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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

FINAL OFFER INTEREST ARBITRATION  
OPINION AND AWARD

In the Matter of Final Offer  
Interest Arbitration

between

OZAUKEE COUNTY

WERC Case 24 No. 40183  
INT/ARB - 4804  
Decision No. 25630-A

and

OFFICE AND PROFESSIONAL  
EMPLOYEES INTERNATIONAL  
UNION, LOCAL 35, AFL-CIO-CLC

Hearing Held

December 19, 1988  
Ozaukee County Courthouse  
Room 162  
Port Washington, WI

Appearances

For the County:

Roger E. Walsh, Esq.  
Lindner & Marsack, S.C.  
411 E. Wisconsin Ave., 10th Fl.  
Milwaukee, WI 53202

Arbitrator

Steven Briggs  
3612 N. Hackett Ave.  
Milwaukee, WI 53211

For the Union:

Harold Lehtinen, Esq.  
Labor Relations Consultant  
320 South Wisconsin  
Janesville, WI 53545

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BACKGROUND

The undersigned was notified of his selection as Arbitrator in the above interest dispute by a September 19, 1988, letter from the Wisconsin Employment Relations Commission. The dispute concerns certain provisions the Union wishes to include in the parties' 1988-1989 labor agreement covering all regular full-time and regular part-time employees of Ozaukee County (the Employer), including professional employees but excluding elected officials, supervisors, administrative, managerial, casual and confidential employees.

The initial labor agreement for the bargaining unit described above covered the 1986-1987 period. It was negotiated between the Employer and O.P.E.I.U. Local No. 9. On November 19, 1987, Local 9 was replaced by OPEIU Local 35, the Union involved in the instant case.

Beginning in August, 1988, the parties to this dispute engaged in negotiations over the terms of a successor contract. An interim agreement was reached and implemented, even though there were still a few items in dispute. The parties agreed that the Union would attempt to obtain those items through the interest arbitration process.

The arbitration hearing was conducted by the undersigned on December 19, 1988, during which time both parties were afforded full opportunity to present evidence and argument in support of their respective final offers. Timely Posthearing Briefs and Reply Briefs were filed by both parties, and the record was declared closed on March 14, 1989.

## THE PARTIES' FINAL OFFERS

### County Offer

The County proposes that the 1988-1989 contract should contain the provisions of the 1986-1987 Contract (the first collective bargaining agreement for employees involved in this dispute), and the changes voluntarily agreed upon by the parties. The County notes that such changes include an across-the-board wage increase, several individual and classification wage increases, the amount of health insurance premium payments to be made by the County, and a Fair Share Agreement. The County maintains that the 1988-1989 Contract should not contain any further modification.

### Union Offer

The Union asserts that the following additional changes to its 1988-1989 Contract with the County are justified:

#### Section 6.06 - Overtime

Change (a) to read: Upon prior approval of their Department Head, any time actually worked by such employees in excess of eight (8) hours per day or forty (40) hours per week (other than those who have elected under 6.02 to work a flex schedule) shall be compensated at one and one-half times their straight time pay for such hours. Hours paid for, but not actually worked, e.g., vacation, holiday, sick-pay, etc., shall be included as time worked in computing such forty (40) hours of actual work.

#### Section 13.03 - Holidays

Change to read: Full-time Dispatchers and Cook Matrons in the Sheriff's Department, in lieu of time off for the holidays listed in Section 13.01 shall receive time and one-half for all hours worked on the actual holiday in addition to one day's pay in the pay period in which the holiday occurs for each of the holidays listed in Section 13.01. Regular part-time employees who are normally scheduled to work at least fifty percent of a normal workweek as listed in Section 6.01 will receive time and one-half for all hours worked in addition to a prorata amount...

