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STATE OF WISCONSIN  
WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION  
BEFORE THE INTEREST ARBITRATOR

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In the matter of the petition of

**TAYLOR COUNTY COURTHOUSE  
EMPLOYEES, AFSCME, AFL-CIO**

**Daniel Nielsen, Arbitrator  
Case 26 No. 39717 INT/ARB-4650  
Decision No. 25525-A  
Record Closed: 12/05/88  
Date of Award: 01/14/89**

To initiate arbitration between  
said petitioner and

**TAYLOR COUNTY**

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**Appearances:**

Wisconsin Council 40, AFSCME, AFL-CIO, N-419 Birch Lane, Hatley, WI 54440, by  
**Mr. Phil Salamone**, Staff Representative, and **Mr. David Ahrens**, Research  
Analyst, appearing on behalf of the Taylor County Courthouse Employees.

**Mr. Charles Rude**, Personnel Director, Taylor County Courthouse, 224 South  
Second Street, G-50, Medford, WI 54451-1899, appearing on behalf of Taylor

**ARBITRATION AWARD**

On July 5, 1988, the undersigned was notified by the Wisconsin Employment  
Relations Commission that the Taylor County Courthouse Employees (hereinafter  
referred to as the Union), and Taylor County (hereinafter referred to as the County  
or the Employer) had selected him from a panel of arbitrators to decide a dispute  
over the terms of an initial collective bargaining agreement. The parties consented  
to mediation, which was attempted on September 30, 1988 at the Taylor County  
Courthouse. Mediation was unsuccessful, and a hearing was conducted immediately  
thereafter, at which time the parties were given full opportunity to submit such  
testimony, exhibits and other evidence as was relevant. The parties submitted  
post-hearing briefs, which were exchanged through the undersigned on November  
7, 1988. Supplementary information was supplied on November 14 and December  
5, 1988, whereupon the record was closed.

Having considered the evidence, the arguments of the parties, the statutory  
criteria, and the record as a whole, the undersigned makes the following  
Arbitration Award.

## **I. The Statutory Criteria**

This dispute is governed by the provisions of Section 111.70, Wis. Stats. Although each of the following statutory criteria is not discussed to the same extent, each has been considered in arriving at this Award. The statutory criteria for fashioning an arbitration award are set forth in Section 111.70(4)(cm)7:

"7. Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following

- a. The lawful authority of the municipal employer.
- b. The 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 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 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, factfinding, arbitration or otherwise between the parties, in the public service or in private employment."

## II. The Parties' Final Offers

Copies of the Final Offers are appended hereto, with the Union's Final Offer designated as Appendix "A" and the County's Final Offer as Appendix "B". Five issues are unresolved in this initial agreement:

**A. Job Posting** - Both parties propose job posting provisions. The Union proposes that jobs be posted for a 10 day period, be awarded to the most senior applicant who can qualify for the position, and that the employee be granted a sixty day trial period in the new job. The County's offer would provide for a posting of 5 days, with the job being awarded to the most senior qualified applicant. The employee would serve a 90 day probationary period, and would be limited to bidding once every six months. Finally, the County would exclude the positions of Register in Probate, Deputy Register of Deeds, Deputy Clerk of Courts, and Deputy Treasurer from any application of seniority in selection.

**B. Layoff and Recall** - Both parties propose layoff and recall language. The Union's offer would allow employees to bump into classifications filled by less senior employees in the event of a layoff. The County would limit the employee's bumping to less senior employees within the department.

**C. Part-Time Employee Eligibility For Sick Leave** - The Union proposes that part-time employees received sick leave on a pro-rata basis. The County includes no such provision.

**D. Health Insurance** - The Union proposes that the County pay 80% of the cost of health insurance premiums for existing or better coverage. The County would place a \$190 per month cap on the County contribution, and allow changes in carriers, or to self-funding, so long as benefits are not reduced.

**E. Wages** - The Union proposes a lump sum wage increase for 1987, equivalent to 3% of the employee's wages for the period after March 15, 1987, for all employees who did not receive at least 3% in 1987, offset by the amount of any increase that the employees did receive. For 1988 and 1989, the Union proposes a wage schedule providing wage steps at start, end of probation, 1 year, 5 years and 10 years. The start and end of probation steps on the Union's pay schedule do not change from 1988 to 1989. The Union's wage schedule establishes 15 pay grades. Employees red-circled under the Union's offer receive lump sum payments of 3% each year.

The County's offer features a wage schedule effective on 7/1/87 with steps at start, end of probation and 30 months. The County's schedule has nine pay grades. The County offer red-circles certain employees, who receive \$100 for 1987, \$150 on July 1, 1988, \$150 on December 1, 1988, \$220 on July 1, 1989 and \$220 on December 1, 1989.

