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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of Final and Binding Arbitration Between WASHINGTON COUNTY HIGHWAY DEPARTMENT and TEAMSTERS "GENERAL" LOCAL UNION NO. 200 WERC Case 83 No. 43097 INT/ARB-5444

AWARD

Decision No. 26252-A

I. HEARING. A hearing in the above entitled matter was held on March 9, 1990, beginning at 10 a.m. at the Washington County Courthouse, West Bend, Wisconsin. Parties were accorded full opportunity to give testimony, present evidence, and make argument. Briefs were exchanged through the arbitrator on April 12, 1990, and April 24, 1990.

II. APPEARANCES.

PREVIANT, GOLDBERG, UELMEN, GRATZ, MILLER & BRUEGGEMAN, S.C., by MARIANNE GOLDSTEIN ROBBINS, Attorney, appeared for the Union.

LINDNER & MARSACK, S.C., originally and then DAVIS & KUEHLTHAU, S.C., by ROGER E. WALSH, Attorney, appeared for the County.

III. NATURE OF PROCEEDINGS. This is a proceeding in final and binding final offer arbitration between Teamsters "General" Local Union 200 and Washington County. The Union represents all full-time highway department employees, except office and professional employees, guards, craftsmen, supervisors, temporary summer employees and snow plow pool employees. An agreement between the Union and the County expired June 30, 1989. On November 6, 1989, the County and the Union requested the Wisconsin Employment Relations Commission to initiate arbitration pursuant to Section 111.70 (4) (cm) 6 of the Municipal Employment Relations Act. A commission staff member, Amadeo Greco, upon investigation, found that the parties were deadlocked in negotiations. The commission concluded that the parties had substantially complied with the procedures of the Act, certified that the conditions precedent to the initiation of arbitration had been met and ordered final and binding arbitration on November 30, 1989. The parties having selected Frank P. Zeidler, Milwaukee, Wisconsin, as arbitrator, the commission thereupon appointed him on January 2, 1990.

IV. THE FINAL OFFERS.

A. The Union Offer

"Final offer to be submitted to Arbitration for employees of the Washington County Highway Department who are members of Teamsters "General" Local Union No. 200

"This offer is modified by the agreed to items dated October 25, 1989, and is also modified by the Interim Agreement on Article 14 - Health Insurance, dated October 25, 1989.

"ARTICLE VI

HOURS OF WORK

"Section 6.01 Normal Work Schedule. Add: Work performed outside of the normal work schedule of 7:00 a.m. to 3:30 p.m., shall be considered overtime and shall be paid for at the rate of time and one-half (1½).

"Section 6.05 Premium Pay. Delete.

"ARTICLE VIII

CLASSIFICATION AND COMPENSATION

"Section 8.02 Rates. Effective July 1, 1989, increase all classifications four percent (4%).

Effective July 1, 1990, increase all classifications four percent (4%)."

B. The County Offer.

"The provisions of the 1987-1989 contract are to be continued for a two (2) year term except as modified by the agreed upon items, dated October 25, 1989, by the Interim Agreement - Health Insurance, dated October 25, 1989, and by the following:

- "1. ARTICLE VI - HOURS OF WORK - In Section 6.05 add the following after '\$3.50 per hour': '\$4.00 per hour effective the day after the County Board ratifies the 1989-91 contract, or the date of the Arbitration Award, whichever occurs first, and \$4.25 per hour effective July 1, 1990.'
- "2. ARTICLE VIII - CLASSIFICATION AND COMPENSATION - Increase all wages rates in Section 8.02 by 3.5% effective July 1, 1989, and by 3.5% effective July 1, 1990."

V. **FACTORS TO BE WEIGHED.** Section 111.70 (4) (cm) 7 in final and binding final offer arbitration provides as follows:

"Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall 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. Comparisons of wages, hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of other employes performing similar services.

e. Comparison of the wages, hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employes 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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.

VI. LAWFUL AUTHORITY. There is no issue here of the lawful authority of the County to meet the terms of either offer.

VII. STIPULATIONS. The parties have stipulated to all other matters between them. Among other things the parties have stipulated to a duration of the successor agreement to be from July 1, 1989, to June 30, 1991. Also among the stipulated items, the parties agreed to a 4 week vacation period after the 15th year of employment and a 5 week vacation after 25 years. Sick leave accumulation was changed from 640 to 720 hours.

An interim agreement to be included in the old contract and hence in the new was reached on Health Insurance on October 25, 1989. A cost containment feature known as the "Advantage Program" was adopted while the County agreed to increase its contribution toward single and family plan benefits to higher caps.

The arbitrator regards the stipulated items generally as balancing the interests of the parties with gains and concessions by both parties. Their effect was argued in the briefs.

