WISCONSIN EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between

OZAUKEE COUNTY HIGHWAY DEPARTMENT EMPLOYEES ASSOCIATION

and

OZAUKEE COUNTY (HIGHWAY DEPARTMENT)

Case 27
No. 41428
Dec. No. 26100-A
INT/ARB-5101

DECISION AND AWARD

Appearances: For the Union, Nola Hitchcock Cross, Esq., Milwaukee.

For the County, Roger E. Walsh, Esq., Milwaukee.

## BACKGROUND

On December 14, 1988, the Ozaukee County Highway Department Employees Association (referred to as the Union) filed a petition with the Wisconsin Employment Relations Commission (WERC) pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA) to resolve a collective bargaining impasse between the Union and Ozaukee County (Highway Department)(referred to as the County or Employer) concerning a successor to the parties' collective bargaining agreement which expired on December 31, 1988.

On July 26, 1989, the WERC found that an impasse existed within the meaning of Sec. 111.70(4)(cm)6. On August 10, 1989, after the parties notified the WERC that they had selected the undersigned, the WERC appointed her to serve as arbitrator to issue a final and binding award pursuant to Sec. 111.70(4)(cm)6. No citizens' petition was filed with the WERC.

By agreement with the parties, an arbitration hearing was held in Port Washington, Wisconsin, on October 19, 1989. At that time, a full opportunity was provided for the parties to present evidence and oral arguments. Both parties filed post-hearing briefs and reply briefs.

## ISSUES IN DISPUTE

There are two issues in dispute: wages and health insurance. Both parties' final offers contain identical language on grievance arbitration. The Union's final offer is attached as Annex A and the County's final offer is attached as Annex B. The agreed upon language relating to grievance arbitration is attached as Annex C.

## STATUTORY CRITERIA

Under Sec. 111.70(4)(cm)7, the arbitrator is required to give weight to the following factors:

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 the 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 the 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 pension, 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 the private employment."

## POSITIONS OF THE PARTIES

### The Union

The Union begins its arguments by noting that the Employer has made no claim of inability to pay or difficulty to pay. The Union then raises its most controversial argument: the Employer's final offer should be rejected because of litigation commenced after the arbitration hearing in this case by another bargaining unit challenging the Employer's unilateral actions on health insurance. For the Union, it is important that the arbitrator take notice "of this type of abuse which would be possible under the language proposed by the County."

Turning to more traditional arbitration issues, the Union makes several arguments to support its conclusions that the comparability standards support its final offers. First, the Union argues that internal comparisons should include a recent County decision to continue full health insurance payments for all unrepresented employees. The Union characterizes this as a penalty for unionism. Second, the Union believes that the County's external comparables are too restrictive. They should also include Walworth County, the cities of Mequon, Cedarburg and Port Washington, the town of Cedarburg and the village of Grafton. With this broader base of external comparisons, the Union concludes that this bargaining unit has been falling behind in relative status. Third, the Union believes that other compensation (such as the extent of clothing allowances, longevity pay, and dental insurance) also needs to be part of the comparisons, both internal and external. Fourth, the Union contends that since all bargaining unit members must be able to perform all functions, they must be compared only to other equally skilled employees in other units, not the mid-range used by the County.

As to the health insurance issue, the Union emphasizes that the County has the burden to justify any changes from the provision of full health insurance premiums pursuant to the expired contract. It also concludes that its own final offer is a serious attempt to address health cost issues because the recommendations of the joint Cost Containment Committee should be available in time for the next round of negotiations between the parties for a successor agreement to the one presently subject to this arbitration proceeding.

For all the above reasons, the Union concludes that its final offer should be selected.

### The Employer

The Employer has vigorously objected to the Union's inclusion of documents and arguments relating to litigation commenced by another unit against the Employer concerning the County's health insurance situation as soon as it became aware of this post-hearing submission by the Union. The County believes that such documents and arguments are irrelevant and prejudicial.