### **III. The Arguments of the Parties**

#### **A. The Arguments of the Union**

##### **1. Job Posting**

The Union takes the position that its final offer most closely adheres to the statutory criteria. Addressing each issue in turn, the Union first notes that the County's job posting offer is unique in its exclusion of deputy positions within County departments. There is no question but that the County has the lawful authority to implement an offer without this exclusion. The evidence shows that adjoining counties have broader posting provisions than that proposed by the County, and these contracts cannot be assumed to be inconsistent with the law. The Union notes that, even if the provision were unlawful in some respect, the separability provision of the contract would preserve the remainder of the agreement.

No evidence was presented by the Employer to show an internal comparable for its posting provision. The Union presented the only evidence on comparability, showing that five of the six surrounding counties allow posting to deputy positions. The comparability criteria of the statute thus strongly support the Union's position on this issue.

Criterion "h" addresses overall compensation received by employees. This criterion is relevant because the deputy positions are the highest paid in the unit. Thus they constitute the most important promotional opportunities for unit members. It is irrational, the Union argues, to allow the County to exempt from the posting provision the most highly coveted and compensated jobs in the unit. In connection with this, the Union cites criterion "j", which mandates a consideration of normal and traditional factors in collective bargaining. It is simply unfair, the Union alleges, to exclude the deputy provisions when both offers provide safeguards to insure that qualified personnel are promoted. If the applicant is qualified, why should the County not follow seniority. A review of the statutory criteria, the Union suggests, dictates that the Final Offer of the Union on job posting be accepted.

##### **2. Health Insurance**

The Union next turns to the issue of health insurance, which it characterizes as the most important issue in the impasse. Under criterion "c", the arbitrator should take into account the interests of the public. In a nation with 37 million citizens who have no health insurance coverage, the Union asserts that the public interest is plainly well-served by an offer which makes insurance coverage widely available. The Union's offer, which evenly allocates the risk of increase, most fairly and effectively accomplishes that end. The Union notes that the County has shown no evidence on an inability to pay the requested 80% benefit, which it has in fact

carried in effect for the past three or four years. Prior to that time, the benefit was also paid on a percentage basis, rather than the flat dollar basis proposed by the County.

The comparability criterion are difficult to apply to the health insurance issue, because of the peculiar history of bargaining over 188-89 contracts for other County employees. Both the business agent for the Teamsters units in the Sheriff's Department and the Courthouse Professional employees, the business representative for the AFSCME unit in the Highway department testified at the hearing. The Teamsters business agent, Mr. Jim Newell, testified that his understanding of the tentative agreement reached with both Teamsters units was that the 80% County contribution to health insurance would continue. The AFSCME business representative, Mr. Phil Salamone, testified that he was informed by the County's Personnel Director, Charles Rude, that the Teamster units had agreed to accept a dollar figure in the contract for the insurance contribution. Based upon that representation, Salamone advised his members that the internal comparisons were unfavorable for continuation of the 80% contribution, and the unit then entered into a tentative agreement featuring the County's proposed \$190 per month cap. Upon learning that the Teamsters disagreed with Rude's interpretation of the agreement, he recommended that the contract not be signed, even though it had been ratified by both parties. The possibility of litigation has been raised by the County over the Union's failure to sign the contract. Thus, it is impossible to state with any certainty what the internal comparables on insurance might be.

External comparisons, the Union asserts, demonstrate strong support for the Union's offer. All surrounding counties have insurance premium contributions based upon percentages, All have percentage contributions higher than that proposed for the County. All but Lincoln County pay more in dollar terms for insurance than does Taylor County.

Noting the rapidly increasing costs of health insurance and medical care, the Union argues that its offer most realistically reflects the cost of living, and best preserves the level of overall compensation received by employees. By sharing increased medical costs, rather than assigning the risk of increase entirely to one party, the Union's offer most equitably responds to the inevitability of premium increases. Further, the Union's offer preserves the status quo. The Union avers that changes in the status quo, particularly the type of radical change proposed by the County, should not be imposed through arbitration, but should generally result from the give and take of the bargaining process. Here, the County offers no quid pro quo to the Union for improving its already very favorable position on health insurance.

### **3. Layoff and Recall**

On the issue of layoff and recall from layoff, the Union again objects to the County's exclusion of the departmental deputies from the layoff provisions, and disputes the County proposal to apply seniority rights strictly by department. No evidence of any internal comparable for these provisions was offered. While there may be external comparables for less than unit wide bumping rights, no evidence was introduced to show the extent of these comparables. The sole evidence concerning this issue reflects the abuse of similar language in the Lincoln County contract, which was corrected by the Award of Arbitrator Honeyman. Given that Taylor and Lincoln Counties share a Personnel Director, the Union raises a concern over the possible abuse of this language, if awarded.