Section 27.02 (f) - Overtime Employees

Effective 7/1/88 add an extra step to pay grades 7 and above in an amount equal to the difference between the After 2 year rate and the After 3 year rate in each labor grade respectively

27.02 continued:

The following procedure will apply to pay grades 7 and above. Employees who have been at the 3 Year Rate for one or more years [other than part time employees who have not fulfilled the hours requirement under 27.02 (a)] and employees who are listed as overrates, but paid less than the new "After 4 Year" rate, shall move to the "After 4 Year" rate effective 7/1/88. Employees whose rate of pay exceeds the new After 4 year rate will maintain their overrate and receive increases as provided above.

Upgrades

In come Maintenance Worker to grade 7.

ANALYSIS

The Comparables Pool

The Union sets forth the following counties as appropriate comparables:

Kenosha  
Milwaukee  
Racine  
Sheboygan  
Washington  
Waukesha

The Union also believes that the only employees in those counties appropriate for comparison purposes here are union-represented employees doing work similar to that performed by Ozaukee County employees.

The County maintains that the following counties should be used as comparables:

Fond du Lac  
Sheboygan  
Washington  
Waukesha

Both parties agree that Sheboygan, Washington and Waukesha Counties are appropriate for comparison purposes.

The Union argues against the inclusion of Fond du Lac County for the following reasons: (1) it is not contiguous to Ozaukee County; (2) neither Fond du Lac County nor

its unions have considered it a part of the Milwaukee area labor market; (3) in one Fond du Lac County interest arbitration (Dec. No. 23704-A, Michelstetter), no mention was made of wage comparisons to Ozaukee County; and (4) Ozaukee County was not mentioned as a comparable in the Fond du Lac professional social worker interest arbitration (Dec. No. 23622-A, Imes). The Arbitrator was not persuaded by any of these arguments that Fond du Lac County should be excluded from the comparables pool.

First, there is nothing in the controlling Statute requiring that comparable communities be contiguous to the focal community. Fond du Lac County is very close to Ozaukee County geographically, with its southeast corner not more than five miles or so from Ozaukee's northwest corner. It is therefore entirely conceivable that the two are part of the same labor market, subject to very similar if not identical economic circumstances. Second, the undersigned agrees that Fond du Lac County should not be considered part of the "Milwaukee" labor market, nor for that matter should Ozaukee County, for reasons to be discussed in a forthcoming paragraph. Finally, the fact that Ozaukee County was not mentioned in two prior Fond du Lac County interest arbitration awards is not especially significant. As the County notes in its Reply Brief, no mention was made of Ozaukee County in two prior interest arbitration awards in each of Kenosha, Racine and Milwaukee Counties either. Anyone who understands the realities of interest arbitration in Wisconsin knows that both employers and unions attempt to select only those comparable communities which support adoption of their own final offers. Thus, the mere fact that Ozaukee County was not used for comparison purposes in community X or community Y does not necessarily justify the conclusion that it is not comparable to them.

The County argues against the inclusion of Milwaukee, Racine and Kenosha Counties in the comparables pool. It notes that Ozaukee County's total population (33,810) is less than half of the population of the single most populous municipality in each of Milwaukee, Racine and Kenosha Counties. It is true that Milwaukee and Ozaukee Counties are contiguous, but Milwaukee County is highly urbanized, complete with all of the amenities normally associated with such an entity (e.g., professional sports facilities, a zoo, a major museum, etc.). In stark contrast is Ozaukee County, with none of those facilities. Ozaukee County is predominantly a bedroom community, with its northern end consisting largely of farmland.

As for the comparability of Ozaukee to Racine and Kenosha Counties, similar reasoning applies. It has already been noted that both of them include municipalities with populations more than two times larger than all of Ozaukee County. Moreover, the closest point of Racine County is approximately thirty miles from Ozaukee County. Kenosha County is even farther.

Based upon the foregoing discussion, the undersigned has concluded that the following counties are appropriate for comparison purposes here:

Fond du Lac  
Sheboygan  
Washington  
Waukesha

Another issue related to comparability is whether it should be limited to represented employees. The Union argues for such a limitation, since the terms and conditions of employment for non-represented employees are established unilaterally by management. In contrast, the County asserts that the controlling Statute simply requires comparison with "other employees ...." it does not use the phrase "other unionized employees."

