STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

SAUK COUNTY HIGHWAY DEPARTMENT
EMPOYEES LOCAL 360, AFSCME

Case 91
No. 43144
INT/ARB-5455
Decision No. 26359-B

To Initiate Arbitration
Between Said Petitioner and

SAUK COUNTY (HIGHWAY DEPARTMENT)

APPEARANCES

On Behalf of the Employer: Eugene R. Dumas, Sauk County Corporation Counsel

On Behalf of the Union: Laurence S. Rodenstein, Staff Representative - Wisconsin Council 40, AFSCME, AFL-CIO

I. BACKGROUND

On September 5, 1989, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement which expired on December 31, 1989. Thereafter the Parties met on two occasions in efforts to reach an accord on a new collective bargaining agreement. On November 15, 1989, the Union filed a petition requesting that the Commission initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On March 6, 1990, a member of the Commissions's staff conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and by March 6, 1990, the Parties submitted to the Investigator their final offers, written positions regarding

authorization of inclusion of nonresidents of Wisconsin on the Arbitration panel to be submitted by the Commission. Thereafter, the Investigator notified the Parties that the investigation was closed; advised the Commission that the Parties remain at impasse.

On March 14, 1990, the Commission ordered the Parties to select an arbitrator from the list it provided. The Parties selected the undersigned and he was appointed May 11, 1990. A hearing was conducted on July 30, 1990. Post-hearing Briefs and Reply Briefs were filed. The exchange was completed October 3, 1990.

II. FINAL OFFER AND ISSUES

A. Wage Rates

The Employer proposes in its final offer to increase the wage rates in Appendix A by 4% effective January 1, 1990 and 4% January 1, 1991. The Union proposes an adjustment of 3% January 1, 1990, 2% effective July 1, 1991, 3% effective January 1, 1991 and 2% effective July 1, 1991.

The Employer also proposes to adjust the rate for the "Leadman" position as follows:

> "Appendix A shall be amended by deleting the specified rates for Leadman and substituting therefor, the following language: '30 cents per hour over regular rate while acting as Leadman."

B. Family or Medical Leave Act

The Employer proposes the following:

> "Family or Medical Leave Act. The Parties agree that the leave benefits provided under this agreement, insofar as consistent with the terms of this agreement and any applicable federal or state law, shall satisfy the minimum leave benefits provided employees under such federal or state law. The Employer shall give the Union sixty days notice prior to requiring employees to contribute to an escrow

account under S.103.10(9)(c), Wis. Stats. or any equivalent arrangement."

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The Employer

The County believes that its offer is more in line with the statute and the public interest because it is more consistent with the pattern of settlement which has evolved from negotiations between other Sauk County bargaining units and the wages, hours and conditions of employment in Columbia County. They believe, based on a number of arbitration awards, that historically there has been a general parallelism between the various units of Sauk County and Columbia County employees which is more instructive than comparisons to other employees. They also argue, with citations, that traditional comparables should not be disturbed.

With regard to their proposal on the Family or Medical Leave Act, they note that this matter is addressed in the contracts of all the other Sauk County bargaining units. More specifically, the language contained in the final offer of the County, is identical to that found in the Sheriff's Department unit but varies slightly from the language found in the other three collective bargaining agreements. They also direct attention to a decision between Sauk County and District 1199W wherein Arbitrator Kerkman summarized the then-existing pattern of voluntary settlements involving the Teamsters' Courthouse and Sheriff's Department units and set forth the rationale for accepting the reasonableness of this proposal.

Regarding their wage offer, the County directs attention to past internal settlements. With the exception of specific equity adjustments for particular positions, the percentage settlements have been similar. In this case, an equity adjustment is being offered for Leadman position in the Highway Department. The County also asks that consideration should be paid to the relatively high overall level of compensation enjoyed by these employees in comparison to other County employees and to wage earners in the community in general.

In support of their proposal for an adjustment in the Leadman rate, they note that the effect of the present specified rate is that a Mechanic would

actually have to accept a three cent per hour cut in wages to be compensated for serving as a Leadman and other higher-paid workers receive less than lower-paid workers for assignments to a Leadman function. They note too that no objection to this proposal was ever articulated by the Union during negotiations, nor was any counter-proposal made by the Union representatives.

The County also believes that the cost of living and interest and welfare of the public criteria support their offer. This is particularly true since medical costs are a large component of the annual increases in the 1989 CPI according the their exhibits. Under the collective bargaining agreement, Sauk County employees uniformly enjoy the benefit of having 93% of the costs of health insurance coverage paid by the County. With no change provided for adjusting this rate of contribution during the contract term, bargaining unit employees are virtually insulated from that substantial portion of the Consumer Price Index.

The County also devotes considerable energy attacking the validity of many of the Union exhibits. In summary, they question some of the assumptions, methodology, calculations and conclusions. There is no wage distortion, as the Union asserts, in the Employer's opinion. It is the collective bargaining process which has established the link between Columbia and Sauk Counties as sister or twin counties and it should not be disturbed.

