ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between

LOCAL MENOMINEE COUNTY HUMAN SERVICES, AFSCME, AFL-CIO

and

MENOMINEE COUNTY

Case 44
No. 46968 INT/ARB-6369
Decision No. 27336-A

ARBITRATOR: John W. Friess
Stevens Point, Wisconsin

UNIT: Menominee County Human Services Department
16 Professional employees

HEARING: November 6, 1992
Keshena, Wisconsin

RECORD CLOSED: February 6, 1993

AWARD DATE: April 4, 1993

APPEARANCES:

For the Employer: LINDNER & MARSACK, S.C.

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ARBITRATION OPINION AND AWARD

Menominee County Human Services Professionals
and
Menominee County

BACKGROUND AND JURISDICTION

This dispute concerns the negotiation of a collective bargaining contract between the Menominee County Human Services Professionals represented by Local Menominee County Human Services, AFSCME, AFL-CIO (Union) and Menominee County (County, Employer) to replace their old contract which expired on December 31, 1991.

The parties exchanged their initial proposals on November 19, 1991 and met thereafter on two occasions in an effort to reach an accord. On February 6, 1992, the Union filed a petition with the Wisconsin Employment Relations Commission (WERC, Commission) requesting arbitration pursuant to the Section 111.70(4)(cm) of the Wisconsin Statutes. On March 6, 1992, Amedeo Greco, a member of the Commission's staff, conducted an investigation which revealed that the parties were deadlocked in their negotiations. On July 10, 1992, the parties submitted their final offers and Investigator Greco notified the Commission that the parties remained at impasse and the dispute was certified by the Commission for arbitration. On July 31, 1992, the Commission submitted a panel of arbitrators to the parties. John W. Friess of Stevens Point was selected as Arbitrator and was notified by the Commission on August 26, 1992.

An arbitration hearing was held on November 6, 1992 at the Menominee County Courthouse in Keshena, Wisconsin. At that hearing exhibits were presented and testimony was heard. It was agreed that briefs would be exchanged through the Arbitrator postmarked by December 11, 1992. Reply briefs would be sent to the Arbitrator and each party postmarked by January 4, 1993. The parties agreed the record would be closed as of December 4, 1992 for additional evidence other than some items that both agreed could be submitted after the hearing. Following the hearing, the parties agreed to an extension to January 15, 1993 for the initial briefs and February 5, 1993 for reply briefs. Briefs and reply briefs were filed with the Arbitrator as agreed, the last one of which was received February 6, 1993. Subsequently, no other evidence was received, therefore the record was considered closed as of February 6, 1993.

The Arbitrator is granted authority to hear the evidence and issue an arbitration award under Section 111.70(4)(cm) 6 and 7 of the Wisconsin Municipal Employment Relations Act. The Arbitrator is obligated under the terms of the statute to choose the entire final offer of the Employer or the Union. Section 111.70(4)(cm) 7 sets forth 10 criteria the Arbitrator is obligated to utilize in making the decision. These criteria are itemized in the statute and are quoted verbatim in "Appendix A." For this award, these criteria will be identified as: (a) lawful authority; (b) stipulations; (c) interests and welfare of the public, and ability to pay; (d) comparisons--other employees; (e) comparisons--other public employees; (f) comparisons--

private employees; (g) cost of living; (h) overall compensation; (i) changes; and (j) other factors.

The employees involved in this proceeding are composed of a collective bargaining unit represented by the Union consisting of certain employees of Menominee County. Specifically, "all regular full-time and regular part-time professional employees in Menominee County Human Services Department, excluding supervisory, managerial, confidential and all other employees." There are 16 professional employees in the unit.

STIPULATIONS AND FINAL OFFERS

STIPULATIONS

During the certification process the parties submitted the issues to which they agreed. These issues are stated in a document entitled "Menominee County and the Members of the Menominee County Human Services Department Professional Employees, AFSCME, AFL-CIO; AGREED UPON ITEMS; March 23, 1992" and marked "Stipulations" by the WERC. In addition, during pre-hearing discussions the parties agreed two other issues relating to vacation language and contract duration were not in dispute. Specifically, on page 4 of the "Stipulations" under item "6. Article XI - Vacations" the sentence "Section 11.01 will read in part:" and the last sentence in that part (on page 5) "Part-time employees shall receive prorated vacation based upon actual hours worked." should both be stricken. Also, the parties agreed the duration of this contract should be 2 years per the Union final offer as stated: "2. Revise Article XXVII first sentence as follows: The term of this Agreement shall become effective the 1st day of January, 1992 and terminate at the close of business on the 31st day of December 1993." Therefore, these items will also be considered part of the stipulations and will not be discussed in this award as disputed issues.

FINAL OFFERS

Both parties have submitted proposals for a two-year contract. Based upon the final offers there are two issues involved in this dispute: wages and change in health insurance language. The following are the positions of the parties on these issues:

Wages

The Union is proposing a 4% increase in both 1992 and 1993 wage rates. Also, the Union wishes to delete the note "c) Employees will receive the salaries set forth in Appendix 'A-1'" and all of "Appendix 'A-1'. SALARY SCHEDULE - MCHSD PROFESSIONAL EMPLOYEES" (which appears to be a salary schedule implementation procedure) of the agreement.

The Employer proposes the following: "In addition to the increases established by the provisions above: a) Effective January 1, 1992, a one-time only bonus of $500.00 minus legally required deductions for all employees who were of record, on the payroll and actually performing work on behalf of the

County as of January 1, 1992. b) Effective December 18, 1992, a one-time only bonus of $400.00 minus legally required deductions for all employees who were of record, on the payroll and actually performing work on behalf of the County on December 18, 1992." The County also wishes to continue to keep "Note c)" in Appendix A and to amend Appendix "A-1" to reflect the new salaries based upon salary advancements due to the steps of the schedule in Appendix "A" of the agreement.

