reason for the practice is the unique nature of Door County which has a predominance of two lane roads, heavy traffic during the tourist season and no desire to increase traffic capacity. It, also, appears to argue that the time involved is more than the twenty minutes average per affected day as alleged by the Employer. The Union, also, challenges the use of the letter of the Towns Association to support the position of the Employer, noting that there was no testimony supporting the letter. Finally, the Union argues that the Employer's proposal for changing this benefit does not meet the tests specified in Marathon County (Sheriff's Department) (Dec. No. 22462-A) (Malamud) and, therefore, should be rejected.

DISCUSSION

PUBLIC INTEREST

The Employer has substantially documented a substantial decline in the economy of Door County. While the Union has tended to minimize this decline, the central issue litigated in this case is whether the Employer's offer is necessary to preserve the public's interest in this matter.

The Employer has not argued inability to pay and is now is a very sound financial position. Thus, it would have no financial

difficulty in meeting the Unions' proposal. There has been no showing of a history of ability to pay limited negotiations and, therefore, the Union's argument about the Employer's strong financial position does not have significant weight herein.

Door County is a penninsula and, therefore, its economy tends to be more isolated from counties other than Kewaunee, its neighbor. A large proportion of Door County's work force has recently been employed in the ship building industry, primarily at Bay Ship Builders, Inc. (herein "Bay Ship"). The second largest employer in the area is another ship building concern, Peterson Builders, Inc. (herein "Peterson"). A third ship building concern is Palmer Johnson which builds yachts and is not as drastically affected.

Bay Ship completed the construction of the last ocean going commercial ship under construction in the United States. In one year it has reduced its work force from about 1700, in December, 1986 to less than 100 during some points of 1988. Because of international competitive pressures Bay Ship announced March 29, 1988, that it would no longer seek new ship construction, but would specialize in repair work which involves only a small number of employees. About 1200 local residents have been laid off permanently. Bay Ship in one recent year purchased $3,000,000 of local goods and services and was down to $1,000,000 per year, recently. As a part of its effort to become more competitive for the work remaining, Bay Ship implemented an 18% wage reduction over the objections of its unions and unrepresented employees on January 17, 1988. In a population of 26,000 for the County, the direct loss of employment alone caused a major downturn in the economy.

At one time Peterson employed about 1,000 employees most of whom were local residents. It performs work for the U.S. Navy, but will not likely ever return to its level of work. Since 1986 it has laid off 30% of its work force and when its next order is completed shortly, it will lay off 15-20% of its remaining work force.

The Employer has, also, documented the circumstances faced by the local cherry growers which are agricultural producers unique to the area. They have been forced to largely abandon crops the year before, were devasted by drought in 1988 and there is a continuing glut of cheeries on the market driving prices down. In addition to difficult growing conditions in this area, Door County lost its local cheery processor, which greatly increases production costs for local growers.

The statistical data presented by the Employer leaves no doubt that proportionately Door County has one of the higher levels of real unemployment and the economy is, if not depressed, likely to become so very shortly. The Employer has demonstrated circumstances which require restraint on its part. The Employer has not demonstrated that the public interest, alone, requires that its specific offer be adopted.

STARTING TIME

As explained by the Employer, employees now report to the highway department at starting time from which they are transported on county time and by county conveyance to the work site. They then are returned in the same manner. This practice has existed as long as anyone can remember, at least 17 years. It, also, appears that everyone in the unit is affected by this except the mechanic who may, also, be affected. The Employer proposes to require employees to report to the highway department before their shift. They will then be transported at county expense, but on their own time. They will arrive at the work site at the scheduled start of their day. The return practice is not in issue.

The Employer never prepared an analysis of the value of its proposal to unit employees. Further, the Employer estimated that this involves an average of 20 minutes per day per affected employee during the specified period. The Union contends that this involves a higher average of time. Assuming 129 work days in the affected period and twenty minutes per day, the value to each affected employee in lost time is 2.1%. I am using this as the value when implemented. There are unaffected employee, tax and present value considerations I am ignoring.

