BEFORE THE ARBITRATOR

In the Matter of the Petition of:

LOCAL 36-A, AFSCME, AFL-CIO

To Initiate Arbitration
Between Said Petitioner and

LANGLADE COUNTY

Case 68 No. 50107
INT/ARB-7082

Decision No. 21806-A → 28106-A

Sherwood Malamud
Arbitrator

Heard: 11/02/94
Record Closed: 1/23/95
Award Issued: 3/07/95

APPEARANCES:

David A. Campshure, Staff Representative, 1566 Lynwood Lane, Green Bay, Wisconsin 54311, appearing on behalf of the Union.

Ruder, Ware & Michler, S.C., Attorneys at Law, by Jeffrey T. Jones, with Barbara M. Fliss, on the briefs, appearing on behalf of the Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On July 25, 1994, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator to issue a final and binding award pursuant to Sec. 111.70(4)(cm)6.c., Wis. Stats., in an interest dispute between Langlade County Public Employees (Professional), Local 36-A, AFSCME, AFL-CIO, hereinafter the Union, and Langlade County, hereinafter the Employer or the County. Hearing in the matter was held on November 2, 1994, at the Langlade County Extension Office in Antigo, Wisconsin, at which time the parties presented testimony and documentary evidence. Briefs and reply briefs totaling 100 pages were exchanged through the Arbitrator by January 23, 1995, at which time the record in the matter was closed. Based upon a review of the evidence, testimony and arguments presented by the parties, and upon the application of the criteria set forth in Sec. 111.70(4)(cm)7.a.-j., Wis. Stats., to the issues in dispute herein, the Arbitrator renders the following Award.

ISSUE IN DISPUTE

This dispute concerns the wage rates for several classifications of professional employees for the third year of a three year collective bargaining agreement in effect from January 1992 through December 31, 1994. The offers of the parties under this wage reopener are as follows:

The Union Offer

The Union proposes an across-the-board wage increase effective January 1, 1994, of 2%. The rates generated would be increased by an additional 2% effective May 1, 1994.

In addition, the Union proposes that the following classifications of employees receive the following per hour dollar adjustments effective July 1, 1994:

Forester	$1.33
Public Health Nurse	$0.57
Registered Nurse	$0.62
Social Worker	$0.50

The Union proposes that these adjustments be added to the top step, the 42-month rate for each of the above classifications, and that the other steps in the schedule be recalculated to preserve the percentage differential between steps.

The County Offer

The County proposes that the wage rates in effect December 31, 1993, be increased effective January 1, 1994, across the board by 2%. The rates generated be increased by an additional 2% effective May 1, 1994.

The County strenuously objects to the provision of any "upgrades" under the wage reopener for the final year of this 3-year Agreement.

BACKGROUND

There are twenty-two professional employees in this unit of professionals which was established as a separate unit out of the Courthouse unit. The classifications covered under the Agreement include: Child Support Coordinator, Juvenile Officer, MS Therapist, as well as the classifications which are the subject of the adjustments requested by the Union, here: Forester, Social Worker, Registered Nurse and Public Health Nurse. This wage dispute arises in the context of a wage reopener for the last year of a three year Agreement which expired on December 31, 1994.

As noted above, the parties agree on the amount of the across-the-board increase. The matter at issue is limited to the "upgrades," catch-up wage adjustments proposed by the Union for four classifications of employees. These four classifications include nineteen of the twenty-two employees in this professional unit. There are twelve Social Workers, two Foresters, one Registered Nurse, and four Public Health Nurses for whom the Union proposes the wage adjustments listed above.

Comparability is a key issue in this dispute. The parties dedicated a substantial portion of their arguments to this issue. The identification of those counties which are to serve as the measure of both the wage levels and the amount of annual increase against which both the County's and Union's offers are to be considered, weighed and determined is the gravamen of this dispute. In addition, as in any case in which the identification of comparable units is an issue, the parties are concerned about the impact this determination will have on future negotiations between these parties and the effect the comparability determination will have on negotiations involving the three other collective bargaining units with which this Employer bargains.

These two major points of dispute are resolved through the application of the following Statutory Criteria.

STATUTORY CRITERIA

The criteria to be used to resolve this dispute are contained in Sec. 111.70(4)(cm)7, Wis. Stats. Those criteria are:

> 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 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
>
> e.Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes

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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes, 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.

POSITIONS OF THE PARTIES

The Union Argument

The Union agrees that the primary comparables are Lincoln, Oneida, Forest, Oconto, Menominee, Shawano, and Marathon counties. The Union proposes the following secondary comparables for use in determining the appropriate wage levels and percentage wage increase for 1994: Taylor, Price, Vilas, and Marinette counties. The Union emphasizes that the primary comparables, those counties contiguous to Langlade, do not employ all the classifications at issue here. In order to have an adequate comparability grouping, the Union argues the secondary comparables should be used. For example, only three of the contiguous counties employ a degreed Forester or Registered Nurse. In addition, the Union notes that three of the four secondary comparables, with the exception of Marinette County, were identified by Arbitrator Vernon as appropriate comparables to Langlade in his 1985 interest award between the County and the collective bargaining representative of the Langlade Deputy Sheriffs. The Union proposes to increase the comparability grouping in order to meet the

concern expressed by this Arbitrator that too few comparables prevent proper application of the comparability criteria "d."and "e." Oneida County (Public Health Department), Dec. No. 28021 (Malamud, 10/94).

The Union argues that employees in classifications in comparable counties which are not unionized should not be considered by the Arbitrator. The Union recognizes that there are too few counties employing degreed Foresters who are unionized. The Union urges the use of non-organized degreed Foresters as comparables to the Langlade County Foresters. However, the Union maintains there are sufficient number of comparables with unionized Social Workers, Public Health Nurses and Registered Nurses. There is no need to consider non-represented employees of comparable employers in those classifications.