VIII. COMPARABLE DISTRICTS. Both the Union and the County include in their list of comparable districts those counties which are adjacent to Washington County, with the exception of Milwaukee County which is adjacent to Washington County at a theoretically single point. The adjacent counties are Sheboygan, Ozaukee, Waukesha, Dodge, and Fond du Lac. The Union, however, includes Milwaukee County for wage purposes and the County includes it for cost of living purposes. The County objects to this inclusion of Milwaukee County as a primary comparable on the basis of historical use of comparables in previous arbitration cases.

An argument can be made that on the basis of proximity Milwaukee County nevertheless has an influence of some type on wage rates in Washington County. However the arbitrator is of the opinion that at the present time the value of Milwaukee County as a comparable county is secondary only and the other adjacent counties are most useful for primary consideration.

The Union considers Ozaukee County as the most similar to Washington County among the five primary comparables.

IX. WAGE COMPARISONS AMONG COMPARABLE COUNTIES. The County supplied a series of exhibits showing top step, year end wage rates for 1988, 1989 and 1990 for certain classifications. The following table is an abstraction from County Exhibits 9a, 9b, 10a, 10b, 11a, 11b, 12a, 12b:

Table I

WASHINGTON COUNTY YEAR END RATES FOR SELECTED CLASSIFICATIONS,
1988 TO 1990 INCLUSIVE

A. 1988	Classification	County		Union	
		\$	Rank	\$	Rank
	Patrolman	11.20	1	11.20	1
	Equip. Oper.	11.20	1	11.20	1
	Mechanic	11.52	1	11.52	1
	Foreman	11.52	1	11.52	1
B. 1989	Patrolman	11.59	1	11.65	1
	Equip. Oper.	11.59	1	11.65	1
	Mechanic	11.92	1	11.98	1
	Foreman	11.92	1	11.98	1
C. 1990 ⁽¹⁾	If County offer prevails in Ozaukee				
	Patrolman	12.00	1	12.12	1
	Equip. Oper.	12.00	1	12.12	1
	Mechanic	12.34	1	12.46	1
	Foreman	12.34	1	12.46	1
D. 1990	If Union offer prevails in Ozaukee				
	Patrolman	12.00	1	12.12	1
	Equip. Oper.	12.00	2	12.12	1
	Mechanic	12.34	1	12.46	1
	Foreman	12.34	2	12.46	1

(1) Dodge and Fond du Lac settlements. Ozaukee offers.

Also from these same exhibits this table can be derived in conjunction with Union Exhibit 5.

Table II

PERCENTAGE INCREASES IN WAGES, 1989-1990
HIGHWAY PATROLMAN

A. 1989	Average	Year End ⁽¹⁾	B. 1990	Average	Year End
Dodge		6.00		4.1	5.1 ⁽²⁾
Fond du Lac	2.75	3.5		2.75	3.5
Ozaukee					
County		3.25			4.0
Union		4.0			4.2
Sheboygan	3.55	3.8			
Waukesha		3.0		N.S. Union offer: 4%	
Washington				N.S.	
County	1.75	3.5			3.5
Union	2.00	4.0			4.0

(1) "Lift" where applicable.

(2) County Ex. 9a states this figure at 5%

The following table also is illuminating. It is derived from County Exhibits 9 to 12.

Table III

RANK OF WASHINGTON COUNTY IN PERCENTAGE INCREASES,
1989 AND 1990, AMONG 5 COMPARABLE COUNTIES

A. County Offer	Patrolman	Equip. Oper.	Mechanic	Foreman
1989				
If Ozaukee				
Union offer	4	3	4	3
If Ozaukee				
County offer	3	2	3	2
1990 - Dodge and Fond du Lac settlements. Ozaukee offers.				
If Ozaukee				
Union offer	3	3	4	3
If Ozaukee				
County offer	3	3	4	3
B. Union Offer				
1989				
If Ozaukee				
Union offer	1	1	1	1
If Ozaukee				
County offer	1	1	1	1
1990				
If Ozaukee				
Union offer	3	3	3	3
If Ozaukee				
County offer	2	2	2	2

Union Exhibit 21 reported these data on rates in counties other than the primary comparables.

Table IV

TOP RATES OF PATROLMEN IN COUNTIES OF SECONDARY COMPARISON

<u>County</u>	<u>Year</u>	<u>Rate</u>	<u>% Inc.</u>
Milwaukee	1990	15.05	4
Kenosha	1990	14.28	3
Racine	1990	12.94	3.2
Dane	1990	N.S.	
	1989	11.10	3
Brown	1990	11.62	

The off-phase relationship of contract duration between Washington County and Ozaukee County is illustrated in this table which is placed here because a Union position is based on this information.