Health Insurance Language

Both parties wish to make changes in the health insurance language Article XVI - Insurance 16.01 - Health Insurance. The County wishes specify the percentages of premium payments of the employer at 100% for single and 78% for family plans. In addition, the County's language specifies 1992 premium contributions by employees for family plans (at $89.56) and to provide a calculation procedure for 1993 (employee's contribution to increase at the same percentage as experienced by the Employer for continued coverage).

The Union's offer specifies the percentages of premium payments of the Employer at 100% for single and 78% for family plans.

ISSUES SUBJECT TO ARBITRATION

As mentioned above, there are two issues related to the final offers of the parties: wages and health insurance language. The reasonableness of each offer relating to these issues will be addressed in the DISCUSSION below.

DISCUSSION

INTRODUCTION

The Arbitrator in a case like this is charged with determining the more reasonable of two offers, and to order the implementation by the parties, in full, either one or the other. In this case the parties did important work to narrow the issues--they submitted an extensive list of "AGREE UPON ITEMS" which included changes in the recognition clause, grievance procedure, job postings, vacations, holidays, and sick leave. These are not easy issues to negotiate over, especially with wages and health insurance still in dispute. The parties deserve credit for both their negotiation work and their final offers. The insurance language changes are very close (almost identical) and even the wages are not that far apart considering how each party perceives the cost and benefit of its offer to the employees. Both parties certainly have developed very reasonable offers. So, the job of the Arbitrator will be to decide which of two fairly reasonable offers is more reasonable in relation to the ten statutory criteria.

Before I jump into the detail of this award, I feel compelled to share with the parties a sense of "oddness" with my participation in the resolution of this labor contract dispute. As much as the principal representatives have

assured me, during pre-hearing discussions and through their briefs, that this dispute is no different than any other interest arbitration for other Wisconsin counties or school districts, I am haunted by the notion that it is probably not a "run of the mill" case. Both parties' representatives acknowledge that 97.4% of this county's land is held "in trust" by the Menominee Tribe. I did not have to hold a hearing or read the evidence in this case to know that there may be, and probably are, major cultural differences between me and the vast majority of the people that are affected one way or another by this arbitration award. It seems "odd", maybe unjust, and somewhat ironical for a white male of German heritage, whose ancestors immigrated to Wiseonsin in the 1800's and were undoubtedly part of the process that pushed the ancestors of the native Americans in and around Menominee County to the poverty they currently experience, to sit in judgement and rule on these matters. And even more "odd" and unjust is for three white males to sit around an arbitration table and indicate to each other that this is okay--that there are no cultural ingredients or ramifications to our work.

I believe the parties, though, are in charge of this process. And the parties, through a system established in Wisconsin law (not Menominee law), have selected me to rule in this case. While I certainly have legal jurisdiction in this case, I am not as sure about my cultural or ethical jurisdiction. If this is a concern of not only myself, but of the parties and the Native Americans affected by this mediation/arbitration process, perhaps discussions can be initiated between Menominee County, the Menominee Tribe, and state and federal officials. Even without any changes in the current system, Menominee County could develop alternative dispute resolution procedures that could incorporate cultural/ethnic concerns into a self-defined mediation/arbitration process.

For now, I set aside my sense of "oddness" to do that which the parties here have asked, and State of Wisconsin expects, of me--to resolve this dispute.

The report of my thinking and decisions will be accomplished in this DISCUSSION section. I will provide a brief summary of each of the parties arguments and positions (headed "**The Union**" and "**The Employer**") as I discuss each issue. "**Discussion:**" follows the summary of the parties' positions and indicates the start of my analysis and opinion. Before discussing the substantive issues, the parameters for the analysis of the evidence and argument will be established.

PARAMETERS OF ANALYSIS

EVALUATION OF EVIDENCE

I think the parties should be commended on the amount (small) and type (professional) of evidence that was presented in this case. Too often parties submit reams and reams of evidence that could take literally weeks to read. I am very impressed in the amount and quality of both exhibits and written argument the parties prepared for this case. The parties presented very clearly their cases in short and succinct written argument (briefs and reply briefs). Both sides in this dispute should be proud of the case each presented to this Arbitrator.

I could not find in the record any significant objections by either party regarding the submission of evidence in this case. All exhibits are accepted and weighted based upon the criteria discussed below.

Prior Kerkman Arbitration Decision

Both parties submitted and made reference to an arbitration decision by the late Jos. B. Kerkman published in May, 1983 (Menominee County, No. 28994, MED/ARB-1479; Dec. No. 19948-A; Kerkman, 1983). That decision (hereafter "Kerkman Decision") covered both the County's Human Services and Sheriff's Departments' contracts for the years 1982-1983. Since the parties made such heavy reference to this award, and because arbitral consistency within a particular employer group is important, I studied the decision in detail. Based upon this study, I make the following observations:

1. The political and legal environment within Menominee County (particularly concerning the "co-governing" bodies of Menominee County and Menominee Tribe) have not changed.

2. The social and economic conditions within the county and the reservation have not changed significantly. The only exception is the establishment of the gambling casino, which could improve the poverty conditions in the county and on the reservation, but have had little impact up to this point.

3. The parties at that time stipulated that Menominee County was unique and that there were no other Wisconsin counties comparable to it. While this was the stipulation, the parties and Arbitrator Kerkman made extensive comparisons to other counties. The parties still submit comparability data, but only the Employer argues that Menominee County is comparable to no other Wisconsin county. (See "Primary External Comparable Group" below for further discussion of this issue.)

