

RECEIVED
DEC 26 1990

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In The Matter of an Interest Arbitration	:
between	:
	:
BROWN COUNTY LIBRARY PROFESSIONAL	:
UNION LOCAL 1901-B, AFSCME, AFL-CIO	:
and	:
	:
BROWN COUNTY (PUBLIC LIBRARY)	:

Appearances:

Kenneth J. Bukowski, Corporation Counsel, Brown County, Wisconsin and Gerald E. Lang, Director of Personnel, Brown County appearing on behalf of Brown County.

James W. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO appearing on behalf of Brown County Library Professional Union, Local 1901-B, AFSCME, AFL-CIO.

Arbitration Award

On November 7, 1989 the Wisconsin Employment Relations Commission, pursuant to 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act appointed the undersigned as Arbitrator in the matter of a dispute existing between the Brown County Library Professional Union, Local 1901-B, AFSCME, AFL-CIO, hereafter referred to as the Union, and Brown County, (Public Library), hereafter referred to as the County. On December 19, 1989 a hearing was held in Green Bay, Wisconsin at which time both parties were present and afforded full opportunity to give evidence and argument. No transcript of the hearing was made. Post hearing briefs were received by the arbitrator on January 15, 1990.

Background

The County and the Union have been parties to a collective agreement the terms of which expired on December 31, 1988. In November, 1988 the parties exchanged initial proposals on matters to be included in a new collective bargaining agreement. Thereafter, the parties met on seven occasions and failing to reach an accord, the Union filed a petition on May 15, 1989 with the Wisconsin Employment Relations Commission to initiate Arbitration. After duly investigating the dispute, the WERC certified on October 23, 1989 that the parties were deadlocked and that an impasse existed.

Final Offers of the Parties

County's Final Offer

Article 4. WAGES

1989 - 3% across the board increase

1990 - 3.25% across the board increase

Union's Final Offer

1. Article 4 WAGES

January 1, 1989: 3 percent across the board increase.

July 1, 1989: Additional 2 percent across the board increase.

January 1, 1990: 3.25 percent across the board increase.

July 1, 1990: Additional 2 percent across the board increase.

2. Stipulated items to be included in the Labor Agreement.

3. Change all dates to reflect a two year Labor Agreement beginning January 1, 1989, and including December 31, 1990.

Statutory Criteria

As set forth in Wis. Stats. 111.70(4)(cm)7, the parties and the Arbitrator are to consider the following criteria:

- A. The lawful authority of the municipal employer.
- B. Stipulations of the parties.
- C. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- D. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
- E. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
- F. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
- G. The average consumer prices for goods and services, commonly known as the cost-of-living.
- H. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- I. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- J. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of

employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties in the public service or in private employment.

Positions of the Parties

The County's Position

First, citing Arbitrator Robert J. Mueller's earlier interest decision on this bargaining unit (Dec. No. 30702, 8/31/1983) the County rejects any external comparisons other than those of the library systems of "closely contiguous employers possessing relatively similar size: that is, Oshkosh, Appleton and Sheboygan." In choosing this comparison, the County cautions the arbitrator to keep in mind that the workweek of Brown County librarians is shorter than that of Oshkosh and that the Librarian II positions in Appleton and Oshkosh are more similar to Brown County Library department heads.

The County also rejects the Union's use of top level wages in external comparisons. Rather, says the Employer, it is more valid to use the one year pay rate since it takes 15 years for librarians to reach the top wage level in Sheboygan and no librarians in Appleton are currently at the maximum rate.

With regard to internal comparisons, the County contends that all other settlements for Brown County, with two exceptions, are in the range of 3% for 1989 and 3.25% for 1990. The two exceptions, Registered Nurses and Library Pages, are explainable by the extreme shortage of the former and low base wage of the latter group.

The Union's Position

The Union makes the following arguments. First, with regard to the external criteria, the Union argues that the Brown County Library system is unique. Since it is the largest county wide system in the state of Wisconsin "unique and unorthodox comparisons" are necessary. Thus circumstances require comparisons with city library systems but which generally serve smaller populations. The Union's comparison group includes the library systems of Madison, Oshkosh, Appleton, Eau Claire, Racine, Milwaukee and in addition, the Green Bay Board of Education.