The Union points to the fact that the County has 17 departments, employing 45 employees. Eight of the departments have just one employee, four have only two, two departments have three employees, and one has four employees. The limitations proposed by the County would have the effect of eliminating the seniority rights of half the unit members. This is senseless in a unit of non-professional employees, particularly where the employee must be qualified to perform the work when exercising bumping rights. The County, the Union claims, has completely failed to justify its offer in this area.

### **4. Pro Rata Sick Leave for Part-Time Employees**

The issue of pro-rata sick leave for part-time employees seriously affects the overall compensation received by those employees. Aside from the use of such leave for paid absence due to illness, the days accrued beyond the seventy day maximum are subject to a 50% cash payout at the end of the year. The denial of these benefits to part-time employees is, the Union claims, fundamentally unfair. The Union cites the example of one employee who works a 90% schedule. While eligible for every other fringe benefit on a pro-rata basis, this employee would be denied sick leave because she falls 182 hours short of a full-time schedule. No reasonable basis exists for denying part-time employees this single benefit on a pro-rata basis.

### **5. Wages**

Two issues exist relating to wages. The level of wages to be paid, and the structure of the wage schedule are both in dispute. All of the statutory criteria, except "a" -- the lawful authority of the employer, and "i" -- changes during the pendency of arbitration are relevant to the wage issues. Criterion "b" dictates that the stipulations of the parties be considered. The Union proposed an effective date of July 1, 1987 for its lump sum payment in the first year. This is a delay of nearly four months from the date on which the Union was voted in. This stipulation thus

reduces the cost to the County, and supports the reasonableness of the Union proposal.

The interests of the public are served by employees of high morale in positions of public trust. The employees in this case were moved to organize by the County's unilateral decision to eliminate the ten year wage progression that had been in place for many years, in favor of its new, and ill-considered wage scheme. The three step scheme included reclassifications based upon personalities rather than duties. It resulted in 29 of 45 unit employees receiving wage freezes, while organized employees received across the board increases. The animosity towards this change led to the Union's presence, and the call for a return to the status quo under the former ten year progression. The County's offer would only perpetuate the ill-will created by the original switch to the three step schedule.

The offer of the Union is supported by a review of the internal comparables. While the Highway department employees received cost of living increase of only 1.6% in 1987 (due to the small increase in CPI for 1986), the two other organized units received 4% across the board increases. The dollar value of the Union's proposed bonus for red-circled employees in 1987 is \$225. Assuming an employee earning \$15,000 per year, the Highway increase would equal \$240, while the Sheriff's and Professional agreements would lead to a \$600 increase. The County, by contrast, offers only \$100 for those employees. The Union's wage offer for 1987 would be the lowest of any organized group in the County.

In 1988 and 1989, the Union offer maintains the integrity of the ten step system in place prior to the organizing campaign. This structure is identical to that enjoyed by employees in the Sheriff's Department and by Professional employees. The rather lengthy progression is due to the fact that longevity here, unlike many other counties, is not separately compensated. Any reward for years of service is built-in to the wage schedule.

The Union acknowledges that some individual rates increase by relatively large amounts. The Union notes, however, that 29 of the 45 employees have not received a wage increase since 1986, and will not have an increase in their rates until 1988 under either proposal. The Union stresses that collective bargaining is a group dynamic, with some employees receiving relatively generous increases, while other receive modest improvements, or, in some cases, red-circling. The overall increase in rates under the Union's offer would be 8.4% between 1987 and 1989 (from an average wage of \$7.59 to an average wage of \$8.23). By contrast, the County's offer would result in a decrease in average wage rates of 4¢, from \$7.59 to \$7.55. Over the same three year period, employees in the Teamsters unit will receive 10% increases in rates, while Highway department rates will increase by 7.6%.

The County attacks the Union's reclassification of certain employees on the basis of a lack of qualifications among Union members in job evaluation. The Union's wage equity survey was conducted using job descriptions that were either drafted by the County, or approved by the supervisory employees in relevant departments. It featured a review of other contracts, and forms obtained from the State of Wisconsin Personnel Department. Exacting consideration was given to actual duties and responsibilities performed by County employees. This is in contrast to the County's failure to interview any employees, study any jobs, or seek any opinions before it implemented the reclassifications and new wage structure that resulted in this dispute.

External comparability is difficult to determine because Taylor County alone incorporates longevity into its wage schedule, rather than providing separate compensation for length of service. Thus the maximums for the other counties in the area tend to be undervalued when compared to Taylor County maximum wage rates. Comparing at the five year rate of the Union's offer, before the longevity component is factored in, Taylor County rates tends to be in middle range of wage rates for area counties.