Wages and working conditions for non-represented employees are indeed unilaterally established by management, albeit with some input from employees. However, employers exercising such authority must do so within the general constraints of the relevant labor market in order to attract and retain an adequate workforce. For this reason the Arbitrator believes it would be inappropriate to ignore altogether the wages, hours and working conditions of non-represented employees in comparable counties.

Another consideration relates to a fundamental objective of the interest arbitration process: the approximation through an Award of what might have been the outcome of free collective bargaining. Clearly, negotiated settlements across the comparables group more closely reflect the result of free collective bargaining than do employment terms imposed by management fiat. The undersigned therefore attaches greater weight for comparison purposes to the employment terms of unionized employees than to those of non-represented individuals and work groups. Again, however, the latter conditions are still considered.

#### The Overtime Issue

The Union's overtime proposal would alter the status quo in two significant ways. First, it would provide 1.5 times the regular rate for time actually worked in excess of eight hours per day. The current agreement provides 1.5 times pay only for time actually worked in excess of forty hours per week. A related change proposed by the Union is to delete language providing that time actually worked in excess of the normal workweek but not in excess of forty hours per week will be paid for at straight-time rates.

The second area of change proposed by the Union provides that hours paid for but not actually worked (e.g., vacations, holidays, sick time, etc.) would be counted toward computing the forty hours for overtime purposes. Currently such hours are specifically excluded from consideration.

The Union notes that represented non-exempt employees in Washington and Waukesha Counties receive premium pay for work beyond eight hours per day, and that in Sheboygan County some nonprofessional employees in the Support Services Unit receive premium pay after seven and one-half hours in a day. The Union also argues that the internal comparables do not lend much support to the County's position.

The County finds several faults with the Union's overtime proposal. For example, it notes that unlike the current contract, the proposed language does not indicate the appropriate rate of pay for time worked in excess of the normal workweek (37 1/2 hours for most employees) but not in excess of forty hours in a week. Furthermore, the County argues, both the Union's premium pay demand for hours worked in excess of eight hours per day and its demand with regard to hours paid for but not worked exceed the overtime requirements of the Fair Labor Standards Act.

The County also argues that the Union's parenthetical addition of the phrase "other than those who have elected under 6.02 to work a flex schedule" in the overtime language would produce confusion in administration of the agreement. The current Section 6.02, the County notes, does not even mention a flexible work schedule.

The County asserts that the Union's final offer is inconsistent as well, since it would count paid time off for the purposes of computing weekly premium pay (i.e., in excess of 40 hours), but makes no mention of counting such time in the computation of daily premium pay. In addition, the County argues, there is no contractual support for counting paid time off toward premium pay qualification in Sheboygan and Waukesha Counties, and only mixed support for it in Fond du Lac and Washington Counties. The same is true for LaSata Nursing Home, an internal comparable.

On this same question the Union points to Washington County for external support. And in contrast to the County's assertion, the Union notes that AFSCME contracts in Waukesha County provide that "all time paid for shall be counted as hours worked" (Union Exhibit 24; Article 11.03). Finally, the Union argues, two of the internal comparables (the Sheriff's and Highway Departments) support its demand.

The foregoing review of the parties' arguments on the overtime question reveals mixed support for both of their positions. The undersigned is persuaded from careful study of the Union's proposed language, however, that adopting it could prove to be a disservice to both parties. It is indeed ambiguous and confusing, as noted in the previous review of related employer arguments. This fact outweighs the mild support for the Union's position found in comparable internal and external employment relationships.

Furthermore, since the Union's proposed overtime language is an attempt to change the status quo bilaterally negotiated in a previous labor agreement, the undersigned must be presented with compelling evidence of the need for such a change. The record before me contains no such evidence.

### Holidays

The Union proposes that the twelve employees classified as Cook Matrons and Dispatchers be paid the premium rate (15X) for work performed on a holiday, in addition to a day's holiday pay. They are currently paid at straight-time for such work, in addition to a day's holiday pay.