During the course of the hearing in this matter, the Employer took the position that it intended to offer this unit the same general increase as its other units; 0% the first year, 2% the second, and that its 2% proposal during the first year was solely to be considered as the quid pro quo for the buy out of the starting time benefit currently enjoyed by unit employees. This is at variance with its position in its brief, in which its position was primarily premised upon the consideration of its proposal as a 2% general increase in 1988 and, essentially, separate consideration of its work day proposal.

Although not determinative in this matter[4/], it is important to address this matter. An exchange or buy out of objectionable provisions is important to the give and take of collective bargaining. It facilitates the development of collective bargaining agreements acceptable to both sides and facilitates the resolution of disputes short of arbitration, or, in the private sector, strikes. §111.70(40)(cm)7.h., j. permits the consideration of the total compensation package including its interrelationship and h. requires the consideration of: "such

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4/ Even if the Employer's proposal were considered as 2% in each year, the value of the proposal over hours is such that it is more important that the wage issue in, at least, the year in which it becomes effective. The Employer cannot take double credit for making a wage proposal and making a buy out proposal. If given credit as a wage proposal, for the reason offered herein the Employer has shown virtually no justification for its position on this issue. Accordingly, for that year, the Union's position for that year would be heavily favored.

other factors, not confined to the foregoing, which normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment trough voluntary collective bargaining ...." Arbitrators can, and should, consider the buy out or exchange nature of related proposals as appropriate to preserve the voluntary process.

The Employer has a long history of coordinating its bargaining strategy in all of its units and making essentially consistent proposals in each unit. Structuring its offer in the buy out form preserved the consistency and prejudiced the union which represents this and other units in its arguments in this and other cases. Only after the rendering of the arbitration awards in the other County units basically rejecting the Employer's proposed 0%, 1988 increase in its other units, did restructuring its position become useful to it. This is particularly true because arbitrators often consider economic packages separately from proposals about hours, often not costing the latter. However, considering it in this form would frustrate the voluntary negotiation process.

The Employer, also, argued that it should be given credit because the starting time proposal was not implemented by virtue of the fact that this matter was not resolved. Accordingly, its proposal will first be implemented the second year. The Employer did not initially propose a delayed implementation and under the circumstances of this case consideration of that result would frustrate the voluntary resolution of disputes since the Union could not have accepted it in that form and have had the delay without the Employer changing its offer.

In my view a party seeking to changing an existing provision has the burden of establishing that circumstances have changed since its creation, that there is a need to make the change and that its proposal is unambiguously reasonably suited to make the change necessary. Where there is a quid pro quo involved of equal or greater value, a party need not show the circumstances have changed and, rather than showing "need", must show a legitimate economic purpose. It must still show that its proposal is unambiguously reasonably suited to make the proposed change.

The Employer certainly has demonstrated a legitimate purpose of improving productivity. In my view, the value of the benefit appears to be, at least, slightly greater than the value of the Employer's offer. The Employer explained the substantial ambiguity in its proposal during hearing and, for the purposes of decision, I am satisfied that the proposal is sufficiently unambigous to be adopted. I am satisfied that, as a buy out, this issue very slightly favors the position of the Union.

As other than a buy out, the Employer has failed to show a change of circumstances. The self-serving letter of the service using towns group does not establish that there has been any change in their position over the years. The mere fact that that this provision tends to be unique among the comparables does not

create a change in circumstances and the fact is that the nature of Door County's limited roads and heavy traffic in tourist season may be legitimate reason for continuing the provision. As other than a buy-out, this issue would heavily favor the Union's position.

WAGES

Comparisons to Comparable Public Employers of Similar Employees

I cannot agree with the Employer's position that because Door County is a penninsula and its economy is largely self contained that comparisons to other counties' units performing similar work is totally without merit. Recently, the legislature rewrote the comparison criteria, separating it into three distinct criteria. Section 111.70(4)(cm)7.e. provides for comparison of wages of unit employees to those performing similar services. It is not limited to those in the same or comparable communities. Paragraph e. provides for the comparison of wages of unit employees to those in comparable communities. By its amendment the legislature enlarged rather than restricted the use of comparisons. The comparisons used in this case have less of a degree of comparability than those which would be ideal and are accorded less weight herein than other comparisons.

