STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of

TEAMSTERS LOCAL UNION NO 579

To Initiate Arbitration
Between Said Petitioner and

LAFAYETTE COUNTY (HIGHWAY DEPARTMENT)

Case 49
No 48270 INT/ARB-6656
Decision No 27739-A

APPEARANCES

Marianne Goldstein Robbins on behalf of the Union
Howard Goldberg on behalf of the County

On August 11, 1993 the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator pursuant to Section 111.70(4)(cm)6 and 7 of the Municipal Employment Relations Act in the dispute existing between the above named parties A hearing in the matter was conducted on December 3 1993 in Darlington, WI Briefs were exchanged by the parties and the record was closed by February 11, 1994. Based upon a review of the foregoing record, and utilizing the criteria set forth in Section 111 70(4)(cm) Wis Stats the undersigned renders the following arbitration award

ISSUES

The issues in dispute include the following.

Classifications.

The Union proposes continuation of the classification scheme providing for semi skill and skilled classifications The County proposes merging the two classifications into a laborer classification.

Wages

The Union proposes a split wage increase of 2 4%/2.9% in 1993, and 2 8%/2 9% in 1994 for skilled and foreman positions, and a split 2%/2% in

1993 and 2%/2% increase in 1994 for the semi-skilled and custodian classifications. The County proposes a 1.7% increase for those in the semiskilled classification, plus an across the board 2%/2% split increase in 1993 and a 2%/2% split increase in 1994.

The County proposes that the wage rate for seasonal employees remain open, while the Union proposes continuation of a $5.00 rate for said employees.

Health Insurance:

The Union proposes capping the County's contribution to health insurance premiums by increases of $25 for the family plan and $18 for the single plan effective January 1, 1995.

The Union also proposes deleting language from the past agreement which pertains to the Union's right to substitute another health insurance plan for the current plan provided, and which sets forth the employee contribution consequences of such a change.

The County proposes new language entitling it to provide comparable coverage from a different insurance carrier.

Holidays:

The Union proposes that work performed on all holidays, including December 24 and 31, would be paid at the rate of time and one half, in addition to holiday pay. The current contract has such a provision for all holidays except December 24 and 31.

Union Activity:

The County proposes the following new language:

"Only one steward is authorized to investigate and/or present grievances to the Employer unless circumstances reasonably require more"

"No employee in the bargaining unit shall be paid for time participating in bargaining, mediation, and/or arbitration proceedings. This provision applies to both grievance arbitrations and interest arbitrations."

The relative merit of the parties' positions on each of the foregoing issues will be discussed individually, after which I will discuss the relative merit of the parties' total package final offers.

HEALTH INSURANCE

Union Position.

The parties have stipulated that the Union's final offer is for a two year agreement. Based upon said stipulation the County cannot now assert that the Union' final offer is not for a two year duration and that it is therefore unlawful.

The health insurance premium proposed by the Union for 1995 is not an extension of the contract beyond the stipulated two year duration. Rather, the Union's proposal essentially addresses how the health insurance premium issue will be handled should there be a contract hiatus until a successor agreement goes into effect.

The County, though aware of the Union's health insurance proposal, never challenged its legality until the arbitration hearing. The Statute provides a declaratory ruling procedure under which the County could have challenged the Union's offer. The County did not avail itself of that procedure.

In fact, during the arbitration process the Union offered to delete the January 1, 1995 health insurance proposal, and the County rejected said offer.

In addition, under the contract's Separability and Savings clause, illegal provisions would be deleted and the parties could renegotiate such provisions. Thus, there is a contractually provided procedure to handle the alleged problem if indeed the Union's offer is selected.

With respect to the County's carrier change proposal, a review of other County agreements indicates that many do not address the issue. The only unit which contains the County's proposed language is the Professional unit, which does not constitute an established internal pattern supporting the County's position on this issue. In addition, if the County chooses to change carriers it may do so as long as it negotiates the consequences of such a change with the Union. (Citation omitted) Thus, there is no need to address the issue in the contract.