4. The offers of the parties in this case are similar to the offers back in 1983: the Union offering an across-the-board (atb) percentage increase and the Employer offering a one time bonus and 0% increase to the schedule. A very significant difference though, is that in 1983 the 2 remaining settled employee groups had accepted the Employer's bonus/0% offer; as opposed to the case now in which the 3 other groups have settled for (or received) percent atb increases (4%, 6% and approx. 10.5% avg.).

5. Probably because of the lack of strong external comparables, Kerkman was very concerned with, and apparently placed great weight on, the internal comparables and maintaining consistency among them.

6. Arbitrator Kerkman paid close attention to the issue of the Employer's ability to pay, and while finding that the employer made a very compelling case for an inability to pay with the Sheriff's Department, found the County's case not as strong with the Human Services Department. Essentially, the way I read the decision, Kerkman found convincing reasons not to fund the Union's Sheriff's Department offer based upon the inability to pay and public welfare concerns, and then applied an internal consistency principle to find against the Union's Human Services' offer.

I will make further reference to the Kerkman Decision not because a 10-year-old arbitration should have any control in this case, but again, in order to maintain some arbitral consistency with this group, and to provide a basis for explanations of any inconsistencies.

Step Increases and Cost of Living Increases

A major non-economic issue separating the parties has to with how the parties view any "wage increase" resulting from their final offers. This is a situation where the parties are arguing over an interpretation of how their wage proposals should be characterized, and how to view their scheduled (yearly, start to five years) increases.

The Employer believes any increase in wages, whether or not through a movement up the schedule, a percentage atb, or a bonus, is a wage increase and the total amount should be used as the wage increase for comparisons purposes. The County contends the "traditional" approach (of viewing only atb adjustments to the schedule as wage increases) is flawed for a number of important reasons. First, any payments to employees no matter what the form, results in additional take home pay and spendable income for the employee. It only makes sense to view these payments as a wage increase. Second, a method of wage compensation where the employees advance upon a set progression has not been a traditional or past practice of the County. Because the current schedule is without historic support, any argument that the guaranteed step increases plus a bonus do not constitute a "wage increase" is totally without merit. And finally, there are no other employee groups in the County in which employees are compensated by any form of automatic wage progression. The Employer challenges the Arbitrator to summon the courage to reject the Union's traditional method of employee compensation and adopt the Employer's view of "wage increases."

The Union, on the other hand, takes the position that the movement of employees through the schedule each year is different from the amount of across-the-board (atb) increase applied to the schedule. The Union completely rejects the Employer's view of considering step increases (that are based on years of service) as "wage increases." The Union characterizes this as "...a thoroughly preposterous notion" and maintains that nowhere in labor relations, both public and private sectors, are incremental movements considered to be cost of living wage increases.

Discussion: To summarize the effect of these two view points: The Employer prefers to compare its offer (step increase plus $500 bonus) of 5.6% average increase in 1992 to the Union's 5.1% average increase, which is a cost of living increase (of 4.0%) plus the costs of the step increases (of approx. 1.1%). And the Union chooses to characterize the County's offer as a "wage freeze," and compares its 4% atb with the Employer's 0% schedule increase for 1992.

Perhaps underneath this all, the parties are also fighting over how to pay for the implementation of a new schedule. In 1990 the parties put into place a new salary schedule for the Human Services Professionals. The new schedule replaced a two or three step schedule (see below for further explanation of this) with a six step schedule. The agreement to initiate this new schedule was accompanied by an plan to move people onto the new schedule

(Appendix "A-1"). This plan resulted in an average of a 20.7% increase to the Human Services employees. In order to keep things as clear as possible, I would like to use the following definitions.

I think there are (at least) five types of costs associated with salary or wage adjustments. If the wage adjustments, or the pay received by employees, has steps or scheduled increases through which all new employees will move based upon their time of service, these are "step increases." If the employer is implementing a new schedule, existing employees need to be brought into the system through an implementation plan--"implementation adjustments." Then, the parties usually negotiate over the amount of annual adjustments to each step or cell in the salary schedule--"cost of living increase." Occasionally a salary schedule may, for whatever reasons, become non-competitive among other comparable employers in the area for comparable positions, and will need to be adjusted--"catch-up adjustments." Finally, employers may have a system to make salary adjustments based on special talent or contributions to the organization--"merit increases." While all these individual adjustments do add up to a single wage cost for the employer, I think keeping them segregated can be helpful not only for costing purposes, but also for designing implementation plans and assigning future value/costs.

It is important when making a distinction between step increases and cost of living increases to keep in mind that each performs a different function. The step increases, which are tied to the amount of time an employee has with the organization, can serve one or both of two functions: 1) rewarding employees for loyalty and devotion to the organization (e.g. longevity); and 2) providing higher compensation for added experience, competency, and productivity because of greater familiarization with the organization and/or the job (e.g. completion of probation).

In this case, I think it is proper to view the first five years of a social worker's employment with Menominee County as a kind of "on-the-job-training" in which each year the worker gains in knowledge, experience, skills, insights, maturity, and a whole host of other attributes which make that employee more valuable to the organization. The step increases received by the employee during this period is recognition and compensation for the corresponding improved performance, efficiency, and competence. Once a social worker has been with the organization for five years, this "on-the-job training" is complete and the employee (theoretically) has reached peek productive capability--and has reached the top of the salary scale. Thus, there would be no further salary increases based upon increased experience or time with the organization.

Cost of living increases (or adjustments to each step or cell in the salary schedule) function to keep the organization's salaries competitive with other employers within the local (and perhaps regional) labor market. If an organization's wages are comparable and competitive with other employers' wages of comparable jobs, then only cost of living adjustments (adjustments comparable to the other employers' schedules) need to be made. In other words, the cost of living adjustment keeps the schedule in line with what other employers are paying comparable positions.

