ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)
)
Between)
)
BARRON COUNTY - DEPARTMENT OF)
SOCIAL SERVICES)
)
And)
)
NORTHWEST UNITED EDUCATORS)
(DEPARTMENT OF SOCIAL SERVICES)
PROFESSIONALS))
)
)

Case 95
No. 45168
INT/ARB 5907
Decision No. 27060-A

Impartial Arbitrator

William W. Petrie
217 S. Seventh Street #5
P. O. BOX 320
Waterford, Wisconsin 53185

Hearing Held

Barron, Wisconsin
January 27, 1992

Appearances

For the County

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For the Union

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Barron County Department of Social Services and Northwest United Educators, with the matter in dispute the terms of a two year renewal labor agreement covering calendar years 1991 and 1992. The parties are in agreement with respect to all matters except the Employer's proposal for certain changes covering future probationary employees, and the Union's proposal for the addition of longevity pay for long service employees holding the Social Worker II Classification.

The parties exchanged proposals and met and negotiated without complete success, after which the Union on January 25, 1991 filed a petition with the Wisconsin Employment Relations Commission seeking final and binding interest arbitration pursuant to Section 111.70(4)(cm)(7) of the Municipal Employment Relations Act. After a preliminary investigation by a member of its staff, the Commission on October 17, 1991 issued certain findings of fact, conclusions of law, and an order requiring arbitration of the matter, and on November 13, 1991 it issued an order appointing the undersigned to hear and decide the matter.

A hearing took place in Barron, Wisconsin on January 27, 1992, at which time both of the parties received full opportunities to present evidence and argument in support of their position. Each thereafter summarized with the submission of post hearing briefs and reply briefs, after which the record was closed by the Arbitrator on May 18, 1992.

THE FINAL OFFERS OF THE PARTIES

The final offers of the parties are hereby incorporated by referenced into this decision and award, and they provide in summary as follows:

(1) The Employer proposes a one year probationary period for employees hired after the ratification of the renewal agreement, with fringe benefits implemented after six months of service, and with salary increases of $50.00 per month or 4.0%, whichever is higher, after six months of employment.

(2) The Union proposes that Social Workers II with seven years of service receive longevity pay of .25 per hour, with an additional .25 per hour for those with over fourteen years of service.

(3) Both parties proposed identical 3.5% across the board increases for all wages effective January 1, 1991 and January 1, 1992; accordingly, this item is no longer in dispute.

THE STATUTORY CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Arbitrator to give weight to the following arbitral 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 sector or in private employment."

POSITION OF THE EMPLOYER

In support of the contention that its is the more appropriate of the two final offers before the Arbitrator, the Employer argued principally as follows:

(1) In general that its offer provides a reasonable wage increase, in line with the comparable settlements, while maintaining the County's wage leadership position among the comparables.

(2) That the County proposed comparable pool is reliable and must be utilized to determine the outcome of the dispute.

(a) That the parties agree that the eight contiguous counties should be used as comparables and, contrary to any arguments to the contrary, that all eight should be given equal weight in the final offer selection process.

(b) That a twelve year old arbitration decision involving the County Sheriff's Department, which broke the eight contiguous Counties into primary and secondary comparables should not be followed; that the County has had seven

intervening arbitrations, in all of which the arbitrators have confirmed the use of all eight contiguous counties as the appropriate comparables.

(c) That it is well established that the Arbitrator should respect the historic utilization by the parties of the eight continguous counties as the primary comparison group.

(d) That the Union has failed to point to any significant changes in the comparability criteria, which would warrant arbitral reversal of the seven previous arbitration decisions.

(e) Apart from arbitral precedent, the normal criteria used as indicia of comparability include geographic proximity, size of population and income level; that application of these criteria in the dispute at hand supports arbitral use of the eight contiguous counties as the primary comparables.

(3) That when external comparables' wage rates are analyzed, the Union's alleged lack of promotional opportunities is without merit.

(a) That the parties' proposals for 3.5% wage rate increases for each of the two years are identical; that the Union, however, is proposing longevity increases of .25 per hour after seven years, and .50 per hour after fourteen years, for Social Worker IIs.

(b) That while the Union argues that its proposal is a means of providing SW-II's with a financial remedy for a lack of job progression, the proposal is really a smokescreen to de-emphasize the fact that Barron County already pays the highest social worker wage rates of any of the eight counties in the comparable pool, even without additional longevity payments.

(4) That the Barron County Department of Social Services is subject to the Wisconsin Department of Health and Human Services Merit System Rules for social worker position advancement, and a review of the County's current policy on social worker job progression is useful at this point.

(a) That Article V, Section 5.03, entitled Promotions, provides as follows:

"Social Worker I will be reclassified to a Social Worker II after two years of experience as a Social Worker I in the Barron County Department of Social Services, satisfactory performance, and achievement of the Merit System minimum inservice training requirements. Social Worker II will be eligible for reclassification to a Social Worker III after they have had three years of experience as a Social Worker II, 12 graduate credits from an accredited school of social work or extension programs, 255 hours of in-service training, and specified staff development activities. Promotion from a Social Worker II to a Social Worker III will be at the discretion of the Employer."

(b) That the fact that automatic progression for Social Worker II's to move into the Social Worker III classification has been a recurring Union demand at the bargaining table, is not relevant to this dispute.

(c) That the Union's presumed intent to show that the County has been unreasonable for refusing to agree to the Union proposed automatic progression, should be rejected for three basic reasons: first, that bargaining is a give and take process, and the final agreement reflects a mutual agreement by both parties and represents the best bargain that was possible in that round of negotiations; second, that no other County unit has automatic progression from one classification to another, and the social workers are already ahead by virtue of such progression from Social Worker I to Social Worker II; and, third, the Union's proposal disregards the very rules which govern job promotion in Barron County, inherent in which is the concept that progression to Social Worker III is not automatic.