The County affirmatively supports its final offer by identifying four traditional comparables, the four nearby counties of Fond du Lac, Sheboygan, Washington, and Waukesha. It rejects Walworth County as being too distant and distinguishable; it also rejects the municipalities included by the Union as inappropriate based upon other county highway department interest arbitration cases. In addition, the County relies heavily upon internal comparables, particularly noting that voluntary agreements, particularly relating to employee health insurance contributions, should be given great weight. However, the County rejects the Union's inclusion of unrepresented employees in the comparisons appropriate for the health insurance issue since arbitrators have traditionally refused to take into account unrepresented employee wage increases. Fairness dictates that if such comparisons are not appropriate for one issue, wages, they are also inappropriate for another issue, health insurance.

Moreover, on the health insurance issue, the County argues against the merits of the Union's proposal which it believes is not a viable alternative. First, many of the cost containment ideas to be studied have already been incorporated into the County's existing plan. They have not proved to be very cost effective. Second, the Union's proposal was only introduced belatedly into the impasse procedure when the Union submitted its final offer. It has not, therefore, been subject to the negotiations process at all. Third, there is extensive authority to support the existence of a serious health insurance cost crises and the Union's proposal is not responsive to that established problem. Finally, the County points to its data establishing that in 1989, the overwhelming number of Wisconsin counties require some employee contribution, particularly for family coverage, from highway employees.

The County also rejects the Union's arguments that comparisons based on total compensation would favor the Union's wage offer because the County notes that this bargaining unit receives some benefits not found in collective bargaining agreements covering comparables.

Based on all the above, the Employer concludes that the Union's final offer is not reasonable while the County's final offer maintains the relative wage position of this bargaining unit and addresses in a balanced manner the health insurance crises facing the County.

## DISCUSSION

Although this bargaining unit is not a very large one (41 employees) and there are only two issues for a successor agreement which the parties have been unable to resolve voluntarily, a number of issues have been raised in this arbitration proceeding by both parties and they are not simple to resolve.

First to be resolved is the issue of the weight to be given documents and arguments submitted by both parties relating to post-hearing litigation commenced by another bargaining unit against the County concerning the County's actions taken in connection with health insurance coverage and premiums for members of that other bargaining unit. My January 29, 1990 memorandum (attached as Annex D) only determined that the disputed documents and references would be made part of the record and left until later a determination as to weight and relevancy. (See Issue One of Annex D.) In the context of the entire record, the undersigned now determines that this subsequent litigation should not play any part in this arbitration proceeding. Since the issue central to the litigation involves another bargaining unit, with a distinct bargaining history and collective bargaining agreement, and since there has been no opportunity to develop factual similarities and differences, the undersigned does not believe it is possible for her to assess at this stage in this proceeding the significance, if any, of this additional evidence and arguments. Accordingly, this collateral issue will be ignored by the undersigned in her consideration of the merits of the parties' positions in this proceeding.

Next, the undersigned must resolve a number of disagreements between the parties about appropriate comparables. As for the primary external comparables, she concludes that they should continue to be the four nearby counties. However, she believes that the Union's comparables of the municipalities within Ozaukee County also should be given significant weight. Walworth County, another Union comparable, should be given some, but lesser, weight. In addition, she concludes that another Union argument is meritorious. This argument is based upon the unrefuted fact that members of the bargaining unit are required to have skills to perform, when assigned, at a high skill level. Accordingly, comparisons should be made only with positions calling for these skills and not less demanding positions.

Applying the above to the wage issue, the undersigned finds it very difficult to assess which offer should be selected because it conforms more closely to statutory factors which must be considered. While both parties have presented some wage data, including total compensation information, the primary thrust of their arguments regarded the health insurance issue and not wages. Indeed, neither side submitted information about the costs of the parties' final offers on wages. The County's primary argument on wages concerns its need to maintain consistency among bargaining units and the Union's primary argument on wages is to improve its relative standing, particularly in relationship to the external comparisons with Ozaukee County municipalities. Since the wage issue presents such a close call and was not the parties' central issue, the undersigned believes that choosing one party's final offer on this issue should not determine the final outcome of this proceeding. Accordingly, she turns now to the health insurance issue as the key to this dispute without resolving the wage issue.

