

WISCONSIN EMPLOYMENT RELATIONS COMMISSION
INTEREST ARBITRATION

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WISCONSIN EMPLOYMENT
 RELATIONS COMMISSION

In the matter of arbitration between:

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Juneau County Courthouse)))	
Employees' Union, Local 1312,)))	
AFSCME, AFL-CIO)))	Jeffrey B. Winton
)))	Arbitrator
and)))	
)))	
Juneau County)))	Case No. 106
)))	No. 49981
)))	INT/ARB-7049
)))	
)))	Decision No. 28089-A
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BACKGROUND

An interest arbitration was held on October 28, 1994 in the Juneau County Courthouse Annex. The Juneau County Courthouse Employees' Union, Local 1312 represents "all regular full-time and regular part-time employees of the Juneau County Courthouse, but excluding the Administrative Assistant II, County Maintenance Supervisor, Personnel Coordinator, Housing Authority Director, and Soil and Water Technician and excluding all other supervisory, confidential, managerial and professional employees." The previous agreement between the Parties expired on December 31, 1993. The Parties settled all of the issues for a 1994-95 collective bargaining agreement with the exception of wages for 1994-95 and that is the matter that was presented to the Arbitrator for his determination as to which Parties final offer would be incorporated into the 1994-95 agreement.

The Parties have agreed that the only issue still in dispute is the wage increase to be paid to the bargaining unit employees for 1994 and 1995. The Union is proposing an increase of 4% effective January 1, 1994 and an additional 4% increase effective January 1, 1995. The County's final offer is a wage increase of 2% on January 1, 1994, and an additional 1% on July 1, 1994, 2% on January 1, 1995, and 1% on July 1, 1995.

APPEARANCES FOR THE EMPLOYER

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STATUTORY CRITERIA

7. Section 111.70 (4) (CM) (7) of the Wisconsin Statutes directs that the Arbitrator consider these criteria in making any decision under the arbitration procedures authorized by this paragraph.

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost-of-living.

h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. *Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.*

Of the statutory criteria that Wisconsin law dictates the Arbitrator consider, only d, e, h and j are particularly critical. On the other matters, there was either little or no relevant evidence or no disagreement between the Parties.

POSITIONS OF THE PARTIES

The Union has argued that the most comparable Counties to Juneau County are those which are contiguous to it including the counties of Adams, Columbia, Jackson, Monroe, Sauk, Vernon and Wood. The County sought to include Clark and Crawford Counties in its list of comparables, and the Union objected.

The Union points out that all of the Counties which it seeks to include as comparable, are contiguous to Juneau County and compete in the same labor market. The Union submitted the below "Summary of Commuting Pattern Data" chart in support of its arguments.

Summary of Commuting Pattern Data

County	Commuters to Juneau County	Commuters from Juneau County	Total
Adams	280	99	379
Columbia	23	131	154
Jackson	17		17
Monroe	656	436	1,092
Sauk	240	720	960
Vernon	231	101	332
Wood	165	124	289

Source: Union Exhibit 10, Wisconsin Department of Labor and Human Relations.

The burden is on the County to show that non-contiguous Counties such as Clark and Crawford should be included in the list of comparable Counties.

In addition to being reasonable proximate to Juneau County, the Union argues that its list of comparables also share a common labor market.

The Union submitted the following "Pattern of Wage Settlements 1994 - 1995" in support of its argument that its final offer was more reasonable than that of the County.

**Pattern of Wage Settlements
1994 - 1995**

County	1994 % Increase	1995 % Increase	Two-Year % Increase
Adams	1/1: 3% 7/1: 1.5% Total Lift: 4.5%	No Settlement	Ne Settlement
Columbia	1/1: 2.5% 7/1: 2% Total Lift: 4.5%	1/1: 2.5% 7/1: 2% Total Lift: 4.5%	9%
Jackson	<u>Courthouse:</u> 1/1: 2% 7/1: 3% Total Lift: 5% <u>Human Services:</u> 1/1: 2% 7/1: 2% Total Lift: 4%	No Settlement	No Settlement
Monroe	3.9%	No Settlement	No Settlement
Sauk	4%	No Settlement	No Settlement
Vernon	No Settlement	No Settlement	No Settlement
Average	4.27%	4.5%	9%
Juneau - Employer	1/1: 2% 7/1: 1% Total Lift: 3%	1/1: 2% 7/1: 1% Total Lift: 3%	6%
Juneau - Union	4%	4%	8%

Source: Collective Bargaining Agreements, Union Exhibit 11.