(5) That past reclassification requests submitted by Social Workers II have been appropriately processed by the County in light of the merit system rules and the Department's staffing structures.

(6) That the Union's attempt to portray the SW-II and the SW-III positions as equivalent in job content and job responsibilities is misleading.

(a) That Union offered testimony relative to the job content of the CW-II and CW-III classifications should not be credited by the arbitrator, in that the witness was not fully qualified to testify as to job content.

(b) That Barron County Social Services Director Shirley McGiffin testified that advancement from SW-II to SW-III must be preceded by attainment of specific educational and job activity requirements, and must be approved by the director pursuant to the merit system rules. That she also indicated that the two positions are not identical in job content, that the higher level position involves a significant increase in job responsibilities, job complexity, and advanced, often specialized, casework.

(c) In short, that progression from a SW-II to a SW-III classification is job driven, and only when there is an opening for SW-III level work should an SW-III slot be filled.

(d) That Director McGiffin also testified that, during her tenure as Director, the structure of the agency had changed in such a manner as to require fewer SW-III positions; that any past flexibility in promotion practices by her predecessor should not bind Ms. McGiffin at present.

(7) That Union exhibits relating to past litigation over a ten year period are not material and relevant to the outcome of these proceedings.

(a) That the cases are old (one dating to 1980), all were either voluntarily settled or the County was exonerated, and they

have nothing to do with promotions from SW-II to SW-III.

(b) That the question presented by the Union relates to whether the "promotion frustration" in Barron County is so acute that the social workers deserve a longevity provision as a remedy? That the record fails to support such a claim, and the real issue is money; since Barron County social workers are already paid higher than their counterparts in comparable countries, that the Union has simply concocted an elaborate justification for its longevity proposal.

(8) That an examination of the social worker wage rates reveals that Barron County wages are the highest among the comparables, even without longevity.

(a) That Barron County already pays its social workers higher wages than all eight of the comparable counties.

(b) That the parties agree on the 3.5% across the board increases for 1991 and 1992, which is a reasonable settlement and in line with the comparables.

(c) That when monthly wages are analyzed, Chippewa, Dunn and St. Croix County social workers receive equal or higher wages than Barron County social workers, but the latter work far fewer hours per year (1820) than do the average comparables.

(d) That Barron County social workers hourly wage rates exceed the highest of the comparables by .20 per hour, and exceed the average of the comparables by close to $2.00 per hour. Further, that Barron County social workers receive the maximum rate after only twelve months, rather than the more typical eighteen to twenty months required elsewhere.

(e) In consideration of the Union's arguments relating to an alleged lack of promotional opportunities for SW-II's, it should be noted that Barron County's Social Workers II wage rates are higher than all of the comparable Social Workers III, except Sawyer County, and they exceed the average SW-III rates by about $1.20 per hour.

(f) Even without the Union's longevity demand, that the County's wage rates exceed the comparables' wage rates <u>with longevity included</u>.

(9) That the Union's final offer is seeking a significant change in the previously negotiated status quo, but it has failed to meet the normal arbitral standards to achieve such change.

(a) That parties seeking a change in the negotiated status quo ante in Wisconsin have normally been required to demonstrate a need for such change and to show a quid pro quo for the proposal; that evidence of such requirements should meet a <u>clear and convincing standard of proof</u>.

(b) That the Union has failed to demonstrate any need for the change: that Barron County Social Workers already make more money than their counterparts on a straight wages basis, when longevity is factored in, and even when Barron County's SW-II's are compared with seven of eight counties' SW-III's; that the Union's demand for longevity pay exceeds the amount paid by those comparables which have longevity pay; that Barron County's social workers work fewer hours than their normal counterparts, and have never suggested increasing their take-home pay by working an increased number of hours per year.

(c) That the Union has failed to provide any quid pro quo for its proposed change in the status quo. In this connection, that its wage offer is the same 3.5% as proposed by the County, and it has refused to agree to the County proposed increase in the length of the probationary period, a change already agreed to in the County's other five bargaining units.

(d) Pursuant to the above, that the Union has failed to establish any appropriate basis for arbitral adoption of its proposed change in the status quo.

(10) That arbitral adoption of the final offer of the County is supported by consideration of internal comparisons with the settlements reached in other Barron County units.

(a) That the County's wage offer is consistent with the internal comparables, with the exception of the County's public health nurses who received an extra step in their salary schedule in the second year of their renewal agreement. That this additional step was, however, necessitated by comparisons, and brings the nurses to within .01 per hour of the average among comparables, and brings them to the approximate middle of the comparables.

(b) That the Union's longevity proposal is not supported by the internal comparables. That only the County's law enforcement unit has longevity pay, and only as a result of a 1981 arbitration award wherein the Arbitrator favored the County's position on longevity but selected the total offer on other grounds.

(c) That no other County unit has longevity pay, and even in the law enforcement unit the provision is much less lucrative than that proposed by the Union in the case at hand. Contrary to any arguments to the contrary, that the extra step in the public health nurses salary schedule does not constitute a longevity pay plan.

(d) That Wisconsin interest arbitrators have frequently recognized that internal comparisons take on greater significance in connection with benefits, such as longevity pay.

(e) That the proposed change in the duration of the probationary period would be fully consistent with the practices in all of the other County units.