County Position

The Union's final offer on this issue is unlawful because it contains a provision which would go into effect beyond the two year statutory limitation set forth in 111 70(4)(cm)8m. Under said statutory proviso, it is only lawful for the parties to exceed the two year limitation on agreement if there is a voluntary agreement to do so, or, if the parties are negotiating an initial contract In this case this is not an initial contract, and the County has not agreed to extend the term of the proposed agreement beyond the two year limitation. Thus, the Union's final offer contains an invalid proviso Since this portion of the Union's final offer is not in conformance with the statute, the Union's final offer is invalid and should not be awarded by the arbitrator

The County was not obligated to challenge the legality of the Union's offer in this regard by seeking a declaratory ruling from the WERC The Statute contains permissive rather than mandatory language in this regard In fact, the County did raise the issue during the investigation and the Union refused to clarify its final offer in response thereto Thus, the County has the right to object to the legality of the Union's offer at this time

The Statute does not permit the arbitrator to conclude that a portion of the Union's final offer, though illegal, can still be adopted because the provision cannot be enforced as a matter of law. The Arbitrator has no authority to ignore a portion of any party's final offer. If the Union's final offer is adopted, the savings clause in the parties' Agreement would obligate the Employer to commence another round of litigation to declare that portion of the contract to be illegal, which is simply not reasonable

A second issue pertaining to health insurance is raised by the Union's deletion of current language which affords the Union the right to substitute another health insurance plan, and the County's proposal to afford both parties the opportunity to change health insurance carriers, provided coverage under a change proposed by the County is comparable. In this regard it is absolutely fundamental that the contract spell out what will happen in the event there is to be a change in the current health insurance plan The contract provision at issue is not unique to this bargaining unit The County has comparable provisions in the Hospital Workers' contract, the Courthouse Employees' contract, and the Professional Employees' contract

Discussion:

With respect to the issue relating to the Union's proposal for a cap effective January 1, 1995, though both parties have some responsibility for the fact that said proposal remains in the certified final offers even though it is inconsistent with the proposed two year agreement stipulated to by the parties, the fact remains that said proposal is not consistent with the terms of a two year agreement, and the fact that it is probably unenforceable compels the undersigned to conclude that the County's health insurance proposal in this regard is more reasonable than the Union's proposal.

Regarding the parties' proposals concerning their rights to change health insurance carriers, while the County's proposal in this regard is not fail safe in assuring that problems will not arise in such an event, it's proposal is supported by internal comparable contracts, and in addition, it at least establishes a comparability standard for measuring the appropriateness of potential County action. In sum, the County's proposal on this issue, while not free from ambiguity, and though it does not assure that differences will not arise between the parties under such circumstances, at least addresses a potentially troublesome issue in a frequently utilized manner, and therefore, the undersigned deems the County's proposal on this issue to be more reasonable than the Union's.

WAGES.

Union Position:

The County's exclusive reliance on internal rather than external comparables on this, as well as other issues, is contrary to the large body of arbitral precedent. (Citations omitted) The Union suggests four external comparables: Grant County, Green County, Iowa County, and Richland County. All are contiguous with the County, experiencing the same labor market and economic conditions. The proposed external comparables also have similar population bases as the County. Moreover, in two prior arbitration cases these counties have been deemed appropriate external comparables. (Citations omitted)

The Union's wage proposal is closer to the wage settlements in comparable communities. In 1993, Grant County gave its employees a 3/3.6% split wage increase In addition, the wage rates in three of the comparable counties are higher than either of the final offers at issue herein. The Union's offer will

still keep skilled workers at $1.00/hour below Green County. However, the Union's offer will allow County employees to maintain closer parity with comparable counties than would be the case under the County's offer. Even then, the County would only rank four out of five among the comparables.

Since the County's tentative agreement with its hospital unit has not yet been ratified, it should not be utilized as an internal comparable. In addition, no settlement has been reached between the County and the Courthouse unit.

It should also be noted the Sheriff and Professional unit settlements included additional longevity benefits not provided unit employees.

The County has not presented any evidence demonstrating that it is unable to pay the wage increases proposed by the Union. Indeed, the evidence establishes that the County's budget is quite flexible, since all of its agreements exceed the 2%/2% split increase included in the County's budget for 1993 wages.