As the Union points out, the Employer has the burden in this proceeding to justify its proposed change in the payment of health insurance premiums. To sustain this burden, the County points to escalating health insurance costs at a national, state and local level. It also produced evidence that requiring employee contribution to health insurance premiums is an increasingly common pattern

for county highway (and other public) employees throughout Wisconsin and locally as well. Accordingly, it is not surprising that the Employer has proposed some form of employee contribution for health insurance premiums. However, despite the above evidence which might form the basis for a conclusion that the County has met its burden to justify its proposed change in Employer payments of health insurance premiums from the status quo pre-1990, there are several other facts which make the undersigned conclude that the County has not met its burden in this proceeding. First, the County has decided to continue its full payment of health insurance premiums for all its nonrepresented employees for 1990. The arbitrator believes that this fact is relevant in her determination of the issue of whether the County has met its burden. (This is a distinct issue from the issue of whether unrepresented employees are ever an appropriate comparable.) If the County is concerned about a genuine health insurance cost crises and believes that it is important to address this issue by means of required employee contributions of the type incorporated into its final offer, then its treatment of its unrepresented employees is inconsistent with its concern and remedy articulated in this proceeding.

In addition, while the "capped" amount of employee contribution under the County's final offer appears modest, the proposal may require an employee contribution in excess of the amounts required for some comparable employees (particularly for the first year of a plan requiring employee contributions under certain circumstances) and, more importantly, does not incorporate a system whereby employees and employer share, except in a very limited way (only if the employee maximum contributions have been reached), escalating health insurance costs. Thus, there is some basis for employee concern that the Employer's final offer does not provide adequate incentives for the Employer as well as for employees to hold down health care costs to the extent that they exceed the Employer's dollar commitments but do not exceed the "capped" employee contribution. Moreover, an argument may be made that the specific wording of the Employer's health insurance "capped" employee contribution is such that it may be difficult for the Union to argue that an "uncapping" of the employee contribution is a change from the status quo which would place a burden upon the Employer to justify such a change. (As this discussion itself demonstrates, an arbitration outcome may be determined by a finding on the question of burden.)

In finding that the Employer has not sustained its burden to demonstrate the need for the particular health insurance premium contribution plan incorporated into its final offer, the undersigned is aware of some of the problems presented by the Union's alternative which the Employer has noted. The Union's Cost Containment Committee will not produce immediate results for 1990 costs. Also, some of the cost containment methods to be examined have been already incorporated into the existing health insurance plan without apparent beneficial results. Nevertheless, since employee cooperation appears to be an essential ingredient of any effective plan to control health insurance costs, there is some hope that a truly cooperative Cost Containment Committee will produce real benefits for both the Employer and employees affected. While there is no guarantee that this will happen, working on a real problem of mutual concern to both Employer and Union has some potential for improving the relationship between the parties. This assessment, however, depends completely upon the parties and has not played any role in determining the outcome of this arbitration proceeding.

## AWARD

Based upon the statutory criteria contained in Sec. 111.70 (4)(cm)7, the evidence and arguments of the parties, and for the reasons discussed above, the arbitrator selects the final offer of the Union and directs that it, and the grievance arbitration proposal mutual agreed upon (Annex C) and all other items already agreed upon be incorporated into the parties' collective bargaining agreement for 1989 and 1990.

Madison, Wisconsin
April 21, 1990

June Miller Weisberger
Arbitrator

FOURTH FINAL OFFER
OZAUKEE COUNTY HIGHWAY DEPARTMENT EMPLOYEES

1. Article VI, Wages.

a. Commencing 1/1/89 the contractual compensation schedule shall be revised as follows:

| | PER HOUR |
|---|---|
| 1. Beginning hourly rate for new employees: | $ 9.55 |
| 2. Hourly rate after one (1) year of service: | $10.52 |
| 3. Employees with two (2) or more years of service: | $11.54 |
| 4. Foremen wages shall be: | $11.84 |

b. Commencing 1/1/90 the contractual compensation schedule shall be revised as follows:

| | PER HOUR |
|---|---|
| 1. Beginning hourly rate for new employees: | $ 9.97 |
| 2. Hourly rate after one (1) year of service: | $10.99 |
| 3. Employees with two (2) or more years of service: | $12.05 |
| 4. Foremen wages shall be: | $12.35 |

2. Article IV. Grievance Procedure shall be revised to include arbitration as per the attached language (same language as in county's offer).