(f) That since new social workers are on the road 60% to 70% of the time, it is difficult to adequately evaluate their

performance within the current six month probationary periods. That the county's probationary period proposal is a reasonable one which has already been agreed upon in each of the County's five other bargaining units.

(11) That arbitral consideration of the interests and welfare of the public and the cost of living criteria supports the selection of the final offer of the County.

(a) That the County formulated a final offer that is in line with the level of increases given to other public sector employees and internal settlements; in these connections, that the County's final offer matches the level of restraint and moderation utilized by other employers and employees who have settled in the same economic environment.

(b) That the need for moderation in the case at hand is particularly indicated by Barron County's continued reliance upon the farm economy and its current difficulties.

(c) That Barron County taxpayers are already facing sharp increases in property tax rates, while the value of their land is correspondingly increasing at a slower rate than in other counties; that the County's taxpayers are also facing increased school taxes in the face of a higher than average rate of unemployment.

(d) That arbitral consideration of the cost of living criterion supports the adoption of the County's final offer; that cost of living comparisons should be based upon examination of the total package costs of the final offers and the CPI for non-metropolitan urban areas. That the referenced examination and comparison shows that while both parties' offers exceed increases in the cost of living, the final offer of the Employer is closer to the index than that of the Union.

(e) On the basis of all of the above, that there can be no justification for selection of an offer which exceeds the County's final offer.

In summary and conclusion, that the final offer of the County is principally favored by arbitral consideration of the following: that the County proposed comparison pool is appropriate; that the Union's emphasis upon an alleged lack of promotional opportunities is misplaced, in that Barron County social workers are wage leaders even without a longevity provision; that neither the internal nor the external comparables support the Union's proposal; that the Union has failed to meet the standards governing a proposed change in the status quo; that the County's wage offer is in line with both internal and external settlements, and maintains its position among the comparables; that the County proposed probationary period is supported by internal comparables, and is a reasonable way to address a growing administrative concern; and that the County's final offer is more reasonable in light of increases in the cost of living and the interests and welfare of the Barron County taxpayers.

In its reply brief, the County emphasized or reemphasized the following principal considerations and arguments.

(1) That its earlier arguments should be credited with respect to the inclusion in the external comparison pool of all eight contiguous counties, without the distinctions used in an eleven year old arbitration decision, and consistent with the intervening decisions of six other Wisconsin interest arbitrators.

(2) That, as the Union admits, Barron County Social Workers work far fewer hours than do their counterparts in comparable counties; for this reason, that the only valid wage rate comparison is a comparison of hourly wage rates.

(a) That at all three positions, Barron County pays its social workers about $2.00 more per hour than comparable counties; that the Union's proposal would add an additional .25 to .50 per hour to the Social Worker II classification, which already exceeds the comparables' wage rates.

(b) While the Union claims a desire to reduce the discretionary power of the Director, its argument is a "smoke screen" designed to mask the fact that its longevity proposal is nothing more than a demand for additional wages for employees who already earn more than those employees in comparable counties.

(3) That the Union arguments that the degree of promotional discretion reserved to the Director under Article V of the agreement, has resulted in "promotional frustration" for Social Workers II, ignore the fact that the Wisconsin Department of Health and Human Services Merit System Rules, under which the Barron County Social Services Department is required to operate, mandate that all social worker promotion decisions must be at the discretion of the Director.

(a) That the record does not support the Union's claim that the Director's infrequent promotions from SW-II to SW-III, reflect any abuse of her discretionary powers.

(b) That progression from SW-II to SW-III is not automatic, that no such automatic progressions are provided for in other County bargaining units, that Merit System Rules prohibit automatic progression, and that promotion to SW-III is job-driven; in the latter connection, that only when there is an opening for SW-III level work can a position be filled.

(4) Contrary to certain arguments advanced by the Union and as emphasized in the County's initial brief, Barron County Social Workers earn more without longevity than all of the comparable counties, even including longevity.

(5) As emphasized in its initial brief, longevity pay is not a pattern in Barron County.

(6) Contrary to the arguments of the Union, that a justification has been established for the County proposed change in the duration of the probationary period.

(a) That the above point is reflected in the fact that the County has terminated two probationary social workers in recent years.

(b) That while the current contract provides for extended probationary periods by mutual agreement of the parties, there is nothing to require the Union to agree to such extensions.

(c) That the extended probationary periods are already the internal pattern in the five other bargaining units within the County.

POSITION OF THE UNION

In support of the contention that its is the more appropriate of the two final offers before the Arbitrator, the Union argued principally as follows:

(1) Preliminarily it urged that the case was highly unusual, that it was not about money, but rather that it involved power and control over the employment relationship.

(a) That its longevity proposal was an attempt to reduce the discretionary power vested in the Social Services Director in regard to social worker promotions.

(b) That the County's proposal to extend the probationary period was an attempt to expand the discretionary control of the Director, in regard to probationary periods.

(c) That both parties have proposed changes in the status quo, and each has the burden of establishing the appropriate basis for its proposed change; that the Union has established the requisite basis for its proposal, while the Employer has failed to do so.

(2) That the threshold issue for the Arbitrator is the determination of which counties are the most comparable to Barron County.

(a) That while the County urges that the eight contiguous counties are comparable, the Union urges that only Polk, Dunn, St. Croix and Chippewa Counties are actually comparable to Barron, and that Burnett, Rusk, Sawyer and Washburn Counties are simply too small by all indicia of comparability.

