ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between DOOR COUNTY And DOOR COUNTY COURTHOUSE EMPLOYEES, LOCAL UNION 1658, AFSCME, AFL-CIO	WERC Case 59 No. 40002 INT/ARB-4746 **Decision No. 25428-A**

Impartial Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, WI 53185

Hearing Held

August 31, 1988
Sturgeon Bay, Wisconsin

Appearances

For the Employer

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between Door County and Door County Courthouse Employees, Local Union 1658, AFSCME, AFL-CIO, with the matter in dispute the terms of the parties' renewal labor agreement covering January 1, 1988, through December 31, 1989. The impasse items include management rights, use of part time employees, vacations, wages, the format of the wage schedule, and the preamble to the agreement.

The parties exchanged bargaining proposals and met with one another in an unsuccessful attempt to arrive at a negotiated settlement, after which on January 13, 1988, the Union filed a petition with the Wisconsin Employment Relations Commission requesting interest arbitration of the matter in accordance with the Municipal Employment Relations Act. After the completion of a preliminary investigation, the Commission on May 10, 1988, issued certain findings of fact, conclusions of law, certification of the results of investigation and an order requiring arbitration. On May 19, 1988, it issued an order directing the undersigned to hear and decide the matter as arbitrator.

A hearing took place in Sturgeon Bay, Wisconsin on August 31, 1988, at which time all parties received a full opportunity to present evidence and argument in support of their respective positions, and each closed thereafter with the submission of post-hearing briefs and reply briefs, after which the record was closed by the undersigned effective November 9, 1988.

THE FINAL OFFERS OF THE PARTIES

The final offers of each of the parties to the proceeding are hereby incorporated by reference into this decision, and they provide in summary as follows:

(1) The Union's final offer proposes that the prior agreement be modified in the following respects, in addition to those changes already agreed upon by the parties:

(a) That a management rights provision be added to the renewal agreement that is identical to that which appears in an agreement covering County Highway Department employees.

(b) That part time employees be defined as those working less than 40 hours per week; that those working 1,040 or more hours per year

receive full health and dental insurance benefits. That those part-time employees working less than 1,040 hours per year shall not receive fringe benefits except as provided by law.

(c) That the computation of vacation benefits be changed as specified in the final offer.

(d) Effective January 1, 1988, that hourly wages be increased by the greater of 25¢ or 3%; effective January 1, 1989, that hourly wages be increased by the greater of 26¢ or 3%.

(e) That the preamble of the renewal agreement be revised as specified in the final offers.

(2) The County's final offer proposes that the prior agreement be modified in the following respects, in addition to those changes already agreed upon by the parties:

(a) That the wage schedule be amended to include hourly, biweekly and annual wage rates.

(b) That a management rights provision be added to the agreement, as specified in the final offer.

(c) That wages remain unchanged for 1988, and the hourly wage rates be increased by 2% effective January 1, 1989.

THE ARBITRAL CRITERIA

Section 111.70 (4)(cm)(7) of the Wisconsin Statutes directs the Arbitrator to give weight to the following described arbitral criteria:

"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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

e. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

f. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees 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 employees, 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."

POSITION OF THE EMPLOYER

In support of its contention that the final offer of the County is the more appropriate of the two offers before the Arbitrator, the Employer argued principally as follows.

(1) That Door County is a unique and an independent economic center which defies traditional comparability analysis.

(a) From the standpoint of geography, that the County is a peninsula surrounded by Green Bay to the west and Lake Michigan to the north and east.

(b) Economically, that the base for the County consists of three primary sectors: agricultural, tourism and manufacturing. That manufacturing provides nearly one third of all jobs, agriculture 22%, and tourism just under 18%.

(c) That manufacturing jobs are the most important to the County because they traditionally pay far better than jobs in agriculture or tourism, and they provide approximately 44% of the County's annual income. Additionally, that manufacturing provides greater stability to the local economy than the highly seasonal agricultural and tourism related jobs.

(d) That the County's manufacturing activity is located almost exclusively in Sturgeon Bay, with the highest concentration employed in the Shipbuilding industry, with three shipbuilders located in the City (i.e., Bay Shipbuilding, Peterson Builders and Palmer Johnson).

(e) At the peak of their employment in 1986, that the three referenced shipbuilders employed approximately 3,000 people, or nearly 75% of the manufacturing workforce in the County. Because of the over-concentration of shipbuilding in Sturgeon Bay, the County's manufacturing sector is highly dependent upon shipbuilding.

(f) That Door County is an independent economic center which is isolated by geography from other major markets; that it is also less subject to the forces of the external labor market, due to the fact that its scenic beauty and recreational opportunities attract many to work and to live there.

(g) That the County is also unique, due to the composition of its economic base. Although many counties rely upon agriculture, none depends upon the orchard crops (apples and cherries) and fruit processing to the extent of Door County; that the same is true with respect to the tourism sector, and the manufacturing sector which is not diversified and which rides with the fortunes of the shipbuilding industry.

On the basis of all of the above, the County submits that the normal comparison criterion is not applicable to the determination of which final offer should be selected, due to the fact that there is no true external labor market from which valid comparisons can be made. Accordingly, that the Arbitrator should give greater weight and consideration to other statutory criteria.