Consideration of the increases in the consumer price index also favors the Union offer. Projected increases in the cost of living over the 1987, 1988 and 1989 contract years total between 13.9% and 14.4%. The Union offer would increase rates by 8.4% in this period of time. The County's offer, as noted, would decrease rates by 4% over this period. Plainly, the Union offer better maintains the purchasing power of County employees, and should be favored.

The overall compensation of employees is best maintained by the Union's offer. The Union seeks to maintain a status quo on wage structure and health insurance, while the County proposes drastic changes in these fundamental areas, with no apparent quid pro quo. Had unit employees simply received the 3% increases offered all other organized County employees for 1988 and 1989, the average wage in the unit would rise to \$8.10 per hour. The average under the Union offer reaches \$8.23 in 1989, while the average under the County offer drops to \$7.55. No reasonable person could characterize such a result as a good faith effort to settle with these employees. Based upon a review of all statutory criteria, the Union urges that its offer is the more reasonable.

## **B. The Arguments of the County**

### **1. Job Posting**

The County takes the position that the posting dispute turns on two issues. The Union offer requires the posting of all vacancies, while the County offer restricts



posting to those which the County desires to fill. The County must be entitled to determine the number of positions it will have and whether it will fill a vacancy or not. The other major dispute is whether the County may exclude the departmental deputies from the posting procedure. While perhaps unusual, such provisions are not unheard of, and serve legitimate governmental concerns. The elected department heads should have the right to select their "right hand man or woman" on the basis of other relevant consideration than simple seniority. Further, the Union's language would open up the possibility of a newly elected official being forced to accept a political opponent as a deputy.

## **2. Health Insurance**

The County switched to a self-funding health insurance plan on January 1, 1988, using a third party claims administrator. This plan duplicated the benefits available under two HMO plans which had been available to employees. The Greater Marshfield Plan, and an identical plan with "up front" \$100 deductibles. The County has proposed to pay \$193.00 per family plan and \$88.00 per month for single coverage under the self-funded plan. This is slightly more than 80% of the 1988 premiums of \$240.48 and \$109.30. For those employees who wish to remain in the former HMO plans, the County would propose to contribute \$190 for family coverage and \$87.00 per month for single plans. These represent the entire cost of the HMO with deductibles. This identical proposal was made to the Teamsters units and the other AFSCME unit in the County, and all three agreed to the flat dollar amounts rather than the former 80%/20% contributions. All three units have since reneged on the agreements, and the matter remains unsettled.

Taylor County, like every other employer, simply seeks to maintain some measure of control over insurance costs. The introduction of fixed dollar contributions gives certainty to the County, and offers a slightly higher benefit to County employees in the self-funded plan than the 80% contribution proposed by the Union. For those in the HMO with deductibles, the benefit is even greater, since 100% would be covered. The County notes that the other AFSCME unit had negotiated a clause guaranteeing that the HMO with deductibles would not increase in cost during 1989. Thus the County offer extends this benefit across the entire length of the contract.

## **3. Layoff and Recall**

Two issues separate the parties in the area of layoff and recall. The County proposal would allow bumping within each department. This recognizes the "one-of-a-kind" nature of many County jobs, and avoids serious disruptions in the work force in the unlikely event of a layoff. The second dispute is the County's desire to again exempt the departmental deputies from the application of the contract's seniority provisions. This is not unusual, since both Langlade and Lincoln Counties have similar provisions in their agreements.

#### **4. Part-Time Employee Sick Leave Benefits**

The County opposes the concept of sick leave benefits for part-time employees because the benefit is unnecessary. Part-time employees, by the nature of their work schedules, can make-up lost work time at a later date, and thus suffer no overall reduction in earnings from the denial of the benefit.

#### **5. Wages**

There are substantial differences between the parties on the issue of wages. The County has proposed to carry forward the change it initiated in January of 1987 in order to return clerical pay rates to a more realistic level in Taylor County than had previously been the case. The County's plan was intended to bring wage rates into line with the community and with surrounding counties. The County's intention was not to reduce pay rates, although a number were temporarily red-circled. Those employees will receive lump sum payments in the years in which they are red-circled, so as to provide an increase in actual pay, while still moderating the wage rates in the County.

The County notes that its offer results in pay rates which are comparable to those paid in surrounding counties in 1989. Some classifications remain substantially above the going rate for surrounding counties. While the County admits that it does not compete with these counties for employees, the comparability of pay rates displays the reasonableness of the County's offer.

The rates proposed by the County for 1988 and 1989 represent 3% increases in each year. This is identical to the increases in the Sheriff's Department, Professionals and Highway units. It is consistent with the settlement pattern in Northern Wisconsin. Thus, on the basis of both internal and external comparables, the County's offer should be favored.