(b) That while the County has correctly cited the previous interest arbitration awards in which all eight counties were considered, in several of these the arbitrators recognized a primary and a secondary comparable pool; that the most notable of the latter is the decision of Arbitrator Imes in Barron County Sheriff's Department, Dec. 18437-A (7/81),(EX #40), wherein she indicated in part as follows:

"...For these reasons, the undersigned concludes the eight contiguous counties should be looked at as comparables, but that they should be divided into primary and secondary comparables, with Polk, St. Croix, Dunn and Chippewa as the primary counties and Burnett, Washburn, Sawyer and Rusk Counties as the secondary comparables."

(c) That the Arbitrator should not consider the secondary pool in the dispute at hand for the following basic reasons: that Barron County had a 1990 population of 40,750, the average population of Polk, Dunn, St. Croix and Chippewa Counties is 43,323, while the average population of Burnett, Rusk, Sawyer and Washburn Counties was 14,029; that similar statistical results are obtained when comparing shared revenues, state aids, public assistance and medical assistance monies; and Barron's 1989 per capita adjusted gross income more clearly aligns with the four larger counties.

(d) That while the issue of comparability may not be the determining factor in these proceedings, that it is time for the Arbitrator to go on record on the comparability issue; that reliance on all eight contiguous counties is simply inequitable and results in a stranglehold on the wages paid to public employees in Barron County.

(3) That the record favors adoption of the Union offer relative to Longevity Pay for Social Workers II.

(a) Given the fact that there are 10 Social Workers II in Barron County, that the new benefit could have a maximum yearly cost of $9,100; since most of the Social Workers II have less than seven years of experience, however, the current cost of the benefits is significantly less than the theoretical maximum. That the low yearly cost illustrates the position of the Union that the issue has less to do with money than with control.

(b) That the basic problem flows from the last sentence of Article V, Section 5.03, which provide that "Promotion from a Social Worker II to a Social Worker III will be at the discretion of the Employer."

(c) That the Union has sought to eliminate or to revise the above language since 1982, generally proposing automatic progression based upon satisfactory performance and length of service as a Social Worker II. That despite its efforts, however, the disputed language has remained unchanged since 1982.

(d) That only two employees in Barron County currently hold the Social Worker III Classification, and it appears unlikely that the two pending requests for reclassification will increase this number.

(e) That in addition to its negotiations attempts, the Union has sought relief through litigation; that Union Exhibit #18 illustrates the difficulties of the Union, and represents an instance where the actions of the Director were found to have constituted a prohibited practice which interfered with the rights of the employees.

(f) That within the atmosphere of frustration, domination and illegal interference, the Union has proposed longevity for Social Workers II; that while they may never achieve a reclassification, the proposal would at least reduce the monetary differences between the second and the third levels of the social worker jobs, for the affected employees.

(g) That while the County will argue that longevity is an expensive new benefit that should not be granted through arbitration, such a benefit already exists within the Sheriff's Department and the Public Health Nurses units.

(h) That since the Social Workers cannot achieve vertical advancement through promotion, the Union has no choice but to propose horizontal advancement through longevity.

(i) That the County will also oppose the Union's longevity proposal on the basis of the hourly rates paid in comparable counties, but these rates do not reveal the entire picture. Due to the fact that Barron County is the only county with a 35 hour week, it is not a wage leader when reviewing monthly rates; that Chippewa, Dunn, Polk and St. Croix average $2,368.27 per month, versus Barron's average of $2,340.00 per month. Further, that the four comparable counties provide for longevity benefits in addition to the rates averaged above.

In summary, that the Union's longevity proposal will appropriately reduce the discretionary authority of the Director, attempts to negotiate changes have been unsuccessful and have resulted in endless litigation, Director McGiffin has reclassified only one employee since 1977, and the Union's request for longevity pay is not without precedent in the County.

(4) That the record does not favor adoption of the Employer proposal to lengthen the probationary period to one year.

(a) That while there is no doubt that one year probationary periods are the norm in Barron County, three of the five units made the change a part of their voluntary settlements.

(b) That there is no evidence in the record to indicate that there has been a problem with the previous six month probationary period; to the contrary, that Director McGiffin indicated only two instances of failure to complete the probationary period, and there is no indication that another six months would have had an impact on either case.

(c) That the County currently has the ability to extend a probationary period by requesting an extension and, in any event, it has failed to establish that the current six month period is a condition which requires change.

(d) That four of the comparable counties still maintain six month probationary periods, which supports the continuation of the status quo ante.

In the basis of all of the above, the Union submits that the Arbitrator should select the final offer of the NUE in the matter at hand.

In its reply brief, the Union emphasized or reemphasized the following principal considerations and arguments.

(1) That the County's reliance upon an eight county comparison pool and in accompanying hourly rate statistics in support of its final offer, distorts the wage comparisons.

(a) That the appropriate comparison pool should be limited to Chippewa, Dunn, Polk and St. Croix Counties; when this pool is used, that Barron County does not emerge as a wage leader.

(b) In the above connection, that the County's reliance upon hourly wages is misleading.

(2) That the County has gone to great lengths to argue that the Union's proposal is without merit, and to urge that the request for longevity pay is inappropriate.

(a) That the Social Workers II are, however, frustrated in their desires for advancement, and the Employer should understand and respect these desires.

(b) That the Employer should practice what it has been preaching in the 1990 annual report, a copy of which comprises Union Exhibit #14.

(3) That the County's claim that progression from SW-II to SW-III is job driven and only when there is an opening for SW-III level work can a SW-III slot be filled, is not acceptable to the Union.

(a) That there is no contractual or statutory limitation upon the number of SW-III's in a particular County.

(b) That there are currently only two SW-III's and if the Director had her way, there would only be one.

(c) That the current Director simply does not believe in SW-III's, and that her negative attitude toward job advancement must end.