The major problem here is that the Employer is not looking at these costs as individual costs, but rather one lump sum. While, again, it is true these costs are a lump sum for budgeting and costing purposes, to employees

they are separate individual parts of their wage increase. I think it is reasonable, within current abritral thinking and good personnel practices, to view each of these costs as separate items. In this regard then, I believe the step increases should not be combined with cost of living increases or implementation adjustments for comparisons either with other employee group increases or with the CPI data. So, on these points, I agree with the Union.

I think the Employer reaches its conclusions for its view of wage increases based upon a number of misconceptions. One is the County's belief that no other employee group in Menominee County has step increases. In reviewing the contracts of the other groups (Sheriff and Highway) I find this not to be the case. That is, each of those groups also have wage progression systems. Now, for sure, these systems are not as nicely detailed as the Human Services Professional's schedule, but progressive wage steps they still have. It is my opinion, when a contract calls for an increase of wages that is tied to length of service, no matter when during an employee's tenure with the organization or where in the contract the increase is detailed, there is a wage progression that can be likened to an established salary/wage schedule. Two common examples of wage increases tied to length of service are increases following completion of a probationary period and longevity payments, both of which are part of the Sheriff's and Highway Departments', and the previous Human Services Professionals' contracts.

Related to this is the County's claim that the new Human Services schedule is not supported by past practice of the parties. Based upon the limited evidence provided by the parties regarding this issue, this appears to be inaccurate. Both the previous contracts of the parties (1987, and 1988-1989) have longevity clauses giving full-time employees with more than five years experience an increase in wages (10 cents per hour). Thus, there was actually a step on the wage progression "schedule" not depicted which employees automatically moved to upon reaching five years of service with the organization.

But more importantly, the County misses an important point--its Human Services Department now has, and has had for two years now, a formal (6 step) salary schedule. That schedule was implemented through collective bargaining and was voluntarily agreed to by the Employer. The County's arguments relating to the past practice of the parties regarding schedules are misplaced. The issue here is not whether or not the parties will have a salary schedule, but what changes the parties are proposing related to that existing schedule.

My hunch is that the County is trying to hold on to the old way of doing things--to the old method of paying its employees. I take the County's wanting to keep in the contract Appendix "A-1" (a list of current employees with their salaries) as evidence of this clinging to the past. There is no need to keep this list in the contract--Appendix "A" (Salary Schedule) says it all. Of course, this is not to say the Employer (and even Union) would not want to keep a list like this as part of its personnel records and/or for negotiation purposes. I just think it is unnecessary in the contract. For these reasons, I find the Union's proposal to eliminate Appendix "A-1" more reasonable.

In my opinion the County should look seriously at its approach to salary administration procedures and its view of employee compensation. While I

agree it is important to keep an eye on overall costs of wage and benefit proposals, coming up with pay plans that runs counter to an established schedule tends to subvert and defeat the very purpose of that schedule--to provide a fair and equitable means of paying employees, while providing management an objective way of analyzing its wage and benefit program.

Chart I (below) compares the three wage progression systems of the Menominee County Highway Department, Sheriff's Deputies, and Human Services Professionals, and demonstrates what all three "salary schedules" would be like if depicted as the Human Services schedule.

Chart I
Menominee County
Organized Labor Groups
Comparison of 1992 Salary/Wage Progressions

Step	Highway[1]	Sheriff[2]	Human Services Employer	Human Services Union
start	>17,566	16,203	18,000	18,720
3 mo	17,566	V	V	V
6 mo	V	17,098	V	V
1 yr	V	17,992	19,000	19,760
2 yr	V	V	20,000	20,800
3 yr	V	V	21,000	21,840
4 yr	V	V	21,500	22,360
5 yr	17,774[3]	18,200[3]	23,000	23,920

[1] Grader Operator: annual rate = $8.27 X 40 hrs X 26 weeks plus $8.62 X 40 hrs X 26 weeks.
[2] Deputy: annual rate = hourly rate X 40 hrs X 52 weeks.
[3] Based on $.10 per hour longevity rate.

Source: Union Ex. 24, Employer Ex. 55, Joint Ex. 1.

From Chart I we can see the Human Services Professionals have the highest number of steps with six: start, one year, two years, three years, four years, and five years. The Sheriff's contract has the next highest

number of steps with four: start, six months, one year, and five years. The Highway employees have three steps: start, 3 months, and five years. I think it is logical to conclude that the longevity payment for the Highway Department and Sheriff's Deputies should be a step (at five years) because the parties apparently equated the longevity payment with the sixth step on the new Human Services' schedule and, thus, removed the longevity clause from their contract in 1990 when their new schedule was implemented.

In conclusion, I: 1) reject the Employer's suggestion that all wage adjustments be viewed as a "wage increase" made up of step increases plus cost of living adjustments or bonuses, in favor of the view that cost of living increases are separate and distinct from step increases; 2) agree with the County that all the parts of an employee's compensation are costs to the Employer; 3) disagree with the Employer that there are no other County employee groups with wage progression systems, that actually I find both of the other organized groups have some type of "wage schedule"; 4) disagree with the Employer's claim that the current salary schedule is without basis in the past practice of the parties, and actually find that the current 6-step schedule replaced a two or three step wage progressive system, a system that had as part of it a longevity clause that was subsequently replaced by the sixth step ("After five 5 years") of the current schedule; and 5) agree with the Union that the County's wage proposal ($500 bonus) will have no affect on the salary schedule and is, in effect, a "wage freeze" (0% salary increase) for comparison purposes.