The Employer has, alternativley, identified counties listed below plus Waupaca, Langlade and Shawano as potential comparables. While on the bases offered by the Employer they are comparable, I note that Waupaca, Langlade and Shawano are remote from Door County and do not border on Lake Michigan. Further, the remaining counties have industrial cities or are close to such cities. Kewaunee County is highly interdependent with Door County, but is closer to the urban areas. It should be noted that Door County has a very large property tax base for its size.

The Union has, also, identified Brown and Manitowoc Counties as proposed comparables. Brown County is substantially larger and more urban than Door County. Manitowoc is, also, larger and less comparable than the comparisons selected from the Employer's offered group. Nonetheless, Manitowoc does share some economic characteristics with Door County and I have included it for reference.

1987 Maximum Wage Rate Comparisons

	Ptmn	grader	mechanic
Marinette	9.32	9.56	9.56
Oconto	9.30	9.46	9.71
Kewaunee	10.59	10.74	11.02
Manitowoc	9.32	9.56	9.56
av. w/o Door	9.63	9.83	9.96
Door	9.97	10.11	10.18

1988 and 1989 General Wage Increase

	1988	1989
Marinette	2.5	-
Oconto	2.5 7/1/88	-
Kewaunee	3.5	-
Manitowoc	2.5%	-

The above data does tend to support the position of the Employer that unit employees are generally well paid, even considering Kewaunee as the closest comparable. The comparable communities which did not suffer the same economic situation as Door County granted increases for 1988 very close to the Union's position herein. No 1989 information is available. For the purposes of these comparisons I have treated the Employer's offer as 0% the first year and 2% the second.

Internal Comparisons

The Union has heavily relied upon the fact that all Door County and most of its other organized units have arbitrated similar wage positions and the Unions have won all of these awards. In those cases, the Employer position has been essentially 0% for 1988 and 2% for 1989, while the unions in all, but one, have sought at least 3% in each of those years. Had the parties in these cases agreed to a procedure for a single determination or mutual determination of all of these disputes, the holding in one case would, by virtue of that agreement, be binding upon the parties in all of the other disputes. Since they did not agree to such a procedure, the Employer is entitled to a separate determination of the merits of this dispute. This is particularly true in this case in which the Employer, unlike its proposals in the other two cases, has made a buy out offer with significant money in the first year. The precedential value of those other awards is discussed more below.

The following is a summary of the position of the Employer and unions in the other units all of the agreements are from Jan. 1, 1988 to Dec. 31, 1989.

unit	size	Er. 88	Er. 89	Un. 88	Er. 89	award
amb. ser.		0%	0%	0%	3% May 1	Un.
sheriff		0%	2%	1/1 2% 7/1 2%	repeat	Un.
social services		0%	2%	3% or 25¢	3% or 26¢	Un.
court house		0%	2%	3% or 25¢	3% or 26¢	Un.
highway	37	0%	2%	3%	3%	?

For the purposes of this comparison, I am treating the Employer's offer in this case as 0% for 1988 and 2% for 1989 in accordance with the Employer's request that the 2% offered in the first year be considered solely as a buy out of the starting time provision. The Employer offered strong evidence (Employer exhibit 16-1) that wage increases among all of these units have been virtually identical in every year since 1983, with some minor variations in 1986. This year there have been differences when the separate

units have had demonstrably different circumstances. There has been no testimony about the size of the other units or other factors which would tend to show which, if any, units play a lead role in negotiations. A review of the documentary evidence of the history of negotiations in all units suggests that this unit does not play a lead or dominating role. A review of the awards in the other cases indicates that the circumstances in this case are not sufficiently different to warrant different treatment. Because of this bargaining history of similar general increases, the results in the other significant bargaining units which all favor the Union's position herein are accorded heavy, but not determinative weight.