Again, for emphasis, the County contends that the evidence clearly shows that Sauk County's final offer is more reasonable, in comparison to wages, hours and working conditions of the Columbia County Highway Department bargaining unit employees than is the Union's final offer. For instance, the County offer will result in a unit average hourly rate for Sauk County of $9.43 per hour, as compared with the $9.20 unit average hourly rate which will be achieved by the Columbia County bargaining unit on July 1, 1991. As is consistent with the long-standing relationship between the Sauk and Columbia County comparables, Columbia County will have "caught up" from the $0.54 lower average hourly rate relationship which existed on January 1, 1989 to the point where only a $0.23 per hour gap in favor of Sauk County will exist, under the Sauk County proposal, as of July 1, 1991. Consistent with the classic argument urged in support of split increase, it is reasonable to conclude that the Columbia County parties reached a voluntary settlement with the expectation that the settlement would in fact allow Columbia County to "catch up" with Sauk County, a clear comparable. There simply is no reason to break this historical relationship.

Last, the County believes that the Union misconstrues the County's Section 11.03 Family or Medical Leave Act proposal and mischaracterizes the record. The escrow provision is not punitive. Instead, it provides the Union with the opportunity for the Union to bargain the impact of any proposed program to implement the County's statutory rights under Section 103.10(9)(c), Wis. Stats. The Union has identified no harm or disadvantage which has accrued or will accrue to the employees and all other bargaining units who are subject to substantially the language at issue here. We believe that the passage of time and the fact that one additional bargaining unit has since voluntarily agreed to the same language, makes even more valid now the observation of Arbitrator Kerkman that "the fact that two other bargaining units of the Employer voluntarily agreed to the same provision which the Employer proposes to this Union established the reasonableness of the Employer proposal."

B. <u>The Union</u>

The Union's first argument relates to the Parties' longstanding reliance on a single external comparable. This in their opinion, has caused significant wage distortion for Highway employees relative to other Highway Department employees in counties of similar size, proximity and economic characteristics. In the three benchmarks, Sauk ranks near the bottom in all the counties in the state. This is in spite of a relatively high degree of wealth. They believe that the use of this statewide wage data is necessary to cure wage distortion.

The Union, while they don't believe the use of contiguous counties as comparables is particularly appropriate because of their generally disparate demographic characteristics, also argues that wage comparison to contiguous counties shows the wage distortion.

The Union also presents data for a grouping of counties which rank five above and five below Sauk's statewide ranking, regarding per capita income, equalized value and population. This creates a pool of 23 counties. Out of this group they pick four primary comparables, Fond du Lac, Portage, St. Croix and Waupaca. They believe these counties to be similar to Sauk in many essential respects. They add these four counties to the contiguous group for another group and the wage data shows Sauk to be last in two of the three benchmarks and second to last in the other. They also are far below the average. In fact, Sauk's 1991 wage rate for all benchmarks, under either final

offer, will be less than the average maximum wage rate of these comparable counties for 1989. They describe their offer as "keep-up" not "catch-up."

The Union acknowledges that their final offer matches the voluntary settlement in Columbia County in 1990 and 1991 and for Iowa County in 1991, but submits the County's final offer represents further erosion of Sauk's already grossly disadvantaged position by falling behind Columbia and Iowa counties as well. Moreover, they state that their principal objective is to establish a rational and equitable group of external comparables.

The Union also addresses the appropriate weight to be given to Columbia County. In their opinion, the use of a single comparable, to the exclusion of all others, necessarily precludes any comparison with several other comparables so as to provide a more unbiased database. They note several cases wherein arbitrators have criticized both unions and employers when one party has relied on an overly narrow comparable set. They note too that arbitrators, while reluctant to disturb previously determined comparable groupings, have on occasion, for compelling reasons, fashioned a new set of comparables. The circumstances of a 14-17% wage distortion are compelling in this case.

Next, the Union addresses the Employer's proposal on Medical and Family Leave. It is their position that the County introduced no evidence to support its proposed escrow account. They also raise a number of concerns about the mechanics of the escrow pool. Moreover, two of the internal units have no escrow language.

IV. DISCUSSION AND OPINION

The first paradox presented by this case is that both Parties claim that a comparison to Columbia County favors their offer. The settlement for Highway Department employees in Columbia County was identical to the Union's offer here which is a 3/2 and 3/2 split. On the other hand, the Employer argues that the Columbia settlement favors their position on the basis of wage levels. They note that the wage rates of Sauk County Highway Department employees are higher than Columbia County, therefore, they suggest that an identical wage rate increase isn't needed in Sauk. They speculate that Columbia is trying to catch-up to Sauk.

Thus, the Parties not only disagree as to the importance of Columbia as a comparable, they also disagree as to the basis or method that should be used to compare it. The difference is that the Union relies on a wage rate increase comparison and the Employer relies on a wage level comparison.