It is readily apparent that the comparables lend support to the 4% increase proposed by the Union. Each and every one of the comparables provide for a wage increase of at least 3.9%, and three provide greater lift through split increases. In contrast, the employer's offer of a 2/1 split is outside the range of increases established by the comparables.

The Union believes that the above chart supports its argument for a 4% increase. The smallest increase in the chart above was 3.9% for 1994 and the largest was 5% (although it was a split increase).

The Union argued extensively that by comparing the pay rates in key positions in Juneau County and the other comparable Counties, it becomes obvious that in all but one case Juneau County employees are paid below average and that, therefore, the Union's final offer is more reasonable because it would at least tend to lift the pay rates in these positions toward average rather than the Counties offer which would keep them below average.

For example, the Clerk Typist II position ranked fifth on the list of comparable wages list as submitted by the Union in 1993. If the Union's offer were adopted, the pay rate would range from \$7.27 - \$8.76 in 1994 and it still would rank fifth. If the Counties offer were adopted, the pay rate would be from \$7.20 - \$8.68 and the rank on the list of comparables would fall from fifth to sixth. The Union argues that in this and other typical positions, the County offer would make a bad wage situation even worse. The Public Health Tech position has an average start rate of \$8.45 per hour, yet in Juneau County the start rate was \$1.12 per hour below that. If the County's final offer were adopted the difference would increase to \$1.25 per hour below average while if the Union's offer were adopted it would be \$1.18 per hour below average. With regard to the maximum rate per hour, in 1993 the differential was \$.91 per hour below average, in 1994 if the County's offer were adopted then it would be \$1.05 per hour below average and if the Union's offer were adopted it would be \$.97 per hour below average.

In conclusion, the Union's position is that its offer at least would come close to maintaining the wage relationships between Juneau County and other comparable Counties, but that the County's offer would further erode the ranking in relative earnings of the Juneau County employees.

The Arbitrator previously ruled on a Motion by the Union to exclude the County's evidence on the Vernon Courthouse final offer, Juneau County non-union wage increases and JCPPA settlement. Information submitted by the County with regard to the comparability of Clark and Crawford Counties was considered by the Arbitrator but was found to be comparable to Juneau County for purposes of this Award.

POSITIONS OF THE PARTIES

The County argued that it should be allowed to present evidence regarding the JCPPA contract and the non-union wage increase for Juneau County employees, even though *evidence regarding these matters was not presented at the arbitration hearing nor was it in the Agreement made by the Parties for submitting this evidence at a later date.* In so arguing, the County attorney pointed out that "at the time of the Courthouse arbitration hearing it was not known if the matters would be resolved. It was not until mid-December of 1994 that an understanding was reached between the Parties...Hence, the JCPPA Agreement could not be presented at the time." The County attorney also argued that the Juneau County non-union wage increase "was not made until the very end of December" and thus it could not be presented at the October arbitration hearing.

It is exactly for these reasons that the Arbitrator cannot now consider this evidence since they clearly were not presented at the arbitration hearing and to allow them into evidence now would be improper and unfair to the Union since it would not have the chance to cross-examine witnesses or present its own evidence on this matter. Evidence may be presented in legal briefs that is related to evidence presented at the arbitration hearing or for which there was an agreement to submit evidence at a later date, but brand new evidence may not be produced after the close of the hearing.

The County argues that as of January 1, 1994 a tax levy freeze went into effect pursuant to State legislative action. This meant that Counties could not raise their tax levy more than .001 above 1992 levels unless their equalized property values went up by more than that. This legislative action caused major problems for Juneau County.

"The County had held a hard line on tax levy increases for approximately the past ten years and the time had come when an increase in the tax levy rate was going to be necessary in order to develop a reasonable operating budget." The County points out that in past years salary increases were taken out of excess monies held in a contingency fund, but after utilizing that resource for a number of years there was none left to draw upon. The County also indicated that the Department of Natural Resources was and continues to push for the implementation of a mandate that could cost Juneau County nearly 2 million dollars with regard to a County landfill.

The flex plan which Juneau County began offering in 1993 and workers compensation benefits and the cost of Family Medical Leave under both State and Federal law are additional expenses to the County.