Table V

**AVERAGE YEARLY RATES UNDER UNION AND COUNTY OFFERS
IN WASHINGTON AND OZAUKEE COUNTIES FOR 1989 AND 1990**

<u>County</u>	<u>1/1/89</u>	<u>7/1/89</u>	<u>Aver.</u>	<u>1/1/90</u>	<u>7/1/90</u>	<u>Aver.</u>
Washington						
County offer	11.20	11.59	11.39	11.59	12.00	11.79
Union offer	11.20	11.65	11.42	11.65	12.12	11.88
Ozaukee						
County offer	11.46	11.46	11.46	11.92	11.92	11.92
Union offer	11.54	11.54	11.54	12.05	12.05	12.05
Dodge	9.85	9.85	9.85	9.97	10.17 ⁽¹⁾	10.03
Fond du Lac	10.11	10.26	10.19	10.46	10.61	10.53
Sheboygan	10.92	10.97	10.95			
Waukesha	11.23	11.23	11.23			

From the above table it can be seen that when average annual income of persons at the Patrolmen level is considered, this modifies the interpretation of the leading rank of Washington County in Table I Sections B and C, relating to Patrolmen. In average basic wage take-home payment for the calendar years of 1989 and 1990, Washington County is second to Ozaukee County.

The following table of year end rate increases, the "lift" where there are step increases yielded averages which can be found from inspection of County Exhibits 9a and b.

(1) 9/1/90

Table VI

YEAR END RATE INCREASES, DOLLARS AND PERCENTAGE

	1989 Increase		1990 Increase	
	<u>%</u>	<u>\$</u>	<u>%</u>	<u>\$</u>
Patrolman Average with Ozaukee				
County offer	2.73	.29	4.3	.44
Union offer	2.88	.30	4.7	.45
Washington County				
County offer	3.5	.39	3.5	.41
Union offer	4.0	.45	4.0	.47

UNION POSITION SUMMARIZED. The Union holds that its offer is most reasonable. It holds that the most comparable county of the five comparables agreed upon is Ozaukee County which shares a long common boundary and proximity to Milwaukee. Ozaukee employees under either current offer will receive a 4% or more increase.

The Union says that because of the staggered contract terms in Washington County it is difficult to make accurate comparisons, but in the comparisons of percentage increases in 1990 will be higher in three of four comparable counties.

The Union objects to the County's comparison in percentage increases which is skewed. The County, although averaging percentage increases in 1989 for the comparable districts, did not do so for 1990. The average increase in 1990 for districts which settled is 4.16 percent if the County's offer is included, and 4.3 percent if the Union offer is included, both well above what the County is offering.

Also in the 1989 average percentages when the County's offer is considered under the fact that its increase comes only on July 1, 1989, the unit average under the County is only 2.87 percent, which is under the percentage increases in other counties except Dodge.

The Union contends that the County's comparison of year-end averages is misleading. The County compares wages negotiated in the first months of the year with County wages which begin in July. Annual averages would be more appropriate. Taking annual averages, Washington County wage rates are below those of Ozaukee.

The Union holds that in its external comparisons, the County's description of theirs is misleading. The County omits the fact that if the Ozaukee County offer for patrolmen in 1990 is accepted, and the Washington County offer is accepted in January 1990, the Washington County patrolmen will lag in payment by \$0.33 per hour. If the Union offer in Ozaukee County is accepted, the lag on January 1 will be \$0.46. Even after a July 1, 1990, raise under the Washington County offer, Washington County patrolmen will continue to lag.

The County's offer will cause Washington County to lose its relative position among comparables.

The Union, noting the presence of longevity in pay in four counties, holds that the comparison of basic wages without consideration of fringe benefits is misleading. Thus in 1989 a 15 year patrolman both in Sheboygan and Waukesha Counties would receive a higher rate with longevity included than in Washington County.

The Union asserts that Washington County employees have exchanged a slightly higher base rate than in other counties in exchange for a more conservative fringe benefit package. Therefore hourly rates are not comparable.

COUNTY POSITION SUMMARIZED. The County contends that Washington County rates for patrolmen, equipment operators, mechanics, and foremen were the highest paid among the comparable counties. For a patrolman the average rate in Washington County in 1988 was 87 cents per hour more, with a range from \$0.10 to \$1.53 greater. For equipment operators it was a range from \$0.29 to \$1.35 greater. For mechanics the range was \$0.27 to \$1.63 greater with the average being \$0.92 greater. For foremen, the range was \$0.38 to \$1.42 greater.

The County's 1989 offer would keep the patrolman as the highest paid with an average possibly as much as \$0.97 higher with differences ranging from \$0.13 to \$1.92. For equipment operator the difference in favor of Washington County would be \$0.84 on the average with the differences ranging from \$0.36 to \$1.74. Washington County mechanics would earn on the average up to \$1.03 more with \$0.23 to \$2.03 per hour more. Foremen in 1989 under the County's offer will be higher paid than those in adjacent counties from \$0.08 to \$1.81 per hour.