Door County Area Public Sector Employer Settlements

The Employer heavily relies upon comparison to the City of Sturgeon Bay and Sturgeon Bay Utilities. The street department is represented by another local of AFSCME. Both are local public employers sharing the same economic problems as Door County. In 1987 unit employees received a 5% general wage increase, along with all of the other units of Door County. In 1987, all Sturgeon Bay units received a 4% general wage increase and the utility received a 3.75% increase. Union Exhibit B-5 indicates, however, that in 1986 unit employees received a 3.2% increase whereas city street employees received a 5.0% increase. Thus, the record does not support the Employer's claim that it should be afforded additional leeway because of the "large" increase in 1987. Rather, the variation in 1987 seems well within the parameters of bargaining variations. Further, those offers suggest a history of comparison of wage increases between the two units of government.

The most relevant unit of the City of Sturgeon Bay is the city employees unit which has many employees of classifications similar to the instant unit. This unit is represented by a different local of AFSCME and Mr. Wilson is its District Representative. The City of Sturgeon Bay and the union arbitrated its agreement for calendar 1988 and 1989. The Employer proposed 2% in each year for 1988 and 1989 and the union therein proposed essentially 3% in each of the years. The Employer won the case on the basis of local economic conditions. The results in other relevant units of the City were consistent with that result.

For 1988 and 1989, the Sturgeon Bay Utilities and its utilities arbitrated. The Union therein proposed 3% the first year and a increased determined on the basis of consumer price index in the second. The Employer sought 1.5% the first year, 2% the second and proposed a health insurance premium limit which resulted in unit employees paying a contribution similar to that of other city employees. The Employer won the case on the basis of the local economic conditions and comparisons with the city. It should be noted final offers in utilities case occurred after the announcement by Bay Ship that it would no longer seek to build new ships.

The parties in the City unit exchanged final offers shortly before Bay Ship announced that it would no longer build ships. The Employer infers that had the City known of the announcement it would have made a lower offer. Employer exhibit 3-21 is a letter from Bay Ship to the Employer's attorney herein (also, the labor attorney for the City of Sturgeon Bay) replying to his request with respect to the future of Bay Ship in which Bay Ship detailed most of the facts which have occurred concerning Bay Ship. Under the circumstances, I am satisfied that the City made its offers with a full appreciation of the situation of Bay Ship. Additionally, the City made the offer to the utilities after Bay Ship announced its decision to not seek to build new ships. Although the record indicates that the offer was slightly lower than that made to city employees, the 1987 settlement with respect to the utilities was slightly less than the city settlement and the award with respect thereto suggests a wage to me that the parties conduct was based more upon the wage leadership position of that unit than a hardening of the City's position after Bay Ship's announcement.

It should be noted that area school settlements were all less than would have been expected by comparison, but none was as extreme as the offer of the Employer herein. Thus, this data strongly suggests that public sector employers in this area have moderated their final offers, but none has been as extreme as the Employer herein.

While the comparison to the city is entitled to substantial weight in this proceeding, it is midway between the offers of the parties in this case and, therefore, does not strongly support the position of either party. The comparisons overall indicate that no other public employer has dealt with this situation by having made an offer as low as that of the Employer herein.

Private Sector Comparisons

Section 111.70(4)(cm)7.f. establishes the consideration of private sector comparisons as a separate, co-equal critereon with the other criteria. The Employer correctly alleges that in the event of a serious downturn in private sector comparisons provide meaningful information in evaluating the proposals of the parties. However, one of the seriously limiting factors in the use of this data is the quality and comparability of information supplied by private employers.

The Employer has applied its private sector comparisons based upon weighted average including the primarily affected employers, Bay Ship and Peterson and by averaging increases including these two employers. It appears likely that Emerson Electric will not give increases in 1988 because of economic troubles in that industry. It, also, appears that Door County Hospital is not giving a general increase above the small increase generated by its lengthy salary schedule. Because of the weighting involved the Employer's argument primarily is one of relating unit employees solely to wage adjustments in the

affected ship building industry.

