

REC'D
MAY 28 1991

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of

Case 171 No. 43932
INT/ARB-5658

DOUGLAS COUNTY (HIGHWAY DEPARTMENT)

Decision No. 26686-A

To Initiate Arbitration
Between Said Petitioner and

GENERAL DRIVERS, TEAMSTERS
LOCAL NO. 346

DISCISIVISIA

Sherwood Malamud
Arbitrator

APPEARANCES:

Mark L. Pendleton, Personnel Director, 1313 Belknap Street,
Superior, Wisconsin 54880, appearing on behalf of the Municipal
Employer.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C.,
Attorneys at Law, by Kurt C. Kobelt, 1555 N. River Center Drive,
Suite 202, Milwaukee, Wisconsin 53212, appearing on behalf of
the Union.

ARBITRATION AWARD

JURISDICTION OF ARBITRATOR

On December 12, 1990, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator to issue a final and binding award pursuant to Sec. 111.70(4)(cm)6.c., Wis. Stats., with regard to an interest dispute between Douglas County (Highway Department), hereinafter the County or the Employer, and General Drivers, Teamsters Local No. 346, hereinafter the Union. An arbitration hearing was conducted on February 14, 1991 at the Douglas County Courthouse in Superior, Wisconsin, at which time the parties presented documentary evidence at testimony. Briefs were submitted and exchanged through the Arbitrator on March 19, 1991, at which time the record in the matter was closed. Based upon a review of the evidence, testimony and arguments submitted and upon the application of the criteria set forth in Sec. 111.70(4)(cm)7.a-j, Wis. Stats., to the issues in dispute herein, the Arbitrator renders the following Award.

SUMMARY OF THE ISSUE IN DISPUTE

Both the Union and the County propose a two year successor agreement covering calendar years 1990 and 1991.

WAGES

	<u>1990</u>	<u>1991</u>
County Offer	3.5 %	1/1/91 3%; and 7/1/91 an additional 1%
Union Offer	5.5 %	5.5%

BACKGROUND

The employees of Douglas County are organized into nine collective bargaining units. This case concerns one of those units, the Highway Department employees. The parties reached a tentative agreement in mediation with Wisconsin Employment Relations Commission Mediators Robert McCormick and Homer Middlestadt. (County Exhibit 18a). The Union membership rejected the tentative Agreement.

In their final offers, the parties each list approximately 12 matters as issues in dispute. The proposals of each are identical on ten of the issues listed. At the Arbitration hearing, the parties agreed to the amendment of their final offers to remove the health insurance issue as a matter in dispute. The parties agreed to move the County proposal on health insurance to the Stipulation of Agreed Upon Items. Consequently, the sole remaining issue in dispute is wages.

Douglas County has experienced enormous increases in health insurance premiums over the last three years. Premiums for family coverage increased 33% in 1989 over 1988 levels; 37% in 1990 over 1989 levels and 17% in 1991 over 1990 levels. The increase for single coverage was 36% in 1989, 22% in 1990 and 16% in 1991. The 1991 premium for family coverage is \$451.03. For single coverage, it is \$161.34 for the WPS HMP Plan. Douglas County employees contribute 15% toward the cost of monthly premiums. The extent to which these increases in premium consume compensation dollars is evident in County Exhibit 13 wherein the annual dollar increase in premiums for family coverage in 1990 was \$1,272, and for 1991 it will total \$744. This on top of a dollar increase in the amount of \$816 for family coverage in 1989.

This dispute is to be resolved under the following:

STATUTORY CRITERIA

The criteria to be used to resolve this dispute are contained in Sec. 111.70(4)(cm)7, Wis. Stats., as follows:

7. 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. 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 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.

DISCUSSION

Introduction

The County relies on the following criteria to support its final offer: "c", "d", "e", "g", "h", and "j". The Union relies on "d", "e", and "g" to support the selection of its final offer for inclusion in a successor Agreement.

As necessary, the Arbitrator refers to the arguments presented by the parties in the course of discussing each of the criteria. Each of the criteria below are applied to determine which final offer on the matter of wages is to be included in a successor Agreement.

c. Interest and Welfare of the Public

The County argues that there exists a pattern of settlement in Douglas County. Adoption of the Union proposal will upset that pattern of settlement. The County argues that adoption of the Union offer will result in instability in the bargaining relationships between the County and the collective bargaining representatives of employees in the eight other units. The Arbitrator addresses the internal comparison argument in the discussion of criterion "j", "Such other factors".