(2) In the alternative, that Kewaunee, Oconto, Langlade, Waupaca and Marinette Counties provide the most appropriate external comparisons for use in these proceedings.

(a) That these counties should comprise the principal comparison group due to their geographic proximity and their relative similarity to Door County, in terms of population size and total revenues and expenditures.

(b) Of the five comparable counties suggested by the Union (i.e., Brown, Kewaunee, Manitowoc, Marinette and Oconto), that Manitowoc and Brown are simply not comparable and should be rejected by the Arbitrator. That Brown County has a population over seven times the size of Door County, while Manitowoc County's population more than triples that of Door County; that the two counties are also distinguishable from Door County on the basis of an examination of their revenues and their expenditures, which far outstrip those of Door County.

(3) That the County's wage proposal is inherently more reasonable than that of the Union.

(a) That external salary settlements are entitled to little weight in these proceedings because the County has not traditionally looked to any other counties in determining wage rates for its courthouse employees.

(b) In the parties' first labor agreement in 1986, that the settlement clearly paralled other internal County settlements in the Ambulance Service, the Highway, the Social Services and the Sheriff's Department settlements.

(c) Unfortunately, that there have been no settlements among any of the County's bargaining units for 1988 and 1989, against which the parties' final offers can be judged. That the offer of the County in these proceedings is, however, comparable to those pending in other County bargaining units.

(d) That the Union argument that the Arbitrator should consider counties spread throughout the State with unemployment over 10% should be

rejected. That the Union has made no showing that these counties are comparable in terms of geography, location, size, total population, economic base or any other of the time tested factors of comparability; that it has not shown when the settlements were reached, and that it has arbitrarily excluded Kenosha County from its comparisons.

(e) That the devastating loss of Bay Shipbuilding to Door County is rivaled only by Chrysler Corporation's announcement that it is closing its Kenosha assembly line; that consideration of Kenosha County settlements support the final offer of the County rather than that of the Union.

(f) That the County's offer is a reasonable one, but even if it were determined to be below the market for 1988, Door County is entitled to some "fall back" due to the fact that the courthouse employees received "league leading" increases among external comparables in 1987.

(g) That there have been only two settlements for 1989 among those counties which have been presented as external comparables (Waupaca and Manitowoc), and there have been no settlements among the parties' internal comparables. That it is a well established arbitration principle that where there is a dearth of comparable settlements and/or where economic conditions distinguish an employer from the normal comparables, other statutory criteria must be accorded greater weight and consideration.

(4) That consideration of the interests and welfare of the public criterion favors the selection of the final offer of the County.

(a) That it is well established in Wisconsin interest arbitration, that local economic conditions are entitled to great weight in determining the reasonableness of the parties' final offers.

(b) That the distressed state of the shipbuilding industry in Sturgeon Bay, coupled with the disastrous year experienced by Door County cherry growers in 1988, should be given determinative weight in the selection process.

(c) That the record clearly shows that Door County is worse off in regards to local economic conditions than are any of the comparables suggested by either party.

(d) That the record clearly shows that the Sturgeon Bay Shipbuilding industry is in the depths of a depression. That Peterson Builders has already laid off 30% of its workforce over the past two years, and it anticipates further layoffs of 10-20% upon completion of four minesweepers under contract for the Navy. That Bay Ship had delivered the last commercial ship under construction in the U.S. on November 7, 1987, and by December 1987 had reduced its workforce from a December 1986 high of 1,812, to a total of 128 employees; that its March 1988 announcement that it would no longer build ships and would handle only ship repair and conversion work, confirms that it will never return to previous levels of employment; following the announcement of March 1988, that further layoffs have reduced the workforce to a total of 69 employees, including only 12 production workers.

(e) That massive layoffs at Bay Ship have had a devastating and permanent impact upon Sturgeon Bay and upon Door County. That the high percentage of manufacturing employees in the county and the high wages in the shipbuilding industry have affected many aspects of the Door County economy, including: a decline in retail trade employment; an increase in county unemployment; flat retail sales; a loss of $2 million per year to local vendors and suppliers; a reduction in technical college enrollment due to a lack of tuition money; a glut of homes in the resale market; depletion of savings; and various other economic negatives.

(f) That recovery of the Sturgeon Bay-Door County economy is not imminent, due to its continued dependence upon the shipbuilding industry. That recovery prospects for Bay Shipbuilding are bleak for various reasons; that while Peterson Builder's prospects are better than Bay Shipbuilding, there is little prospect of future return to its previous levels of employment.

That the County is not pleading inability to pay in the near term, but the public interest and welfare demand the fiscal restraint embodied in the County's final offer, due to the economic devastation caused by the massive layoffs at Bay Shipbuilding and the resulting permanent restructuring of the County's economic base.

(g) That the 1987 cherry season was a financial catastrophe for commercial cherry growers in Door County, and the 1988 prospects are equally bleak. Due to a bumper cherry crop, market prices bottomed-out, and growers were only able to recover the costs of harvesting their orchards. Approximately 70% of the 1987 crop was left unharvested.

(5) That arbitral consideration of private sector settlements support the selection of the County's final offer.

(a) That consideration of private sector settlements in both Sturgeon Bay in particular and Door County in general, support the position of the County.

(b) That Bay Shipbuilding implemented a final offer involving an 18% cut in wages and miscellaneous other reductions.