The Union anticipates the County's argument that the uniform wage pattern of internal settlements should be given much greater weight than the external wage comparisons by classification urged by the Union, herein. However, the Union argues that it proposes these adjustments to address the large wage discrepancies between the rates paid by this Employer to these four classifications and the wage levels paid by comparable employers. In this regard, the Union relies on the observation of Arbitrator Johnson in his award in City of Rhinelander, 27830 (Johnson, 4/94) as follows:

> The decision in this arbitration depends on balancing the City's argument in favor of uniformity in settlements among the bargaining units against the Union's evidence purporting to show that there are large adverse differentials between the City rates in these classifications and the rates for these classifications in the comparables, differentials so large that except in one classification neither the Union's two-step upgrade proposal nor its extra quarter of one percent proposal would eliminate the differentials.
>
> The Union makes a persuasive case with reference to factors d. and e., convincing enough so as to satisfy an extra quarter of one percent general increase and to overcome reservations about lack of uniformity in settlements with unions representing other units.

Accord, Rock County, 24319-A (Vernon, 8/87); Rock County, 25698-A (Kerkman, 5/89); Rock County, 16397-A (Mueller, 3/79). The Union underscores this point that wage adjustments to reduce inequitable wage levels outweigh a pattern of internal settlements.

The Union argues that even after the application of its wage adjustments, the rates in effect at the end of 1994 will be less than the average top rate paid by the comparables to the Registered Nurse and Public Health Nurse classifications in 1993. The top rate of the Social Worker in Langlade County will exceed by 4¢ the average top rate paid by the comparables to the highest Social Worker classification in 1993. Finally, the Union notes that the Forester, even after the $1.33 adjustment which it proposes, will remain well below the average top rate paid by comparable employers. The Union charts that its wage adjustments will do little more than move the wage levels for these classifications towards the average paid by the comparables.

The Union notes the errors contained in the County's calculation of the total cost of its and the Employer's offers in this case. However, the Union does not provide an alternate costing of its and the Employer's final offers.

In its reply brief, the Union takes exception to the County's assertion that the Union is cherry picking in an attempt to bolster its final offer. The Union notes that Vilas County is in bargaining for its first collective bargaining agreement. No data was available from Vilas for consideration of the 1994 wage levels. The Union notes that Taylor and Price counties are not wage leaders.

The Union argues that the Human Services Board of Forest, Oneida, and Vilas counties must be considered as a comparable, inasmuch as it employs a Registered Nurse.

The Union supports its proposal to include Marinette County as a comparable. It notes that the per capita income of residents of Marinette and Langlade counties are similar. In addition, Marinette County has one urban-municipal center. Timber comprises an important segment of both the Marinette and Langlade counties' economies.

The Union meets the Employer's argument with regard to the uniformity and the importance of internal settlements by noting that such uniformity and reliance on consistency among units has been voiced by arbitrators in relation to fringe benefits, citing: Dane County (Sheriffs Department), 25576-A (Nielsen, 2/89); Vernon County (Highway Department), 15259-B (Kerkman, 6/77); and Iowa County (Sheriffs Department), 27554 (Vernon, 12/93). The Union notes that the Iowa County award was cited by the Employer in its brief. The Union calls the Arbitrator's attention to the following observations made by Arbitrator Vernon in that case:

> In general, the Arbitrator must conclude that the Union's catch-up proposal deserves more weight

than the Employers' internal comparable argument. The internal pattern, such as it is, must in this instance, give way to the external comparables because adherence to the internal pattern results in too much further erosion. In this connection, the Employer is plainly wrong when it says their offer does not result in the Union losing ground. It does, and as such, the Employer's offer does little to address the wage disparity issue.

The Arbitrator recognizes that these wage levels are the result of voluntary bargains. However, the Employer didn't point to any particular bargain or quid pro quo where it could be said that the Union had in the past agreed to accept a lower wage level in exchange for some other benefit. It must be recognized that disparate wage levels can be an unintentional result. If parties with a below average wage level continuously follow the pattern of percentage increases in the comparables, over time there will be erosion.

In its reply, the Union acknowledges that where "catch-up" is not at issue, reliance on the pattern of settlement is appropriate. Here, the Union attempts to reduce the large gap in wage levels of Langlade employees in these classifications and the wage levels paid by comparable employers to employees in these classifications.

The Union responds in its Reply brief to the Employer's data demonstrating that the Employer's offer lowers the ranking of Langlade employees in each classification by no more than one rank. The Union notes that Langlade County ranks towards the bottom. The Union notes that in the documentary evidence presented at the hearing and in its brief, the Employer presents neither data nor argument with regard to the Registered Nurse classification.

The Union concludes that the criteria support the selection of its final offer for inclusion for 1994, the third year of this three year agreement.

The Employer Argument

The Employer argues that geographic proximity should be the determining factor for establishing the identity of those counties comparable to Langlade. In this regard, the County argues that the contiguous counties of Forest, Lincoln, Marathon, Menominee, Oconto, Oneida and Shawano should serve as the comparables to Langlade. The County vehemently

opposes the use of any secondary comparables, such as those proposed by the Union: Price, Taylor, Vilas, and Marinette counties.

The Employer argues that Arbitrator Vernon back in 1985 resolved a dispute concerning the County's law enforcement unit. Arbitrator Vernon did not discuss all the factors which went into his adoption of comparables. However, he noted that the parties had agreed to the use of Taylor County as a comparable. In response to that agreement, Arbitrator Vernon included Price and Vilas counties to establish a region of comparables.