REASONABLENESS TESTS

The ten statutory criteria are sufficient for determining the reasonableness of the final offers in this case. Since the changes being proposed by each party for the health insurance are closer to ordinary, as opposed to substantial or critical, and because both parties place little weight on the issue, no change tests will be required by either party.

Comparative Tests

Relevant Statutory Criteria

The parties presented little or no evidence relating to some of the criteria. Thus, these criteria will receive little or no weight in this arbitration decision: (b) stipulations, (f) comparisons--private employees, and (i) changes. So then, the relevant criteria to be used in deciding this case are: (a) lawful authority; (c) interests and welfare of the public, and ability to pay; (d) comparisons--other employees; (e) comparisons--other public employees; (g) cost of living; (h) overall compensation; and (j) other factors. These criteria will be weighted and considered for each of the issues and discussed separately under each issue.

The tenth criterion allows the parties to argue and the Arbitrator to consider "such other factors...which are normally or traditionally taken into consideration...." The parties suggest an equity or fairness criterion as a reasonableness test in this case.

The Union presents the equity/fairness standard in its arguments related to the wage increases. The Union maintains that the principle of equity and fairness in relation to compensation is a very important criterion and, indirectly argues that the Arbitrator should place great weight on this standard. The Union points out that Arbitrator Kerkman in the 1983 Kerkman Decision relied heavily upon the internal comparables and a principle of equitable treatment among employee groups within the county.

The Employer also argues in favor of this Arbitrator using an equity principle for both issues: wages and health insurance. Joining the Union on this point, the County also supports Arbitrator Kerkman's reliance on an equity principle and points to Kerkman's opinion that "favored treatment to [the Social Service Department employees] should be avoided." (Kerkman Decision, p.4) The Employer implies that this Arbitrator should also place great weight on the principle of equity among the employee groups in Menominee County.

Discussion: I agree with both parties that equity, fairness and, in some cases, parity among the units of the same employer is of great importance. This is true not only for the employer for administrative reasons (e.g. insurance policies), but also within the employee groups for keeping up morale. Therefore, I will also adopt and place major weight on the equity/fairness criterion in deciding this case.

Primary External Comparable Group

The Union argues that the 1983 stipulation in which the parties agreed there were no external comparables for Menominee County is no longer valid for a couple of reasons. First, even though the parties stipulated "no comparables," the Employer submitted and Arbitrator Kerkman considered wage levels of external comparables. And second, the parties this time have not stipulated to "no comparables." Based upon this, the Union proposes the following contiguous and geographic proximate counties as the appropriate comparable pool: Langlade, Lincoln, Marathon, Marinette, Oconto, Oneida, Outagamie, Portage, Shawano, and Waupaca.

The Employer spends a great deal of effort trying to convince the Arbitrator that there really are no counties comparable to Menominee County. The Employer argues that not one shred of evidence exists which minutely suggests that circumstances and conditions have changed in any manner which would make the parties prior stipulation (of no comparables) invalid. Even so, the County maintains that it has not waived the right to submit a list of comparables, and suggests: Florence, Forest, Iron, Langlade, Oconto, Pepin, and Shawano.

Discussion: My opinion on this point is not going to help the parties very much in their future contract negotiations. But, based upon the evidence submitted, I must agree with the Employer that there seems to be, at least using traditional analysis, no county comparable to Menominee County. Menominee County is definitely unique among Wisconsin counties. Therefore, for this award I find no other counties comparable enough to be compared to Menominee County. Thus, for this award, I will disregard, for the most part, the comparisons of wages and benefits of the instant employees with municipal employees of other the counties provided by the parties.

But this is not to say the parties couldn't agree upon a group of (perhaps non-contiguous) counties that looked more like Menominee County than the ones submitted by them here. The fact is, I believe both parties want to find a way to compare to other counties, if for no other reason to set fair, competitive wage rates. Further, the employees naturally look to other county human services departments, and the employer does too, to see "how they're doing." The parties really ought to negotiate, and litigate if necessary, this issue separately.

Ranking and Weighting of Statutory Criteria

Based upon the opinions, arguments, and evidence presented by the parties, I place weight on the relevant criteria in this manner: (j) fairness/equity (highest/major); (d) comparisons--other employees (high/major); (c) interests and welfare of the public (high/major); (a) lawful authority (high/major); (c) ability to pay (high/major); (g) cost of living (low/fair); (e) comparisons--other public employees (low/fair); and (h) overall compensation (lowest/minor).

ANALYSIS AND OPINION

In this section I will discuss the issues in this dispute using the interpretations and criteria described above. Both parties agree that wages is the most important issue: each spends the bulk of their time (briefs) and resources (exhibits) on the wages issue. Thus, based upon the opinions of the parties from the evidence and argument, I rank and place weight on the issues this way: wages (highest/major); health insurance (lowest/minor). Most of the discussion and emphasis of this decision will be place on the issue of highest priority and weight.

Health Insurance

It is clear that both parties believe this to be a minor issue. Actually, both offers are very similar, and upon investigation are essentially identical.

The Union basically wonders why the Employer is proposing its change in the health insurance language: What is the motivation for the County to make these changes? The Union believes that there is no consistent pattern among the internal employee groups regarding the provision of health insurance in Menominee County--the language proposed here is different from the other units' contracts. The Union concludes that absent some credible rationale for the change, the Union must conjecture that the County is seeking to effect a movement from a percentage to dollar expression of premiums. And more, that the County is laying the ground work towards a possible future dollar cap on the Employer health insurance premium contributions. And, the Union points out, this kind of change should more appropriately be achieved through voluntary negotiations.