(c) Beyond Bay Shipbuilding, that the three next largest County employers are Peterson Builders, Emerson Electric and Palmer Johnson; of this group that only PBI has reported salaries for 1988. Wages for PBI office and production employees have been frozen since 1986 and will remain so through the end of FY 1988; Emerson Electric anticipates no increases for 1988, which follows on the heels of a wage freeze in 1987 and a 2% increase in 1988, and the 1988 elimination of its annual 5% Christmas bonus and company picnic; that Palmer Johnson employees have received only a single 2.56% pay raise since 1986.

(d) That an examination of general Door County private sector wage and salary increases in 1986-1988 supports the selection of the final offer of the County.

(e) That an examination of national private sector settlements, supports the selection of the final offer of the County.

(6) That consideration of the cost-of-living criterion favors the selection of the final offer of the County, given the wage gains that courthouse employees have made relative to past changes in the consumer price index.

(a) That substantial past increases relative to cost-of-living will cushion, if not offset, the impact of a one year wage freeze on their standard of living.

(b) That consideration of 1986 and 1987 changes in the appropriate CPI, as compared to courthouse salary settlements, support the selection of the final offer of the County.

(7) That comparisons with other relevant employee groups support the selection of the final offer of the County.

(a) That the County's proposed management rights provision, and its proposed inclusion of hourly, bi-weekly and annual wage rates in the wage schedule, are supported by the record.

(b) That three of the four Door County bargaining units have the management rights provision proposed by the County.

(c) That external and internal comparisons support the proposal to include hourly, bi-weekly and annual wage rates in the renewal agreement.

In conclusion that the Arbitrator's function should be to step back in time to the point when the parties were engaged in negotiations, to consider the various criteria referenced above, and to determine which final offer is closer to where the parties should have settled voluntarily, had they been able to do so.

In its reply brief the Employer expanded upon and added to its previous arguments as follows:

(1) It urged that certain of the Union recommended county comparables be rejected because of considerations relating to size, revenues and expenditures.

(2) It took issue with alleged patterns of settlements cited by the Union in support of its final offer.

(3) It urged that its arguments relating to the economic environment in Door County, in connection with the interests and welfare of the public criterion, were amply supported by evidence in the record.

(4) It took issue with certain of the Union's arguments submitted in connection with its fiscal analysis of Door County.

(5) It emphasized recent levels of unemployment in the County.

(6) It took issue with the weight placed upon certain City of Sturgeon Bay settlements by the Union.

(7) It distinguished the County's settlement in the Ambulance Service Unit, and its final offer in the Highway Department negotiations, from its offer in the matter at hand.

(8) It distinguished from the case at hand, certain other public sector settlements urged for comparison purposes by the Union.

(9) It emphasized certain arguments in support of arbitral consideration of certain City of Kenosha settlements.

(10) It offered actual costing data and certain equity based information, in connection with the Union proposed 1988-89 wage increases.

(11) It urged that private sector settlements cited by the Union should not be accorded significant consideration.

(12) It urged that the Arbitrator reject the Union's hearsay objections to certain items of evidence offered at the hearing.

(13) It argued that the Union had failed to justify the adoption of the language components of its final offer.

POSITION OF THE UNION

In support of the contention that its final offer is the more appropriate of the two offers before the Arbitrator, the Union argued principally as follows.

(1) Preliminarily it submitted that the weight to be accorded to the interests and welfare of the public criterion is likely to have a major bearing on the outcome of the proceedings.

(a) Contrary to the arguments of the Employer, that the conditions at Bay Shipbuilding should not carry determinative weight in these proceedings.

(b) That the wages of Door County employees have not traditionally been linked to the wages and fortunes of Bay Shipbuilding.

(c) That the Union did not overlook the Bay Shipbuilding situation in drafting a very modest final offer for 1988-1989. That the package costs of the Union's final offer are so modest that the Employer has not even emphasized its costs.

(d) That the County can well afford what the Union is asking; that willingness rather than ability to pay is in issue in these proceedings.

(e) That external and internal comparisons should be given significant weight in the final offer selection process. That the reasonableness of the Union's final offer is based primarily on what has happened in the public sector in Door County, rather than upon considerations arising at Bay Shipbuilding; that the impact of Bay Ship should be the same upon employees of the City of Sturgeon Bay, the School District of Sturgeon Bay, etc.

(f) That the issue is why Door County Courthouse employees should be singled out for a wage freeze in the first year, and a total wage increase of 2% over the two year contract duration.

(g) That the position of the Union is supported by public sector settlements in Door County, and by settlements entered into in surrounding counties.

(h) That the Union proposal would provide to the lowest paid courthouse employees the highest percentage increase; that such an approach has been used in the Door County Social Services Department, and has at times been applied in the Door County Courthouse.

(i) That the County has proposed that the wage schedule include hourly, bi-weekly and annual wage rates, but nowhere does it exhibit the proposed wage schedule; that this approach ignores certain problems in depicting annual wages.

(j) That the Union's proposal governing the cutoff point for fringe benefits for part-time employees will not affect any employees, but will clarify the rights of employees.

(k) That the Union's vacation proposal is a step toward clarification of chaotic practices in the County; that it would bring the Courthouse Employees into a position identical to that enjoyed by Highway Department employees.