The County argues that Marinette and Vilas counties have a tax base more than double that of Langlade. The other counties, Taylor and Price, enjoy a larger tax base than Langlade County. In this regard, the Employer cites the following decisions which support reliance on geographic proximity as a basis for the identification of appropriate comparables: Langlade County (Sheriffs Department), 22203-A (Vernon, 10/85); Merton Jt. School District, 27568-A (Baron, 8/93); Marathon County (Health Department), 26030-A (Fleischli, 1/90).

The County notes that in Vilas County (Courthouse), 27896-A (Michelstetter, 6/94), the Arbitrator rejected the inclusion of Langlade, Marinette and Taylor counties as comparables to Vilas. He noted that these three counties were too far from Vilas County to constitute the same labor market. The Employer argues that Arbitrator Michelstetter's analysis holds true in this case, as well.

The County maintains that its wage offer is reasonable. It argues that the Union wage offer would increase the Forester's wage rate by 15%; the Public Health Nurse by 8.3%; the Registered Nurse by 8.7%; and the Social Worker by 7.8%. Over the entire unit the wage adjustments together with the across-the-board increase would generate a unit-wide wage increase of over 8%. The other collective bargaining units have all settled at 2% January 1, 1994, and an additional 2% effective May 1, 1994. This is the pattern of settlement. This is the settlement which the Arbitrator should adopt in this case.

The County argues that a large disparity must be shown in order to break this pattern of settlement accepted by the Deputy Sheriff's unit, the Highway and Courthouse (non-professional) units. The Employer argues that the percentage wage increase offered by the Employer more closely approximates the wage increases offered by the comparable contiguous county employers to their employees for 1994. The Employer asserts that its proposal will maintain or at worst reduce the ranking of a classification by one rank.

In this three year agreement, the parties merged the three Social Worker classifications of Social Worker I, II, and III into one Social Worker

classification and established the rate for that classification at the highest Social Worker III rate. The County urges the Arbitrator to compare the rates paid by the comparables to the entry level Social Worker I as contrasted to the rate paid to new Social Workers employed in Langlade. Social workers who would be Social Worker I in comparable departments, comprise 7 of the 12 social workers in Langlade County. The rates paid by comparables to Social Worker III should be compared to the rate by the County at the top of the Social Worker classification.

The County proceeds through each classification and notes that under its offer the wage level for the Langlade Social Worker, who would be a Social Worker I in a comparable county, would go down one rank, from #2 to #3, between 1993 and 1994. The wage level of a Langlade Social Worker, who would be a Social Worker III in a comparable county, would remain at #6 of the 8 among the comparables inclusive of Langlade. Similarly, for Public Health Nurse, Langlade was #6 in 1992, 1993, and will remain at the sixth rank in 1994. The Union's proposal will increase its rank from 6 to 5 in 1994.

The Employer notes that the maintenance of relative rank at each of the classifications supports the adoption of the Employer's offer. In this regard, the Employer quotes this Arbitrator's awards in Pierce County (Sheriffs Department), 25009-A (Malamud, 5/88); Richland County (Highway Department), 27897-A (9/94). Accord, Barron County (Social Services), 26009-B (Nielsen, 1/90); City of Rhinelander, 26001-A (Stern, 12/89); Salem Jt. School District No. 7, 27479-A (Krinsky, 5/93); City of New Berlin, 27293-B (Krinsky, 2/93).

The County rejects the Union's attempt to use only degreed Foresters as a basis for comparison to the Foresters employed in Langlade County. The County notes there is no record evidence of the duties and responsibilities of Foresters employed by the comparables.

Furthermore, the County strenuously objects to the Union's argument that non-unionized Foresters may be considered for comparability purposes for this classification, but may not be used for any other classification. The County argues that the Union should not have it both ways. In its reply brief, the Employer quotes Arbitrator Petrie on the matter of including non-unionized employees in the comparability grouping. Arbitrator Petrie states in Shiocton School District, 27635-A (Petrie, 12/93), as follows:

> In Sec. 111.70(4)(cm)7.d. of the Wis. Statutes the legislature has clearly and unambiguously directed the undersigned to give weight to comparisons between the employees involved in this arbitration and other employees performing similar services, and it has made no reference to either the organized

> or to the unorganized status of such employees. While Wisconsin interest arbitrators have considerable discretion in the weight to be placed upon the various statutory arbitral criteria applicable to a dispute, they have no authority to unilaterally modify the specific criteria described in the statutes and mandated by the Legislature for their use. Since the parties have agreed that the Central Wisconsin Athletic Conference comprises the primary intra-industry comparison group for use in these proceedings, it seems clear to the undersigned "as a matter of law," that all of the employees within the conference who are "performing similar services" are part of the primary intra-industry comparison group, regardless of union representation; stated simply, there is no appropriate basis under the statutory criteria to, on a blanket basis, include or exclude Districts on the basis of union representation, despite the fact that union representation or lack of same may control the weight to be placed upon certain types of comparisons.

Accord, Cameron School District (Gundermann, 8/93); City of Cudahy, 26936-A (Slavney, 2/92).

The County notes that the cost of living criterion, the increase in the Consumer Price Index, more closely approximates its final offer than that of the Union.

In addition, the County argues that the interest and welfare of the public is best served through its final offer. The Employer notes that Langlade is not a rich county. On the basis of per capita income it ranks 48 out of 72 counties. Only Menominee County has a higher tax levy. Only Marathon and Oconto counties have more individuals receiving public assistance per month than Langlade County.

The Employer argues that a wage adjustment is not justified here: Marinette County (Sheriffs Department), 22910-A (Malamud, 4/86); Sauk County (Highway Department), 26359-B (Vernon, 11/90); Marinette County (Social Services), 22574-A (Grenig, 9/85). The County contends that no slippage in wage rates will result from the inclusion of the County's offer for calendar year 1994 in the three year agreement.