The evidence also does not demonstrate that the County is not able to afford the Union's final wage increase offer. What the record does demonstrate is that the County may have incurred a deficit in it general fund in 1992 which delays its ability to become self-insured; however, it does not indicate that there was a deficit in other funds or that it is unable to pay the wage increased proposed by the Union. In fact, when all governmental funds and expendable trust funds in 1992 are looked at, the County had excess revenues of more than $500,000. Furthermore, in 1992 the Highway Department ended 1992 with a balance in excess of $200,000. Under such circumstances there is no reason why these employees should not receive a wage increase which is commensurate with those received by other highway unit employees in comparable communities.

Moreover, the County's evidence regarding its mill rate is inconclusive since it does not provide mill rates for the external comparable communities of Grant and Richland Counties.

Furthermore, the information which is provided regarding the remaining comparable communities demonstrates that the County seems to be in line with its neighboring communities. There is only $1.09 difference between the mill rates between the County and Iowa County, and Green County has a mill rate more than $3.00 above the County's. Additionally, the County has the third highest adjusted gross income per capita among comparable communities.

The County s reliance on CPI data does not alter the persuasive evidence which establishes that unit employees are entitled to maintain wage parity with comparable communities. (Citations omitted)

The County has also offered no reason why its proposal to leave the wage rates for seasonal employees open should be accepted, nor has it explained how it would change the rate under its proposal.

County Position:

The County was forced in September, 1992 to borrow approximately $1,700,000 in order to meet its operating expenses for the 1993 calendar year. Because of this situation, the County was forced to increase its levy by 10%, in spite of the fact that the County has one of the lowest levels of property valuation in the State. In setting its 1993 budget, the County planned for a 2% increase in wages for January 1 and an additional 2% increase July 1, 1993. Any additional increase would result in the mill rate being set at the highest level of any county in Wisconsin. As it is, this increase resulted in the County having the third highest mill rate of all counties in the State.

All of the other bargaining units in the County have accepted the wage increases proposed by the County, except for the Courthouse unit which has not yet settled.

The Union's contention that the settlements covering employees in the Sheriff's Department and Professional employees are distinguishable since said employees have longevity benefits that unit employees do not have is not meritorious. Longevity benefits in said contracts have nothing to do with the wage increases those units accepted.

Because of the financial difficulties the County is experiencing, the County's budget is under a great deal of scrutiny and criticism from the public. It is not fiscally sound for a governmental unit to have to borrow money in order to meet its current operating costs. The County has asked all of its employees to hold their wage demands to the limits the County has proposed, and it is reasonable for the County to ask the arbitrator for that same restraint.

The adverse financial condition of the County should rule out meaningful comparisons with other counties, which have not experienced the same economic difficulties that the County confronts. The Union has failed to

demonstrated that its proposed comparables are experiencing similar economic difficulties as is the County.

Instead, the arbitrator should only consider the internal comparability of the wages and increases that other represented County employees agreed to accept during this critical period.

Furthermore, the external comparability data is simply not sufficient to make meaningful comparisons. Of the four counties proposed by the Union as comparables, Richland County has not settled for 1993 or 1994, Iowa County has not settled for 1992, 1993, or 1994, and Grant County employees are not represented, and there is no foundation for the Union's assertion as to what their terms and conditions of employment are.

Though the wages of employees in Green County are much higher than the wages of employees of other counties in the group, it is important to note that Green county is contiguous to Dane and Rock counties. Furthermore, in 1990 Green County obtained a major concession from the Union on health insurance, and offered, as a quid pro quo, a significant increase in wages for 1991 and 1992, which lifted its wage levels above the comparable norms. (Citations to relevant interest arbitration awards omitted)

Because the County is proposing upgrading the wages for semi skilled jobs, its proposal has the effect of a 3.66% increase for all semi-skilled work during the first wage increase. In fact, the semi skilled rate under the County proposal is higher than the Union proposal.

Since both parties' final offers exceed relevant cost of living increases, said criterion also supports the reasonableness of the County's offer.