3. Article VIII. Insurance and Retirement. The parties shall establish a Cost Containment Committee for the purposes of exploring measures which will contain the cost of providing health insurance and HMO coverage to the employees. Each party shall select two representatives to sit on the committee. The committee shall meet every other month and shall be authorized to obtain information from providers, to survey employees, and to gather comparative information from other public and private employers and unions. The committee shall specifically look into, but not be limited to, possibilities for second opinions, prior approvals, and higher deductibles and exclusions from coverage.

June, 1989
NJHC/ld

Annex A

OF OZAUKEE COUNTY TO
THE OZAUKEE COUNTY HIGHWAY EMPLOYEES' ASSOCIATION



JUNE 30, 1989

1. Article VI - Wages and Hours:

a) Commencing 1/1/89, the contractual compensation schedule shall be revised as follows:

| | PER HOUR |
|---|---|
| 1. Beginning hourly rate for new employees: | $ 9.49 |
| 2. Hourly rate after one (1) year of service: | 10.45 |
| 3. Employees with two (2) or more years of service: | 11.46 |
| 4. Foremen wages shall be: | 11.76 |

b) Commencing 1/1/90, the contractual compensation schedule shall be revised as follows:

| | PER HOUR |
|---|---|
| 1. Beginning hourly rate for new employees: | $ 9.87 |
| 2. Hourly rate after one (1) year of service: | 10.87 |
| 3. Employees with two (2) or more years of service: | 11.92 |
| 4. Foremen wages shall be: | 12.22 |

2. Article VIII - Insurance and Retirement. Revise the first paragraph to read:

"The County will furnish group health insurance, under the County's standard health insurance plan or under any HMO plan offered by the County, single plan or family plan, as applicable, for permanent full-time employees. Coverage is to be effective on the first day of the month following completion of two (2) full months of employment. Participation in health insurance or an HMO offered by the County shall be at the employee's option. Election of coverage must be made for the ensuing year during the annual open enrollment period.

During 1989, the County will pay the full cost of group health insurance under any of the above health insurance plans offered by the County. Effective January 1, 1990, the County shall pay up to one hundred six dollars and forty-one cents ($106.41) per month toward the cost of a single plan, and up to two hundred eighty dollars and fifty-one cents ($280.51) per month toward the cost of a family plan of group health insurance under any of the above group health insurance plans offered by the County. In the event on and after January 1, 1990, any of the health insurance premiums for any plan offered by the County exceed the amounts listed above, the employee will be required to pay the difference, through payroll deduction, up to a maximum in 1990 of eight dollars and fifty cents ($8.50) per month for single coverage, and seventeen dollars ($17.00) per month for family coverage, and the County will pay the balance of such 1990 premium."

Annex B

ARTICLE IV
Grievance and Arbitration Procedure

Sec. 1. Definition. Only matters involving the interpretation, application or enforcement of the terms of this agreement shall constitute a grievance.

Sec. 2. Grievance Procedure Steps.

Step 1 The employee alone or with his/her Association representative shall explain the grievance verbally to the Highway Commissioner. Grievances must be initiated within fifteen working days of the event that caused the grievance, or the date either the employee or the Association knew or should have known of the event that caused the grievance. The Highway Commissioner shall within three (3) working days verbally inform the employee and/or the Association representative of the decision on the grievance presented.

Step 2 If the grievance is not settled at Step 1, the Association representative may reduce the grievance to writing and submit it to the Highway Commissioner within ten (10) working days after the Commissioner's verbal response. The Highway Commissioner shall, within ten (10) working days after receipt of the grievance, meet and discuss the grievance with the aggrieved employee and/or Association representative and shall respond in writing to the Association representative within ten (10) working days after receipt of the grievance.

Step 3 If the grievance is not satisfactorily resolved by the Commissioner, the Association representative shall have the right to appeal the grievance to the Highway Committee within seven (7) working days after receipt of the Step 2 answer. The Highway Committee shall meet to discuss the grievance with the aggrieved employee and the Association representative, and shall respond in writing within ten (10) working days after such meeting to the Association representative.