These external comparisons, in the Union's view, support the point that, based on market value, there is a demonstrable need for catch up pay. By the Union's calculations, excluding the Green Bay School District, in 1989 the average wage for Librarian I was \$13.73 for its comparables. The County proposes \$11.72 and the Union \$11.96 for the same year. When the local school district is added, the disparity is even greater. Thus, concludes the Union, the Brown County librarians are not being paid their market value and a catch up is in order.

The Union also challenges the County's use of internal settlements. For example, the Union points out that half the County contracts remain unsettled for 1989/90 and those which have settled provide wage increases ranging from 2.94% to 8%. Thus, concludes the Union, there is no consistent pattern. Moreover, asserts the Union, two settlements which are

considerably higher than what the Employer has offered herein, Registered Nurses and Pages, are examples of the County paying market wages.

In support of its position that the external comparisons should predominate the Union quotes from an extensive and impressive list of arbitrator decisions. In summarizing what it sees as an arbitral consensus the Union concludes,

" . . . it is obvious that when it comes to special circumstances or market value, the internal settlements are not given any significant weight and the arbitrators relied on and(sic) have given great weight to external comparables."

Discussion

The parties are in dispute over a single issue for the successor agreement to their 1987-88 contract. The Employer proposes to increase the wage level by 3.0% for 1989 and 3.25% for 1990 while the Union seeks split increases of 3.0% and 2% for 1989 and 3.25% and 2.0% for 1990. In order to resolve the dispute the undersigned will consider the pertinent statutory criteria under Section 111.70, Wis. Stats.

External Comparisons

Since the parties are at odds over the appropriate external comparisons to use this issue must be resolved before the dispute can be considered on its merits. First, a review of the parties' exhibits underscores the Union's point that the circumstances of the Brown County Librarians makes the task of constructing a valid set of external comparables problematical at best. However, the undersigned is not persuaded that this puzzle can be solved through a benchmark group that includes Madison and

Milwaukee. These cities, and by inference their library systems, are too dissimilar from Green Bay and Brown County by size, population served and location to be logically included within a comparison set for Brown County.

One would also have to exclude the Green Bay School District librarians. Although these librarians would fall within the same geographical area - and potentially within the same labor market - the considerations of the school district wage structure to which they are tied and the industry within which they work would tend, for comparison purposes, to place the school librarians in a different wage contour. There is no evidence in the instant record to support the assumption that librarians move between positions at the school district and the County or that the wage systems and changes have been used by the two bargaining units as reference points for negotiating purposes. This conclusion applies equally to Madison and Milwaukee.

The Union also offers Racine and Eau Claire as part of its comparables set. On one or another characteristic, e.g. hours worked, the requirement of a master's degree or geographical proximity these systems fall short. In the case of Eau Claire, however, the undersigned's research suggests that in related arbitration awards involving nonprofessional library employees in Brown County (cf. Gundermann Dec. No. 30670, 1983 and Malamud Dec. No. 32773, 1984) this city has been considered.

The most pertinent arbitration award, however, is that of Arbitrator Robert Mueller who, when faced with an earlier dispute

involving the instant bargaining unit, resolved the issue by choosing the comparables which were "the most closely contiguous libraries and the ones for whom both parties have supplied comparative data." This rule led Arbitrator Mueller to select Oshkosh, Appleton and Sheboygan as his external comparables.

The County has urged the Mueller set on the undersigned and the Union does not reject these three referents. The latter would enlarge the set as indicated above, a point which is rejected here. The Mueller criteria provide a logical and consistent basis by which to proceed. Therefore, since the parties have both supplied data on only Oshkosh and Appleton these two library systems will constitute the primary external comparables for this dispute. If it becomes necessary, a secondary set consisting of Eau Claire and Sheboygan will also be employed.