(4) That this case is simply another example of the Director's long term power play. That it is time for shared decision making within the Department of Social Services, and that adoption of the final offer of the Union will help move the parties in that direction; that such action would reduce the power of the Director in evaluating reclassifications requests, and it will also create an equitable wage differential between the social worker classifications.

FINDINGS AND CONCLUSIONS

This is a highly unusual interest arbitration proceeding, in that the basic thrust of the Union's case is directed against a contract provision and an alleged practice of the Employer, neither of which is directly brought into issue as part of the final offer of either of the parties. In essence, the Union is urging that those terms of Section 5.03 of the collective agreement which govern promotion from the Social Worker II to the Social Worker III Classification, are inequitable to the extent that they condition such promotion upon

the discretion of the Employer, and arguing also that the Employer has unreasonably withhold such discretionary approval in the past, which has frustrated the job advancement prospects of many Social Workers II, who are allegedly fully qualified for advancement to the higher classification. Prior to addressing the evidence and the arguments of the parties in detail, applying the statutory criteria, and reaching a decision, the Arbitrator will offer certain preliminary observations about the application of the statutory interest arbitration process to the underlying problem described by the Union.

Arbitral Observations Relative to the Interest Arbitration Process

The question before the undersigned is not whether the Union has made a strong equitable case for such possibilities as specific staffing ratios between the Social Worker II and Social Worker III classifications, for automatic progression from Social Worker II to Social Worker III, and/or for modification of the terms of Article V, Section 5.03 of the collective agreement; neither is the Arbitrator empowered to evaluated the provisions of the Wisconsin Department of Health and Social Services Merit System Rules which govern social worker advancement, and/or to determine whether they are wise or unwise, or equitable or inequitable. Rather, the undersigned possesses only the authority to determine which of the certified final offers of the parties is the most appropriate, when measured according to the statutory criteria described in Section 111.70(4)(cm)(7) of the Wisconsin Statutes.

By way of dicta, the Arbitrator will observe at this point, that while the Union has regularly proposed changes to Article V in its past contract renewal negotiations demands (Union Exhibits #5 through #9), it has failed to achieve such changes at the bargaining table, and it has also failed to include any such proposal in its final offer submitted to arbitration. This choice by the Union undoubtedly reflects its anticipated difficulty in gaining arbitral acceptance of any provision in arbitration which probably could not have been achieved over the bargaining table.

It will be noted at this point that while private sector interest arbitrators almost invariably avoid giving either party that which they could not have achieved over the bargaining table, public sector neutrals are at least somewhat more receptive to such proposals. This principal is very well discussed as follows by Arbitrator Howard S. Block:

> ".....The bargaining in the private sector has for its consideraiton the union's giving up its legal right to strike for a defined period of time in return for acceptable conditions of employment and rates of pay. But, what can a public employee organization offer as meaningful consideration in bargaining when it has no legal strike weapon to relinquish? Any other consideration offered by unions, public or private, such as improved employe moral and more efficient work performance, can be obtained through other methods, such as enlightened personnel policies, outside the bargaining relationship....
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> .....As we know, a principal guideline for resolving interest disputes in the private sector is prevailing industry practice - a guideline expressed with exceptional clarity by one arbitrator as follows:
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> 'The role of interest arbitration in such a situation must be clearly understood. Arbitration in essence, is a quasi-judicial, not a

legislative process. This implies the essentiality of objectivity - the reliance upon a set of tested and established guides.

'In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of the extraordinary pressures which led to the exhaustion or rejection of their traditional remedies.

'The arbitrator attempts to accomplish this objective by first understanding the nature and character of past agreements reached in a comparable area of the industry and in the firm. He must then carry forward the spirit and framework of past accomodations into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past but only that he avoid giving to either party that which they could not have secured at the bargaining table.'

Viewed in the light of the foregoing principles, the public sector neutral, I submit, does not wander in an uncharted field even though he must at time adopt an approach diametrically opposite to that used in the private sector. More often than in the private sector, he must be innovative; he must plow new ground. He cannot function as a lifeless mirror reflecting pre-collective negotiations practices which management may yearn to perpetuate but which are the target of multitudes of public employees in revolt." 1./

Without minimizing the significant difficulties inherent in attempting to gain in the interest arbitration process, any demand that could not have been achieved at the bargaining table, public sector interest arbitrators should be and are at least somewhat more amenable to such changes, than are their private sector counterparts. Accordingly, the Association's past failure to achieve a negotiated settlement of its perceived problems with Section 5.3 of Article V, should not have automatically precluded it from submitting its proposal to interest arbitration, with success in the process contingent upon its ability to make the requisite persuasive case for such change in the previous status quo.

In addition to the above, it is noted that there is nothing contained in the arbitral criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes which would suggest to the undersigned that a Wisconsin interest arbitrator should consider a party's past failure to achieve one bargaining demand in past negotiations, as providing independent justification for the adoption of a final offer containing another demand intended to "make-up" for the earlier unsuccessful demand.