Discussion:

The record does not support a conclusion that there is an established external comparability pattern in existence which is sufficient to help measure the relative reasonableness of the parties' wage proposals. On the other hand, the internal settlement pattern in the County, though not as uniform as the County asserts, does support the reasonableness and competitiveness of the County's wage proposal, particularly in the context of the fact that the County is having financial difficulties in spite of the fact that its mill rate is relatively high. The undersigned therefore finds that the County's wage offer is more reasonable than the Union's.

CLASSIFICATIONS.

Union Position:

All comparable counties have separate wage classifications for semi skilled and skilled positions. (See Union Exh. 8)

The County's proposal will adversely affect the seniority rights of unit employees.

The differential in wages for skilled and semi skilled positions reflects the fact that the skilled positions require greater skill, experience, and responsibility. Under the County's proposal, these distinctions would no longer be recognized nor would they be appropriately compensated.

The County' proposal to merge the skilled and semi-skilled classifications into one should be negotiated by the parties because it is a radical departure from the status quo and because it is inconsistent with comparable communities In this regard it is noteworthy that the County has presented no evidence to justify altering the status quo and the practice in comparable communities

County Position:

Currently, laborers who are performing semi-skilled work are paid at the semi-skilled rate, and those same employees are paid at the skilled rate when they perform skilled jobs. There are twelve jobs listed in the past agreement which are semi skilled jobs, and twenty five specific jobs that are skilled jobs. Each time an employee performs a different job, he is paid in accordance with the rate for that job.

Of the 34 employees in the unit, all, except for one, worked at the skilled rate at least part of the time in 1992.

The County determined that the amount of bookkeeping and extra expenses involved in keeping track of these different rates is not cost effective. In addition to the wage differential, the County needs to know which classification is applicable for purposes of overtime, sick pay, vacation pay, holiday pay, etc. The County has thus proposed one classification so there would no longer be a need for extensive bookkeeping to record the hours in the two pay classifications.

The Union opposes this change because those who are negotiating the agreement would not benefit from the change; however, a majority of employees in the unit would.

The County's offer does not include any change in the way jobs are assigned. Those with higher seniority would still get preference in assignments, provided they are qualified to do the work.

The Union asserts that comparable external units have separate classifications for semi skilled and skilled positions. The record does not support such an assertion. Green County is the only county that has such a distinction in its contract. In fact, it would appear that the County is the only county in the group where the same employees are paid different wages depending on what they are doing. The County's proposed change would simply create the same accounting efficiencies as are currently present in all of the other counties listed by the Union.

Discussion:

The County's proposal in this regard appears to contravene the practice in highway departments in surrounding counties to pay premium rates for skilled work. The County has also failed to persuasively demonstrate that the current pay system is causing sufficient problems for the County to justify such a significant change in the status quo. Absent evidence of a demonstrated need, and based upon the pay systems utilized in comparable departments, the undersigned does not believe that the County's proposal to merge the skilled and semi skilled classifications in the Department has been justified sufficiently to merit adoption herein.

HOLIDAYS:

Union Position:

External comparables support the Union's offer on this issue. Iowa and Green Counties contain provisions for overtime pay for hours worked on December 24 and 31.

The Union's proposal is also supported by internal comparables. County employees in the Hospital, Courthouse, and Professional units receive this benefit. Sheriff's Department employees earn an additional six hours straight time pay for worked performed on these days, the same benefit received for other holidays.

The fact that highway employees are more likely to be called to work on December 24 and 31 than other County employees makes the Union's request for premium pay more compelling.

Highway employees should not be compared to law enforcement and hospital employees in this regard since the other two groups regularly work on the days in question.

County Position:

The County Highway Department is closed on all holidays listed in the contract unless it needs to be open because of weather. The two days in question are the most likely holidays on which Highway Department employees are likely to be called into work.

Each of the other County bargaining units handle these days differently. The Hospital and Sheriff's Department units always work on these days. While the Sheriff's Department employees are paid at the premium rate of time and one half plus holiday pay for work on December 24 and 31, these employees are only given four hours of holiday pay on each of said days, whereas employees in the Highway Department are given a full day of holiday pay. Hospital employees have no provision in their contract for either of these days, and do not receive premium pay for work performed on said days

Though the Professional Employees' and Courthouse Employees' contracts provide that December 24 and 31 are paid holidays, and also provide for premium pay for all hours worked on said days, said employees are never scheduled to work on these days. This fact explains the different treatment of employees in the various contracts on this issue.