### **IV. DISCUSSION**

#### **A. JOB POSTING**

Two elements separate the parties on the job posting issue. The Union's proposal defines vacancies subject to posting in much broader terms than the County's, in that it requires posting of all vacancies in the work force, while the County would post only those which it desires to fill. The distinction seems largely semantic, in that no evidence was introduced to show an intent by the Union to require the filling of jobs that the County has decided to keep vacant. The stipulations of the parties would seem to rebut such a reading of the Union's proposal, since the right to "determine the size and composition of the work force" is expressly reserved to

management, as is the right to use temporary, part-time and seasonal employees, except where the use of such employees is for the purpose eliminating full-time positions. Plainly the parties contemplate that full-time positions can be eliminated for other reasons. Reading the offers in light of the stipulations, the undersigned is persuaded that the issue of mandatory filling of vacancies raised by the County is not actually presented by the Union offer.

The most important distinction between the offers is the County's desire to exclude the Deputy Treasurer, Deputy Register of Deeds, Deputy Clerk of Courts and Register in Probate/Probate Registrar from the posting provisions. The County urges adoption of this provision as a vindication of the right of elected officials to select their principal assistants, and to prevent political opponents from having to work closely together. Carried to their logical conclusions, these arguments would exempt the employees of elected officials from coverage under the terms of the contract. The County is engaging in speculation about potential political problems as a justification of this proposal, without showing that the elected officials have any greater interest in compatibility with their deputies than would be had by any other department head. The positions at issue are not policy making positions, where a stronger argument could be made for the compatibility factor. Neither is there a particularly persuasive argument to be made that the County's proposal would insure a harmonious political and working relationship between elected officials and their deputies. Nothing prevents a deputy from developing a personality or political conflict with the incumbent elected official after selection as a deputy, yet the discipline provisions of the contract would seem to require proper cause for any removal. This protection is a far more pervasive restriction on the right of elected officials to manage their relationship with their deputies than the posting provision, and its inclusion is inconsistent with County's stated rationale.

While the County's desire to allow elected officials a certain latitude in filling deputy positions is understandable as a practical political concern, it must be weighed against the fact that this exemption would close off nearly 10% of the jobs in the unit, and deny senior employees the contractual right to secure promotion to four of the most highly compensated positions in the County's service. The County's proposed limitation on posting rights substantially reduces the value of seniority within the unit, and does so on very speculative grounds. While one of the comparable counties does have such an exclusion, it is far enough out of the ordinary to require justification. That offered by the County is simply not persuasive, and the offer of the Union on the issue of job posting is found to be more reasonable.

## **B. Health Insurance**

While each party points to negotiations with other units as in some measure supporting its offer, the status of health insurance in those units is obviously muddled. At the time of hearing, the County and its Unions were contemplating litigation as a means of resolving what the actual agreement, if any, was on health insurance.

Resolution of the health insurance issue in this unit turns on whether the County is justified in its attempt to modify the status quo ante in this area. The County has always, in the past, contributed to health insurance coverage on the basis of paying a percentage of the premium. It now seeks to commit to a flat dollar amount. The Union, on the other hand, asks to maintain the 80% employer contribution previously in effect. The County's motive for switching to a set dollar figure is to limit its exposure to cost increases. This is certainly understandable, particularly in these days of rapidly increasing insurance costs. The County fails to explain, however, why shifting the entire cost of health insurance increases to the employees is justified, particularly in light of the fact that the current system gives employees a stake in holding down costs by sharing increases between the parties. The County would, under the Union offer, pay the lowest percentage contribution to health insurance of any surrounding county. In actual dollar terms, the County would pay slightly under the average for area counties. If Marathon County is excluded, because of its slightly higher insurance cost, the County's contribution would be precisely at the average.

The County's proposal is a sharp departure from the long established system of cost sharing. Neither the amount of contribution in percentage terms, or the dollar cost of the premium to the County appear to provide compelling justification for this departure. Arbitration is generally not an appropriate vehicle for innovation. Major changes should, instead, result from voluntary collective bargaining. It is incumbent upon the County, as the proponent of change, to show either that the circumstances underlying the establishment of the former system have changed so substantially that the system needs modification and that reasonable attempts to obtain change through bargaining have been unsuccessful, or that the current system is so far out of the mainstream, without reason, as to constitute an aberration. No such evidence was offered in this case. The County's insurance burden is neither greater nor less than that of surrounding counties, and the payment of premiums on a percentage basis is uniform throughout area counties, with Taylor County paying the lowest percentage. Absent evidence of some strong reason to change the status quo, the Union's proposal to maintain the 80% County contribution to health insurance is deemed the more reasonable.

