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In the Matter of an Arbitration
between
BROWN COUNTY (DEPARTMENT OF SOCIAL SERVICES)
and
BROWN COUNTY DEPARTMENT OF SOCIAL SERVICES
PARAPROFESSIONAL EMPLOYEES ASSOCIATION

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

WERC
Case 467
No. 46766
INT/ARB-6302

Decision No. 27240-A

Appearances:

Mr. John C. Jacques, Assistant Corporation Counsel;
representing the County.

Ms. Lise Lotte Gammeltoft, Attorney, Zuidmulder, Appel &
Gammeltoft, S.C.; representing the Association.

Before: Mr. Neil M. Gundermann, Arbitrator.

Date and Location of Hearing: July 16, 1992
Green Bay, Wisconsin.

Briefs Received: August 31, 1992.

Date of Award: September 28, 1992.

BACKGROUND:

The parties entered into a two-year agreement covering the period from January 1, 1991 through December 31, 1992. Contained in that agreement was a Memorandum of Understanding entitled "Reopener of the Economic Support Specialist Rate of Pay Adjustment," which provided as follows:

"The parties agree to make a good faith effort to bargain a rate of pay adjustment for the Economic Support Specialist position and any retroactivity of that rate of pay adjustment. Negotiations will commence no later than October 1, 1991. If no agreement is reached by December 1, 1991, the parties may proceed to Interest/ Arbitration with Mediator, Bill Houlihan, retaining jurisdiction as mediator (as required under 111.70 Subsection 4, Wisconsin State Statutes.)

"The purpose of this reopener is to allow time for the County Internal Auditor to complete his study of the Economic Support Unit manpower problems which will be considered in their reopener negotiations."

In accordance with the terms of the Memorandum of Understanding, the parties entered into good faith negotiations with the assistance of Mr. Houlihan. With the assistance of Mr. Houlihan the parties were able to narrow their positions, however, the issue of the wages to be paid employees in the classification Economic Support Specialist II as well as retroactivity remained unresolved.

There are three aspects to the wages issue: (1) the size of the wage increases; (2) the number of step increases; and (3) retroactivity.

Association's Final Offer

<u>Classification</u>	<u>Start</u>	<u>6</u> <u>mos.</u>	<u>12</u> <u>mos.</u>	<u>24</u> <u>mos.</u>	<u>36</u> <u>mos.</u>	<u>48</u> <u>mos.</u>	<u>8</u> <u>yrs.</u>	<u>12</u> <u>yrs.</u>	<u>16</u> <u>yrs.</u>
ESS II-1991*	9.60	10.10	10.40	10.55	10.80	11.00	11.07	11.14	11.19
-1992**	10.00	10.50	10.80	10.95	11.20	11.40	11.47	11.54	11.59

* Effective first payroll period of 1991
 ** Effective first payroll period of 1992

County's Final Offer

<u>Classification</u>	<u>Start</u>	<u>6</u> <u>mos.</u>	<u>24</u> <u>mos.</u>	<u>36</u> <u>mos.</u>	<u>48</u> <u>mos.</u>	<u>8</u> <u>yrs.</u>	<u>12</u> <u>yrs.</u>	<u>16</u> <u>yrs.</u>
ESS II-1991*	9.60	10.10	10.40	10.55	10.80	10.87	10.94	10.99
-1992**	10.00	10.50	10.80	10.95	11.20	11.27	11.34	11.39

* Effective 9/29/91
 ** Effective 12/22/91

ASSOCIATION'S POSITION:

Under the terms of the collective bargaining agreement, after one year in the ESS I classification an employee is reclassified to

an ESS II. Accordingly, the relevant issue in this case is the rate of pay for the ESS II after 12 months.

The County submitted evidence regarding the wage percentage increases for other bargaining units for 1991-1992. However, that information is irrelevant to the issues in this case. This arbitration is a result of special circumstances and a realization by the County that the wage scale for ESS II workers had to be increased beyond the cost of living increases given to other employes for 1991 and 1992. As set forth in the County auditor's report, the last few years have seen a very high turnover among ESS workers resulting in very high caseloads for experienced ESS workers. In addition, the minimal wage differential between ESS workers and experienced clerical personnel was perceived as a disincentive to movement to the ESS positions.

A major reason for the requested increase is a tremendous increase in the responsibilities of ESS workers over the past few year. Any other employe could, on the basis of such dramatic changes in job description, request a reclassification to a higher paying position. However, there is no higher level to which ESS workers can go.