(l) That the Union has reasonably responded to the Employer's request for a management rights provision in the renewal agreement; that the County's proposal is not a balanced one, and it could constitute a waiver of bargaining on some major subjects such as sub-contracting.

(m) That the Union's preamble proposal merely identifies and recognizes Door County as the contracting party, and it has no right to refuse such a proposal.

(n) That the Arbitrator should consider the September 20, 1988, pay raise resolution of the City of Sturgeon Bay, which would affect non-represented employees of the City; that the decision to pay employee insurance benefits in full, and to grant wage increases, is material and relevant to these proceedings.

(2) During the final offer selection deliberations, that the Arbitrator should distinguish between <u>ability to pay</u> versus <u>willingness to pay</u>.

(a) That the Union proposal would not constitute a hardship to Door County, nor is the County in a hardship situation.

(b) That when measured in terms of levels of revenues and expenditures, unemployment rates and cost-of-living, the final offer of the Union is favored.

(c) In addressing revenues and expenditures, that various considerations favor the selection of the Union's final offer: that with two thirds of the year remaining, seventy-four percent of funds remain in the income category; that revenues are at an appropriate level, with consideration of the new sales tax; as a result of the sales tax, the County is in the position of reducing property taxes; that the current County tax levy of $4.02 per $1,000 is already comparatively low; that the overall property tax rate for all services in Door County is a relatively low $19.04, of which only 21.9% goes to county government; that the County has very high property values in relationship to property located elsewhere in the State; that the County has experienced high population growth over the past decade; that the County spends more money on specific categories such as developing highway facilities, emergency medical treatment, and law enforcement than comparable communities, and it also spends considerable amounts on conservation and development.

(d) Even if there were a fiscal crisis in the County, that it has untapped potential tax revenues such as a room tax, which would impact upon non-residents.

(e) Contrary to the arguments of the Employer, that unemployment data does not support the selection of the final offer of the County. At the time of the final offers, that the unemployment rate was 15%, at the time of the hearing it had fallen to 8.8%, and at the time of the brief it had fallen to 6.8%. That Door County has a cyclical employment pattern which typically climbs to 10% in January and falls to about one-half of this figure by summer.

That the County is entitled to no different treatment than other Wisconsin counties with high unemployment rates this year; that these counties increased wages at a level above the County's final offer, and in many cases above the final offer of the Union. That the situation in Kenosha County is distinguishable for various reasons, from the dispute at hand.

(f) That changes in the CPI clearly support the selection of the Union's final offer; that acceptance of the Union's final offer will cause a decline in real wages of approximately 3%, while the selection of the Employer's offer would double the decline.

(3) That newspaper articles, videotapes and letters from third parties constitute hearsay, and they should be rejected from consideration of the Arbitrator.

(a) That consideration of much of the above described material by the Arbitrator would be a waste of valuable time and resources, and the material should be rejected.

(b) That Counsel for the County did not present a single witness, which deprived the Union of the opportunity for cross examination.

(c) That arbitrators should not allow the record to be burdened with a mass of material having little or no bearing upon the issues.

(4) That arbitral consideration of internal wage comparisons favors the selection of the final offer of the Union.

(a) That all five County bargaining units are in arbitration regarding their 1988-89 agreements; that the Social Services, the Courthouse and the Sheriff's Department are arbitrating a zero percent increase for 1988, while the County is offering a 2% increase during the first year of the Highway Department renewal agreement. Accordingly, that even the County's final offer in the Highway Department favors the selection of the final offer of the Union in these proceedings.

(b) That consideration of the Door County Ambulance Service arbitration settlement favors the selection of the final offer of the Union.

(5) That settlements within the City of Sturgeon Bay favor the selection of the final offer of the Union in these proceedings.

(a) That the City of Sturgeon Bay voluntarily settled with its firefighters on the basis of a 2.5%

increase in 1988 and an additional 2.5% increase for 1989. That this settlement favors the final offer of the Union.

(b) If the City of Sturgeon Bay lost its City Police and its DPW arbitrations, that the settlements would still favor the selection of the final offer of the Union in these proceedings. That the City Police and the DPW employees would receive 2% increases in 1988, which is closer to the final offer of the Union than to that of the County.

(c) That consideration of the wage and salary increases granted non-represented employees of the City of Sturgeon Bay, favors the selection of the final offer of the Union.

(d) That consideration of Door County School District settlements favors the selection of the final offer of the Union, rather than that of the County. That the Sturgeon Bay District granted 7.1% and 7.5% increases to its teachers for the two year agreement, the Gibralter District granted 6.5%, 6.0% and 6.0% increases for three years, and the Southern Door District granted a 6.2% increase for 1988-1989. That the Sevastopol District arbitration resulted in the selection of the District's final offer, which provided for 6.07% and 5.9% increases for 1986-87 and 1987-88.

(6) That consideration of settlements in comparable counties supports the selection of the final offer of the Union.

(a) That comparable counties should include Kewaunee, Oconto, Marinette, Brown and Manitowoc.

(b) That the 1988 settlement patterns provided for a 3½% increase in Kewaunee with a 28¢ minimum, for a 2½% increase in Oconto, for a 2½% increase in Marinette, for a 3% increase in Brown and for a 4.7% increase in Manitowoc County.