### **3. Layoff and Recall**

The central dispute in the area of layoff and recall is in the scope of the clause. The Union proposes that employees who are laid-off be given the right to bump into any equal or lower classification for which they are qualified, with the employees displaced by the bumps having the same right to bump across or down. The County would limit the right to bump, requiring that any bump be within the department. The County would also exempt the Deputy Treasurer, Deputy Clerk of Courts, Deputy Register of Deeds and the Register in Probate from any application of the layoff clause.

Neither offer is particularly reasonable. The Union's bumping provision could conceivably lead to a complete restaffing of the County if one high level unit employee was targeted for layoff. While such a result is unlikely, there is no express requirement that the employee whose job is being eliminated target the most equivalent job for which he or she is qualified which is occupied by the least senior employee in the classification, thus limiting the ripple effect. Certainly the requirement that employees be qualified for the position into which they will bump offers an inherent limit on the bumping, but the proposal nevertheless appears to be overly broad.

The County's offer on layoff is premised upon its claim that most of the jobs are "one-of-a-kind", and that bumping across departments would lead to major disruptions in work flow. No evidence was presented as to the uniqueness of jobs within the County work force. This is a non-professionals unit, with a heavy representation of clerical workers. To be sure, there are duties and procedures which vary from office to office in any enterprise, but the essential character of the work for many unit employees appears to be very similar in nature. The disruptions foreseen by the County are just as likely to occur if an employee bumps from one classification to another within the same department. In both cases, there will certainly be some time required for familiarization. Under both the Union and County offers, an employee must first be qualified for any job before bumping rights may be exercised.

As a practical matter, the County's limitation of layoff and recall rights to departments would remove the benefit of seniority based job protection from a large number of unit employees. The 45 unit employees are spread across 17 departments. At least 38% of unit employees (the least senior in each department) would effectively have no bumping rights in the event of a layoff, no matter what their unit-wide seniority or job skills. Given the nature of the work, the County's balkanization of bumping and recall rights across seventeen departments is unwarranted.

The County does not address the reason for its proposal to exclude the deputy positions from the layoff and recall provisions, other than to note that similar clauses exist in AFSCME contracts in Lincoln and Langlade Counties. Presumably, this goes again to the desire of elected officials to control the identity of their principal assistants. Absent evidence of unique responsibilities in these positions, this is not a compelling reason for such exemption. Under either proposal, the exposure of deputies to bumping would be quite limited, since the parties each place these jobs at or near the top of the pay scale.

As noted at the outset of this section neither party's offer is reasonable on the issue of layoff and recall. To the extent that the Union's offer more realistically reflects the transferability of job skills in a non-professionals unit, without drawing apparently unjustified distinctions based upon departmental employment, it is less unreasonable than the County's offer.

#### **D. Sick Leave for Part-time Employees**

This is conceded by the parties to be a minor issue in this proceeding, a fact reflected by the relative lack of evidence on the point. The County proposes to exclude part-time employees from receiving pro-rata sick leave because lost work time can be made up at another time. It is unclear what distinguishes sick leave from funeral leave, which part-timers receive under the stipulations reached by the parties. It would seem that the two benefits are virtually identical in general purpose, and the principle cited by the County should have equally precluded extending funeral leave to these employees. Aside from the question of consistency, the County's rationale breaks down somewhat for those part-time employees working at a nearly full-time level of hours. Four of the twelve part-time employees work at least 75% schedules, with one working a 90% schedule. An illness of any length would not be easily made up by these employees.

The sick leave issue slightly favors the Union, although the lack of evidence on this point and its minor impact relative to the other issues entitles it to very little weight in reaching an overall conclusion.

#### **E. Wages<sup>1</sup>**

The wage issue has four components -- structure of the wage schedule (specifically the number of steps), classification of employees, actual compensation received by employees over the contract, and the absolute level of wages.

1. **Structure** - Prior to 1987, non-represented employees were paid according to a schedule featuring 6 steps -- start, 6 months., 1 year, 2 years, 5 years and 10 years. This schedule had been in effect since 1980. In January of 1987, the County Board adopted a resolution revising the salary schedule to provide for a start rate, after probation rate, and a maximum rate which was based upon the addition of 1% per year of service to a maximum of 9% over the

after probation rate for the employees classification. As part of this plan, numerous employees were reclassified and/or red-circled at their previously existing rate. 29 of the 45 employees involved in the dispute here were red-circled at their 1986 pay rates for 1987. All parties concede that this is the event that led to organizing the Union.

The final offer of the County continues the three step format, concluding with a maximum rate at 30 months. The final offer of the Union has five steps -- start, after probation, 1 year, 5 years and 10 years. Plainly the number of steps on the Union schedule more closely resembles the former model, eliminating the 2 year step, but maintaining the other five steps. The County's reason for reducing the number of steps is admittedly a desire to reduce wages in the clerical work force. Whereas the former differential between start and maximum had been approximately 20%, the new structure adopted by the County Board lowered the starting rates, and set a 24% differential between the start and maximum. The final offer submitted by the County sets the differential between starting wages and 30 month wages generally at 6%. The Union offer, by contrast, requires step increases of 1% after probation, 2% at 1 year, 10% at 5 years, and 4% at 10 years, or a differential of 17%.