There has been no allegation in this record, much less evidence to support it, that unit wage rates herein have ever been established by mutual agreement of the parties based upon the wage rates at any one employer or in any one private industry. While no direct comparisons were offered, the journeyman mechanic with 43 months of service received $12.04 per hour in 1984, plus cost of living and other benefits. After the wage reduction at Bay Ship for those journeymen mechanics remaining, the wage maximum wage rate for journeyman mechanic will be $10.05 per hour. The 1987 rate for mechanic in this unit is $10.18 per hour. Further, the evidence in this case indicates clearly that wage increases in this unit have not been set by reference to increases granted by any single private employer. Under those circumstances, I do not find that sole reliance upon wage increase comparison to the affected industry should be given the heaviest weight in this case.

Public employers do not set their wage rates, nor bargain in a vacuum. Competing private and public employers in general do create a labor market in which public employers must compete to get employees. Thus, the weighted average of wages in the area heavily supports the position that there is little growth in the wages of many local private sector employees.

A central issue in this case is how, if at all, this downturn should affect the general increase granted this unit. One of the strongest elements of private sector comparison is to evaluate how local private sector employers outside the affected industry have adjusted wages in the light of what is occuring in the affected industry. Many of these employers compete in the local labor market and are affected by the sudden availability of laid off employees. Many of these employers provide services or goods either to the affected industry itself or to the people who do or did work there. They are affected by the reduced purchasing power of these business and people in the local economy. Thus, viewed in this way, one can get an overview of the economic impact of these circumstances.

The following is a chart of the information derived from the Employer's area wage increase survey. As indicated, the data is not necessarily highly reliable or comparable to each other or to the increases proposed herein. Many of the private employees herein are not organized. This substantially weakens the benefit of these comparison. For the purposes of making this comparison, I am construing the Employer's proposal in accordance with its structure as 0% for 1988 and 2% for 1989, the purpose of its 2% 1988 proposal being for a buy out. Because there are a large number of private employers reported here, this data does demonstrate that by far the largest number of employers have granted increases closer to that proposed by the Union for 1988. It appears many wage increases were determined without respect to the downturn or was given only a modest impact on 1988 wages. By this method of analysis, the data is not usesful for a 1989 comparison.

Private Employers 1986-1989

Employer(U=un.)	86	87	88	89	90
Bay Ship 128 U	-	7.0	-18%	-	-
PBI 700	0.0	0.0	0.0	-	-
C&S Manuf. 40	5.0	5.0	5.0	-	-
Door Co. Hsp 39U*	6.0	6.0	5.0	-	-
202	0.	0.	0.	-	-
Dorco Mfg	3.0	3-5.0	-	-	-
Emerson Elect. 575	2.0	0.0	-	-	-
Hatco Corp. 135	5.0	6.0	6.0	-	-
First Nat. Bk 34	7.45	7.55	4.26	-	-
Bk.of St. Bay 99	7.72	5.58	4.3	-	-
Mdwst Wire 82	2.0	3.0	c.o.l.	-	-
Overland Boll. 35	3.0	3.0	-	-	-
Palmer-J Yacht114	0.0	2.56	less than 7.9%	-	-
Roen Salvage 40	0-3%	0-3%	0-3%	-	-
St.B..Mtl. 26	5.0	3.2	2.5	-	-
Therma Tron 85	4.2	3.7	2-3%	-	-
Evergreen Nur. 38	3.0	3.5	-	-	-
Marine Tvl.Lft 50	3.0	3.0	-	-	-

* There are 202 non union employees for which employees apparently received no increases in 1986, 1987 and 1988, except nurses and pharmacists who received market driven 11% increases in 1987. There is a lenghty wage schedule in effect for exiting employees which provides a very modest level of increase.

This data indicates that the largest number of private employers are providing at least modest increases closer to the Union's position herein than the Employer's in 1988. No data is available for 1989. From this standpoint, this data supports the Union position.

Cost of Living

The CPI-U for non metro urban areas, north central states change from December, 1986, to December, 1987 was 3.8%. The total package represented by the Union offer for 1988 is closer to this figure. The change for the first six months of 1988 was already 2.4% and it appears likely that the total package offer of the Union is supported by this figure.

The mere fact that the Union's settlement in the prior year exceeded the cost of living is not evidence of a pattern of substantial gains over the cost of living as alleged by the Employer. I find the evidence insufficient to conclude that the Union has had increases substantially in excess of the cost of living over a long period of time to warrant a different application than the one I have used herein.