(c) That Door County proposed exclusion of Brown and Marinette, and the inclusion of Langlade and Waupaca; that settlements for the latter two counties are not available.

(d) Regardless of comparables, that Door County's position stands out as the only one offering 2% over a two year period.

(7) That consideration of private sector comparisons favors the selection of the final offer of the Union.

(8) That the Union's proposal for a minimum wage increase in each year of the renewal agreement is justified by the record.

(a) That the Union's approach is similar to that used by Door County for its Social Services Department employees in 1982, 1983, 1985, 1986 and 1987.

(b) That current rates paid in the bargaining unit justify the Union's minimum increase proposal.

(c) That Kewaunee County in 1988, voluntarily agreed to a renewal agreement embodying a similar type of wage proposal.

(9) In addressing attention to the 1989 deferred wage increase, that the offer of the Union is justified.

(a) That the settlement pattern for 1989 is more debatable than for 1988, since the comparable counties of Kewaunee, Brown, Marinette and Oconto have not yet settled. That Manitowoc County has settled for a 4.6% increase, with certain additional adjustments for maintenance personnel and the possibility of additional increases based upon the rate of inflation.

(b) That Langlade last settled for 1987, Marinette last settled for 1988, and the Waupaca Courthouse rates were not introduced into evidence. That the Waupaca Department of Human Services wage rates for 1988 and 1989 indicate a voluntary agreement for a 3½% increase for 1989.

(10) That the proposal of the Union relating to part-time employees is fully justified.

(a) That the current contract, the parties' first, is in need of clarification, and that it does

not address the status of an employee working 1,041 hours.

(b) That while the matter is not a major issue, now is the time for clarification; that no one is currently affected, and there are no cost implications.

(c) That the logic of the Union's proposal is that if an employee works one-half time or more he qualifies for benefits; that full time is based upon a total of 2,080 hours per year.

(11) That the Union's vacation proposal is fully justified.

(a) That the County currently does not have a standard vacation computation schedule amongst its various bargaining units, with some based upon employee anniversary dates, and some using a calendar year approach.

(b) That the Union's proposal is identical to that voluntarily agreed upon by the County and its Highway Department employees.

(c) Under the proposal, that the first year of vacation would be prorated, and all subsequent years would be based upon full year increments.

(d) That this is a minor issue, and is justified by an internal comparable.

(12) That the managment rights proposal of the Union is fully justified.

(a) That the current agreement contains no management rights provision, but the Union has made a response to the Employer's proposal to add one to the agreement.

(b) That the Union proposal is identical to that contained in the County's labor agreement covering Highway Department employees.

(c) That the Union's proposal recognizes all of the County's lawful authority, while the County's proposal might result in the waiving of the right of representation in connection with various items not specifically addressed in the agreement.

(d) That the Union is "looking down the barrel" of an Employer proposal to freeze wages and to expand management rights. That the Union would not have agreed to such a change across the bargaining table, and it should not be granted in arbitration.

(13) That the Union's preamble proposal is fully justified on its face.

(a) That the Union does not know why Door County will not agree to identify itself as the contracting party in the preamble, and the correction of a minor typographical error should raise no real issue.

(b) That the Arbitrator has no lawful authority to order anything other than the Union's position on this impasse item, and the County's arrogance has jeopardized its entire case on this seemingly trivial issue.

In conclusion, the Union submits that its final offer is more reasonable because it is based upon the voluntary agreement(s) of others in and around Door County. It emphasizes that the City of Sturgeon Bay is not buying the "doom and gloom" of Bay Ship, and it asks arbitral adoption of the final offer of the Union.

In its reply brief the Union elaborated upon and added to its arguments principally as follows:

(1) It presented arguments and urged arbitral consideration of the county comparisons previously recommended by it, and took issue with County arguments that Door County was unique and isolated from valid comparisons with other counties.

(2) It expanded upon its original arguments, and took issue with some of the figures cited by and some of the arguments generated by the County in connection with consideration of comparables.

(3) It referenced various cases, and presented arguments and information in connection with the relative weight to be placed upon arbitral consideration of the interests and welfare of the public versus certain other arbitral criteria.

(4) It examined certain information and arguments relating to arbitral consideration of private sector settlements.

(5) It cited cases and examined certain information and arguments relating to arbitral consideration of the cost-of-living criterion.

(6) It reiterated and expanded upon certain arguments in connection with the language proposals of the parties.

FINDINGS AND CONCLUSIONS

The parties are apart on the wages to be applicable during the two year renewal agreement, and in connection with certain language proposals submitted by them in connection with their respective final offers. Without unnecessary preliminary elaboration, it is fair to observe that the parties' principal difference is in the area of wages, with the language considerations carrying secondary importance. In arguing their cases the parties emphasized three principal statutory criteria, comparisons, the interests and welfare of the public and cost-of-living; they differed, however, in how the criteria should be applied, in the arbitral inferences to be drawn from their application to the dispute at hand, in the relative weight to be placed upon them, and with respect to which of the final offers should be selected.

Procedurally and for the purpose of clarity, the Arbitrator will preliminarily discuss the application of the referenced arbitral criteria, will then apply the various statutory criteria to the dispute at hand, and then will select the more appropriate of the two final offers.