At this point it will also be noted that a Wisconsin interest arbitrator normally operates as an extension of the parties' collective negotiations, and he or she normally attempts to place the parties into the same position they would have reached in negotiations, but for their inability to achieve a complete settlement during their preliminary negotiations. This principle was touched upon in a slightly different context above, and it is also well described in the following excerpt from the book by Elkouri and Elkouri:

"In a similar sense, the function of the 'interest' arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the arbitrator is best

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1./ Block, Howard S., Criteria in Public Sector Interest Disputes, Reprint No. 230, pp. 162, 164-165, Institute of Industrial Relations, UCLA, 1972. [Included quotation from Des Moines Transit, 38 LA 666, 671 (1962)]

understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:

> 'Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting their case to arbitration, the parties have merely extended their negotiations - they have left to this Board to determine what they should by negotiations have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men have agreed to?...To repeat, our endeavor will be to decide the issues, as upon the evidence, we think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining..'." 2./

The Application of the Arbitral Criteria to the Dispute at Hand

In arguing their respective cases, the parties principally disagreed with respect to the application of and the weight to be placed upon the internal and external comparison criteria, the cost of living criterion, the interests and welfare of the public criterion, certain elements in the bargaining history of the parties, certain elements of past litigation between the parties, and the significance of each party's proposed change in the status quo ante. Prior to specifically addressing the two impasse items in detail, the Impartial Arbitrator will offer certain preliminary observations and conclusions relating to these various considerations.

The Wisconsin Legislature has not prioritized the various statutory criteria contained in Section 111.70(4)(cm)(7) of the statutes, but it is generally recognized that the most important and persuasive of the various arbitral criteria is the comparison criterion, and the most important of the possible comparisons is the so-called intraindustry comparisons. This principle is very briefly described in the following excerpt from the widely respected book by Irving Bernstein:

> "a. Intraindustry Comparisons. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. Most important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards..." 3./

The terms "intraindustry comparisons" when applied to the public sector refers, of course, to comparable public employers employing similar groups of employees. In the case at hand, this group consists of comparable counties employing similar groups of social workers.

2./ Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, pp. 104-105. [Included quotation from Twin City Rapid Transit Co., 7 LA 848 (1947)]

3./ Bernstein, Irving, The Arbitration of Wages, University of California Press, 1954, p. 56.

The parties differed with respect to the makeup of the primary intra-industry comparison group in the case at hand, with the Employer urging that it should consist of the eight contiguous counties of Polk, Dunn, St. Croix, Chippewa, Burnett, Rusk, Sawyer and Washburn, and the Union urging that Polk, St. Croix, Dunn and Chippewa Counties should constitute the primary comparables, and that Burnett, Washburn, Sawyer and Risk Counties should be considered secondary comparables. In arguing its case, however, the Union urged that the Arbitrator should disregard the so called secondary comparables in the final offer selection process in these proceedings.

While Arbitrators apply a variety of consideration when they are called upon to initially determine the makeup of a primary intraindustry comparison group, they generally need no such analysis to approve the continued use of the same comparables previously utilized by the parties. As referenced earlier, the principal role of a Wisconsin interest arbitrator is to attempt to place the parties into the same position they would have occupied but for their inability to reach full agreement at the table. In so doing, the neutral will normally pay close attention to the parties' bargaining history, including past interest arbitration decisions, and will require very persuasive evidence to justify changes in the makeup of the primary intraindustry comparison group. As emphasized by the Employer in its post-hearing brief, these principles were particularly well stated as follows by Arbitrator Daniel J. Nielsen, in the County's most recent previous interest arbitration proceeding.

> "Acknowledging that these four counties do have populations and median incomes more nearly reflecting those of Barron, the undersigned must still decline to alter the historic comparability relationship between the nine counties. The Union has not pointed to any change in relative population size or income levels from those prevailing at the time when the comparability relationship was first established or the times when it was reinforced in subsequent preceedings. Presumably the arbitrators in 1980, 1982, 1984, 1985 and 1987 were aware of the differences in size and wealth among the nine counties, and yet declined to divide the comparables group into primary and secondary comparables. Absent a change in circumstances, the parties are entitled to rely upon the benchmarks established in prior arbitrations." 4./

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that all eight of the contiguous counties, in addition to Barron County, should comprise the primary intraindustry comparison group in this dispute.

In next addressing the cost of living criterion, the Arbitrator will preliminarily note that its importance varies with the rate of movement in the CPI. In periods of rapid increase in living costs, the criterion assumes much greater individual importance, while during periods of relative stability in living costs, it declines in relative importance. Due to various reasons, including the composition of the market basket of goods and services used for comparison and measurement, the CPI tends to somewhat overstate the impact of cost of living increases upon individual employees, particularly in the short term. Due to relative recent stability in living costs versus those of years past, the cost of living criterion is currently of a lesser order of importance than are intraindustry comparisons, particularly in light of the fact that the settlements of comparable employers

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4./ Barron County Social Services, Decision No. 26009-B, January 1991.

already include their treatment of cost of living considerations.

In next looking to the interests and welfare of the public criterion, the undersigned will reiterate as he has in past arbitrations, that adverse economic circumstances must be taken into consideration in the final offer selection process, but they are normally given determinative importance in only two sets of circumstances, first, where the record indicates an absolute inability to pay and, second, where the selection of one of the final offers would necessitate a disproportional or unreasonable effort on the part of an employer. The case at hand, however, involves no claim of inability to pay, and the County is not facing unique or highly unusual economic circumstances, versus the comparables. While the interests and welfare of the public in Barron County and in comparable counties are also served by the professional and effective delivery of social services as well as the payment of fair and adequate wages and benefits to their employees, these considerations do not readily lend themselves to county by county quantification. Accordingly, the Impartial Arbitrator has preliminarily concluded that the interests and welfare of the public criterion is not entitled to unusual weight in the final offer selection process in these proceedings.