CONCLUSIONS AND SELECTION OF OFFER

Under Section 111.70(4)(cm), Wis. Stats., the arbitrator must

select the final offer of one party or the other without modification of either offer. The arbitrator must apply the statutory criteria, but must determine for himself or herself which issue is to be given the heaviest weight and the applicability and weight to be assigned to the statutory criteria.

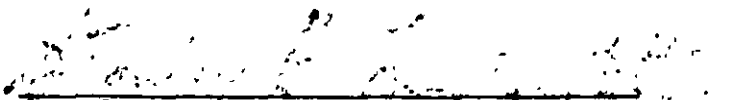
The issue concerning the addition of biweekly and annual wage rates is of less significance that the other issues presented in this case and is heavily outweighed by those issues. The remaining two issues as a package are determinative. While viewed from the opposite way the result would still be the same, when viewed by allocating the Employer's first year increase to the buy out of the starting time benefit, that issue becomes close and, therefore, less important. It does still bear weight in the Union's favor. The remaining issue, the wage issue, then becomes most important.

The public interest in this case dictates that restraint is appropriate given the very severe economic circumstances of Door County. Private employers reactions to the economic situation indicate much more restraint in the situation created when the largest employers reduced their work forces and lowered or limited wages, than that proposed by the Employer. While the closest public sector comparison is essentially mid way betwween the two positions, the overwhelming weight of public sector employer actions has been more restrained than the Employer's position. Taking this with the fact that the other units of the County have won settlements similar to the Union's and the practice here of treating similarly situated unions similarly, I conclude that the final offer of the Union is to be adopted.

AWARD

That the final offer of the Union is to be incorporated into the parties' collective bargaining agreement.

Dated at Milwaukee, Wisconsin this 13th day of April, 1989.



Stanley H. Michelstetter II
Arbitrator

BEFORE THE ARBITRATOR

NOV 16 1988

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

DOOR COUNTY HIGHWAY DEPARTMENT EMPLOYEES, LOCAL 1658, AFSCME, AFL-CIO

TO Initiate Arbitration Between Said Petitioner and

DOOR COUNTY (HIGHWAY DEPARTMENT)

Case 64
No. 40394 INT/ARB-4874
Decision No. 25426-A
Stanley H. Michelstetter I
Arbitrator

ORDER DENYING MOTION TO REOPEN HEARING

Door County Highway Department Employees, Local 1658, AFSCME, AFL-CIO, herein referred to as the "Union" having petitioned the Wisconsin Employment Relations Commission to initiate Arbitration, pursuant to Sec. 111.70(4)(cm), Wis. Stats., between it and Door County (Highway Department), herein referred to as the "Employer," concerning an impasse with respect to the parties' calendar 1988 and 1989 agreement; and the Commission having appointed the Undersigned as Arbitrator on May 19, 1988; and the Undersigned having conducted a hearing in Sturgeon Bay, Wisconsin on September 15, 1988, at the close of which the parties agreed to the close of the hearing as of that time and specifically agreed that there would be no correction of exhibits after the close of hearing. After the close of the hearing, the Union by letter dated October 4, 1988, alleged that the City of Sturgeon Bay, a municipal employer in Door County, adopted unilateral wage increases for its non union employees and the Union sought to submit this evidence in this proceeding. The Employer objected thereto and the undersigned by letter dated October 13, 1988, set the issue for written arguments and outlined the standards by which the request for consideration of that evidence would be considered. On October25, the Union filed a motion to reopen the hearing and on November 1, 1988, the Employer filed its response. Based upon the positions of the parties and the record to date, I enter the following:

ORDER

1. It is ordered, that the motion made by the Union to reopen the hearing in this matter is, and the same hereby is, denied.

2. That the briefing schedule be amended to as follows: That the original and one copy of each party's brief will be due in my office no later than January 9, 1989.

Dated this 14th day of November, 1988.