The Employer argues that the average wage rate comparisons made by the Union are irrelevant to this case. The wage levels and their relationship to comparable employers was established by the parties when they entered

into this multi-year agreement. In this regard, the Employer quotes from the 1993 award of Arbitrator Petrie in the City of Eau Claire (Police), as follows:

> . . . it is clear that when operating within the context of a wage reopener, Arbitrators will distinguish between those considerations which pre-exist the parties' last negotiated settlement, versus those which have arisen since that time; the former considerations will normally carry little or no weight, while the latter will normally carry weight which varies with the extent to which they bear upon the adequacy of wages during the term covered by the reopener. . . .
>
> Interest arbitrators, under wage reopeners, will carefully consider any claims of erosion of relative earnings alleged to have occurred subsequent to the effective date of the current agreement, but they will give short shrift to any such erosion claimed to have occurred prior to the current agreement. In the latter connection, the parties must be presumed to have considered comparable wages in arriving at their pre-reopener wage levels, and an interest arbitrator operating within the context of a reopener has no authority to revisit or to otherwise review the merits of such earlier wage settlement.

The County emphasizes that the employees current ranking is a result of voluntary collective bargaining. During the term of this agreement, in calendar years 1992 and 1993, no slippage has occurred relative to the wage levels paid by comparable employers to their employees at each of these classifications. Consequently, there is no basis for the Arbitrator's adoption of the Union's offer and its provision for catch-up.

In this case, the Employer underscores the wage increases and classification adjustment made to the Social Workers made in this Agreement. The across-the-board increase in 1992, the first year of the Agreement, was 4%. In addition, the collapse of three Social Worker classifications into one Social Worker classification and allocation of the rate of the new classification at what was formerly the Social Worker III rate occurred in 1992, as well. The across-the-board wage increase for 1993 was 3% effective January 1 and an additional 3% effective July 1, 1993. If adjustments to the wage levels of any of the classifications covered by this Agreement are necessary, they should result out of negotiations for the successor to this multi-year agreement. Negotiations on that agreement will commence immediately upon receipt by the parties of this award.

In the case of the Forester classification where the Union requests the largest wage adjustment, the County argues that arbitrators require that the Union establish the need for such catch-up. D.C. Everest Area School District, 24678-A (Malamud, 1/88); Marathon County (Health Department), 26030-A (1/90).

In its reply brief, the County supports the costing analysis reflected in its Exhibits 17-20. The County notes that the Union did not indicate that there was any costing dispute at the outset of the arbitration hearing.

The County concludes its argument by noting that its offer is reasonable; it should be adopted by the Arbitrator.

DISCUSSION

Introduction

In the analysis which follows, the Arbitrator first addresses the comparability arguments presented by the parties. With that established, the Arbitrator then turns to apply the statutory criteria to the Union's proposal to adjust the wage levels for each of four classifications: Forester, Registered Nurse, Public Health Nurse, and Social Worker.

The parties argue the applicability of four statutory criteria: the two comparability criteria, i.e., the comparison to the wage rates paid to employees in similar classifications and the comparison of rates to public employees generally in comparable communities; cost of living; and interest and welfare of the public.

Upon review of all the statutory criteria and their applicability to the issues in dispute, herein, the Arbitrator concludes that three of the four criteria addressed by the parties, in some measure, serve to distinguish between the final offers of the parties. Due to the inadequacy of the costing data presented, the Arbitrator finds no basis for the application of the interest and welfare of the public criterion. The Arbitrator also finds that the criterion Such Other Factors serves to distinguish between these final offers.

Comparability

Comparability is the central issue in this dispute. The Union's case turns on whether it can establish that the wage rates for the four classifications of Social Worker, Registered Nurse, Public Health Nurse, and Forester are substantially below the rates paid by comparable employers so as to justify a need for adjustments. This point is further amplified in the discussion below. However, for purposes of establishing the importance of comparability, it is sufficient to note that there is no other basis for

providing adjustments to the rates paid to these four classifications, unless such adjustments are necessary to meet the "market rate" paid to such classifications.

The Employer argues that the determination of the comparability pool will not only affect bargaining between the Employer and this unit, but other units, as well. The Employer argues that this Arbitrator should give little weight to the comparability determination made by Arbitrator Vernon in an interest dispute involving its law enforcement unit. Arbitrator Vernon expressed concerns about the agreement of the parties to include Taylor as a comparable county. In addition, he notes some misgiving with regard to the inclusion of Marathon County in this comparability pool.

The Employer is correct when it notes that the pool of comparables may vary among the various classifications of employees. A comparability pool appropriate for a law enforcement unit, in which the pool of comparables may be limited to law enforcement departments of similar size and performing similar duties, may not be appropriate for other classifications of employees. Often counties may not employ a particular classification of employee or if they do, the unit may contain only one such employee. It is for that reason, that the Arbitrator approaches the comparability question on a classification by classification basis. The parties present conflicting evidence as to whether Shawano and Forest Counties have a forestry department or employ a Forester. That conflict only highlights the need to carefully consider the municipal employers included in the comparability pool, by the classification of employee at issue. Furthermore, the comparability pool is not some academic exercise. Rather, it is an attempt to identify the labor market in this north central-northeast sector of the state of Wisconsin for each of the four classifications at issue herein. The range of rates paid in this labor market to each of the classifications establishes the competitiveness of the rates paid by Langlade County to employees in each of these four classifications.