The County argues that the County tax rate has increased by some 47% in the 1989 budget year. Although that rate declined in 1990, it still remains at its highest level in 15 years.

The Arbitrator is provided with no other information other than the fact that the tax rate in Douglas County is higher now than it has been for 15 years. There is no data in the record as to the reason for the tax increase, nor is there any cost analysis of the total cost impact of each offer. The costing of the offers of the parties is limited to County Exhibit 15. The Union did not place into evidence an exhibit on this point. The County's exhibit does not develop the total compensation budgetary figures for the base year 1989 and compare that base year with the increase in wages and other total compensation factors for calendar years 1990 and 1991. Instead, the County identifies a benchmark position, Equipment Operator I. It identifies the roll ups with regard to paying the hourly wage. It applies the increases proposed by the County and the Union to the wages and roll-ups for the benchmark position. The Arbitrator has no knowledge of the total

cost impact of the County and Union offers.¹

The Arbitrator concludes that there is insufficient data upon which the Arbitrator may distinguish between the final offers of the parties.

d. Comparability : Of These Employees with Employees Performing Similar Services

County Exhibit 5 deals with the comparability issue. In that Exhibit, the County includes excerpts from decisions of arbitrators rendered in Douglas County. For its argument on comparability, the County relies heavily on the award of Arbitrator Kerkman in a case involving health department employees of this Employer in which the counties of Bayfield, Sawyer, Taylor, Ashland and Washburn were recognized as comparables. The County also points to the decision of Arbitrator Boyer in a case involving the same unit which was decided in 1986. The County asserts that the City of Superior should be a secondary comparable, in this case.

The Arbitrator is reluctant to rely upon awards involving the same Employer for purposes of comparability where the unit which was the subject of the arbitration award is substantially different from the one in question. The cases cited by the Employer involve the County's nursing home, health department and law enforcement units. Health department, nursing care facility and law enforcement cases may well involve categories of employees which may only be compared at the county level of government. Yet, the County requests that the City of Superior be excluded as a comparable on the basis of these cases. For example, the City of Superior may not operate a nursing care facility.

For its part, the Union introduced testimony establishing the relationship between the classifications in the Highway Department salary schedule with positions in the City of Superior for employees employed in the street, garbage, sewer, sign, park, equipment depot and sewage departments. The Union notes that the rate for Equipment Operator I in Douglas County is \$10.26 per hour, the counterpart in the City of Superior earns \$11.37 per hour. The disparity is more pronounced in the case of

¹ The manner in which the parties' proposals are costed in County Exhibit 15 is as follows. The County notes that the current wage for Equipment Operator 1 is \$10.26 per hour. It proposes to increase that wage rate to \$10.62 in 1990 and to \$11.05 in 1991. The County then computes all costs of benefits and notes that the total wage cost under its offer increases from \$13.69 per hour to \$14.65 per hour in 1990 and \$15.48 per hour in 1991. On that basis, it concludes that its final offer generates an increase of 7% in 1990 and 5.6% in 1991. Using the same data, the County calculates that the Union final offer increase for 1990 is 8.7% and 7.1% in 1991.

Equipment Operator II. The hourly rate in Douglas County is \$10.16 and it is \$12.06 in Superior. The mechanic in Douglas County is paid \$10.46 per hour; in Superior an employee in that position is paid \$12.60 per hour.

The Union argues that Carlton County in Minnesota should be a comparable for this proceeding. The Arbitrator rejects this argument. As noted by Arbitrators Richard N. Miller in Douglas County Law Enforcement decided in 1983 and Richard U. Miller in City of Superior Decision No. 23757-A (4/87), the wage rates for public employees are established under a different statutory collective bargaining system. They are not properly considered in an interest arbitration proceeding in Wisconsin. The Arbitrator notes that Arbitrator Kerkman in his award concerning this Employer's Health Department, provided weight to the data concerning wage rates paid to private sector nurses in hospitals in Duluth. However, Arbitrator Kerkman had evidence in his record of a business relationship and interchange of resources between the hospitals put in evidence and the public facilities which served as the subject of his arbitration proceeding. Furthermore, he notes that he provided consideration to that data under criterion "f", comparability of the employees in arbitration to employees in private employment in the community and comparable communities. Arbitrator Kerkman concluded that the employees in question were in private employment in the same community and labor market as those employees who were the subject of the arbitration proceeding before him. There is no such evidence in this case. Quite the contrary, the Union points to wage rates in Carlton County rather than St. Louis County in Minnesota. There is no explanation for its analysis, other than, the data from Carlton County may support its position.