Stanley H. Michelstetter II

Stanley H. Michelstetter II,
Arbitrator

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO REOPEN HEARING

After entering into a stipulation to close the hearing at the end of September 15 hearing, the Union herein seeks to reopen the hearing for the purpose of adducing additional testimony with respect to the post hearing actions of an allegedly comparable employer. The issue presented in this motion is one of common interest to all interest arbitrators and practitioners. In interest arbitration proceedings arbitrators frequently receive requests to submit post hearing exhibits and requests by parties to correct their own exhibits or post hearing claims that the exhibits of the other party are incorrect. It is the arbitrator's responsibility to insure that a hearing is full and complete. Thus, it is important that each party be afforded an opportunity to present all of the relevant evidence it wishes to present and that the opposing party has its right to cross examine with respect thereto. Each party must be afforded an opportunity to prepare and present its arguments based upon the evidence in the record. Thus, it is important that at some point the record be closed so that parties may prepare and present their arguments based upon a complete record and that interest arbitration cases be resolved promptly. Uniformity of practice among arbitrators in this area would better enable parties to prepare and present their cases.

Additional Backround

Briefs have not been submitted in this matter and statements made herein are for the determination of this motion only, and based upon the parties' presentations to date. The primary issues in this case are the general wage increase for 1988 and 1989 and the Employer's proposal for requiring employees to travel to job sites on their own time. In essence the Union seeks a 3% general wage increase in each of the two years ($.30/hr., 1988; $.31/hr., 1989), while the Employer proposes a zero percent increase the first year and 2% the second. The Employer proposes to change the long standing practice of having employees report to their work station to be transported to the job site by Employer transportation on Employer time to require employees to make the trip to the work site on their own time. Soley in exchange for the latter change, the Employer proposes a 2% general wage increase for the entire unit for 1988. A main focus of the evidence is directed to the Employer argument that larger increases are not justified because of local economic conditions, mainly that ship building industry (primarily Bay Shipbuilding Corporation of Sturgeon Bay, Wisconsin), is in a pronounced decline with no substantial liklihood of recovery. Both parties submitted extensive economic information with respect to both the local economy and nationally. Both parties, also, submitted comparative wage increase data for allegedly comparable public and private employers. Among the data submitted, the Employer submitted the final offers of the City of Sturgeon Bay and AFSCME with respect to the police bargaining unit in which the City seeks a one year agreement (calendar 1988) for a 2% increase and AFSCME seeks a two year agreement (calendar 1988 and 1989) at 35¢ per hour the first year and 42¢ the second year. The Employer,

also, submitted the final offer of the City of Sturgeon Bay and AFSCME with respect to the streets unit for calendar 1988 and 1989. The City proposes 2% across the board in each year, while AFSCME proposes 35¢ and 45¢, per hour across the board, respectively, for each year. The Employer, also, submitted the final offers of Sturgeon Bay Utilities Commission and Operating Engineers for calendar 1988 and 1989, with the Commission proposing 1.5% across the board for the first year and 2% across the board for the second year and IUOE proposing 3% the first of year and cost of living the second year.

The Union requests to reopen the hearing in this case for the purpose of submitting wage increases allegedly granted by the City of Sturgeon Bay to its non union employees ranging averaging approximately 10% per year. Most of the positions involved are in classifications which are normally considered supervisory and/or managerial. Some of the pay increases are for confidential and technical positions. Many of these latter increases are consistent with the 10% per year. The reason the Union wishes to offer this evidence is that it believes that the City is the public employer most likely to be affected by Bay Shipbuilding's troubles and that these increases demonstrate that the City's conduct demonstrates that the economic circumstances do not warrant increases below the level proposed by the Union to the Employer herein.

The Employer admits the action by the City of Sturgeon Bay, but alleges that the City has moved to rescind their action. The parties intensely disagree whether the City's attempt to reconsider is effective or relevant. It argues that this evidence was not received in the City's streets department interest arbitration and, therefore, will not impact collective bargaining there. It relies upon precedent from other arbitrators who have refused to receive post-hearing evidence.

