STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of:	Case 208 No. 51091 INT/ARB-7318
DOUGLAS COUNTY	Decision No. 28215-A
To Initiate Arbitration Between Said Petitioner and	Sherwood Malamud Arbitrator
TEAMSTERS LOCAL 346, DOUGLAS COUNTY HIGHWAY EMPLOYEES	Heard: 1/17/95 Record Closed: 2/6/95 Award Issued: 3/19/95

APPEARANCES:

John Mulder, Personnel Director, Douglas County, 1313 Belknap Street, Superior, Wisconsin 54880-2730, appearing on behalf of the Municipal Employer.

Halverson, Watters, Bye, Downs, Reyelts & Bateman, Ltd., Attorneys at Law, by Timothy W. Andrew, 700 Providence Building, Duluth, Minnesota 55802, appearing on behalf of the Union.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On November 16, 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., with regard to an interest dispute between Douglas County (Highway Department), hereinafter the County or the Employer, and Teamsters Local No. 346, hereinafter the Union. An arbitration hearing was held on January 17, 1995, at the Douglas County Courthouse in Superior, Wisconsin, at which time the parties presented documentary evidence and testimony. Briefs were submitted and exchanged through the Arbitrator on February 6, 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

The final offers certified and forwarded to the Arbitrator by the Wisconsin Employment Relations Commission contain many issues. At the commencement of the hearing on this matter on January 17, 1995, the Employer consented to the Union's amendment of its final offer to permit the Union to accept the Employer's proposal on all matters except for the wage issue. Accordingly, the sole remaining issue to be determined in this Award is the percentage across-the-board wage increase for calendar years 1994 and 1995.

The County proposes to increase the wage rates in effect December 31, 1993, by 3% effective January 1, 1994, and to increase the rates generated by the 1994 increase by 2.5%, effective January 1, 1995.

The Union proposes increases of 3.5% each for calendar years 1994 and 1995.

BACKGROUND

Thirty-five employees comprise this bargaining unit. Twenty- five of this unit's employees are in three classifications. Eleven of the employees in this unit are classified as Equipment Operators I, Heavy Equipment; eight are classified as Equipment Operators II, Light Equipment; and a total of six employees fall within the Partsman and Mechanic classifications. Employees in the Partsman and Mechanic classifications perform similar duties and are paid at the same wage rate.

In negotiations for this successor Agreement, the Employer sought and obtained the approval of the Union's bargaining committee for employees with single coverage to contribute 10% towards the premium for health insurance, the same percentage of contribution made by employees electing to obtain family coverage. As part of this settlement in January 1994, the parties agreed to wage increases of 3% in 1994 and 2% effective January 1, 1995, and an additional 1% July 1, 1995. That tentative agreement was rejected by the membership.

In February 1994, the parties reached a second tentative agreement in which those employees receiving single coverage health insurance would contribute 10% towards health insurance premium. The wage package was altered to 3% effective January 1 of each year of the Agreement, 1994 and 1995. The Union membership rejected this tentative agreement.

In May 1994, the Employer withdrew its health insurance proposal and agreed to continue to pay 100% of the premium for single coverage. The 10% employee contribution for family coverage remained unchanged.

The negotiating committees agreed to the following change to the wage package: 3% effective January 1, 1994, and an additional 2.5% January 1, 1995. The Union membership rejected this tentative agreement. The Employer's final offer is identical to the third tentative agreement reached by the parties.

At the hearing, the Union and County agreed that the Union would proceed first with its presentation of evidence and argument in support of its position, although it is the Employer which petitioned for the initiation of the interest arbitration process. The wage issue is the focus of this dispute. This dispute is resolved through the application of the following Statutory Criteria.

STATUTORY CRITERIA

The criteria to be used to resolve this dispute are found 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:
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> a. The lawful authority of the municipal employer.
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> b.Stipulations of the parties.
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> 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.
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> 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 argues that this Employer, which has the largest population, the highest per capita income among the comparables in the northern region of the state and with the increasing full value of property, it has the financial resources to meet the Union's demand. The Union notes that the City of Superior is the county seat. It is the single municipality of any size in Douglas County. It should be included in the comparability group.