The proper identification of the appropriate pool of comparables and the wage levels established by that labor market for each of the classifications at issue herein will demonstrably effect the ability of Langlade County to compete for employees in each of these classifications in a labor market marked by decreasing unemployment. Although, the level of unemployment in Langlade County is substantially above that of the rest of the state of Wisconsin, however, the downward trend in unemployment in Langlade is similar to that of the rest of the state.

The Forester classification provides a substantive example to the need to properly identify the appropriate labor market and rate for this classification. If the County is correct in its assertion that it has identified the appropriate pool of comparables, then should either of the two long-term Foresters in the employ of Langlade decide to leave county service or if

the County determines to expand the number of Foresters it employs, it may effectively enter the labor market and recruit replacements. However, if the Union market argument is closer to the mark, then the large disparity between County rates and the market rate will prove a substantial hurdle to any County effort to recruit Foresters.

Union Exhibit 12, the Forester job description, demonstrates that the Forester in Langlade County is an important position in a county in which a substantial portion of its economy comes from timber. The management of timber sales from County lands requires knowledge and experience. Counties which do not rely on timber sales from their own lands may not emphasize their forestry departments as much as Langlade. It follows, therefore, that the comparability pool for Forester may differ from the comparability pool for Social Worker.

With the importance of comparability to this dispute established, the Arbitrator now turns to address the specifics of this case. The County argues that the comparability pool for Langlade County, for all of the classifications at issue, and by extension to all its bargaining units with the exception perhaps of the law enforcement unit, are the seven contiguous counties to Langlade; i.e., Forest, Lincoln, Marathon, Menominee, Oconto, Oneida, and Shawano. The Union agrees that these seven counties serve as the primary comparables to Langlade. It is noteworthy that Marathon County is substantially larger than Langlade in population, per capita income and in the equalized value of property taxed to support county government. The only basis for <u>including</u> Marathon as a comparable to Langlade is its geographic proximity and contiguity to Langlade. Certainly, Marathon exercises a substantial influence on the labor market in the region, however, arbitrators do not necessarily include a substantially larger employer in a comparability pool comprised entirely of employers of substantially smaller population and economic base. In his award, Arbitrator Vernon notes the unique character of Marathon in this comparability grouping. Here, both parties agree to its inclusion in the comparability pool.

The Union would include Marinette, Vilas, Price, and Taylor as secondary comparables. Vilas, Price, and Taylor counties are identified as secondary comparables by Arbitrator Vernon in his 1985 award in the Langlade County Sheriffs Department. Often there are differences between the comparables appropriate for a law enforcement unit and those appropriate for other categories of employees of a county employer. Other than to a establish a regional comparability grouping, it is unclear why Arbitrator Vernon included Vilas, Taylor and Price counties in the comparability pool. Therefore, this Arbitrator revisits the comparability issue, in this case.

The Arbitrator can find little basis for including both Marinette and Vilas counties in this comparability pool. The Union notes that the

professional employees employed in Vilas County have recently organized and are engaged in collective bargaining for an initial agreement. No data was presented with regard to Vilas County for consideration in the determination of this case.

Both Vilas and Marinette counties have a substantially larger tax base for supporting governmental functions. Union Exhibit #9 demonstrates that the average equalized value in 1994 of the nine counties excluding Marinette and Vilas counties is $1,090,023,966. Langlade County, with an equalized value of $555,178,200 would place at the median, number 5, in the comparability grouping. The equalized value of Marinette and Vilas is $1,210,733,100 and $1,690,179,600, respectively. The Marinette economy depends on timber sales. However, the inclusion of Marinette and Vilas counties would establish a range of comparables which are unduly weighted with counties with substantial resources greater than Langlade. The Arbitrator recognizes that the inclusion of Menominee County, which is much smaller than Langlade both in population and economic resources available to support county functions, may well offset the inclusion of larger units. However, the Arbitrator believes it appropriate to minimize the impact of Menominee County in the analysis of wage levels rather than establish a comparability pool of much larger counties.

The Arbitrator includes Price and Taylor counties in the comparability pool for Public Health Nurse, Registered Nurse, and Forester to permit the establishment of a comparability pool sufficient in number so as to permit proper comparisons between the wage rates paid by Langlade County and a sufficient number of comparable county employers. This Arbitrator has long felt that a minimum of five comparables are necessary to engage in a meaningful comparability analysis. Otherwise, the wage rates paid by one particular employer has undue weight.

The County argument that no secondary comparable should be employed here is rejected by this Arbitrator for a number of reasons. It is well accepted that the labor market for professional employees is broader than the market for blue collar employees. This Arbitrator substantially reduces the weight he gives to the comparability criteria, in case there are insufficient settlements to support a comparability analysis. However, were the Arbitrator to accept the Employer's argument, the comparability pool for some of the classifications; e.g., Registered Nurse, Public Health Nurse and Forester, may never total the minimum number of comparables necessary to apply these important statutory criteria. It is one thing to argue that there are not enough settlements. It is quite another to argue that the pool of comparables should always be inadequate for the application of these statutory criteria.

The Union and the County do not agree on whether non-unionized employees in a particular classification should be included in the group of

comparables. The Union acknowledges that it is necessary to include non-unionized Foresters in order to establish an adequate comparability group. In the Positions of the Parties section of this award, the Arbitrator quotes at length the views of Arbitrator Petrie on this issue. They argue that the statute requires consideration of non-unionized employees in the comparability grouping, although they may accord the rates paid to such employees different weight than is accorded the rates paid to unionized employees. This Arbitrator respectfully disagrees with that analysis. The basis for this Arbitrator's view was first expressed in his decision in West Allis-West Milwaukee School District, 21700-A (Malamud, 1/85). This Arbitrator visited this issue recently in Richland County (Highway Department), 27897-A (Malamud, 9/94). The latter award contains the following observation:

> This Arbitrator's philosophical basis for excluding nonrepresented employees from a comparability pool as expressed in West Allis-West Milwaukee has not changed. Nonrepresented employees cannot proceed to interest arbitration under the framework established by the Municipal Employment Relations Act. It affects the end product, the wage rates paid to these employees. (Footnote omitted.)