The Employer argues that its proposed language is more reasonable for several reasons. First, the change allows for the creation of the needed

trust fund for premium payments, without increasing the employee's premium obligation in 1992. Second, the Employer's proposal guarantees that the employee's share of premium contribution will remain fixed in 1992. Third, the County's proposal is substantially similar to the language of Highway and Sheriff's Departments' contracts which were voluntarily adopted by those groups. And lastly, the County's final offer and Union's final offer achieve the same economic result in both years of the contract.

Discussion: As is the Union, I was puzzled by the proposed change of the County. Assuming that the Union's offer is in fact a codification of the past practice of the parties (and this is uncertain because of lack of evidence--the 1986 contract language), then there would be an extra burden on the Employer to justify its language over the Union's. Because I wasn't quite sure of financial impact to the employees of both offers, I developed the following chart:

Chart II
Menominee County
Employee Monthly Contribution to Health Insurance Premium
Comparison of Final Offers

	1992 Actual		1993[1] Projected	
	Un Offer[2]	Emp Offer[3]	Un Offer	Emp Offer
Single Premium	125.00		150.00	
Family Premium	409.41		491.29	
Employee Contri Single	0	0	0	0
Employee Contri Family	90.07	89.56	108.08	107.47
Contribution Difference	.51		.61	

[1] Projecting a 20% increase over 1992 in the premium cost for illustration purposes only.
[2] Union offer = 0% single and 22% family employee contribution.
[3] Employer offer = 0% single and 22% family employee contribution, with 1992 family contribution being $89.56 and 1993 contribution increase equal to the premium percentage increase (20% for this example).

Source: Employer Ex. 67, Final Offers

According to Chart II, the offers are almost identical. Still, the Employer would be paying slightly more (51 cents in 1992 and 61 cents in 1993) of the health insurance premium in both years. Based on this by itself, I wonder why the Union would object to the Employer's offer.

The Union speculates as to the motivations of the County in presenting its offer in this way, fearing that there may be caps on employer premium sharing in the future. I don't see any caps in the current language, and if there were, this issue would have greater weight than it does in this case. To speculate as to what the County will do in the future is indeed speculation. The parties will need to deal with the implementation of caps in future bargains, if, in fact, that is the intention of the Employer. And as I have said, unless I'm missing something, I don't see any caps in the Employer's current proposal. I think the Union is arbitrating a situation that does not yet exist, if it ever will. As the Employer points out, it appears the Union is trying to create a straw man to knock down.

On the internal comparability and equity/fairness criteria, I think the Employer's language here is substantially the same as previously adopted by the other units. Therefore, these criteria favor the Employers offer as well.

Therefore, considering these and the other relevant criteria, I find the Employer's health insurance language proposal to be more reasonable.

Wages

This by far is the most important issue for several reasons. First, there is a significant economic impact of the offers both to the employees and to the County. Second, there are some perceptual, or interpretational issues that separate the parties (for the most part, discussed above). And mostly there are the fairness/equity issues raised by both parties.

The Union summarizes its arguments in this way:

1. It is in the interest and welfare of the public to have an adequately compensated social service professional unit so that necessary services are properly and professionally provided.
2. Menominee County has the ability to pay for the costs of the Union's proposed settlement due to the availability of state and federal funding which can and has been applied to wage increases in the Human Services Department.
3. Other Menominee County employees received wage increases for both years of the contract in dispute.
4. External comparable social workers receive wage increases similar to those provided in the Union's final offer. There is no evidence of a single external comparable, in either of the parties chosen comparability pools, receiving a lump sum payment in lieu of a wage increase.
5. Menominee social workers wage rates are already at a dismally low level when compared with social worker benchmarks in comparable counties.
6. The cost-of-living has been increasing at a rate far more consistent with the Union's final offer than that of the County's.

7. Overall compensation (as computed by totalling wages and health insurance costs) is far lower for Menominee's social workers that it is for its comparables.
8. Rationale adopted by Arbitrator Kerkman in 1983 clearly favors the selection of the Union's final offer today.

Based on these, the Union believes its offer should be selected by the Arbitrator.

The Employer arguments can be summarized as follows:

1. A comparison of Menominee County to the other comparable counties (Employer list) shows that the Employer's final offer for employee compensation is the more reasonable.
2. The Menominee County Professionals are receiving wage increases comparable to the other employee groups in the county because the Professionals' salary schedule guarantees each employed person a wage increase in addition to the one time yearly bonus proposed by the County.
3. Menominee County's tax base is comprised of only 2.6% of the total county property, and with the ability of many of these land owners to move into the Menominee Tribe's trust, there is the real possibility that the County's tax base will erode even further if greater taxes are foisted upon these tax payers. This greatly restricts the County's ability to pay the Union's high wage demand.
4. Another aspect to the County's ability to pay has to do with the nature of the state and federal funds which make up the majority of the Human Services Department budget. These funds are not discretionary--that is, they are restricted to certain programs and services, of which some may bar the use of monies to off set salary increases. Any resulting "over-match" situation would have to be funded by the County out of local funds, which are very limited or nonexistent.
5. These Professional employees will be getting, under the County's offer, a 5.6% increase in 1992 over 1991, and a 4.4% increase in 1993 over 1992. This compares to a 2.9% increase in the consumer price index during 1992. The County's 1992 increase is 2.7% over the CPI and compares more favorable to the cost of living than does the Union's very high offer.

Based upon these the Employer believes its offer is more reasonable and should be selected by the Arbitrator.

Discussion: Based upon the above analysis and opinions, the central question in this dispute can be restated as: Is it fair/reasonable for the Employer, given the financial conditions of the County, to treat this bargaining unit different than its other employee groups by continuing a wage freeze and providing an off-schedule, one-time payment to these employees? I will deal with this question, and its component parts, as they relate to the relative statutory criteria (listed and weighted above) in the following discussion.