A review of wage scales for ESS workers in other counties demonstrates that the County ESS workers are presently grossly underpaid. The County has utilized for its comparable counties the small counties that lie directly to the south and west of the County. While these counties are geographically close to the County, they have a lower cost of living and are significantly smaller in population and in workload for ESS workers. Furthermore,

the 1992 salary rates for three of the counties utilized by the County as comparables are not available, skewing the County's figures even more. It must also be noted that County Exhibits 14 and 15 are misleading in that the alleged "average wages" do not reflect the average of all the comparables, but reflect only the average for those counties in which there is a salary increase for the period in question.

Using the County's criteria of geographical proximity, there is no reason that Oconto and Marinette Counties should not be utilized as comparables. The County's exhibits indicate that the "Green Bay Region" for the Division of Economic Support includes Oconto and Marinette counties. It is the Association's position that Kenosha, Dane and Milwaukee Counties should also be utilized as comparables. While more geographically distant than the counties that are normally utilized in County arbitration proceedings, the Association believes that these counties, because of their population and workload, compare with the County and more properly represent the relevant comparables. While Dunn, Jackson and Douglas Counties are geographically distant and have lower populations than the County, their inclusion among the comparables demonstrates that even small counties have salary scales for ESS workers which are as high or higher than those proposed by the Association.

Association Exhibits 4 and 10 demonstrate the growing realization that ESS workers may soon be considered professionals," and that the salary scale for the County's Department of Social Services Professionals is much higher than that proposed by the Association. The Association is not claiming that ESS workers

should be paid as much as social workers, but a comparison of salaries is relevant to give a perspective of the salary structures.

A major difference in the final offers of the Employer and the Association is the point in the ESS seniority scale at which the proposed salary increases would go into effect. The County proposes a significant increase after two years; the Association proposes an increase after one year. The Association proposal is based on the fact that after one year, when an ESS worker changes classification from ESS I to ESS II, the responsibilities of the ESS worker increase substantially, primarily in terms of caseload and training. The evidence establishes a large amount of turnover in the ESS workers occurs between 12 and 24 months, and it is the Association's position that a substantial salary increase at 12 months will minimize the turnover.

The past several months have seen a decrease in the caseload in ESS workers compared to the past year in which all ESS II workers were handling many "split caseloads." This decrease is due to an increase in the number of ESS positions. However, as testified to at the hearing, even with the increase in positions, there are presently split caseloads and anticipated caseloads. Furthermore, there was testimony that in the last several months there have been a number of new programs implemented, so that the work has increased even though case levels may have decreased somewhat.

The County takes the position that the wage increase should only be retroactive to September 29, 1991, rather than the beginning of 1991. It is the Association's position that the increase should be retroactive to the first pay period of 1991. It is clear from

the County's exhibits that the amount of monetary difference between the County and the Association proposals is relatively insignificant given the total amount of wages involved. Furthermore, the reopener was agreed to in May 1991 during negotiations for the 1991-1992 contract. All other financial provisions of the contract were made retroactive to the beginning of the year, even though the agreement was not ratified by both parties until July, 1991. The Association contends it would be grossly unfair to penalize the Union because the parties were unable to reach agreement and proceeded to arbitration. There is simply no basis for the County's position that the increase should only be retroactive to September 29, 1991.

For the reasons set forth above, the Association's final offer should be selected by the arbitrator.

COUNTY'S POSITION:

The County used wage level data from the following neighboring County Income Maintenance Workers/Economic Support Specialists: Calumet, Fond du Lac, Manitowoc, Outagamie, Sheboygan and Winnebago. These county-operated income maintenance/economic support programs employ persons performing services similar to those performed by the County's Department of Social Services.

The Association's use of Dane, Dunn, Jackson, Milwaukee and Marinette Counties as comparables should be given no weight because of their geographic location outside the Fox Valley region of Wisconsin. Additionally, Dane and Milwaukee County are much larger in population than all the other comparables submitted by the Union.

The southeastern Wisconsin counties used by the Association are also far removed geographically from the County. Dunn and Jackson

County are even more distant geographically, being located in western Wisconsin. None of the above counties are within the recruitment or market area.

In the interest arbitrations for 1991-92 involving the County, arbitrators have indicated that population and geographic location were factors to be considered in determining the appropriate comparables. Arbitrators examined both sets of external comparables submitted by the parties in making wage data comparisons and "established" a comparable pool, choosing the Employer's final offer in three of four awards. The comparable pools consisted of the geographically proximate counties submitted by the County.

Arbitrator Kerkman adopted the following counties as "comparables" to the County: Fond du Lac, Manitowoc, Outagamie, Sheboygan, Winnebago and Marathon. In using only those counties for wage rate comparisons, he excluded Dane County because of geographic distance and population size.