The County notes that in 1990 its patrolman position will still be likely the highest paid position among patrolmen. Only the Ozaukee County rate could exceed the Washington County rate and this by \$0.05. Other counties to exceed the Washington County rate would have to grant substantially higher percentage increases for equipment operators, although the Dodge County employees were granted a 5.1% increase after a previous wage freeze. Washington County employees will still earn more by \$1.65 per hour. Other counties would have to grant substantially higher percentage increases to exceed the Washington County 1990 offer for this position. A similar condition holds for the 1990 increase offered by the County for the positions of mechanic and foreman, except that under the Union offer in Ozaukee, the Ozaukee wage would exceed the Washington County rate by \$0.01 per hour.

The County also notes that its percentage increase for patrolman in 1989 is much higher than the average percentage increase of comparable counties, being 3.5% compared to 2.73%.

The County contends that there is no justification for the Union's higher wage offer, because the amount that Washington County highway employees would be earning above the employees in comparable counties would increase even further.

The County objects to the Union's observations on impending substantial percentage increases in Dodge County in 1990, and points out that Dodge County had a wage freeze in 1989.

The County also defends its use of year-end wage rates and percentages, noting that in stating such percentages it included mid-year rate changes in both Fond du Lac and Sheboygan Counties.

Noting the arguments of the Union on the impact of longevity, the County states that longevity in Waukesha County does not obtain for employees hired on or after January 1, 1973. In both Dodge and Fond du Lac Counties, even with longevity, employees are paid substantially less than in Washington County.

DISCUSSION. Where there are comparisons to be made on a calendar year basis of wage rates with wage rates that begin mid-year, or two-step wage rates, precise comparisons cannot be readily made. In year-end wage rates Washington County rates are among the highest, and closely comparable to Ozaukee County wage rates. However if the average of calendar year wage rates are taken, Ozaukee rates for patrolmen yield more dollar income. For the calendar year of 1989, Ozaukee County patrolmen would have an average rate of \$11.46 for the entire year. The Washington County patrolmen would have an average rate of \$11.40 which is a composite of a rate of \$11.20 for the first six months and \$11.59 for the next six months of 1989. This presents the question of whether Washington County rates should be compared principally with Ozaukee rates or within the otherwise comparable counties. Since the deterioration of the Washington County wage rate position with respect to the Ozaukee position is not so marked and cannot be precisely judged because of different contract durations, the preponderant weight of the matter lies with a comparison within the comparable counties. Under such a standard, the data in Table I indicates that the Washington County offer is reasonable, although Tables II and III show what appears to be a shrinkage in leadership position.

Concerning percentage increases, while Washington County percentage increases for 1990 do not match the percentage increases already in place or imminent, yet it is the opinion of this arbitrator that a unit of government with a leading position in actual dollars paid does not necessarily have to match other percentage increases if the leading dollar position is maintained among the comparables, and if not modified by other factors which the arbitrator does not see present here.

To reaffirm, the conclusion here is that the Washington County offer is reasonable.

X. WAGE COMPARISONS AMONG UNITS OF GOVERNMENT IN WASHINGTON COUNTY. County Exhibit 21 furnished the following information about wage settlements of units of government within Washington County:

Table VII

INNER-COUNTY WAGE SETTLEMENTS

<u>Unit</u>	<u>1989</u>	<u>1990</u>
Deputy Sheriff's Assn.	3.5%	N.S.
Local 1199, AFSCME, Social Service	3.5%	N.S.
Local 150, SEIU, Nursing Home and Mental Health Center	\$0.20 ACB (from 3.7% to 3.0%)	\$0.20 (from 3.7% to 3.0% at top)
Non-Represented Employees	3.5%	3.5%
Local 200, Parks	3.0%	3.5%

UNION POSITION SUMMARIZED. The Union states that the Deputy Sheriff's had a 3.5% increase during the whole of 1989 whereas the Highway Department only had that during the last six months. This was true also for the Social Service Unit. Although the County had settled with the Highway Department six months earlier for a 2.25% increase in July 1988, the County did not feel bound by this amount of settlement and six months later gave both the Sheriff's and Social Service employees a 3.5% increase. The County ironically is now claiming that comparability is to be applied. There should be a catch-up for the Highway Department since it received 1.25% less of an increase in the second year of its last contract than did the Deputy Sheriff's and the Social Service employees.

COUNTY'S POSITION SUMMARIZED. The County notes that no other County bargaining unit received a 4.0% increase asked by the Union for 1989 or 1990. The internal comparables of the County clearly support the County offer.

DISCUSSION. Again, the difficulty of comparing wage levels of bargaining units operating with different contract durations presents itself here. However the evidence supports the conclusion that the County offer is the more comparable one, when other bargaining units are considered even though there is a lag in the time that the Highway Department gets a change in wage level that might be considered comparable to previous changes enjoyed in the levels in other bargaining units.