The Interests and Welfare of the Public Criterion

Section 111.70 (4)(cm)(7)(c) of the Municipal Employment Relations Act directs arbitral consideration of "The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement." The parties differed significantly with respect to the application of this criterion, principally relative to the impact upon these proceedings of the distressed nature of the shipbuilding industry in Sturgeon Bay, with particular reference to the recent abandonment of ship building by the Bay Shipbuilding Company, and relative to the current economic difficulties facing commercial cherry growers.

Without undue elaboration the Arbitrator will merely observe that the various exhibits submitted by the Employer at the hearing were properly accepted into the record, despite the fact that various reproduced articles from periodicals, and certain video tapes constituted hearsay. Hearsay is routinely accepted in the labor arbitration process, subject

to arbitral determinations relative to the weight to be placed upon such evidence, and there is no real dispute as to the major impact upon the Door County and the Sturgeon Bay economics, created by the undisputed economic woes of the local shipbuilding and the local cherry growing businesses. It is abundantly clear that these economic difficulties have created changes in the local labor markets, have reduced or will reduce tax revenues in various respects, and have had or will have a significant ripple effect upon other elements of the local economies. The questions remain, however, as to the impact that these economic conditions should have in the final offer selection process in these proceedings.

Questions relating to the financial condition of an employer have been raised in private and in public sector interest arbitration for many years. The subject is generally addressed in the following excerpts from an excellent book on the arbitration of wages, authored by Irving Bernstein:

> "Financial Condition of the Employer
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> This unorthodox and rather heavy-handed title constitutes an attempt to devise a meaningful phrase to describe what the parties and arbitrators actually deal with in wage cases. The conventional slogan - ability to pay- is deficient on several counts. For one, the employer's typical plea is negative, inability to pay. For the purpose of precision in this discussion this concept is confined to the comparatively rare contention that a wage increase or failure to cut wages would imperil the marginal firm. A second inadequacy of 'ability to pay' is that the usual argument is less extreme than this language suggests on its face. Normally the employer contends that a prospective wage action would be a secondary financial embarrassment. He may note, for example, that stiffening price competition necessitates cost retrenchment without suggesting that failure to cut wages will knock the firm out of business. The term 'financial condition of the employer,' then, shall include these three relatively distinct notions; affirmative ability to pay as justification for an increase, inability to pay in the face of a threat to survival, and, most commonly, moderation in wage policy reflecting less than satisfactory business conditions."
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> "In the face of these management and labor attitudes toward the financial-capability criterion, arbitrators have three alternatives: first, to give it decisive weight; second, to ignore it; and, finally, to accord

it some but not controlling influence. The problem almost invariably arises in negative form: the employer argues that he cannot pay the proposed increase (or must have a wage cut) and the union counters that his plea should be disregarded. Hence the three options revolve about the matter so framed.

The great majority of arbitrators refuse to grant the employer's impaired financial standing decisive weight..."

"The much more common ruling is that the financial standard is not controlling. 'I can see no justification,' Wasservogel has held, 'for the view that ability to pay is an absolute determinant in wage fixing.' ..."

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"The second alternative, entirely ignoring this criterion, receives a similar response from arbitrators. The great majority are unwilling to take this extreme position; a small minority dissent..."

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"One conclusion arbitrators often reach is that other standards should generate the basic direction of the wage movement but that demonstrable financial hardship should limit the distance that it travels. As Singer has put it, 'On the facts....I find that inability to pay...may not be used as a bar to the granting of a wage increase, but rather as a limitation on the amount to be granted.'..."

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"Most arbitrators incline to give more influence to the intraindustry comparison than to financial hardship, provided that both are of roughly equivalent validity. That is, a tight comparison tends to carry greater weight than a clear showing of distress. If one is not substantiated, of course, the other gains relatively in force."

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"Arbitrators have evolved no clear line on the weight to be assigned financial hardship in relation to cost-of-living. The only generalization that is perfectly safe is that they do not feel that a wage claim based on rising living costs should be dismissed out of hand because the employer is distressed." 1./

1./ Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, pp. 77-78, 80, 82-83, 84. (footnotes omitted)

On the basis of the above it is quite clear that interest arbitrators in the private sector have generally assigned less than determinative weight to financial difficulty claims of employers, even where there is an alleged inability to pay. In applying various arbitral criteria in connection with financial difficulty considerations, three generalizations are appropriate. First, financial difficulty may moderate but not prevent wage increases which are justified by consideration of other criteria. Second, comparisons command more weight and influence than claims of financial difficulty, when both criteria are of equivalent validity. Third, cost-of-living considerations should not be dismissed, but should be balanced against financial difficulty considerations.