In Richland County, this Arbitrator noted that arbitrators have included nonrepresented employees in the group of comparables where such groups of employees either constitute the labor market or substantially impact that market.

The Union includes nonrepresented Foresters from Lincoln, Oneida, Price, and Vilas counties in the comparability for that classification. Yet, the comparability pool for Registered Nurse would total four, excluding Marinette, as this Arbitrator does, (Union Exhibit 17), and would total five with Taylor County. However, no data has been provided for the rate paid to the Public Health Coordinator in Taylor County for 1994. The Public Health Nurse in Forest and Lincoln counties are not organized. As noted by this Arbitrator in his award in Oneida County, both the Union and the Employer in that case recognized that the labor market for Public Health Nurses is dominated by nonrepresented employees in this region of the state. The Arbitrator concludes that the labor market for the classifications of Registered Nurse, Public Health Nurse, and Forester are substantially impacted by the employers whose employees in these classifications are not represented.

On the other hand, the labor market for Social Workers is dominated by and established through the rates paid to organized employees. Only the Social Worker employed in Forest County is not organized. In the application of the comparability criteria to the Social Worker classification,

the Arbitrator has excluded consideration of the rates paid to the Forest County Social Worker. In the analysis which follows, the Arbitrator refers to the seven contiguous counties with the exception of Forest County for Social Worker) to Langlade, as well as Price and Taylor counties as the comparability grouping for the analysis of the rates paid to employees in each of the four classifications, at issue here.

Such Other Factors

The Employer argues that the internal settlement pattern in Langlade County for 1994 at 2% effective January 1 and an additional 2% effective May 1 would be destroyed should the Arbitrator adopt the Union's proposed adjustments to each of the four classifications affecting nineteen of this unit's twenty-two employees. The basis for the Union's demand is "catch-up." If the Union cannot establish that each of the classifications are entitled to such "catch-up," its offer will be rejected. In this manner, the internal settlements are given substantial weight. Arbitrators do recognize that substantial deviation from the average rates paid by comparable employers does constitute a basis for breaking a wage settlement pattern. However, arbitrators do so only on the basis of clear and convincing evidence. City of Rhinelander, 27830 (Johnson, 4/94); Rock County, 24319-A (Vernon, 8/87); Rock County, 25698-A (Kerkman, 5/89); Rock County, 16397-A (Mueller, 3/79).

The Employer argues that the relationship between the rates paid in Langlade County to those paid by comparable employers should be given little weight, in this case. The Employer quotes Arbitrator Petrie, which quote is set out extensively in the summary of the Employer's position above. This Arbitrator agrees with Arbitrator Petrie's analysis. In a multi-year agreement, the parties establish through their acceptance of wage levels in the first two years of the Agreement, the relationship those wage levels have to the appropriate labor market. Arbitrator Petrie notes that an arbitrator in an arbitration proceeding over the wage increase appropriate in a reopener, may address slippage over the term of the particular multi-year agreement in the relationship of the wage rates of the unit in dispute relative to the rates paid by comparable employers. Arbitrator Petrie observes that it is inappropriate to address any inequity which the parties recognize when they agree to the wage rates for the first and second year of their multi-year agreement, in the determination of a wage dispute in an interest arbitration the subject of which is a wage reopener.

This Arbitrator would add one additional caveat to Arbitrator Petrie's analytical rule. In some instances, parties enter into a multi-year agreement with an eye to bring up a depressed wage rate over a term of years. The deviation from the average rate paid by comparable employers may be so great that wage adjustments may be appropriate in order to bring depressed wage rates into a "range of reasonableness." In a case where parties enter

into a multi-year agreement with an intent to bring up a depressed wage rate over a term of years, they may disagree over whether an adjustment is necessary in the year of the reopener or over the size of the adjustment necessary to bring the wage rate to the average.

The Employer argues that this case represents the converse of this Arbitrator's decision in Richland County (Highway Department), supra. In that award, concerning a wage leader, this Arbitrator observed that:

> The wage level of this Employer is not that much above the average that the statutory scheme operates to force it downward to the mean. The relationship above the average was achieved through voluntary agreements. The Union offer is consistent with the bargaining patterns of the past.

Here, the Employer argues that the wage pattern below the average was established through voluntary collective bargaining. This wage relationship between the rates paid by Langlade County and those paid by comparable employers was recognized by the parties in their wage settlement in the first two years of this 3-year Agreement. The Employer argues that this Arbitrator should give considerable weight to the pattern of settlements and the relationship which those settlements have established relative to the wage rates of comparable employers in this wage reopener interest arbitration dispute.

In Richland County, as well as this Arbitrator's award in Belmont School District, 27200-A (Malamud, 10/92), this Arbitrator recognized where salary levels are far above or below the average, the effect of the interest arbitration statute is to drive those salaries to the mean. Where those wage levels are the product of years of voluntary agreements and are not substantially above or below the average, it is appropriate for the Arbitrator to continue the pattern of settlement voluntarily established through the parties' voluntary collective bargaining.

In the Discussion below concerning each of the four classifications, the Arbitrator determines whether the Union has established that the rates paid to employees in each of the four classifications are so far below the average that it is appropriate to adopt wage adjustments in this, the third year of a three year agreement, under a wage reopener provision.