XI. COMPARISON OF WAGES WITH PERSONS IN PRIVATE EMPLOYMENT. No evidence was submitted on this subject by either party.

XII. COST OF LIVING. Union Exhibits 19a and 19b related to the cost of living. The Union uses the United States All Items Annual Average, CPI-W. This shows a 4.0% increase in the average annual increase of 1988 over 1987 and a 4.8% increase of 1989 over 1988. Specific monthly changes which occurred during 1989 over the similar month in 1988 were for January, 4.1%, for July, 5.4% and for December, 4.5%. The change for January 1990 was 5.2% above the previous January.

County Exhibit 13 was a publication of the US Department of Labor of February 21, 1990, showing consumer price indexes for the Milwaukee metropolitan area. During 1989 the CPI-W change from a January-June index of 123.1 to a July-December index of 124.0 for all items, was a 0.7% increase. The increase, however, from a year ago was 3.2%. However, the annual average change in the Milwaukee metropolitan area between 1988 and 1989 was from an index of 118.6 to 123.5, an increase of 4.1%.

POSITIONS OF THE PARTIES SUMMARIZED. The Union holds that its use of the United States index is appropriate and the annual increases in 1988 and 1989 of 4.0 and 4.8 percent respectively justify the Union offer. The increases in the last contract of 2.3% in 1987 and 2.25% in 1988 on July 1 of each year did not keep pace with inflation.

The Union opposes the contention of the County that the arbitrator should use the Milwaukee rates for January 1989 to January 1990. The reference to one year is too restrictive and the period to be considered is the time from the last contract. The Union states that the more appropriate index to use is the Small Metro Area index, which shows a 4.9% increase from January 1989 to January 1990. If, however, the Milwaukee area is used for comparison, the Union asks the arbitrator to use the 4% increase that Milwaukee County highway employees received in 1990.

The County notes that the Milwaukee CPI-U for December 1989 was 3.4% higher than in December 1988, and the CPI-W was 3.25% higher than in December 1988. The offer of 3.5% is in line with these figures.

DISCUSSION. While there is validity in the use of the Milwaukee metropolitan area index since Washington County is adjacent to it in its southeast area and therefore shares some-economic interchange, nevertheless the use of the Milwaukee Metro area index for just one year, 1989, does not take into consideration the change in the consumer price index for urban workers or for all consumers for the life of the past contract. According to Union Exhibit 19b and 19c, the U.S. All Items CPI-W under the Revised Series went from 335.6 in July 1987 to 366.8, a change of 31.2 points or 9.3% change. It should be noted that these data refer to U.S. All-Items index and may not fully reflect what happened in the Milwaukee Metro area. However County Exhibit 13 does show that under the "New Index" for the Milwaukee area the change from the 1988 annual average to the 1989 annual average was from 118.6 to 123.5, a change or an increase of 4.1%. Based on this information the arbitrator is of the opinion that the Union offer more nearly approximates the change in the consumer price index and that there is an element of catch-up involved in favor of the Union offer as to percentage increase. This is said even though the County offer in percentage increase is more comparable when internal settlements are considered.

XIII. OVERALL COMPENSATION. Union Exhibit 12 was a tabulation of fringe benefits available in Washington and the five comparable counties. It is the general impression of the arbitrator that Washington County benefits are less in terms of sick leave and longevity, and about median in the matter of holidays and insurance payments required of employees and equal in terms of vacation, under the stipulations. Maximum accumulation of

90 days for sick leave newly agreed upon is less than the accumulation permitted in other districts, and the 25% payout on the accumulation at retirement is less than the amount paid out in other districts. Washington County with Ozaukee County has no longevity. The other counties do.

In insurance benefits, judging only from contributions required of the employee without knowing the benefit, one can conclude that the County payouts are a median type payout.

Neither party supplied any data on overall compensation either internally or for comparison purposes.

PARTIES' POSITIONS SUMMARIZED. The Union cites the fringe benefit levels to argue that comparison of wage rates is misleading in that it does not reflect the higher fringe benefits received in comparable counties. The Union says that essentially the Washington County employees have exchanged a slightly higher base rate than found in Waukesha, Sheboygan and Fond du Lac for a more conservative fringe benefit package. This justifies the higher percentage increase of 4% in the Union offer.

The County notes that the Union did not take into consideration the benefits conferred in the present negotiations. Further fringe benefit differences here do not outweigh the higher base rate offered in the Washington County offer.

DISCUSSION. The lesser fringe benefits received by the Washington County employees is a factor in supporting their offer for a higher base wage. However, lacking a quantification of the value of these benefits, and also considering the improvements currently achieved in the stipulations of the parties, the arbitrator considers the fringe benefit factor only a minor factor in favor of the Union offer.

XIV. OTHER FACTORS: HOURS OF WORK. The Union is proposing to change portions of Article VI, Section 6.01 and Section 6.05. In the predecessor contract the sections were as follows:

"Section 6.01 Normal Work Schedule. The normal work schedule shall consist of eight (8) hours per day, Friday through Thursday, excluding Saturday and Sunday with a minimum of forty (40) hours per week.

.