It will next be noted that the negotiations history of the parties, including their grievance and arbitration experience, and contract related litigation during the contract terms, falls well within the scope of sub-section (j) of Section 111.70(4)(cm)(7) of the Wisconsin Statutes, but only to the extent that such evidence is material and relevant to the final offer selection process in a particular dispute. If, for example, there had been persistent disagreements in relation to a particular portion of a prior agreement, evidence of such disagreement would be material and relevant in evaluating an offer which would clarify the ambiguous language previously in dispute. The Arbitrator has carefully examined the evidence advanced by the Union relating to prior litigation between the parties, and has concluded that it bears no direct relationship to either the Union's demand for longevity pay or to the Employer's demand for a lengthened probationary period. Accordingly, this evidence is not entitled to any significant weight in the final offer selection process in these proceedings.

The Longevity Pay Impasse Item

Although the parties are in agreement with respect to the general wage increases to be applied during the term of the renewal agreement they remain at impasse on the Union's demand for longevity based additions to hourly wages of .25 per hour for Social Workers II after seven years of service, and an additional .25 per hour after fourteen years of service. It is appropriate to view the Union's longevity proposal within the context of wages in general, and also to consider the relative merits of the two final offers on the basis of total package costs.

As referenced earlier, comparisons are the most significant of the various arbitral criteria, and intraindustry comparisons are the most important of the various criteria. The various wages, total package and longevity comparisons within the primary intraindustry group are contained in Employer Exhibits #23 through #29.

(1) Employer Exhibit #24 compares the monthly and the hourly wages within the Social Worker I classification, and the Arbitrator has added the averages for the four counties urged as primary comparables by the Union.

Monthly Wages	1990	1991	1992
Avg. 8 Contig. C'ties	$1905	$2013	$2015
Barron County	$2094	$2167	$2243
Un. Prop'd Grp.	$2003	$2148	$2243 (one only)

Hourly Wages			
Avg. 8 Contig. C'ties	$11.78	$12.24	$12.32
Barron County	$13.81	$14.29	$14.79
Un. Prop'd Grp.	$12.32	$12.81	$12.94 (one only)

(2) Employer Exhibit #25 compares the monthly and the hourly wages within the Social Worker II classification, and the Arbitrator has added the averages for the four counties urged as primary comparables by the Union.

Monthly Wages	1990	1991	1992
Avg. 8 Contig. C'ties	$2096	$2211	$2213
Barron County	$2261	$2340	$2422
Un. Prop'd Grp.	$2211	$2368	$2503 (one only)

Hourly Wages			
Avg. 8 Contig. C'ties	$12.95	$13.44	$13.52
Barron County	$14.91	$15.43	$15.97
Un. Prop'd Grp.	$13.61	$14.11	$14.44 (one only)

(3) Employer Exhibit #26 compares the monthly and the hourly wages within the Social Worker III classification, and the Arbitrator has added the averages for the four counties urged as primary comparables by the Union.

Monthly Wages	1990	1991	1992
Avg. 8 Contig. C'ties	$2222	$2347	$2413
Barron County	$2381	$2464	$2550
Un. Prop'd Grp.	$2275	$2463	$2650 (one only)

Hourly Wages			
Avg. 8 Contig. C'ties	$13.74	$14.24	$14.76
Barron County	$15.70	$16.25	$16.81
Un. Prop'd Grp.	$13.99	$14.50	$15.29

Without belaboring the point, it is quite apparent from the above that the parties have negotiated highly favorable monthly and hourly wage rates for Barron County Social Workers in all three classifications, and this is true even if monthly wages for Barron County employees working thirty-five hour work weeks are compared with others working up to forty hours per week. The value of the length of the work week is apparent from an examination of the rates paid within St. Croix County, which on November 1, 1991 went from 1820 to 2080 hours worked per year. During the above three year period, for example, St. Croix SW III's went from maximum monthly wages of $2143 to $2650, going from $238 per month below Barron County in 1990 to $100 per month above by the end of 1992; during the same period, however, it began $1.57 per hour behind Barron County rates, and by the end of 1992 the St. Croix SW III's were still $1.52 per hour behind Barron County. Any argument that the increase in hours worked should be disregarded in undertaking comparisons of the monthly wage rates is neither logical nor persuasive to the undersigned!

What next, however, of the intraindustry comparisons on longevity pay alone? Employer Exhibit #27 indicates that six of the eight employers in the primary intraindustry group have some form of longevity pay provided for in their collective agreements which, viewed alone, favors the position of the Union that longevity pay should be available to Barron County Social Workers. The Union's proposal, however, providing for .25 per hour after seven years and .50 per hour after fourteen years, provides a far more significant wage increment than found elsewhere, as shown in the following maximum hourly longevity increments for those counties offering such a benefit.

County	Cents Per Hour Equivalent at Maximum Longevity Pay
Chippewa	.07 per hour after 14 years
Dunn	.06 per hour after 10 years
Polk	.14 per hour after 20 years
Rusk	.13 per hour after 35 years
St. Croix	.05 per hour after 10 years
Washburn	.15 per hour after 15 years

Any persuasive value that might have accrued to the Union from arbitral consideration of Employer Exhibit #27, is overcome by consideration of Employer Exhibits #28 and #29, which show wage comparisons for SW II's at seven and fourteen years of service. Such Barron County Social Workers average $1.96 and $2.43 per hour higher than the hourly averages within the primary intraindustry comparison group, including longevity.

On the basis of all of the above, the Impartial Arbitrator has preliminarily concluded that arbitral consideration of the external intraindustry wage comparisons on either an hourly or a monthly basis, clearly and significantly favors the position of the Employer, even when the longevity benefits in the six comparable counties are factored into the comparisons.