In addition, members of local 1312 have a unique benefit found in Article 11 of their Collective Bargaining Agreement. In essence, the provision is that employees that leave County employment will receive a certain percentage of their accumulated sick leave in cash as severance pay.

Considering the new tax rate freeze legislation, any increased costs, must come from increases realized through increasing equalized property value. In 1994, the County asserts, this increase was 3% and for 1995 4.4%. There are other severe burdens on the County's budget including increasing the cost for the Juneau County Department of Human Services, while the level of state aid is decreasing. As juvenile crime increases more and more transports must be made by the Sheriff's Department to LaCrosse since neither Juneau County nor any of its neighboring Counties have such a facility. As of the date of the Arbitration hearing, the Department of Human Services was \$300,000 over its 1994 budget due to such increasing demands.

The County has adopted a conservative approach toward wage increases so that property tax increase are not necessary and feels that all the residents of Juneau County (which would include property owning Juneau County employees) benefit in the long run.

The Union counters that of the 16 million dollar County budget only 3.5 million dollars comes from property taxes. Thus, over 75% of the County's revenues come from non-property tax sources, completely unaffected by the property tax freeze. One of the other sources of revenue is sales tax and testimony indicated that the County anticipated receiving \$160,000 - \$170,000 more in sales tax revenues than the \$800,000 that was budgeted.

The County argues that the following chart which it entered into evidence, is the most reasonable of comparable Counties under the statute, except that Columbia, Monroe, Sack, Wood Counties are clearly not comparable to Juneau County viewed within the context of their population, equalized value, and per capita incomes.

COMPARABLES

COUNTY	POPULATION	RANK TO JUNEAU COUNTY	DIFFERENCE IN POPULATION TO JUNEAU COUNTY	EQUALIZED VALUE 1994	RANK TO JUNEAU COUNTY	DIFFERENCE IN EQUALIZED VALUE COMPARED TO JUNEAU COUNTY	PER CAPITA INCOME 1992	RANK TO JUNEAU COUNTY	DIFFERENCE IN PER CAPITA INCOME COMPARED TO JUNEAU COUNTY
DAMS	16,811	③	-5,701	732,393,500	③	+93,183,800	12,324	6	-2,118
LARK	31,647	⑤	+9,335	708,769,600	②	+69,559,900	14,383	②	-59
OLUMBIA	46,419	7	+24,107	1,758,380,800	7	+1,119,171,100	17,332	7	+2,890
RAWFORD	15,983	④	-6,329	417,291,600	⑤	-221,918,100	14,463	①	+21
ACKSON	16,894	②	-5,418	470,069,500	④	-169,140,200	15,300	⑤	+858
IONROE	37,591	6	+15,279	959,310,100	6	+320,100,400	14,772	③	+330
AUK	48,780	8	+26,468	1,994,433,500	8	+1,356,223,800	17,563	8	+3,121
ERNON	26,033	①	+3,721	623,851,300	①	-15,358,400	13,933	④	-509
WOOD	75,000	9	+52,688	2,263,281,000	9	+1,624,071,300	19,122	9	+4,680
JUNEAU	22,312			639,209,700			14,442		

The County believes that the most comparable Counties would be Crawford, Adams, Vernon and Clark. Many of the Counties which Juneau County argues are most comparable, are on different time tables for collective bargaining than Juneau County. Evidence was presented indicating that Clark County had agreed to a 3% split in 1994 and 3.5% split in 1995.

In summary, the County argues that its final offer of a 3% split increase for 1994 and a 3% split increase for 1995 is the most reasonable in light of the tax increase restrictions put on it by the State and the fact that these restrictions were not in place when many of the other Counties which Juneau County believes are comparable last negotiated contracts.

DISCUSSION

It is a generally accepted principle in interest arbitration that the statutory criteria laid down by the legislature, are not ranked in order of priority. Often, there is a conflict between one Parties position being stronger on some of the criteria while the other Parties position has more weight on other criteria. It is left to the Arbitrator to weigh the relative merits of importance of the stronger vs. weaker positions and the relative ranking of importance of criteria. Obviously, it must be so or the Parties would have less trouble agreeing on a contract! It is my view that the wage comparison criteria is the most important, unless a showing can be made that the governmental body does not have the "ability to pay" for an increase that would otherwise be ordered by an arbitrator.