Sec. 3. Arbitration

a. If the grievance is not settled at Step 3, the Association shall have the right to appeal the grievance to arbitration within twenty (20) working days after receipt of the Step 3 answer by written notice to the Chair of the Highway Committee.

b. At the time of giving notice to arbitrate, the Association shall also request the Wisconsin Employment Relations Commission to submit a list of seven (7) arbitrators to the Employer and the Association. The Employer and the Association shall alternatively strike names from the list until one (1) remains, and the name remaining will be the arbitrator designated to hear the dispute.

c. Arbitration proceedings shall be implemented in a manner prescribed by the arbitrator.

d. The arbitrator shall render a written decision which shall be final and binding on both parties. The arbitrator shall not add to, subtract from, nor modify the provisions of this agreement.

e. The fees and expenses charged by the arbitrator shall be borne by the Employer and the Association equally. Either the Employer or the Association may request a transcript of the arbitration proceeding. The cost of same shall be borne entirely by the party ordering same, but if both the Employer and the Association desire a transcript, the cost shall be shared equally.

f. The scheduling of witnesses shall be done in such a way as to avoid excessive disruption of work, whenever possible. The County shall not be required to pay wages for more than one (1) Association representative to attend meetings or hearings.

Sec. 4. Time Limitations
"Working day" shall not include Saturday, Sunday or holidays. Any time limit provided for in this article may be extended by written agreement of the parties.

Annex C

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January 29, 1990

Memo to: Attorney Roger E. Walsh
Attorney Nola Hitchcock Cross

From: June Weisberger, Arbitrator

Re: Ozaukee County Highway Department INT/ARB-5101

By letter dated January 2, 1990, Attorney Walsh raised objections to the inclusion of a list of documents attached to Attorney Cross' initial brief as well as to all references to these documents contained in her brief. He based his objections on his belief that such submissions and references violated the deadline of December 4, 1989 set by the parties for the exchange of new data and delayed exhibits.

Attorney Cross responded to these objections in her Reply Brief, Section II, as well as by letter dated January 23, 1990. The undersigned sent a copy of Section II of the Association's Reply Brief to Attorney Walsh and notified both parties that she planned to rule on this issue on January 29, 1990. No communication has been received from either party and, therefore, there is no need to delay this ruling.

The parties' correspondence raises two issues. Issue One is whether the Association's documents and references objected to by the County are submitted in violation of the December 4th deadline agreed to by the parties. Issue Two is whether Attorney Walsh's request for a ruling on Issue One prior to his submission of the County's Reply Brief precludes him from submitting a Reply Brief after the date originally set.

Issue One: To resolve this issue, I have consulted my notes made at the October 19, 1989 arbitration hearing. Unfortunately, they do not shed any light on whether the December 4th deadline covered comparables only, as argued by Attorney Cross, or covered all additional submissions, as argued by Attorney Walsh. In the absence of any direct evidence on this point and in view of the parties' vigorous factual dispute on the scope of the deadline agreement, I determine that the disputed documents and references should be part of the record. In reaching this conclusion, I have opted for the liberal admission of evidence in an administrative-type hearing not governed by the formal rules of evidence. Since I am unable to determine that the parties did agree to a broad December 4th deadline, I believe that it is better policy to accept the disputed materials at this stage in the proceeding.

Annex D

In making this ruling, I wish to make it clear to the parties that I have not yet made any decision on whether I will give any weight to these documents and references. I believe that such a weight or relevancy ruling would be premature now. In addition, I wish to note that if I subsequently determine that the documents are entitled to little or no weight, I do not believe that their inclusion at this stage of the proceeding will be prejudicial to my impartial consideration of the parties' other evidence and arguments. Accordingly, it should be clear that I have only ruled on the scope of a disputed oral argument concerning the December 4th deadline and, further, that I do not believe that my ruling will prejudice the interests of either party in my ultimate decision on the merits.

Issue Two: Although Attorney Cross argues that Attorney Walsh should be precluded from submitting a Reply Brief because he did not submit such a brief within the time frame originally agreed upon, I believe that such a procedural result would not be proper or fair. Accordingly, I now set Monday, February 5, 1990, as the latest date for the County's Reply Brief to be mailed to me. As soon as I receive that Reply Brief, I will exchange the parties' Reply Briefs, as agreed upon already.