The other contracts entered into evidence are collective bargaining agreements for the Teamster unit in the Sheriff's Department and the Professional Employees. Each of these has a ten year progression. The differential in the Sheriff's Department is 24% between the start and the 10 year rates. The Professional Employees have a differential ranging from 12.8% to 13.7% between start and 10 years. The internal comparables strongly favor the structure proposed by the Union, as does the historical evidence of at least seven years' experience with the 10-year structure. No evidence was introduced on the subject of wage structures in the surrounding counties, but the Union is correct in noting that six area counties provide longevity payments for long service, with most beginning in the 10th year, while Taylor County has no such provision. The extended wage schedule previously in force, and as proposed by the Union, builds such longevity payments into the structure. Thus the relatively long period of step increases proposed by the Union has a rational basis.

The County's use of a truncated pay structure to achieve rate reductions, rather than directly red-circling rates on the old structure, or using some other device, creates problems of proof in showing that structural change was required. In order to reach the issue of absolute wage rates structural change is not necessarily required. The effective elimination of longevity pay under the County proposal is an unnecessary side effect of the attempt to use structural change to reduce certain pay rates.

The structure proposed by the Union is clearly supported by the internal comparables, the historical pay structure, and the presence of longevity payments in surrounding contracts. The Union's offer is the more reasonable under the statutory criteria.

#### **B. Reclassifications**

The Union proposes to reclassify a number of employees through its final offer, generally increasing their pay beyond that proposed by the County. The County, for its part, reclassified a number of employees in introducing its unilateral pay plan in January of 1987. This reclassification was one of the reasons for the many pay freezes resulting from that plan.

The Union reclassification scheme was undertaken after a review of existing job duties by a Union committee, using existing job descriptions and descriptions which were updated by employees and reviewed by their supervisors. A five point scale was used to rank jobs. This scale was created by the Union committee. None of the actual job descriptions, or point assignments were introduced into evidence. The Union's witness relied upon a description of the process used. With all due respect to the sincerity and effort of the Union's committee chair, the record establishes that she has absolutely no professional qualifications in job assessment or personnel, and the description of the method used does not suffice to reasonably establish the reliability of rankings she and her committee assigned to jobs within the unit. While she offered opinions as to the reasons for ranking some jobs at a higher level than others, the distinctions drawn were general and conclusionary. The evidence offered by this witness on the basis for reclassifying jobs is not persuasive, absent a great deal more background data.

The reclassifications accomplished by the County and memorialized in its proposed pay structure were not explained at all. While the existing classification of employees to a pay grade does not generally call for any justification beyond the fact it exists -- the burden being on the party proposing change -- these reclassifications were accomplished only months before the Union was voted in, and were the subject of much public comment as being arbitrary. Unrebutted testimony to that effect was introduced at the hearing. Under these circumstances, the undersigned would reasonably expect some defense of the classification structure by the Employer. Neither party's final offer can be deemed preferable on the issue of classifications, as no reliable evidence justifying either change from the status quo prior to January of 1987 was offered.

#### **C. Compensation Across The Contract**

The Union offer sets 1987 compensation at a lump sum amount equivalent to the difference between raises actually received, and what would have been received had the employees all received 3% increases. The County proposes a payment of



\$100 to each red-circled employee, the equivalent of 0.7% on the average wage. Eleven other employees, by the County's calculation, would receive raises ranging between 1.7% and 32.8% by virtue of implementation of the County pay structure on 7/1/87.

In 1988, the County would increase its pay plan by 3%, with 22 red-circled employees receiving lump sum payments of \$150 on July 1, 1988 and \$150 on December 1, 1988, a value in the contract year of 0.59% on the average wage, having a lump sum value (at \$300) of 2.0%.<sup>2</sup> In 1988, the Union would implement its wage schedule, resulting in increases between 2.0% and 13.7%, and paying lump sum bonuses equal to 3% of annual salary to 4 red-circled employees.

For the 1989 contract year, both parties propose to increase their pay schedules by 3%, although the Union would freeze the "start" and "after probation" rates at 1988 levels. The County would pay bonuses to 7 red-circled employees, in amount of \$220 on July 1, 1989 and \$220 on December 1, 1989. The contract year value of the bonuses is 0.93%, while the lump sum value of the \$440 total is 3.2%. three employees red-circled under the Union plan would receive lump sum payments equivalent to 3% of their annual wages.