WAGE ADJUSTMENTS

Settlement Patterns

The settlement pattern, the percentage wage increase for calendar year 1994 among the seven contiguous counties is as follows.[1] The cost of the annual increase provided to employees in each of these classifications in calendar year 1994 approximates 3.75%. The cost of the across-the-board increase provided in Langlade and agreed to by both the Union and the County is approximately 3.3%.

The cost of living more closely approximates the wage offer of the Employer. However, where catch-up or wage adjustments must be paid, arbitrators uniformly recognize that any settlement which includes such adjustments will exceed the pattern of settlement, and in all likelihood will exceed the increase in the cost of living, as well.

In the analysis which follows, the Arbitrator contrasts the year end rates of any split increases in contrasting wage levels paid at each of the classifications in dispute, here.

Forester

In the data and arguments presented by the Union, it distinguishes between degreed and non-degreed Foresters. The Employer objects to this distinction. It correctly notes that there is insufficient data in this record describing the job duties and responsibilities of non-degreed and degreed Foresters employed by comparable employers.

The Arbitrator must adopt the distinction pressed by the Union. This is a professional unit. The basis for their separation from the Langlade Courthouse unit is their professional status. It would be inappropriate to compare the wage rates of non-professional employees to those of professional employees. It would be inappropriate for this Arbitrator to compare the rates of a non-degreed- non-professional Forester to the rates paid to a professional Forester; just as it would be inappropriate to contrast the rates paid to a professional Social Worker to the rate paid to a Case Aide.

There is conflicting evidence as to whether Forest, Menominee, Oconto, and Shawano counties employ professional Foresters. The Union maintains that these counties do not employ professional Foresters. The

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[1]The Arbitrator gives no weight to the Menominee County settlement. It provides for a $600 signing bonus but no increase in the wage rate. The inclusion of Menominee in identifying the settlement pattern would distort the pattern of settlement. It is apparent that Menominee County is a unique situation.

County maintains that the information it has received from these counties indicate that each of these counties employ a Forester. Even with the inclusion of non-degreed Foresters, or if the Arbitrator were to assume that each of the counties employ professional Foresters, with the exception of Menominee where it appears that the Forester is not a professional, the average top rate paid to a Forester would be $14.12. The difference between the average rate paid by such comparables in 1994 as contrasted to that paid by Langlade is $1.40. The Union's substantial adjustment would reduce that differential to 7¢ below the average.

The Employer argues that its offer retains the County's ranking relative to the rates paid by comparable employers. Again, among the primary comparables, those contiguous to Langlade County, it would continue to rank fifth out of the eight counties including Langlade. The Union's proposal would improve the County's rank to fourth among the comparables. The County emphasizes that this relative ranking was established through voluntary collective bargaining and was recognized by the parties when they agreed to the first two years of this multi-year agreement.

This Arbitrator gives little weight to rankings, as such. The Arbitrator notes whether an employer/union in their relationship are wage leaders or last among the comparables. However, the Arbitrator finds more significant whether a wage level deviates substantially above or below the mean. If one assumes that a professional Forester would be paid a higher rate than a non-professional, it follows that the data reflected in Employer Exhibit 20, supports the Union proposed demand. Accordingly, the Arbitrator concludes that the evidence tends to support the Union's assertion that the Forester classification should receive a substantial adjustment. The Union's demand brings the Forester classification practically to the average through this adjustment made under a wage reopener.

The Union's attempt to bring the wage rate of the Forester in Langlade County so close to the average in the context of a wage reopener, undermines the Union's position. The parties recognized this wage disparity when they ratified the Forester's wage rate for calendar years 1992 and 1993 in the first two years of this agreement. There is some slippage of 8¢ in the wage differential in 1993 and 1994 between the rate paid to the Langlade Forester and that paid by the comparables.[2] Since this wage adjustment occurs in the context of a wage reopener, the Arbitrator

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[2]The average rate paid by the contiguous counties, excluding Menominee, in 1993 was $13.34 as compared to Langlade's $12.23. In 1994, the disparity increased by 8¢, the average rate was 13.91 vs. Langlade's $12.72.

concludes that the Employer's offer is marginally preferred over the Union's offer.

Registered Nurse

Contrary to the Employer, the Union argues that the Human Services Board of Forest, Oneida, and Vilas counties should be considered a comparable. It is the governmental body that employs a Registered Nurse. There is no evidence in this record as to the governmental functions performed by the Human Services Board of Forest, Oneida, and Vilas counties. There is little data as to the job functions performed by the Registered Nurse employed by that Board. There is no evidence of the job functions performed by the Langlade Registered Nurse. There is no evidentiary basis for the inclusion of the Human Services Board as a comparable to Langlade relative to the Registered Nurse classification.

In Union Exhibit 17, the Union identifies three comparables, Marathon, Oconto, and Taylor counties, that employ Registered Nurses. The Arbitrator finds there is insufficient data concerning the 1994 wage rates for the Registered Nurse classification to engage in a comparability analysis. Unless there is some agreement as to the inclusion of the Human Services Board of Forest, Oneida, and Vilas counties as a comparable for this particular classification, the range of comparables employing a Registered Nurse would total four. The parties may wish to establish some comparability framework for evaluating the appropriate wage level for the Registered Nurse classification. In the alternative, the parties may wish to establish a fixed dollar or percentage rate differential between the rates paid to the Registered Nurse and to the Public Health Nurse.

In light of the insufficient data, the Arbitrator concludes that the Union has not established the need for "catch-up" at this classification.