The Union argues that not only has the County made no well documented claim of financial adversity but it has completely failed to show in any absolute way that it has an "inability to pay." While the County certainly has made an argument of "financial hardship" the Union does not believe that this has been very well documented.

The Union asserted that the appropriate counties are those that are contiguous to Juneau county which include Adams, Columbia, Jackson, Monroe, Sauk, Vernon and Wood. The County wanted to include Clark and Crawford which the Union opposed arguing they were geographically distant and not contiguous. It is the Arbitrator's view that contiguous counties that are of reasonably similar size and have interactive labor

and economic markets with the County in question, certainly are the list of comparables to start with. The burden is on the Party seeking to include other counties or to exclude contiguous counties, to show some substantial reason for changing the list of contiguous counties that are comparables. For example, if a contiguous county included a major city such as Madison or Milwaukee it might be easy for the County to show that it was a significantly different county and to exclude it from comparison. However, it is not appropriate for either side to cherry pick counties from around the state just because they have higher or lower wage rates without sustaining their burden to show why they should be included or not included in the list of comparables. The County sought to include Clark and Crawford counties in the list of comparables, but in the Arbitrator's opinion did not sustain its burden of proof to demonstrate why these particular counties were especially comparable to Juneau County.

In trying to determine a fair and reasonable list of comparable counties, the Arbitrator first considered the population of the contiguous counties. Most of the surrounding counties are larger than Juneau based on population, but I do not believe there is any statistical importance to a difference of 22,000 residents vs. 45,000 residents in an area of land the size of a county as a determining factor in what wages should be. Wood County, with 75,000 residents has three times the number of residents of Juneau County. Secondly, I considered the 1992 per capita income and, other than Wood County, found that there was not a significant difference in the per capita income of residents in surrounding counties. Following is a chart the Arbitrator prepared showing the population and per capita income information. The Arbitrator believes the chart presented by the Union showing the "Summary of Commuting Pattern Data" is of great importance because it demonstrates the daily flow of workers to and from Juneau County. On that basis, there is significant flow of workers to all of the surrounding counties except for Jackson County. Based on the foregoing I have excluded Wood and Jackson Counties from the list of comparables. Using the following list as the final list of comparable counties indicates an average wage increase in 1994 of 4.23% (including two split increases). There is not enough data on 1995 increases to draw any conclusions.

	Population	1992 per Capita Income	1994 Wage Increase
Adams	16,611	12,324	split increase split 3% + 1.5% total 4.5%
Columbia	46,419	17,332	split 2.5% + 2% total 4.5%
Monroe	37,591	14,772	3.9%
Sauk	48,780	17,563	4%
Vernon	26,033	13,933	---
Average	32,957	12,654	4.23
Juneau	22,312	14,442	---

The County argued that it would be difficult for it to fund the 4% increase sought by the Union given the tax situation and various other factors. However, the County did not argue, nor did it prove, that the County would be unable to meet this increase or that it was not within the County's "financial ability to pay."

It is obvious that between the final offer of the County (a split increase of 2% + 1% for a total of 3% in 1994 and 2% + 1% for a total of 3% in 1995) and the Union's final offer of 4% for 1994 and 4% for 1995 there is a difference of only a little over 1% per year. Needless to say, each of the Parties considers this 1% difference to be a very significant amount of money, of the case would not have come to final interest arbitration. However, it is difficult for the Arbitrator to weigh all of the various factors and evidence presented, having no issues to decide other than wages, and come up with a very strong argument for whether 3% or 4% is more appropriate. Based on the evidence, the Arbitrator believes that the increase in Juneau County probably should be somewhere around 3.5% for each of the years, but that is not one of his choices under the law.

AWARD

Based on all of the evidence and data submitted by the Parties and a careful study by the Arbitrator, I have concluded that the Unions position of 4% for 1994 and 4% for 1995 is slightly more appropriate than the County's final offer and under Wisconsin law and because this is final offer arbitration, I have selected the position of the Union and determined that the employees covered by the Collective Bargaining Agreement should receive a 4% increase on January 1, 1994 (retroactively) and a 4% increase on January 1, 1995 (retroactively). The Union's final offer on wages shall be incorporated into the Parties agreement. All of the other issues were previously settled.


Jeffrey B. Winton
Arbitrator

March 10, 1995
Chicago, Illinois