A similar problem faced Arbitrator Ziedler in a previous interest arbitration between Sauk County and Teamsters Local No. 695, (Med/Arb-2081, Decision No. 20404-A). The Employer there made similar arguments to those advanced in this record. The following comments reflect Arbitrator Ziedler's belief -- one with which this Arbitrator wholeheartedly agrees -- that the primary method of comparisons of external comparables should be a comparison of wage rate increases. He stated:

> "The best means of judging the wages in Columbia and Sauk Counties, then, is to simply compare percentage increases on past total base wages. The total dollar amounts of neither parties have been given -- only an average. Increases in increments of employees in the steps of the range are not fully known to the arbitrator. Thus he is reduced to comparing percentage increases, and on this basis the offer of the Union at 4-1/2% across the board is more comparable to the Columbia County increase of 4-1/2% than the Employer offer of 3-1/2%, and therefore more nearly meets the criterion of comparability."

There can be little doubt that this method is the most commonly used basis of comparison. In this case, it is particularly important because there is no history of wage level parity between the two counties. There are and evidently have been differences in wage rates which strongly suggest that the historical comparisons in bargaining have been on the basis of wage rate increases.

Accordingly, the comparison with Columbia County favors the Union. This presents the second curiosity of this case. If the traditional external comparable favors the Union, then why is so much time and energy spent on trying to establish other external comparable groups. The answer lies in a very candid pronouncement in the Union's Brief. They stated:

> "The principal objective of the Union in this Arbitration proceeding is to permit the establishment of a rationally determined and equitable structure of comparable counties as an objective backdrop for the Parties in future negotiations." (Emphasis added.)

It seems to this Arbitrator that the Union has the cart before the horse. The principal objective of interest arbitrations and arbitrators is to determine the wages, hours and conditions of employment by selecting one final offer or the other. Arbitrators sometimes, in the process of selecting one or the other offer, do, in fact, make external comparisons which bear on future negotiations. However, the establishment of comparables is not an issue in and of itself to be resolved isolated and insulated from issues which have a practical bearing on the selection of final offers.

In this case, the traditional external comparable clearly supports the Union's offer. Consequently, there is no need to look further. Under different circumstances there might be a need to look beyond the traditional comparables. These might include a situation where Columbia County wasn't settled or where it was settled but the comparison was inconclusive. Here, there is no particular need to look to contiguous counties or some hybrid group.

The other factor that got substantial attention was the internal comparisons. Certainly, when one employer bargains with several different unions, equity concerns arise about treating these different groups fairly relative to each other. For this reason, arbitrators give weight to internal comparisons. However, they give particularly significant weight -- usually more than external comparisons -- when there is a history of pattern bargaining between the various groups. For example, it is powerful evidence when an employer comes into an arbitration with a final offer identical to its settlement with three of its four unions and can show a history of that over several contract periods that all the unions have had identical rate adjustments.

The problem here is there is no history of pattern bargaining among the various employee groups and Sauk County. The Employer historically has permitted and tolerated a moderate degree of variance in the internal settlements. In 1986, the settlements (including those for non-represented employees and not including individual equity adjustments) ranged from 2.8% to 3.3%. Only two of six groups got identical increases. In 1987, the range was 2.7% to 3.0%. In 1988, there was one at 8.43%. The others ranged from 2.8% to 3.7%. In 1989, the adjustments were 3.2%, 4.1%, 2.9%, 5.0%, 4.59% and 4.7%. For 1990, there are three units settled at 4.0%, 4.0% and 3.9%.

In view of this history, it is difficult to say that the Union's proposal would seriously create internal equity problems. The Union's offer, while higher in 1990 than the other settlements, is within the historic range of variance. The cost isn't substantially greater than the Employers offer. In the first year, the cost of a 3/2 split is virtually the same as the Employer 4% offer. The 1% lift is, however, carried over in the second year and then again into the following year.

In short, the internal comparisons do not conclusively favor either offer. The traditional external comparison does, however, clearly favor the Union's offer. This is the factor which tips the scales in favor of the Union's offer since neither the cost of living factor nor the interest and welfare of the public clearly favor either offer. Neither offer is inconsistent with these factors.

The remaining two issues are the Leadman adjustment and the leave issue. The reasonableness of the Leadman issue is essentially undisputed since the Union made no proposal on this issue, nor did they argue against it. The Employer's offer in this respect is favored.

On the leave issue, the reasonableness and necessity of having such a matter addressed in the collective bargaining agreement in the wake of The Family or Medical Leave Act is apparent from the fact that it is addressed in one form or another in the contracts of all the other county's bargaining units. However, the escrow aspect of the language does raise some concerns. Moreover, it must weigh against the Employer not the Union that the Employer's proposal in this respect does not comport with two of the other provisions concerning leave. The Health Care Center and the United Professionals contracts do not provide for the escrow option.

Even if the Arbitrator were to favor the Employer's position on leave, the preference would be slight. More important even when combined with the Leadman issue, it wouldn't be enough to outweigh the preference for the Union's wage proposal which affects a greater number of bargaining unit employees.