Public Health Nurse

The comparability pool for establishing the wage rates for Public Health Nurse are reflected in Union Exhibit 18. The comparability pool consists of Public Health Nurses employed in Forest, Lincoln, Marathon, Oconto, Oneida, Shawano, and Taylor counties.[3] There is no evidence of the 1994 wage rate paid to the Public Health Coordinator in Taylor County. The average top rate paid by comparable employers to the Public Health Nurse classification as reflected in Employer Exhibit 19 is $15.87. The County rate in effect May 1, 1994, would bring the Public Health Nurse wage rate to $14.87, $1.00 below the average paid by comparable employers. The Union

[3]Price does not employ a Public health Nurse.

wage adjustment would bring the Public Health Nurse rate to within 43¢ of the average paid by the comparables.

The Union proposed wage adjustment contained within its offer at the Public Health Nurse classification is supported by the record evidence. The Employer proposal would keep the average wage rate paid to the Public Health Nurse classification at approximately a dollar below the average. This dollar differential below the average was ratified by the parties in their three year agreement, when they established the rates for this classification for calendar years 1992 and 1993. There is no slippage in the rate. The Union proposal attempts to halve the differential from the average. The Union proposes to do so in the context of a wage reopener. The differential below the average is not sufficient to overcome the arbitral reluctance to alter the rates established during the first two years of a multi-year agreement. There is no evidence of an attempt to adjust this rate over the three year term of the Agreement. The Arbitrator concludes, therefore, that the Employer offer at this classification is preferred.

Social Worker

In this 1992-94 Agreement, at the request of the Union and through agreement by the Employer, the parties collapsed the three Social Worker classifications of Social Worker I, II, and III into one Social Worker classification and established the wage range for that classification at the rate of the highest classification, the Social Worker III classification. Nonetheless, the Union seeks a 50¢ adjustment to the Social Worker rate.

In addition, the Union argues that the wage comparisons between the Social Worker classification and the Social Worker I, II, and III should be made exclusively at the higher Social Worker III classification. The Employer argues that since the rates of the three classifications were collapsed, the top rate of the lower classification and the top rate of the highest classification should be contrasted to the singular top rate paid at the Social Worker classification in Langlade County. The Arbitrator agrees with the Employer's argument. Seven of the twelve Social Workers employed by Langlade County would be classified as Social Worker I's in comparable departments, according to the unrebutted testimony of the County's Director of Social Services, Meisinger.

The $13.77 rate paid in Langlade County to Social Workers who would be classified as Social Worker I in comparable counties is well above the average rate of the comparables at $12.76. This County's' $13.77 is $1.04 below the average at the top rate of the Social Worker III classification of the

comparables[4] for 1994. The Union's proposed adjustment would bring the top rate to within 30¢ below the average paid by the comparables at the top classification. However, the Union's adjustment would only increase the substantial wage differential above the average for the seven of twelve Social Workers employed by Langlade County who would be Social Worker I's in other departments.

The parties had to be fully aware of the imbalance they would create as a result of collapsing all three classifications into one classification and placing it at the rate of the Social Worker III classification. Obviously, under that scenario, the Social Worker III classification would not enjoy the same sizable increase in salary enjoyed by the other Social Workers. The Arbitrator infers that the parties agreed to the collapse of the Social Worker classification in order to raise the wage rates of most of the Social Workers employed by Langlade County. Here, the parties clearly established at the outset of this agreement, the wage rate for the Social Worker classification. The Arbitrator concludes that the Employer proposal at the Social Worker classification is preferred.

SELECTION OF THE FINAL OFFER

In the above Discussion, the Arbitrator concludes that the large disparity between the rate paid to the Forester in Langlade County and that paid by comparable employers, even including those who may employ non-degreed Foresters, makes a case for an adjustment, but not in the context of a wage reopener. Similarly, the Union's moderate proposal to adjust the wage rate of the Public Health Nurse in the face of the Employer's proposal to continue the substantial wage differential is not supported in the context of a wage reopener.

The Arbitrator concludes there is insufficient data to establish whether "catch-up" is necessary at the Registered Nurse classification. The Arbitrator finds that the parties established the wage differentials and recognized that the wages paid to the Social Worker III would lag behind those paid to comparable Social Workers III when it collapsed the three classifications of Social Worker I, II, and III and established the rate for the new unified classification at the Social Worker III rate. Furthermore, the data suggests that the Employer offer will not increase the differential below the average paid at the Social Worker III classification should its offer be selected. In addition, the rate adjustment for Social Worker impacts 12 of the 19 employees subject to the adjustments proposed by the Union. The proposal at the Social Worker classification is given greater weight. The

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[4]The seven comparables are: Lincoln, Marathon, Menominee, Oconto, Oneida, Shawano and Price. Taylor County was not settled in 1994.

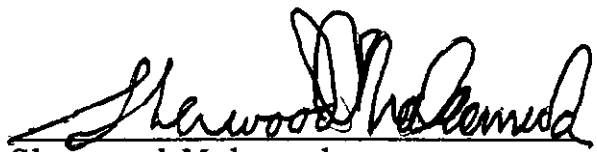
substantial weight of the evidence supports the adoption of the Employer proposal at this classification. Accordingly, the Arbitrator selects the Employer's proposal for across-the-board increases of 2% each effective January 1 and May 1, 1994, for inclusion in the third year of this three year Agreement.

Based on the above Discussion, the Arbitrator issues the following:

AWARD

Upon the application of the statutory criteria found at Sec. 111.70(4)(cm)7.a.-j., Wis. Stats., and upon consideration of the evidence and arguments presented by the parties and for the reasons discussed above, the Arbitrator selects the final offer of Langlade County for inclusion in the third year, calendar year 1994, of the three year Agreement between Langlade County and Langlade County Public Employees (Professional), Local 36-A, AFSCME, AFL-CIO.

Dated at Madison, Wisconsin, this 7th day of March, 1995.



Sherwood Malamud
Arbitrator