The Union calculates the cost of its wage schedule as 8.55% over 1988 and 1989, with the County's proposal costing 5.6% over three years. The Union fails to cost its 1987 bonus when it characterizes the costs of its offer. Across the unit, the value of this bonus in the 1987 contract year is difficult to characterize, as it comes in varying amounts. From the figures provided, however, it appears to be just under two percent.

In comparison with the settlements received by other units internally, the Union's offer presents a higher cost over the three years, while the County offer is considerably lower. The Teamster units received pay increases of 10% on their rates, costing the County 9.5%. The Highway unit received 7.6% over the same three year period. The average for internal settlements was a cost of 8.67%, or 3% over the County cost and roughly two percent below the cost of the Union offer.

Neither offer is particularly reasonable in terms of cost when compared with internal settlements, although the Union offer is closer in cost to the Teamster contracts. External settlements suggest a wage cost of 3% per year in neighboring counties, or a three year average cost of 9%. Again, the Union offer more closely approximates the outlays of municipal employers in comparable units. While neither offer is reasonable on a cost basis, the Union's is the less unreasonable.

#### **D. Level of Wages**

The central argument of the County is that wage levels in this unit are unrealistically high when compared to wage levels in comparable units. Comparing the maximum wage in surrounding counties with County offer for 1988 and the Union's five year step for the same year<sup>3</sup>, the undersigned agrees that the wages in this unit are high. The 1988 average top for secretaries in surrounding counties is \$7.16 per hour, while the County offer sets the rate at \$7.19 and the Union proposes \$7.97. Income maintenance workers average a top of \$7.82 per hour, while the County would set them at \$8.53 and the Union at \$9.01. Site managers in surrounding counties receive an average of \$4.73 per hour, while the County offers \$5.74 and the Union proposes \$5.99.<sup>4</sup>

The overall wage levels in this unit reflect the unilateral decisions of the County over a period of years. To the extent that the statutory arbitration process is intended to yield results reflecting the likely outcome of voluntary bargaining, the undersigned is skeptical of an offer such as the County's, which reduces average wage rates, eliminates longevity, and establishes maximum rates in the final year of a three year agreement below those proposed in the County's 1987 unilateral pay plan.<sup>5</sup> While employees negotiating an initial collective bargaining agreement can be often expected to secure more modest gains in language and economic benefits than their counterparts in more well established units, it seems extremely unlikely that such employees would ever voluntarily agree to a proposal such as is put forward by the County here.

The County is understandably concerned with reducing the disparity between the wages it pays, and those paid by other municipalities. Given appropriate evidence of overall compensation levels, the County could likely justify a wage offer at a level less than would be reasonably acceptable in other units. The County's effort to accomplish a three year reduction in average wages during the term of this contract, however, requires more than merely a showing that wage rates are high relative to other units. The County proposal makes drastic changes in the status quo ante on wages, without sufficient support for the proposition that structure, classifications, and longevity are necessary to the end that it seeks.

An overall consideration of the issue of wages persuades the undersigned that the Union's proposal is more reasonable. While the wage levels established under the Union offer are unjustifiably high in comparison to other workers, the County's offer makes fundamental changes in the compensation structure that it unilaterally established prior to the introduction of the Union. The County's final offer represents overkill, in that it eliminates longevity, reduces the average wage rates, and establishes maximum rates below those set in its own compensation plan just three months before the Union was voted in as bargaining representative.

## **V. Conclusion and Award**

The final offer of the Union is more reasonable under the statutory criteria on the issues in dispute, and is hereby ordered incorporated into the 1987-1989 collective bargaining agreement, together with the stipulations reached in bargaining.

Signed and dated this 15th day of January, 1989 at Racine, Wisconsin:

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Daniel Nielsen, Arbitrator

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<sup>1</sup> The amount of increase in the final offers is pegged at three percent after initial establishment of the wage schedule. This is consistent with area patterns. The critical issues on wages relate to the establishment of the wage schedule themselves.

<sup>2</sup> The reduction reflects the staggered payment of the bonuses at mid-year and eleven months into the year. This somewhat overstates the reduction, obviously, but the use of these figures is merely illustrative, and a present value calculation of the bonuses in this case is not necessary to the resolution of the dispute.

<sup>3</sup> The five year rate is referred to in order to offset the fact that the employees in surrounding counties receive an average of 51¢ per hour in longevity pay in their tenth years, while the Union proposal awards longevity through a tenth year step on the schedule.

<sup>4</sup> Only four surrounding counties -- Oneida, Langlade, Price and Lincoln -- have comparable positions. Thus the weight of this comparison is somewhat reduced.

<sup>5</sup> Union Exhibit # 15 shows maximum rates in sixteen classifications. With only one or two exceptions, the maximums specified for each classification are higher than the maximums proposed in the County's 1989 wage offer.