The only mutually used comparable, Sheboygan County, is located in northeastern Wisconsin and is in the general labor market and recruitment area of the County. The population of five of the County's six comparable counties is generally similar to the County's population. Calumet County is smaller in population, but located in the geographic center of the other comparable counties. The pool of external comparables used by this arbitrator should be limited to the six geographically close count ..

Comparing 12-month wage rates with the \$10.10/hr. wage rate in the County, without the final offer adjustments, establishes that even without an adjustment the County ESS II wage rate is very

competitive on a "statewide" basis. Of 11 counties submitted by the Association, the County's existing 1991 wage rate for ESS II's exceeded that in six counties. In three counties, the \$10.10 County rate was almost identical. In only two counties were the wage rates substantially above \$10.10 per hour--Dane and Kenosha. These two counties cannot be considered comparable to the County. The other nine counties were between or approximately at the \$10.10 per hour wage rate and clearly favor the Employer's final offer for 1991.

Union Exhibit 8 contains wage rates for 10 other counties for 1992. The 12-month rate is below the County rate (\$10.50/hr) in 5 of the 10 counties. If the County's final offer rate is used to compare the data, the County's final offer is more reasonable than the Association's demand which is \$10.80. If an average is taken of the 10 other counties used by the Association for January 1, 1992 wage rates, the result (\$10.11) favors the \$10.50 offered in 1992 by the County.

There is no valid rationale for using the 11 counties selected by the Association as comparables. Their population and geographic location do not compare with the County except for Sheboygan. Arbitrator Rose Marie Baron used the following county health facilities as comparable to the County's Mental Health Center: Calumet, Fond du Lac, Manitowoc, Outagamie, Sheboygan, Washington and Winnebago. Arbitrator Baron considered geographic proximity to be controlling.

Using the counties established as the comparables pool for licensed practical nurses and social workers/professionals to make an award in this case supports the wage offer made by the Employer.

The County's final offer exceeds the 1991 actual wage rates paid to ESS II workers in all six of the comparable counties.

The average rate maximum at 48 months for 1991 was \$9.68 compared to the County's final offer of \$10.80. The Union's wage offer at 48 months in 1991, \$11, greatly exceeds the average. In 1992, the average rate maximum at 48 months was \$10.05 compared to the County's final offer of \$11.20. The Union's 48-month wage rate, \$11.40, exceeds the average of \$10.05. The disparity as to average hourly rates for 48 months at the end of 1992, if the Union offer is awarded, would be \$1.35 per hour or \$1,632.50 per year.

Because the County wage rates for ESS II's have been and are already above those of the six comparable counties, there has been no justification shown for the Association's wage demands. Not only is there no evidence of a need to "catch-up" to neighboring counties, but also evident is the present superior position of the County ESS II's as to wages paid in 1990, 1991 and 1992.

The County's Department of Social Services Professionals settled for 4% annual adjustments in 1991 and 1992. All other para-professionals employed by the County's Department of Social Services also settled for 4% increases. The additional increases and wage rate adjustments offered are above regional market rates and were offered as an incentive for retention of ESS II's.

The prevailing wage rate increases for both City and County government units was 4% for 1991 and 1992. The County settlements voluntarily achieved have been at 4% annual wage increases. Internal equity with other County government unit employes clearly favors the Employer's final offer. This arbitrator in Oneida

County, Dec. #26116-A (3/90) recognized that internal equity is necessary to protect and give incentive as to future collective bargaining negotiations.

The Association offered evidence of past turnover in support of its wage demands. The County auditor set forth the conclusion that the ESS wage rates were not "too low" compared to other counties' ESS workers. Of the 38 counties responding to a 1991 pay survey, the County paid third in minimum wages and eighth in maximum wages. The County has historically paid more than its neighboring counties.

The causes of turnover from 1989 were set forth in the vacancy analysis attached to the audit. Of 17 individuals who left ESS II positions, six posted to clerical positions under rights granted under Article 24 of the bargaining agreement. The nature and volume of the work was cited by most individuals as the reason for turnover. The Employer has increased ESS II staffing by six since early 1992. The workload per ESS II has been decreased as the staff numbers have increased. The Employer has addressed the employees' workload complaint. The Employer's final offer does increase the differential between ESS II's and clerical wages as an economic incentive for retention and decreases the incentive for ESS II's to post into clerical positions.

Based on the evidence submitted, the Employer requests that the arbitrator select its final offer as being more reasonable and consistent with the statutory criteria.