The Employer makes an extremely persuasive case that it has a very limited ability to pay the Union's wage demands in this case. In fact, the

County has no lawful authority to tax most of the residents of Menominee County who reside on the Menominee reservation, fully 97.4% of the County property tax base. The tax payers residing on the resulting 2.6% of the County are currently over taxed. This is coupled with the very real possibility that if the County raises their taxes any more, land owners who are eligible, would move their property under the jurisdiction of the reservation trust. This would result in even less property to tax and less revenue from property taxes.

Another point relating to the financial ability of the County to fund the Union's offer-is the overall economic condition of Menominee County. One only needs to listen to the news to know that Menominee County is one of the poorest counties in the nation--with extremely high unemployment, widespread poverty, and high incidences of social problems like alcoholism and drug abuse. The record, including the testimony of the witnesses at the hearing, confirms this fact. The economic situation is undisputed--Menominee County is poverty stricken.

Perhaps the only bright spot in the County's future is the gambling casino. But the "trickle down" from this enterprise will take years, perhaps decades to turn into meaningful economic assistance and growth. While it is a "diamond in the rough," I disagree with the Union that it is having, or will have in the near future, any real impact on the poverty in the County.

There is at least one possible way for the County to "tap into" the casino money (which is Tribe money). That is through its purchase of services contract with the Tribe. The Menominee Tribe contracts with the County to provide social services to the tribe. Perhaps the County and the Tribe could re-evaluate its contract(s), given the plight of the County and the "new wealth" of the Tribe?

Providing a mixed sign is the heavy reliance of the County on state and federal funds for funding the Human Services Department. The County is right that many of the funds coming into the Department have a lot of strings, yet the record does show that the county has been able to increase its revenue from state and federal sources without a corresponding local increase.

One "saving grace" is that yearly inflationary rates have remained fairly low--CPI hovering around the 2.5% to 3.0% level. Both offers are reasonable reflections of these increases in the cost of living.

The question now becomes: If the County is so poor and in such dire straits, why is it offering the Union any pay at all? And why did it grant such relatively generous pay increases to the other employee groups? Chart III (on next page) shows a comparison of the wage settlements for the County employee groups from the available data in the record.

This chart clearly shows support for the Union's claims of unequal treatment with the other employee groups in the County for 1992 and 1993. The Employer's offer of a wage freeze to the schedule for 1992 and 1993 when they have settled at the Union's offer or higher clearly is unfair to Human Service employees. If the County is so poor and unable to institute pay increases, why is it giving the other employees increases that range from 4.0 to 10.8%? So, from this point of view the Union's offer is more comparable and appears to be the more reasonable.

Chart III
Menominee County
Comparison of 1989 - 1993 Wage Settlements
Percentage Increases Applied to Wage/Salary Schedules

Unit	1989	1990	1991	1992	1993
Highway	m	7.8[1]	10.8[2]	10.5[3]	4.3
Sheriff's	m	m	m	4.0	4.0[4]
Unrepresented	m	m	0.0	6.0	m
Human Serv Pros	4.0	20.7[5]	0.0		
Union Offer				4.0	4.0
Employer Offer				0.0	0.0

m = missing

[1] $.50 across-the-board = average 7.8%.
[2] $.40 average on 1/1/91 and $.35 atb on 7/1/91 for $.75 total = 10.8%.
[3] $.43 avg on 1/1/92 and $.35 atb on 7/1/92 for $.77 total = 10.5%.
[4] The actual amount is 3.0% on 1/1/93 and 1.0% on 7/1/93 for 4.0% lift.
[5] Increases ranged from 16.5% to 25.0% with the average = 20.7%.

Source: Union Ex. 21,22,24; Employer Ex. 53,54; Joint Ex. 1.; Final Offers.

If it weren't for 1990--when the new salary schedule was implemented. In that year the Human Services Professionals received pay increases that ranged from 16.5% to 25.0%; the average was a whopping 20.7%. While the Union would explain that the increase only was catch-up for poor wages previously, a 25.0% increase in wages in one year is still a lot. Dividing the 20.7% increase over the four year span (1990 - 1993) results in an average of about 5.2% per year. Given this, and the fact the Employer is paying a one time bonus from 2.2% to 2.7% for 1992 and 1.7% to 2.2% for 1993, the Employer's offer begins to look more comparable with the other employee groups. But still, a three year wage freeze, when other groups continue to receive 4.0% and higher increases just is not fair and equitable.

To try to further understand why the Employer would treat one group with such blatant inequity, I decided to look a little closer at the wage schedule of the Human Services Professionals compared to another internal group--the Sheriff's Deputies. I picked the Deputies because they seem to be the most comparable of all the internal groups. While I know that the work of social workers and sheriff's deputies is very different, it seemed the Professionals

in this unit would most likely compare themselves to a Sheriff's Deputy, than, say, to a Grader Operator. There seems to be good amount of comparability of job duties, responsibilities, and professionalism. The comparison of the salaries is in Chart IV below.

Chart IV
Menominee County
Sheriff Deputies and Human Services Professionals
Comparison of 1992 and 1993 Salary/Wage Schedules

			Human Services			
	Sheriff Deputies[1]		Employer		Union	
Step	1992	1993	1992	1993	1992	1993
start	16,203	16,765	18,000	18,000	18,720	19,469
6 mo	17,098	17,701	V	V	V	V
1 yr	17,992	18,626	19,000	19,000	19,760	20,550
2 yr			20,000	20,000	20,800	21,632
3 yr			21,000	21,000	21,840	22,714
4 yr			21,500	21,500	22,360	23,254
5 yr	V 18,200[2]	V 18,834[2]	23,000	23,000	23,920	24,877

[1] Annual salary rates = hourly rate X 40 hrs X 52 weeks.
[2] Based on $.10 per hour longevity rate.