Decision on Motion

Interest arbitration cases often involve the submission of a vast amount of data and calculations. Occasionally, there are substantial errors in these exhibits. Further, because collective bargaining is an ongoing process, the parties to an arbitration proceeding learn of settlements after the close of hearing by the same or comparable employers and unions. These problems generate game playing with respect to hearing dates when many units are in arbitration, lengthy delays during hearing as parties examine calculations and a considerable amount of post-hearing efforts to correct or expand the record. 1/

1/ §111.70(4)(cm)7.i, ambiguously requires arbitrators to accept evidence of "changed circumstances during the pendency of an arbitration proceeding, but does not define "pendency". Administration of this provision is left to the arbitrator. I conclude that the standards applied herein appropriately administer this provision.

In order to facilitate hearing interest cases in a prompt manner without undue delay for breaks, it has been my policy to establish a date about ten days after the date of hearing by which time the parties may submit to me proposed corrections of their own exhibits and their position as to errors in opposing parties' exhibits. This date, also, establishes the date at which the hearing is to be closed to further submissions of any kind. Prior to making any submission to me, the parties submit their proposed corrections and changes to each other in order that they may make a mutual presentation of agreed upon corrections or, if they disagree, state their positions with respect to the dispute. Parties may, also, submit in the same manner any alleged changes during the pendency. Requests for further hearing for reasonable cause are freely granted, if made during this period. However, after that period expires, the hearing is closed to further evidentiary submissions.

In this case, the parties mutually agreed to close the record as of the end of hearing on September 15, 1988. Arbitrators have the authority to receive evidence at any time prior to the issuance of the award; however, if these dates are to be meaningful, arbitrators must enforce them. In order to establish standards by which to determine the request herein, I have determined to be guided by the standards of Section 805.15, Wis. Stats., the statute governing requests for new trials in civil proceedings in Wisconsin.2/ This balances the need for fair and complete hearings with the need for orderly and prompt argument and decision. Accordingly, the requesting party must establish by

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2/ §805.15, Wis. Stats., states, in relevant part:

"(1) Motion. A party may move to set aside a verdict and for a new trial because of errors in the trial, or because of excessive or inadequate damages, or because of newly discovered evidence, or in the interest of justice. Orders granting a new trial on grounds other than in the interest of justice, need not include a finding that granting a new trial is also in the interest of justice.

(2) Order. Every order granting a new trial shall specify the grounds therefor. No order granting a new trial shall be valid or effective unless the reasons that prompted the court to make such order are set forth on the record, or in the order or in a written decision. In such order, the court may grant, deny or defer the awarding of costs.

(3) Newly-discovered evidence. I new trial shall be ordered on the grounds of newly-discovered evidence if the court finds that:

(a) The evidence has come to the moving party's notice after trial; and

(b) The moving party's failure to discover the evidence earlier did not arise from lack of diligence in seeking to discover it; and

(c) The evidence is material and not cumulative; and

(d) The new evidence would probably change the result.

...."

motion, that the /idence leading to its req sts, the inferences it believes are supported by the evidence, and the reasons why its request comes after the hearing has been closed. These motions must be made as soon as they become apparent, but before the issuance of the award. If granted, unless the parties agree otherwise, the matter is reheard and the parties are both free to submit additional evidence.

The action by the City of Sturgeon Bay to implement non union wage increases occurred after the hearing herein. The evidence in this case is relevant to the Union's position herein in that it does tend to indicate that a municipal employer suffering the same economic conditions as Door County has choosen to give wage increases to some of its personnel higher than that offered by either party herein. The evidence already in the record indicates that the final offers of the City of Sturgeon Bay to its unions are between that offered by the Employer herein and the Union. The post hearing evidence offered involves largely supervisory and managerial personnel. To this extent, evidence of this nature ordinarily is given little weight in interest proceedings. The City has, also, given a small number of non union confidential and technical personnel similarly larger increases as well. Given the small number of people apparently involved and the overall position of the City of Sturgeon Bay, I am satisfied that the evidence sought to be adduced is not likely to affect the result in this case. For the foregoing reasons, I have denied the Union's motion.

Dated at Milwaukee, Wisconsin this 14th day of November, 1988.

Stanley H. Michelstetter II,
Arbitrator