DISCUSSION:

As noted by the Association, this case is somewhat different from most interest arbitrations cases as it arises out of a

specific contractual provision contained in the parties' 1991-92 agreement. The parties recognized the need to address the issue of the appropriate wage rate for the ESS II classification following an internal audit of the Economic Support Division of the Department of Social Services by the County's internal auditor. Any increase contemplated by the parties following the internal audit would be in addition to the 4% per year wage increases negotiated for 1991 and 1992. Due to the nature of this dispute, internal equity is less significant than it might otherwise be in an interest arbitration.

The only issue in dispute is the wage rate for the ESS II classification, however, there are three aspects to the wage issue: (1) the size of step increases, (2) the frequency of step increases, and (3) the date to which the increases will be made retroactive.

In support of their respective positions both parties have presented a group of comparables which they urged the arbitrator to adopt. The Association proposes the following counties as comparables: Dane, Douglas, Dunn, Jackson, Kenosha, Marinette, Milwaukee, Oconto, Racine, Sheboygan and Waupaca. In support of its position regarding its proposed comparables the Association argues that it has included those counties with the largest populations; i.e., Dane, Milwaukee, Kenosha, Racine and Douglas, as well as those counties in close geographic proximity to the County, i.e., Marinette, Sheboygan, Waupaca and Oconto Counties.

In contrast to the comparables proposed by the Association, the County has proposed as its group of comparables the following counties: Calumet, Fond du Lac, Manitowoc, Outagamie, Sheboygan and

Winnebago. The County contends that its comparables are in close geographic proximity to the County and include those counties with population centers within geographic proximity to the County including the Fox River Valley.

There have been four recent arbitration decisions involving the County, three of which are pertinent to this dispute, at least as to the selection of comparables. (The fourth arbitration case involved County librarians which required other considerations in the selection of comparables.) In the decision issued by Arbitrator Kerkman involving the Brown County Mental Health Center Professional Employees Association, the arbitrator concluded the appropriate comparables consisted of Fond du Lac, Manitowoc, Outagamie, Sheboygan, Winnebago and Marathon Counties. He specifically rejected Dane County due to its population and geographic distance from the County. He also rejected Oconto and Calumet Counties on the grounds their populations were not comparable to the County's population.

Arbitrator Baron, in her decision involving Brown County Mental Health Center, Local 1901, AFSCME, AFL-CIO, concluded the appropriate comparables included Calumet, Fond du Lac, Manitowoc, Outagamie, Sheboygan, Washington and Winnebago Counties. She rejected as comparables Dane, Rock and Racine Counties concluding those counties "are far too distant" to be considered as comparables and that "no labor-market nexus or relationship has been proven."

In the third case, Arbitrator David Johnson in Brown County Mental Health Center Local 1901E (Nurses) AFSCME, AFL-CIO, accepted the comparables which the County proposed. Those comparables

included Fond du Lac, Manitowoc, Outagamie, Washington and Winnebago counties. Arbitrator Johnson rejected Dane, Dodge, Kenosha, Ozaukee, Racine, Rock, Sheboygan, Walworth and Waukesha Counties.

Despite the fact there have been several recent arbitration cases involving the County and other bargaining units in which the issue of the appropriate comparables has been addressed, the parties have proposed only one common comparable, Sheboygan County.

In the three recent arbitration cases, which cases the undersigned believes are relevant as to the issue of comparables, the arbitrators concluded that in addition to Sheboygan County, Fond du Lac, Manitowoc, Outagamie and Winnebago Counties are comparable to the County. One of the arbitrators considered Calumet as a comparable and two of the arbitrators considered Washington County as a comparable. The undersigned shares the findings of Arbitrator Kerkman that Calumet is not an appropriate comparable based on its population. The undersigned can find no basis for including Washington County among the comparables.

Based on a review of the comparables proposed by the parties as well as the comparables selected by other arbitrators who have issued decisions involving the County, it is opinion of the undersigned that the following counties should be used as comparables in this dispute: Fond du Lac, Manitowoc, Outagamie, Sheboygan and Winnebago.

A review of the evidence establishes that the County's salary schedule is somewhat unusual in that it provides for salary steps at 8 years, 12 years and 16 years. Although these steps are part of

the salary schedule, they appear to reflect longevity increases rather than progression through the salary schedule as is evidenced by the relatively small increases--between \$.05 and \$.07.

None of the comparables have steps extending beyond five years, and only two of the comparables, Fond du Lac and Manitowoc, have 5-year or 60-month steps.