"Section 6.05 Premium Pay. In addition to the hourly wage rates provided for in Section 8.02 employees shall be paid premium pay at the rate of \$3.50 per hour for all time worked from 12:00 midnight to 7:00 a.m., except on Saturdays, Sundays, and the holidays specified in Article XIII."

As shown earlier, the Union is proposing the following:

"Section 6.01 - Normal Work Schedule: Add: Work performed outside of the normal work schedule of 7:00 a.m. to 3:30 p.m. shall be considered overtime and shall be paid for at the rate of time and one half (1½)."

The Union deletes Section 6.05.

The County is proposing in Section 6.05 to add: "\$4.00 per hour effective the day after the County Board ratifies the 1989-91 contract, or the date of the Arbitration Award, whichever occurs first and \$4.25 per hour effective July 1, 1990."

Union Exhibits 13 through 18 related to contract provisions on hours of work in comparable counties and in the City of West Bend. Summarized, these are as follows:

Washington County Parks - Time and one half for all time worked in excess of 40 hours per week and eight paid hours per day, but to be eligible for work in excess of 8 hours per day, employees had to work 40 hours in the week.

Waukesha County - Normal work day 8 hours with time specified from 7:00 a.m. to 12:00 noon and from 12:30 p.m. to 3:30 p.m. Employees called in before normal work day are assured 8 hours work and will be paid for being called in before regular starting time. Normal work week is 40 hours. Work in excess is compensated at time and a half.

Fond du Lac County - Normal work week is 40 hours and normal work day 8 hours with specified starting time at 6:45 a.m. and ending time at 3:15 p.m. with half hour lunch period. "All employees shall receive one and one-half (1-1/2) times their straight hourly time hourly rate for all hours worked in excess of the regularly scheduled work day and in excess of forty (40) hours in a work week."

Dodge County - Employees called in to work during other than their normal schedule of work are paid at the rate of time and a half.

Ozaukee County - Normal work day from 7 a.m. to 3:30 p.m. (8 hours) 40 hour work week. Employees called in to work at unscheduled hours shall be compensated at time and a half.

City of West Bend - Normal work week of 40 hours and normal work day of 8 hours ending normally at 3:15 p.m. (by inference). Work performed prior to or after the normal work day shall be at time and a half with exceptions for a paint crew, maintenance employees or employees assigned to other shift times.

The County supplied a series of exhibits relating to the historical development of the previous provision in the 1987-1989 contract. These were Exhibits 30 to 47. A summarized recitation of this development is essential here.

Article VII of the July 1, 1972 to June 30, 1974 contract provided for a regular work day of 8 hours beginning at 7 a.m. and a regular work week of forty hours. A forty hour work week was guaranteed. Time and a half was paid for work on Saturdays, Sundays and holidays. County testimony was to the effect that the provisions of this contract resulted in employees working long hours a day in snow plowing. (CX 30).

The County in the successor agreement proposed to change the specified work time and guaranteed work week to a provision of a normal work day consisting of 8 hours. (CX 31). A simultaneous Union proposal sought time and a half for hours over 8 per day and 40 per week. (CX 32). A successor agreement included the normal work schedule provision with a 40 hour minimum and the Union overtime provision. Persons had to work 40 hours before an overtime occurring on a given day would be compensated. A Union official balked at having the agreement ratified because the starting time was not specified, but the agreement was signed when the County alleged a prohibitive practice on the part of the Union. (CX 33-35).

Under the 1974-76 agreement if an employee would be called in at midnight for snow plowing, he could be sent home at 8:00 a.m. and be paid straight time for the hours work. This resulted in a grievance when some employees who were called in at 12:30 a.m. worked less than 8 hours, then went home, and subsequently worked the normal shift while others were kept at work 8 hours and sent home after 8 hours. As a result, the parties subscribed to a Memorandum of Agreement which provided that if an employee began work before 4 a.m., he would be entitled to a minimum of ten hours of work if other employees who began work before 4 a.m. were sent home and directed to return at 7 a.m. (CX 37).

For the 1976 contract the Union proposed a specified work day from 7:00 a.m. to 3:30 p.m. and a 40 hour week. This was not accepted by the County, but the County agreed to pay a premium rate of \$2.50 for hours worked from 12:00 a.m. to 7:00 a.m. (CX 39). The same provisions stayed in the 1978 contract and in the 1980 contract \$3.00 was paid for early hours worked. In the 1987-89 contract the rate was \$3.50 but the provisions were the same, having been set at this figure in the 1981-82 contract.

In the negotiations for the present agreement, the County considered it had reached an agreement with the Union to retain the provisions in Article 6.01 and 6.05 with the Union with the exceptions that \$4.00 per hour would be paid as premium pay for time worked from midnight to 7 a.m. It was the testimony of the Union representative that this provision of the County was not agreed to, but that the bargaining team would report it to the Union membership to see whether it would be accepted.