At this point it will be noted that the above observations of Professor Bernstein were principally addressed to private sector, rather than to public sector interest arbitrations. Even though private sector interest arbitrators generally refuse to assign controlling weight to claimed inability to pay, public sector interest arbitrators will generally assign controlling weight to situations where a public sector employer establishes that it lacks revenue and taxing authority to fund an increase in wages. The distinction between public and private sector interest arbitrations in this area is rather well discussed in the following excerpt from an article by Arbitrator Howard S. Block:

> "...When an employer in private industry argues inability to pay, he implies that if his labor costs are forced above a tolerable level, he will liquidate his holdings and reinvest his capital in another enterprise affording him a more acceptable rate of return. In short, he will go out of business. We have witnessed the same economic forces at work in the past - when federal and state minimum wages were enacted and subsequently raised, large numbers of marginal enterprises closed their doors.
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> One other example will illustrate why inability to pay is seldom controlling in the private sector. Some 20 years ago there were 175 retail hand bakeries in Long Beach, California, and its environs. Gradually, their number dwindled as these bakeries were forced to the wall by competition from frozen pastries and ready-mixed type of powders sold in the supermarkets. Each year or two the survivors met with the Bakers' Union to renegotiate wages and other cost items. The union's demands were modest, but firm. They remained impervious to the depressed conditions of the industry. As the local union president put it, 'What would be the point of forgoing a wage increase? Next year they won't be any better off, or the year after. We can't keep them in business. They've got to solve that themselves. In

> the meantime, for as long as the jobs last, we're going to maintain a decent wage.' It is only necessary to add that arbitral findings in the private sector disclose a substantial concurrence with the reasoning expounded by this representative. In the relatively few instances in which inability to pay has been given significant weight, it has usually been relied upon to justify some postponement of wage adjustments called for by the labor market but not to deny them permanently.
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> Unlike private management, an assertion by government of inability to pay will rarely be a prelude to closing its doors. For government to go out of business is not a very realistic alternative.....The point is, operating decisions of the private sector are economic in nature, rooted in the profit motive. Identical decisions in a public enterprise are political; that is economic decisions are often dominated by political considerations..." 2./

In applying the above considerations to the dispute at hand, it will be noted that the County is not claiming inability to pay, but is merely arguing impairment of Door County's economic base due to the above referenced problems in the shipbuilding and in the cherry growing sectors of the local economy. Accordingly, the above described principles should be applied as follows, in connection with evaluating the positions of the parties with respect to their economic impairment arguments.

(1) The County's claims of economic impairment of the local economy should not be given determinative weight, but they must rather be considered in conjunction with other arbitral criteria such as comparisons and cost-of-living considerations.

(2) Arguments based upon local economic conditions may be applied in such a way as to moderate or to postpone otherwise justified wage increases, but they normally will not be applied in such a way as to defeat such increases.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that while the condition of the local economy in Door County would tend to support moderation or postponement of an otherwise justified wage increase in accordance with the statutory interests and welfare of the public criterion, it normally would not justify elimination

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2./ Howard S. Block, "Criteria in Public Sector Interest Disputes," Institute of Industrial Relations, University of California, Los Angeles, 1972, pp 169-170.

of any such increase.

The Comparison Criterion

Section 111.70(4)(cm)(7)(d), (e) and (f) require Wisconsin interest arbitrators to consider three types of comparisons in the final offer selection process.

(1) Paragraph (d) refers to comparisons between the employees involved in the arbitration and other employees performing similar services, which describes what is normally referred to in private sector interest arbitration as intra-industry comparisons.

(2) Paragraph (e) refers to comparisons between those employees involved in the arbitration and other public employees in the same community and in comparable communities.

(3) Paragraph (f) refers to comparisons between those employees involved in the arbitration proceedings, and other private sector employees in the same community and in comparable communities.

While the legislature did not prioritize the various arbitral criteria described in the Wisconsin Statutes, comparisons in general are normally regarded as the most persuasive of the statutory criteria, and intraindustry comparisons are normally regarded as the most persuasive of the various criteria. The principles underlying these conclusions are rather well described in the following additional excerpts from Bernstein's book:

> "Comparisons are preeminent in wage determinations because all parties at interest derive benefit from them. To the worker, they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill. In the presence of internal factionalism or rival unionism, the power of comparison is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will be able to recruit in the local labor market. Small firms (and unions) profit administratively by accepting a ready-made solution; they avoid the expenditure of time and money needed for working one

themselves. Arbitrators benefit no less from comparison. They have 'the appeal of precedent and... awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.'..."

* * * * *

"a. Intraindustry Comparisons. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. More important, the weight it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.

Wage parity within the industry is so compelling to arbitrators that, absent qualifications dealt with below, they invariably succumb to its force. Its persuasiveness, in fact, provides as sound a basis for predictions as may be uncovered in social affairs. The loyalty of arbitrators to this criterion at the general level could be documented at length..." 3./

It will merely be referenced at this point that Wisconsin interest arbitrators have consistently placed great reliance upon intraindustry comparisons in applying the statutory comparison criteria to the final offer selection process.

The County argues against the application of the so-called intraindustry comparison in the matter at hand on the following bases.

(1) It urges that the County is located on a peninsula, and is geographically separate from other counties in the area.

(2) It submits that the County is economically distinguishable from others, due to the composition of its economic case. In this connection it emphasized that the agricultural sector was made up of orchard crops (apples and cherries), that the tourism sector was equally unusual, and that the manufacturing sector was distinguishable due to the lack of diversification and the dominance of the shipbuilding industry.

It additionally urged that alternative comparisons with such employers as Door County school districts and the City of Sturgeon Bay would be inappropriate because the employees

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3./ The Arbitration of Wages, pp 54, 56.

used for comparison purposes are distinguishable from the courthouse employees subject to these proceedings. Without prejudice to the above arguments, the County recommended certain county comparisons for arbitral consideration.