Because the Highway department employees are more likely to be called in on these days, it follows that their contract should be compared with other County employees who also work on these days.

Of the external comparables proposed by the Union, only Green County includes December 24 and 31 as full paid holidays. Iowa County gives only a half day off on each of these days, and Richland County does not designate either day as a holiday, though it does designate the last workday before Christmas as a holiday. No evidence was presented regarding Grant County.

Discussion:

Neither external nor internal comparables establish sufficiently clear settlement patterns on this issue to support the reasonableness of either party's proposal. Absent strong evidence that the County's practice of paying Highway Department employees straight time plus holiday pay for work performed on December 24 and 31 is out of the comparability mainstream, which evidence is lacking herein, the undersigned is not of the opinion that sufficient reason exist at this time for changing the status quo on this issue

UNION ACTIVITY:

Union Position:

The County proposes a change in the status quo between the parties which should not be lightly altered. (Citations omitted)

These proposed changes will have a detrimental effect on the Union's effectiveness in processing grievances. Stewards with relevant knowledge might not be allowed to assist in the processing of grievances, and employees would be less willing to participate as witnesses in arbitration proceedings. Furthermore, neither stewards nor bargaining committee members would be compensated for their time spent in bargaining or mediation. The County has not presented evidence justifying discontinuance of its practices in this regard.

External comparable agreements do not contain such limitations. In addition, the contract in the Sheriff's Department does not contain such limitations. In addition, the County has not proposed such limitations in the pending hospital and courthouse negotiations.

Most importantly, the County's proposal does not merely function to eliminate pay for employees who abuse the privilege, but rather it eradicates the right to pay for all employees who participate in bargaining, arbitration and/or mediation during regular working hours.

County Position:

The level of grievances in this bargaining unit is higher than is the case in other County bargaining units. In addition, a great deal of time on union

business is being spent by more than one steward during working hours Lastly, at hearings or proceedings scheduled during regular working hours a number of unit employees, after they participated in such proceedings, remained to view them. The County is simply proposing reasonable limits as to the scope of these activities.

Where more than one steward is necessary to process a grievance, the County's proposal allows for this. In addition, at the hearing the County's proposal with respect to the payment of employees during arbitrations was clarified to assure the Union that this limitation would not be applicable to stewards Lastly, it is noteworthy that the current contract does not authorize payment to individual employees to attend arbitration proceedings. There is no adverse impact on the Union if this provision is adopted, other than the elimination of abuse.

Discussion:

The County's proposal concerning the number of stewards that may process grievances appears on its face to be reasonable, though it is not supported by comparability evidence or by other evidence that there have been abuses in this regard. On the other hand, the County's proposal to eliminate abuses by employees who participate in bargaining and arbitration proceedings appears to be overly broad in that it does not narrowly address the abuse issue, but instead denies all employees rights they currently enjoy even if they utilize such privileges in a responsible manner. Because of the overly broad nature of the County's proposal, and its lack of comparability support, the undersigned deems the Union's position on this issue to be more reasonable than the County's.

TOTAL PACKAGE:

The foregoing indicates that the County's proposals on health insurance, wages and holidays are more reasonable than the Union's, and that the Union's proposals regarding classifications and union activity are more reasonable than the County's. Though the undersigned would much prefer not having to select a total package final offer based upon these conclusions, he must do so, and in that regard, the undersigned concludes that the County's final offer should be incorporated into the parties' 1993-94 agreement, with the hope that the problems associated with the County's classification and union activity proposals can be addressed in the parties' next round of negotiations

Based upon all of the foregoing considerations the undersigned hereby renders the following:

ARBITRATION AWARD

The County's final offer shall be incorporated into the parties' 1993-94 collective bargaining agreement.

Dated this 28th day of February, 1994 at Madison, WI.

Byron Yaffe
Arbitrator