The County in its Exhibits 45a and b presented four hypothetical examples of what payment employees would receive under the proposals if they began work at midnight and worked to different times. One schedule was a 15 hour schedule, one a 12 hour schedule, one for ten and a quarter hours, and one for 8 hours. In the first two cases under the County's offer the employee would receive more than under the Union offer, using the County offer for pay as an example. In the third case the Union offer would produce a \$0.98 advantage and in the last case, a \$12.60 advantage.

UNION POSITION SUMMARIZED. The Union states that its offer for time and one half premium pay is more reasonable under the statutory criteria because of the evidence of external comparable conditions in other counties. It holds that the premium pay is to compensate employees for the inconvenience from disrupted off duty hours. Highway employees can be called out for snow removal at all hours.

The Union notes that the 1974 agreement was opposed by the bargaining unit, but accepted only after the County threatened a prohibited practice proceeding. The Union cites the grievance of the employees who were disadvantaged in comparison to others when they were sent home after 8 hours when they had been called in early, while others went home and returned to work 8 hours.

Concerning the bargaining history, the Union holds that it is not relevant and at the same time does not support the County's position because the provision was not supported from the beginning and came in the contract only under threat of litigation. Also the County after the provision went into effect did not follow the practice of a normal work schedule.

As to the hypothetical examples provided by the County, the Union asserts that the County does not actually follow these hypotheticals, but sends some employees called in early home after 8 hours. The County's proposal provides a disincentive to the County for maintaining a regular work schedule.

The Union states that the parties' bargaining history is not a factor in arbitration and is not a factor to be enumerated in the statutory factors. It says that no true agreement existed on this issue in the 1989 negotiations and further there is arbitral authority to the effect that offers of compromise and settlement should not be given weight in considering the merits of a dispute.

The Union rejects the County contention that the administration of the provision as proposed by the Union would be burdensome to the highway department. This is rebutted by the fact that every comparable highway department has such a provision. There is nothing in the Union proposal which precludes the County from scheduling employees as needed. There is also now a financial burden on the County for adopting the same provision as found in other counties.

COUNTY POSITION SUMMARIZED. The County holds that the Union proposals significantly depart from a voluntarily negotiated status quo and therefore under arbitral authority, the Union has the burden of establishing a good and sufficient reason for the change. The County cites Arbitrator Reynolds in Lincoln County, Decision No. 25391-A. The arbitrator there stated that the Union has a burden to prove that the present contract language has given rise to conditions that require amendment; that the proposed language may be reasonably expected to remedy the situation, and that alteration will not impose an unreasonable burden on the other party. The County holds that the Union did not meet any of these factors. Its sole witness did not testify to conditions that required amendment nor why the Union wanted to change. In the 1987-89 agreement, the Union did not propose the changes it is seeking now, and it presented no circumstances which would justify its request.

The County holds that while the monetary advantage which might be obtained under the Union proposal is minimal, yet it would present a burden on the County by limiting the ability of the County to schedule work. The placing of hours of a normal work schedule in the contract would restrict the County to employ persons outside of those hours. The duties of the highway department often require this. The original reason for the County provision was the element of safety in that employees worked too many hours. This request of the Union amounts to a new benefit which should be bargained.

The County argues that the status quo is reasonable from the dollar amount offered and the general provisions. It notes that the Union bargaining committee tentatively agreed to the wage proposal and the premium pay proposal. Arbitral authority holds that although the arbitrators should not decide solely on the basis of a tentative settlement, the tentative agreements are strong evidence of the reasonableness of proposals.

Concerning the bargaining history, the County states that in 1974 the parties did reach a complete agreement on the change then embodied in the agreement. The agreement was reached as a result of a compromise, and the County and the Union each received some of the provisions they pursued. The threatened litigation by the County was merely to enforce the prior agreement which had been reached. This prior voluntary agreement should not be overturned by an interest arbitrator, but only through voluntary collective bargaining.

The County states that the bargaining history should be considered by an arbitrator under the terms of "Other Factors", as defined in the Wisconsin Statutes.

DISCUSSION. The issue of changing the hours of work to include a specified starting time and ending time presents a major difference between the parties. The County argues that the conditions have not indicated need for a change, and that there was a tentative agreement in current negotiations to maintain the status quo. The Union points to the preponderance of evidence which shows that its offer is comparable to what prevails in comparable counties and in the area.

First as to comparability, Section 111.70 (4) (cm) 7 at paragraph marked "d" enjoins an arbitrator to compare conditions of employees in the arbitration proceedings with conditions of other employees doing similar work. The fact of the comparability of a proposed offer must then be given serious consideration, and here the evidence is that the status quo in Washington County is not comparable on the issue of premium pay.