The Union presents no other comparability data. The Union has not introduced any evidence from which the Arbitrator might infer a direct linkage between the wage rates for "street" employees of the City of Superior and Highway Department employees of Douglas County, to the exclusion of any other comparability data.

With regard to the level of salaries paid by Douglas County to its employees in the Highway Department as contrasted to the wage rates paid by other counties to their employees in classifications such as Equipment Operator and Mechanic, there is no data in this record. The County presentation is limited to the percentage increases provided by the County identified comparables to their employees.

There are two dimensions to the comparability factor. First, the factor measures the level of wages paid to employees in similar classifications and performing similar duties among comparable employers to employees who are the subject of the interest arbitration proceeding. Other than wage rates paid by the City of Superior to its employees, that data is not available in this record. With regard to the second dimension, the percentage increase

provided by comparable employers to their employees, that element is discussed more fully under the criterion "g", cost of living.

The Arbitrator finds that the limited record on this criterion does not afford sufficient basis for the Arbitrator to select one final offer over the other for inclusion in a successor Agreement.

e. Comparability of These Employees with Employees Generally in Public Employment in the Same Community and in Comparable Communities

The Arbitrator has already addressed the wage rates paid to "street" employees in the City of Superior. There is little other data with regard to this criterion. It does provide some support to the Union position.

g. Cost of Living

The Union points to the disparity between the settlements reached in Douglas County and the increase in the Department of Labor's Consumer Price Index for calendar years 1986 through 1989. The settlements were at 3% per annum at a time when the Consumer Price Index increased 1.1% in 1986 and 4.4% in 1987 and 1988 and 4.6% in 1989. The Union notes that the County's proposal which is far less than the 6.1% increase in the CPI for small metro area index for 1990, means that County Highway employees will lose further ground to the increase in the cost of living.²

The County argues that the pattern of settlement in evidence in this record demonstrates that the County and the Union have settled above and below the increases in the Consumer Price Index. It argues that such increases should not be controlling, here.

The County has introduced convincing evidence demonstrating the level of increases, in the counties which it identifies as comparables and the City of Superior, which closely correspond to the wage increases provided by Douglas County to its employees over the last five year period of 1985 through 1989. In addition, the County has introduced evidence that the same counties have settled their agreements at levels which closely approximate the 3.5% increase provided by the County in 1990 to its Highway Department employees. Arbitrators often conclude that the best measure of the cost of living is the pattern of settlement extant among comparable employers. Although this Arbitrator is reluctant to establish and fix the comparables for Highway Department employees for Douglas County

² The Union argues that total compensation figures should not be used in the application of the CPI. It cites the Kerkman award, supra, in support of its position. The Arbitrator does not apply the CPI, in this case, because of the lack of costing data, as described at criterion "c" and footnote 1.

based upon the record in this case, it is clear, that there is a pattern of settlement in Northwestern Wisconsin, including the City of Superior, which closely approximates the 3.5% wage increase offered by the County, in this case.

The Arbitrator concludes, therefore, that this criterion supports adoption of the County offer for inclusion in a successor Agreement.

j. Such Other Factors

In County Exhibit 12, the County records the pattern of settlement for the other eight Douglas County units for calendar years 1990 and 1991. In calendar year 1990, six units have settled at between 3.25 or 3.5%. Two units at the Middle River Nursing Home have settled either voluntarily or through an arbitration award at 3% for calendar year 1990. For the Arbitrator to adopt the Union's final offer of 5.5%, it would break this solid and consistent pattern of settlement. There is no evidence in this record to justify the adoption of a final offer which is a pattern buster.

The Arbitrator agrees with the observation made by Arbitrator Vernon in Sauk County (Highway Department), Decision No. 26359-B (11/90):

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 record evidence demonstrates the existence of a pattern of settlement in Douglas County for calendar year 1990, with regard to the percentage increase provided to each of the units. The Arbitrator concludes that it is this factor which provides substantial support for the selection of the County's offer for inclusion in a successor Agreement.

SELECTION OF THE FINAL OFFER


The cost of living criterion supports the County's offer. The criterion "Such other factors" provides strong support for the selection of the County's offer for inclusion in a successor Agreement. The wage rates paid to City of Superior employees provides some support to the adoption of the Union's position under criterion "e". The Arbitrator selects the County's final offer for inclusion in a successor Agreement.