As we apply the external comparables we see a mixed set of results. On the one hand, the Employer's Exhibit 13 seems to indicate that no catch up is required. Thus, for 1989 the starting rate for Librarian I in Brown County would be lower than only Appleton, whereas at the six month and one year employment points Brown County would exceed significantly the other comparables. In the case of Appleton the one year rate would be \$11.24, Oshkosh would be \$10.62 and Brown County at \$11.71.

The County also argues that whichever comparisons are used it's rate of turnover of professional librarians is low and when vacancies do occur it has no problem recruiting replacements.

On the other hand, the Union's evidence, drawn from its Exhibit 4-1, indicates that if only the top wage rate is considered Brown County librarians would suffer a large comparative wage gap even if the Union's offer were awarded. Thus, for example, considering only Librarian I the Union's final offer for 1989 would top their wage out at \$11.96 in contrast to Appleton (\$15.22) and Cshkosh (\$12.30). Apparently after a slower start librarians in the comparable systems overtake those in Brown County. This finding would seem to favor the Union's offer.

Each parties' argument and evidence provide only modest support for their respective positions on the external comparables. Therefore, the undersigned concludes that the evidence is too mixed, too meager and insufficient in its overlap to draw any definitive conclusions. As a consequence, the dispute must turn on other statutory criteria.

Internal Comparables

The Union has contended that many of the County's contracts remain unsettled for 1989 and 1990 and those that have contracts show no consistent patterns. A review of County Exhibit #9 shows 17 total bargaining units of which 10 (about 60 %) have settled. As the following table indicates, eight of the ten have settled on virtually identical wage terms. The "out of line" settlements involve the units of the Registered Nurses and the Library Pages. The County argues these two settlements represent special circumstances and the Union does not dispute this. Thus, for

example, a severe nursing shortage has required a significant upward wage adjustment for RNs while, for Library Pages, a very low base wage is said to be the culprit.

BROWN COUNTY BARGAINING UNITS SETTLED

<u>Unit</u>	<u>1989 Wage Increase</u>	<u>1990 Wage Increase</u>
Airport	2.96%	3.25%
Electricians	2.94%	3.23%
Highway	2.97%	3.23%
Mental Health Center	3.00%	3.25%
Registered Nurses	8.00%	8.06%
Mental Health Profs	3.00%	3.25%
Social Service Para	3.00%	3.25%
Shelter Care Workers	3.00%	3.25%
Neville Public Museum	3.00%	3.25%
Library Pages	3.66%	3.53%
Average*	3.06%	3.27%
Library Professionals		
County Offer	3.00%	3.25%
Union Offer**	4.03%	4.30%

*Excluding RN unit.

**Annualized

Source: County Exhibit #9

Contrary to the Union's contention the settlement pattern is quite clear. And, also evident from the table is that the County's offer is closer to the pattern and the average than the Union's offer. With an annualized average wage increase of 4.03% for 1989 and 4.30% for 1990 the Union's final offer is well above the averages of 3.06% and 3.25% for the settled contracts. This is true even with the unit of Library Pages included. On the criterion of the internal comparables, therefore, the County's final offer is more reasonable.

Summary

The parties have argued only from the standpoint of the external and internal comparables, choosing not to address the remaining statutory criteria. Accordingly, the arbitrator also has not gone beyond these specific two criteria.

The Union made much of the need for a catch up wage increase based on market value. However, the record contains no definitive proof by which this allegation can be sustained. As discussed above, the evidence is conflicting, incomplete and, in part, supports either parties' position.

On the other hand, the internal comparisons present a relatively conclusive picture, supporting the County's position. Inescapably, then, the arbitrator must find for the County.

In light of the above discussion and after careful consideration of the statutory criteria enumerated in Section 111.70 (4)(cm)7 Wis. Stat. the undersigned concludes that the County's final offer is to be preferred and on the basis of such finding renders the following:

AWARD

The final offer of the County together with prior stipulations shall be incorporated into the Collective Bargaining Agreement for the period beginning January 1, 1989 and extending through December 31, 1990.

Dated at Madison, Wisconsin this 15th day of March of 1990.


Richard Ulric Miller, Arbitrator