The Union notes that three Ozaukee County bargaining units (Highway, Law Enforcement and LaSata Nursing Home) already receive premium pay for holiday work, and that such pay is not uncommon in Sheboygan and Waukesha Counties. The Employer acknowledges mixed support for the Union's proposal among the external comparables. With regard to the internal comparables, the Employer points out that the time and one-half payment provision at the LaSata Nursing Home was granted during free collective bargaining in exchange for the deletion of County-provided meals and beverages.

The second aspect of the Union's final offer on the holiday pay issue concerns part-time Cook Matrons and Dispatchers. It provides that those normally scheduled to work at least fifty percent of a normal workweek per the terms of Section 6.01 will receive

time and one-half "for all hours worked in addition to a pro-rata amount ..." There are six part-time employees who would benefit from the adoption of such language.

The Employer argues that there is absolutely no support among either the internal or external comparables for such a proposal. Its language, the Employer asserts, would require payment of premium pay for all hours worked in the two-week pay period in which a holiday occurs. The Union believes its proposed language does not suggest that part-time Cook Matrons and Dispatchers are entitled to premium pay for all hours worked in the holiday pay period. Moreover, the Union argues that the County's fear is unfounded since it (the Union) freely admits in this record that the proposal was not meant to apply so broadly.

And again, the language proposed by the Union is not pellucidly clear. It specifies, for example, that full-time Dispatchers and Cook Matrons would receive premium pay for all hours worked "on the actual holiday" while for part-time employees in the same classifications the comparable operative language is simply "for all hours worked." The contrast between these two provisions might indeed lead to future interpretation problems, in spite of the Union's attempt in post-hearing correspondence to clarify its intent. As noted earlier, the Arbitrator is very reluctant to insert ambiguous language into a collective bargaining agreement.

#### Overrate Employees

The parties have already agreed to increase wage rates for 1988 and 1989 by 3.5% each year. In addition to that, the Union proposes the addition of a fifth step to the salary structure, attainable after four years' service, for employees in Salary Grades 7 through 11. Approximately one-third of the employees in those grades are currently red-circled at rates higher than the salary schedule provides.

The Union argues that adoption of its proposal would balance current wage rates with the salary schedule in almost all of the red-circle instances. Moreover, the Union notes, raising the salary schedule to meet the red-circle rates would allow the other two-thirds of those in grades 7-11 the opportunity to advance to rates equivalent to those currently being earned by the overrate employees.

There are two major questions raised by the Union's proposal. The first is rather clear-cut, relating to the market wage rates for similar jobs as reflected among the external comparables; the second concerns the present wage differential (the schedule rate vs. the red-circle rate) for the same pay grade, and the attendant problems such a differential might foster.

With regard to the external comparables, the County's position appears to be the more reasonable. For 1988, the year for which sufficient comparable wage figures are available, the current salary schedule is quite competitive. The following table of maximum 1988 wage rates confirms this conclusion:

<u>CLASSIFICATION</u>	<u>SCHEDULE RATE</u>	<u>U. OFFER</u>	<u>AVG. COMP.</u>
<u>Grade 7</u>			
Deputy Register in Probate	\$9.36	\$9.73 (3.9%)	\$9.12
Legal Secretary	\$9.36	\$9.73 (3.9%)	\$9.21
Secretary II	\$9.36	\$9.73 (3.9%)	\$9.20
Deputy County Treasurer	\$9.36	\$9.73 (3.9%)	\$9.28
Deputy Register of Deeds	\$9.36	\$9.73 (3.9%)	\$9.74
Dispatcher	\$9.36	\$9.73 (3.9%)	\$9.10*
<u>Grade 8</u>			
Child Support Investigator	\$11.20	\$11.95 (6.7%)	\$9.99
Social Worker I	\$11.20	\$11.95 (6.7%)	\$11.75**
Mechanic	\$11.20	\$11.95 (6.7%)	\$9.69
<u>Grade 9</u>			
Alcohol/Drug Abuse Counselor	\$12.35	\$12.68 (2.7%)	\$11.53
Technician/Conservationist	\$12.35	\$12.68 (2.7%)	\$11.26
Public Health Nurse	\$12.35	\$12.68 (2.7%)	\$12.56
<u>Grade 10</u>			
Programmer Analyst	\$13.68	\$14.41 (5.3%)	\$13.60
Social Worker II	\$13.68	\$14.41 (5.3%)	\$12.75***
Case Manager	\$13.68	\$14.41 (5.3%)	\$11.39
<u>Grade 11</u>			
Assistant District Attorney	\$14.89	\$15.96 (7.2%)	\$15.83
Clinical Social Worker	\$14.89	\$15.96 (7.2%)	\$14.11