As to whether the proposal of the Union to change the terms of a provision once either agreed to by the Union in past contracts, or once accepted as a part of a compromise though not desired, should be barred from consideration by an interest arbitrator, and should only be changed in a voluntary move by the County, this arbitrator does not believe that it should be barred. In contract negotiations all issues are open. To

adopt a principle that unless one side agrees to a change voluntarily, the change cannot be presented in interest arbitration could make meaningless the process of arbitration as it is currently conceived. Thus while a bargaining history may establish that a certain relationship between parties has prevailed for a long time, and that such history should be considered by an arbitrator, one of the parties is not barred from proposing a change at some time or the other.

As to the matter of the recent bargaining committee of the Union agreeing to take the County's proposal back to the Union on the premium pay issue along with other issues, the evidence is that the Union bargaining committee did this, and that it did not register to the County any strong disagreement with the County proposal. The Union membership, however, had the right to reject the tentative agreement of its bargaining committee for whatever reasons the membership majority had. Thus the Union is not bound by tentative agreements of its bargaining committee, although such a tentative agreement may support the reasonableness of the other party's offer. Nevertheless, to repeat, the comparability of the Union offer on this issue heavily weighs in the favor of the Union offer.

There is evidence that the Union has been dissatisfied over time with the lack of a stated work day, that its proposed remedy would provide a feasible remedy to the problem, and that it would not overburden the employer. In absence of a guaranteed work day within the status of the normal work day, the arbitrator does not see how the County cannot schedule as it wishes, subject however to the pay provisions.

Hence, the arbitrator believes that the Union proposal meets the criterion of comparability without fatal deficiencies.

XV. ABILITY OF GOVERNMENT TO PAY. There is no question on the ability of the unit of government to meet the costs of either offer.

XVI. INTERESTS AND WELFARE OF THE PUBLIC. In this matter the factor to be weighed as to the interest and welfare of the public comes to a weighing first of whether the interest of the public is best served by the County offer to pay less on the whole, and then the weighing of a change in a disputed working condition. It might always be thought that the less financial burden on the public serves its interest. In this case there is that statutory enjoiner on the arbitrator, presumably also to serve the public interest, to weigh the matter of comparability, and when this is done here, the parties are more evenly balanced in meeting the criteria of both the interest and welfare of the public. The arbitrator is of the opinion that though the public interest will be well served in either offer, yet the prevalence of so many like-worded agreements to the Union's offer indicates that a pattern has set in how hours of work are denominated, and that this should be recognized. Thus the interests and welfare of the public would not be lost in recognizing the Union offer.

XVII. CHANGES DURING THE PENDENCY OF THE PROCEEDINGS. There are no changes reported during the pendency of the proceedings except that the County submitted three "delayed" exhibits with agreement of the Union. These exhibits have been examined for their information.

XVIII. SUMMARY OF FINDINGS AND CONCLUSIONS. The following is a summary of findings of the arbitrator with respect to statutory criteria and the conclusions therefrom:

1. There is no issue of the lawful authority of the County to meet the terms of either offer.
2. The stipulations of the parties balance the interest of the parties with gains and concessions made by both.
3. The comparable districts include counties adjacent to Washington County. Milwaukee County touching Washington at a point is of secondary value.
4. In wage comparisons with comparable counties the County's offer is comparable and reasonable, maintaining a high status.
5. In internal comparisons in Washington County, the County offer is reasonable and comparable.
6. No comparison was made of County wage offers with wages of private employees.
7. In the matter of the cost of living the Union offer in percentage more nearly matches the annual average changes in the U.S. All Items CPI-W and in the last annual change in the Milwaukee Metro Area index. There is an element of catch-up to be considered from the previous agreement in terms of matching the changes in the consumer price index from 1988.
8. In overall compensation including fringe benefits, some lesser fringe benefits received by Washington County employees as compared to other employees is a factor supporting the Union offer for a higher base wage, but without quantification of the value of the benefits in the various counties, it cannot readily be determined how much a factor in favor of the Union offer this condition is.
9. In other factors relating to hours of work, the proposal of the Union more nearly conforms to the statutory criterion of comparability than does the County's offer.
10. There is no question on the ability of the unit of government to pay to meet the costs of either offer.
11. The interests and welfare of the public will not be lost if the Union's offer is recognized.
12. There are no changes during the pendency of the proceedings to be considered.

In the above matters some are more significant than others. Major weight must be given in favor of the County in comparability of its wage offer among comparable counties and internally in the County. To the Union accrue the weights of comparability of its offer on premium wage pay and hours of work and the changes in the cost of living over the life of the contract. The history of the continuing difference over the hours of work provisions looms as a matter of primary consideration to the arbitrator. The Union offer as pointed out fits the pattern of the comparable counties, while the County provision is one of a kind in the area. The public interest will be best served by resolving this issue in the new agreement between the parties, and bringing the County provision into a state of comparability.

Hence the following award is made.

XIX. AWARD. The agreement between Washington County and Teamsters "General" Local Union 200 should include the provisions of the Union offer in the agreement commencing July 1, 1989.

Frank P. Zeidler

FRANK P. ZEIDLER
ARBITRATOR

Date

May 7, 1990