Source: Union Ex. 24, Joint Ex. 1, Final Offers

This chart is very revealing. Overall, my impression is that all the salaries are pretty low. This is confirmed by a comparison of these schedules with the salary schedule of the Menominee Teachers, which also appears to be on the low side. This, of course, is a reflection of the extent of the impoverishment in Menominee County.

But I think Chart IV also shows why the Employer has been reluctant to grant increases recently to the Professionals that would be applied to their schedule. For two groups that are somewhat comparable (Deputies and Human Services Workers), their salaries are very far apart. For example, under the Employer's offer (wage freeze), a Social Worker with one year experience would make more salary than a Deputy that is a 10-year veteran. But most disturbing

of all is what happens under the Union's offer. Here, in 1993, a fresh-out-of college, newly hired Intake Worker, with no experience, would make $635 more per year than that same Deputy with ten years experience. And a Child Protective Services Worker, with five years experience would make a whopping $6,043 (or 32.1%, almost 1/3!) more per year than a Deputy at the same step. Even under the "wage freeze" (County's offer) the same employees would still be $4,166 (or 22.1%) per year apart.

So now, I ask the Union: Is this fair? Is it fair that two professionals, both with challenging and sometime dangerous jobs, working for the same employer and sometimes side by side should have such disparate salaries? Is it really fair for long standing, seasoned employees in one department to make considerably less than a brand new, inexperienced employee in another comparable and sometimes overlapping department? I do not think so.

It appears to me that the Employer has found a way to provide some pay to the Human Services Professionals without increasing the gap between two fairly comparable employee groups. For sure the wages of all the employee groups in Menominee County are very low. But the County also has an obligation to maintain some order to the salary schedules of its employee groups.

Regarding this, the question now is how long the Human Services Professionals will have to wait for the Employer to adjust/correct the salary schedules of the other employee groups. Is it fair and reasonable to make these employees wait indefinitely while the County makes only cost of living adjustments to the other employee groups, particularly the Deputies? I think a major problem here is that it appears the Employer does not have any kind of written plan to improve its wages schedules. (Maybe a written plan exists, but I could not find one in the record.) If the County had a five- or ten-year plan to correct inequities and make their schedules more competitive, perhaps they would find their employee groups and the Unions a bit more cooperative. More importantly, perhaps they could find a source of additional funding for the specific purpose of improving wage/salary conditions in the County. At the very least, the employees in this unit would know how long the Employer expects them to accept a wage freeze. In my opinion a three-year wage freeze is pushing the limit of reasonableness.

Summary of Opinions and Findings on Wages Issue

The opinions and findings regarding this wages issue can be summarized as follows:

- Menominee County is one of the poorest counties in the United States.
- Menominee County is comparable to no other county provided by the parties for purposes of comparing wage and salary increases.
- The salaries of all Menominee County employee groups appear to be low, which is a reflection of the high poverty in the county.
- The Employer has very compelling reasons which support an inability to pay based on its lawful authority to tax only 2.3% of its county property owners and budgetary restrictions to expenditures in the Human Services Department.

- The Employer has other sources of local income, particularly the service contract with the Tribe, that could be affected by relatively new source of income for the reservation--the gambling casino.
- It is more appropriate to view overall wage/salary costs as separate adjustments (step, cost of living, schedule implementation, catch-up, and merit) for comparative and costing purposes.
- The other organized employee groups have schedule-like salary progressions even though they do not have formal schedules.
- The County implemented a new salary schedule in 1990 which increased the schedule steps to six, eliminated longevity pay, and resulted in an average of 20.7% wage-increases for the employees.
- The Union's 4% atb percentage increase proposal, while in itself reasonable, would result in an unfair salary gap between the Human Services Professionals and other comparable county groups, particularly the Deputies.
- The Employer's offer is a salary schedule wage freeze, but incorporates a bonus payment to the Human Services Professionals which does not match the inflationary rate, but provides some additional take-home pay to the affected employees.
- The Employer's proposed salary schedule wage freeze for the Human Services Professionals is unfair in the narrow context of only 1992 and 1993, but is justified when seen in the context of salary schedules of other employee groups, particularly the Deputies.
- The Employer appears to have no written plan for improving its salary schedules and is pushing the concept of reasonableness with a three-year wage freeze.

Overall, I find the Employer's offer to freeze the salary schedule wages for two more years and provide off-schedule (bonus) payments pushes the limits of reasonableness, but is justified given how the Union's offer would affect the salary schedule in relation to the other employee groups of the county. Thus, on the wages issue, the Employer's offer is preferred.

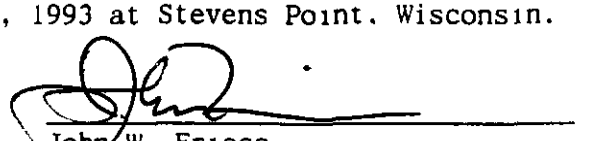
CONCLUSION

Based upon the reasons stated above, and taking into consideration all the evidence before me, weighing the issues and statutory criteria, and deciding the reasonableness of each of the parties' proposals on each of the issues, I find, overall, the Employer's offer is more reasonable than the Union's offer and make the following:

AWARD

The final offer of Menominee County, along with the agreed upon stipulations, shall be incorporated into the 1992-1993 collective bargaining agreement between the parties.

Dated this 4th day of April, 1993 at Stevens Point, Wisconsin.



John W. Friess
Arbitrator

STATUTORY CRITERIA

The criteria to be utilized by the Arbitrator in rendering an award under Section 111.70(4)(cm) 7 of the Wisconsin Statutes are 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 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 pension, 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 and otherwise between the parties in the public service or in private employment."