As can be seen by the accompanying table, the starting salary and the 6-month salary is identical in the parties' final offers for 1991--\$9.60 and \$10.10. The starting rate is significantly higher than the starting rate of any of the comparables, with Outagamie's starting rate of \$8.84 being the closest to the proposed starting rates. Similarly, the 6-month rate is significantly higher than the 6-month rate of any of the comparables, with Manitowoc having the next highest 6-month rate at \$8.53 for the Income Maintenance Worker 3 classification which requires three years of experience.

A major divergence in the parties' final offers involves a 12-month rate. The County proposes no increase at 12 months, while the Association proposes a 12-month rate of \$10.40. The Association notes that after 12 months in the ESS II classification an employe can be required to assume an additional workload when absences occur for short durations. The Association argues, with some justification, that when an employe reaches this level of competency the employe should be given additional compensation. The County argues that where the 6-month rate is higher than the 12-month rate paid by any of the comparables there is no justification for granting an increase at 12 months.

In the 1989-1990 agreement and in the 1991-1992 agreement increases were granted at six months and not granted again until eight years. Under both final offers increases would be granted at 24, 36 and 48 months in addition to the increases after 8, 12 and 16 years.

While the undersigned is of the opinion that an increase could be justified after 12 months, the fact that the County's proposed 6-month rate exceeds any of the 12-month rates, 18-month rates and 24-month rates paid by any of the comparable counties establishes that the employees are receiving more money earlier than are their counterparts in the comparable counties. On balance, the evidence supports the County's position in this regard.

In comparing maximum salaries it seems reasonable to compare the County's 48-month rate with the maximum of the comparables. One of the comparables, Winnebago, has a 54-month rate, and another comparable, Fond du Lac, has a 60-month rate.

The following table reflects the comparison of rates paid by the County and the comparables.

	<u>1991</u>				
<u>County</u>	<u>Start</u>	<u>6 Mos.</u>	<u>12 Mos.</u>	<u>24 Mos.</u>	<u>Max.</u>
Fond du Lac	\$7.44	\$7.84	\$8.23	\$8.63	\$9.79
Manitowoc (1)	8.21	8.53	8.81	9.10	9.53
Outagamie	8.84		9.28	9.71	10.16
Sheboygan	8.22	8.51	8.85	9.19	9.95
Winnebago	7.38	8.04	8.50(3)		9.54
A. Final Off.	9.60	10.10	10.40	10.55	11.00 (5)
C. Final Off.	9.60	10.10		10.40	10.80 (5)

1992

Fond du Lac	7.70	8.11	8.52	8.93	10.13
Manitowoc (2)					
Outagamie (2)					
Sheboygan	8.55	8.85	9.20	9.56	10.35
Winnebago	7.76	8.44	8.93(3)	9.39(4)	10.17
A. Final Off.	10.00	10.50	10.80	10.95	11.40(5)
C. Final Off.	10.00	10.50		10.80	11.20(5)

- (1) Rate shown is for Income Maintenance Worker 3
- (2) Contracts are not settled for 1992
- (3) Rate shown is 18-month rate
- (4) Rate shown is 30-month rate
- (5) Rate shown is 48-month rate

The data establishes that under either final offer the County will be paying a substantially higher starting rate, 6-month rate, 24-month rate and maximum rate than paid by the comparables for 1991. The same is true for the comparables that have settled for 1992. In view of the fact the County will be paying more under its final offer than the comparables, and even more under the Association's final offer, there is no basis for awarding the Association's final offer based on the comparables.

The remaining issue to be addressed is that of retroactivity. The Association's final offer provides retroactivity to the first pay period in 1991 while the County's final offer provides for retroactivity to September 29, 1991. The Union argues that all other economic benefits became effective the first pay period in 1991, and therefore the wage increase should be made retroactive to that date. There is some logic to the Union's position. However,

there are two factors which must be taken into consideration when addressing the issue of retroactivity.

First, in order to award retroactivity the undersigned would have to award the Association's final offer relating to wages. The evidence indicates that the County's offer is the more reasonable when compared to the comparables. Secondly, this is not a situation where ESS II's did not receive a wage increase for 1991; they received a 4% wage increase effective the first pay period of 1991. Additionally, the Memorandum of Understanding which provided for negotiations of the wage rate for the ESS II classification specifically provides that the issue of retroactivity is subject to negotiations. If the parties intended the increases to be retroactive to the first pay period in 1991 they could have so stated in the Memorandum of Understanding.

After giving due consideration to the statutory criteria and evidence introduced at the hearing, the undersigned renders the following

AWARD

That the County's final offer is awarded and should be incorporated into the 1991-1992 agreement between the parties.


Neil M. Gundermann, Arbitrator

Dated this 28th day
of September, 1992 at
Madison, Wisconsin.