The Union submitted that the intraindustry comparison group should consist of the counties of Kewaunee, Oconto, Marinette, Brown and Manitowoc. It cited 1988 wage increases ranging from 2.5% to 4.7% for the five counties, and cited Manitowoc's 1989 increase of 4.6%, in support of the selection of the final offer of the Union. Alternatively, it cited the settlements covering the Sturgeon Bay, the Gibralter and the Southern Door school districts, which had yearly increases ranging from 6% to 7.5% for the 1988-89, the 1989-90 or the 1990-91 school years, and it cited the increases granted by the City of Sturgeon Bay to certain non-represented employees, the City's settlement with its firefighters granting 2.5% for 1988 and an additional 2.5% for 1989, and pending arbitrations with its police and DPW units, each of which would receive at least 2% in wage increases for 1988. The Union also cited the County's 2% increase offered in 1988 for those in the Highway Department bargaining unit. Finally, it cited nine separate private sector wage increases for 1988, all of which were closer to the Union's 1988 offer than to that of the Employer.

Normally at this stage an arbitrator is faced with the need to resolve the preliminary disputes of the parties with respect to which group of employees/employers constitute the principal or primary intraindustry comparison group. In this case, however, no such selection is necessary, because virtually all external comparisons favor the selection of the final offer of the Union versus that of the County. Even if the counties suggested by the County are used for comparison purposes, none would support the no wage increase offer of the County for 1988.

The Arbitrator simply cannot agree with the arguments of the County that it is so different from other counties as to preclude use of typical intraindustry comparisons with other counties. Even if I were to agree with this argument, however, the general public and private employment comparisons described in statutory paragraphs (e) and (f), referenced above, would come into play. If the County were so isolated and distinct as to preclude meaningful comparison with other counties, the public and private sector comparisons within the "isolated and distinct" labor market in the County, would gain additional importance in the final offer selection process.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that arbitral consideration of the

comparison criterion clearly favors the selection of the final offer of the Union, regardless of which specific comparisons are utilized.

Prior to leaving the subject of comparisons, the Arbitrator will merely add by way of dicta, that either short term financial difficulties or long term changes in financial ability, would not normally justify arbitral selection of different comparables in the interest arbitration process. Rather, such conditions would merely come into play in connection with arbitral consideration of other of the statutory interest arbitration criteria.

Cost-of-Living Considerations

Section 111.70(4)(cm)(7)(g) directs arbitral consideration of cost-of-living considerations, which are normally examined by arbitrators only from the last time that the parties went to the bargaining table. Historic movement in consumer prices which occurred prior to the parties last agreement cannot, therefore, be properly considered to have cushioned those in the bargaining unit from further movement in consumer prices during the renewal agreement.

In light of the fact that the Employer is proposing no increase in wages for 1988 and a 2% increase in wages for 1989, any increase in consumer prices during 1988, and any aggregate increases for the two year period that exceed the 2% figure would tend to detract from the selectability of the Employer's final offer. The Union's final offer, including the minimum increase component, would apparently generate annual percentage increases for each of the two years, that are closer to 3½% than to the 3% figure referenced in its final offer.

With the various consumer price indexes moving upward at a 4% to 5% annual rate, it is unnecessary to undertake sophisticated computations to conclude that cost-of-living considerations clearly favor the selection of the Union's rather than the Employer's final wage offer.

The Language Items In Issue

The final offer of the Union contains a provision for a management rights clause, minor language changes governing part-time employees, certain changes in the vacations area and revisions in the preamble to the contract. The final offer of the County includes the addition of bi-weekly and annual wage rates to the wage schedule, and the addition of a management rights provision.

While both parties presented arguments relating to the language components of the final offers, there is nothing in the record to persuasively suggest that the final offer of either party is definitively favored by the language considerations. As referenced earlier, the major issue in these proceedings relates to the wages to be paid during the two year duration of the renewal agreement, and the selection of the most appropriate final offer should be principally based upon the relative merits of the wage components of the parties' final offers.

Summary of Preliminary Conclusions

As addressed in greater detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions:

(1) The principal difference of the parties is in the area of wages to be paid during the term of the renewal agreement.

(2) While the condition of the local economy in Door County would tend to support moderation or postponement of an otherwise justified wage increase in accordance with the statutory interests and welfare of the public criterion, it normally would not justify elimination of any such increase(s).

(3) Arbitral consideration of the comparison criterion clearly favors the selection of the final offer of the Union.

(4) Arbitral consideration of the cost-of-living criterion clearly favors the selection of the final offer of the Union.

(5) Consideration of the language items contained in the final offers against the statutory criteria, does not definitively favor the selection of the final offer of either party.

Selection of the Final Offer

Based upon a careful consideration of the extensive record in these proceedings, and all of the statutory arbitral criteria, the Impartial Arbitrator has concluded that the final offer of the Union is the more appropriate of the two final offers. This conclusion is principally indicated by consideration of the comparison and the cost of living criteria.

AWARD

Based upon a careful consideration of all of the evidence and argument, and a review of all of the various arbitral criteria provided in Section 111.70 of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Door County Courthouse Employees' Union, Local 1658, AFSCME, is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the Union, hereby incorporated by reference into this award, is ordered implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

December 30, 1988