Without great elaboration, the Arbitrator will note at this point that the internal comparables support the general wage increases negotiated by the Parties (Employer Exhibit #39), and they do not persuasively support the Union's demand for additional compensation in the form of its proposed longevity pay plan. In this connection, only one of five County units, the Law Enforcement bargaining unit, has a longevity pay plan. (Employer Exhibit #38)

In next applying the cost of living criterion, it will be noted that, exclusive of the Union's demand for longevity pay, the total package increases for the renewal agreement would be 4.7% in the first year and 5.69% in the second year. (Employer Exhibit #31) When the movement in the CPI since the last time that the parties went to the bargaining table is compared with these figures, it is apparent that cost of living considerations do not provide a persuasive basis for the Union proposed longevity pay increases.

As touched upon earlier, the proponent of significant change in the status quo ante, has the burden of establishing a persuasive basis for such proposal, and the risk of non-persuasion falls upon the proponent of change. Nowhere in the record does the Arbitrator find any persuasive basis for the adoption of the Union proposed longevity pay proposal. There has been no apparent quid pro quo proposed by the Union for its proposal and, also as referenced earlier, there is nothing in the statutory criteria that would suggest that the Union's claim that longevity is needed to "make up" for inadequate promotional opportunities for those holding the Social Worker II Classification, should be accorded weight by the Arbitrator in the final offer selection process.

On the basis of all of the above, the Impartial Arbitrator has preliminarily concluded that the record clearly supports the position of the Employer on wages, in that the Union has failed to establish a persuasive basis for the addition of its proposed longevity pay plan.

The Probationary Period Impasse Item

On this item the Arbitrator is faced with the reverse of the above described wage impasse, with the Employer proposing a change in the status quo in the form of increasing the probationary period from a six month to a one year duration, and the Union preferring retention of the old probationary period.

Preliminarily, the Arbitrator will note that the parties' impasse over the duration of the probationary period is obviously of far less importance than their disagreement relative to the addition of longevity pay. Such an item or items of lesser importance may be assigned significant weight in the final offer selection process when the record is relatively evenly balanced on the more important impasse item or items, but otherwise they do not normally command significant weight in the final offer selection process.

The Employer's demand is supported by internal comparables (Employer Exhibit #37), but there is no persuasive evidence of any high degree of problems with the previously negotiated six month probationary period, sufficient to mandate a change, and there is no Employer proposed quid pro quo in support of the change. While the Employer is quite correct that internal comparisons frequently command greater weight in connection with internal policies than with wages and benefits impasse items, it would be difficult to conclude that it had established the requisite persuasive case for its proposed change in the status quo, if the probationary period proposal were the only item in dispute. The Wisconsin Statutes provide for final offer interest arbitration, however, and under all of the circumstances of the case, the Arbitrator has preliminarily concluded that the probationary period impasse item cannot be assigned determinative weight in the final offer selection process.

Summary of Preliminary Conclusions

As discussed in greater detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions.

(1) The question before the undersigned is not whether the Union has made a strong equitable case for changed promotional policies for Social Workers II who wish to progress to the Social Worker III classification, and/or for modification of Section 5.03 of Article V; neither is the Arbitrator authorized to evaluate the provisions of the Wisconsin Department of Health and Social Services Merit System Rules governing social worker advancement. Rather, the undersigned possesses only the authority to determine which of the certified final offers is the more appropriate, when measured in accordance with the arbitral criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes.

(2) Public sector neutrals should be and are somewhat more amenable to innovation and/or change in the interest arbitration process, than are their private sector counterparts, with success in any such proposal for innovation or change dependent upon the ability of the proponent to make the requisite persuasive case for such proposal.

(3) There is nothing contained in the arbitral criteria contained in Section 111.70(4)(cm)(7) which would suggest to the undersigned that a Wisconsin Interest Arbitrator should consider a party's failure to achieve one bargaining demand in past negotiations, as providing independent justification for the adoption of a final offer containing another demand intended to "make up" for the earlier unsuccesful demand.

(4) The primary function of a Wisconsin Interest Arbitrator is to attempt to place the parties into the same position they would have occupied, but for their inability to achieve a complete settlement at the bargaining table.

(5) Although the Wisconsin Legislature has not prioritized the various statutory arbitral criteria, the comparison criterion is normally the most important and persuasive of the various criteria, and the so-called intraindustry comparisons are normally the most important of the various possible comparisons.

(6) All eight of the contiguous counties, in addition to Barron County, should comprise the primary intraindustry comparison group in this dispute.

(7) The cost of living criterion is of a lesser order of importance than the intraindustry comparison criterion in these proceedings.

(8) The interests and welfare of the public criterion is not entitled to unusual weight in these proceedings.

(9) The evidence relating to litigation between the parties during the terms of prior agreements is not material and relevant to either of the impasse items in issue and, accordingly, it cannot be assigned any significant weight in the final offer selection process.

(10) Arbitral consideration of the external intraindustry wage comparisons on either an hourly or a monthly basis, clearly and significantly favors the position of the Employer on the wages to be paid during the term of the renewal agreement, even when the longevity benefits in six comparable counties are factored into the comparisons.

(11) Arbitral consideration of the internal comparables favors the position of the Employer on wages to be paid during the term of the renewal agreement, and does not favor the adoption of the Union proposed longevity pay plan.

(12) The overall record clearly supports the position of the Employer on wages, in that the Union has failed to establish a persuasive basis for the addition of its proposed longevity pay plan.

(13) The probationary period impasse item cannot be assigned determinative weight in the final offer selection process.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, and a review of all of the statutory criteria, the Impartial Arbitrator has preliminarily concluded that the final offer of the Employer is the more appropriate of the two final offers. This conclusion is principally indicated by the evidence in the record which clearly favors the position of the Employer on the longevity pay impasse item.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the County is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the County, hereby incorporated by reference into this award, is ordered implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

July 17, 1992