\* - includes municipal wage rates within Ozaukee County

\*\* - pre 1/1/87 rate used for Fond du Lac Co., average rate used for Sheboygan Co.

\*\*\* - average rate used for Sheboygan Co.

( ) - percentage increase above current schedule

The foregoing table is even more supportive of the County's position when it is recognized that affected employees have already received a voluntary 3.5% wage increase. Moreover, while there is justification among the comparables for additional wages in some specific job classifications (e.g., Social Worker I, Public Health Nurse), there are no supportive comparable wage data for the wholesale pay grade increases sought by the Union.

The pay differential between on-schedule and overrate employees is also of some concern to the Union. It argues that improved employee morale would result from adoption of its offer because under the current structure, "on-schedule employees will



never be able to achieve the same wage levels as their red-circle coworkers," and that such a situation "can be a considerable source of irritation and annoyance." (Union Posthearing Brief, p. 22). However, it is important to recognize that the red-circle rates were agreed upon voluntarily during prior bargaining sessions, albeit with the predecessor union. Prior to the lock-step seniority-based wage schedule currently in effect, the County administered pay on the basis of merit. The elimination of merit as a basis for wage determination was an adamant demand of the predecessor union, so the County agreed to the current salary schedule system. That union, however, was also strongly opposed to wage reduction for any of the high-merit employees whose job performance had earned them the highest of the wage rates. Thus, the County agreed to red-circle those employees at rates beyond the schedule maxima for their respective pay grades. Now comes the present Union arguing that the Employer should raise everyone else's wage opportunity to the red-circle levels, because there are possible morale problems associated with having overrate employees. Given the history behind the wage schedule, it is understandable that the Employer would resist such wage increases. Its resistance is even more understandable given the comparability statistics reflected in the table. On balance, the Arbitrator is less than enchanted with the Union's wage proposal with regard to pay grades 7 - 11.

#### Income Maintenance Worker Reclassification

The Union's final offer would upgrade the Income Maintenance Worker position from pay grade 6 to pay grade 7. The County contends that there is no justification among the comparables for such an upgrade.

Of the four comparable counties, only two (Sheboygan and Washington) have settled for 1988. The 1988 rate for Income Maintenance Workers in Ozaukee County is between those settlements, both at the minimum and maximum rates. The Arbitrator notes that a new "Lead" classification was established in Washington County for 1988-1989 with significantly higher wage rates attached, but the record in this case does not provide sufficient information to determine whether incumbents in that position perform duties beyond those performed by Income Maintenance Workers in Ozaukee County. Overall, I am not convinced from the evidence at hand that there are compelling reasons to alter the status quo on this issue.

#### Summary

In view of the foregoing analysis, the evidence presented by both parties, and in full consideration of the criteria set forth in Section 111.70(4)(cm), Wisconsin Statutes, the Arbitrator has concluded that the final offer of the County is the more reasonable.

AWARD

The County's final offer, as quoted below, is hereby adopted.

The provisions of the 1986-1987 Contract are to be continued for a two (2) year term, except as modified by the attached "Tentative Agreement."

Signed by me at Milwaukee, Wisconsin, this 3rd day of May, 1989.

  
Steven Briggs