On the basis of the above discussion, the Arbitrator makes the following:

AWARD

Based upon the statutory criteria found in Sec. 111.70(4)(cm)7a-j of the Wisconsin Statutes, the evidence and arguments of the parties and for the reasons discussed above, the Arbitrator selects the final offer of Douglas County (Highway Department), attached hereto, to be included, together with the Stipulation of Agreed Upon Items, in a successor Agreement for the term of calendar years 1990 and 1991 between the Employer and the Union.

Dated at Madison, Wisconsin, this 24th day of May, 1991.


Sherwood Malamud
Arbitrator

COURTHOUSE
1313 BELKNAP
SUPERIOR, WISCONSIN 54880
(715) 394-0464

COUNTY OF DOUGLAS
DEPARTMENT OF PERSONNEL

Mark L. Pendleton
Personnel Director

HIGHWAY DEPARTMENT

- County Final Offer -

1. Article 37, Effective Date, Expiration, Renewal

Two-year agreement 1990 and 1991.

2. New Article: "RETROACTIVITY"

- 1) All retroactivity pay, if applicable to a successor agreement, shall be made payable within 30 days upon receipt of a signed labor contract by both parties.
- 2) All retroactivity pay, if applicable, shall be made to only those employees who were on the Douglas County payroll at the time any successor agreement was ratified by both parties. Any employee that retired during the retroactive period will be eligible to receive retroactive pay.

3. New Article: "MISCELLANEOUS"

- 1) Employees who sustain essential equipment damage in the line of duty shall be reimbursed at a reasonable replacement cost upon approval by the Highway Committee.
- 2) For current Douglas County employees, prior continuous service for benefit purposes (e.g. sick leave, vacation, personal leave days, longevity) shall be transferable to this agreement.

4. Article 9, GRANTING TIME OFF, New Section 3. "Family and Medical Leave"

Family leave and medical leave shall be provided pursuant to Section 103.10, Wis. Stats. Pursuant to this statute, for example, employees are eligible for the following:

- a) Up to six weeks of unpaid family leave over a 12-month period for the care of a newborn or newly adopted child.
- b) Up to 2 weeks of unpaid family leave over a 12-month period for the care of a seriously ill child, spouse or parent.

d) Employees must schedule leaves on a reasonable basis.

5. Article 21, HEALTH AND WELFARE, Revise Section 2.

The County reserves the right to change the insurance carrier and/or self-fund its insurance program, provided the coverages are substantially equivalent or superior to the health insurance coverages that were offered by Blue Cross/Blue Shield in 1986. If all of Douglas County's Collective Bargaining units agree to this provision and if a change in coverage occurs, the employee's contribution will then be reduced to 10% and the employer's contribution increased to 90%.

Any changes in the health insurance program per the above paragraph must include the following coverages:

- *Limits of Liability - \$1,000,000
- *Total Liability for the employee regarding available benefit coverages shall not exceed \$1,500 annually. This amount excludes expenses incurred for prescription drugs and expenses that exceed the limits of liability.
- *The annual front-end deductible shall not exceed \$100 per subscriber and may incorporate up to three deductibles per family. After the deductible is satisfied, no further deductible will apply for each hospital stay.
- *Routine Physicals; however, this coverage may be excluded if the county is unable to reasonably purchase or provide such coverage.

6. New Article

The County reserves the right to offer (at the County's discretion) a voluntary incentive program to the employees for not enrolling in the group health insurance program. The County also reserves the right to terminate such program at its discretion.

7. Article 13, Coveralls, Side-Letter Agreement

"In 1991 the County agrees to purchase 4 leather aprons for the welders."

8. Article 30, Retirement

Revise January 1, 1989 to "January 1, 1990".
Revise \$26,500 to "\$28,500".

9. Article 31, Emergency Leave

Revise by adding the following after uncle, "step-parents".

10. Letter of Understanding:

"With everything equal, for overtime purposes the County will utilize departmental employees before independent contractors are used."

11. Article 34, Tool Allowance

Increase the tool allowance from \$140 to \$160 effective January 1, 1990.

12. Appendix B

Add a new sentence under the percentage progression scale: "Effective January 1, 1991, the Labor (seasonal) position shall be exempt from the above progression scale and shall be paid the full hourly wage rate."

13. Wage Rates:

Effective January 1, 1990, increase each wage rate 3.5% across-the-board.

Effective January 1, 1991, increase each wage rate 3% across-the-board. Effective July 1, 1991, increase each wage rate 1% across-the-board.

*note: Effective April 24, 1990, increase the wage rate for the Office Clerk from \$7.10 to \$7.31.

Submitted by,



MARK L. PENDLETON
Douglas County
Personnel Director

10-23-90
Date