The Union notes that the wage levels of the employees in the Public Works Department of the City of Superior at each of the comparable classifications exceeds the wage rates paid to employees in this unit by approximately $2.00 per hour. The Union notes that the City pays 95% of the premium for family health insurance as against the 90% contribution made by Douglas County.

With regard to the wage issue, the Union argues that between 1990 and 1994, as a result of the final offers of both the Union and the County, there is a decline in the wage rates of employees in the Douglas County Highway Department relative to the average wage rates paid by comparable employers. The wage rates have declined from above the average in 1990 to approximately 6 to 13 cents below the average under the Union's final offer. This decline has occurred even under the Employer's comparability group.

The Union notes that from January 1993 through September 1994 the increase in the cost of living has amounted to 6.37%. The Union urges the Arbitrator to refer to the Consumer Price Index for the North Central states

rather than the National index proposed by the Employer. The Union notes that the average settlement among the comparables is 4.08% for calendar year 1994.

The Union anticipates the County's argument that several of the settlements among the comparables include agreement by the highway employees in those units to pick up 10% of the cost of health insurance premium for single coverage. The Union notes that the County has not provided data concerning the number of employees obtaining single coverage in those units and the impact which that benefit would have on those particular units. In this case, the cost of that benefit has been identified by the parties as one-half of 1%. Accordingly, when that valuation of the pickup of 10% of premium for single coverage is applied to the terms of the settlements reached by comparable employers, the Union offer remains more in line with the pattern of settlement than the offer made by Douglas County.

The Union argues that the Arbitrator should reject the Employer argument of the existence of an internal settlement pattern. There have been only three settlements among the seven collective bargaining units with which Douglas County bargains. The Union maintains that two of the three settlements exceed the 3% which the County offers, here. The Nurse's settlement approximates 6.3 to 7.2% for each nurse. The Paramedics settlement includes an additional 12 hours of compensatory time off for employees working a holiday. Compensatory time may be cashed out. Since Paramedics work on the average of three holidays per year and compensatory time may be cashed out, the Union argues that the increase in this benefit generates an additional 1.23% above the across-the-board increase. The Paramedics settlement exceeds the Employer's offer in this case by 1.23%.

In addition, the Union notes that four of the County's seven units, inclusive of the highway unit, are in arbitration. The Communication Workers' settlement in the Courthouse unit is just one of seven units which have settled. Accordingly, the Union maintains that there is no pattern of settlement for 1994 and 1995.

The Union maintains that its offer is more reasonable than the Employer's; it should be selected by the Arbitrator for inclusion in the successor Agreement.

The Employer Argument

The Employer asserts that the following factors are germane to the determination of this interest arbitration dispute: the interest and welfare of the public, comparability, cost of living, as well as, such other factors. The

application of these criteria will justify the Arbitrator's selection of the Employer's final offer for inclusion in the two-year successor Agreement.

The Employer emphasizes that the parties reached three tentative agreements prior to submitting this matter to arbitration. The Employer maintains that the interest arbitration process should result in an award that the parties would have settled upon. Clearly, three tentative agreements establish that the Employer's final offer is the one which both the Employer and Union negotiating committees determined was reasonable. The Union membership should not be rewarded with the selection of its final offer for inclusion in the successor Agreement. An award in favor of the Union would hamper the collective bargaining process. It would encourage unions to hold out to see what they could obtain through interest arbitration.

The Employer points to Employer Exhibit #6 to demonstrate that from 1985 through 1995, the Employer has consistently offered the various units the same across-the-board percentage increases. In fact, these across-the-board increases have served as the basis for settlements in most of the years with most of the units. This pattern of settlement should serve as the basis for the Arbitrator's selection of the Employer's final offer, Douglas County Health Department, 26687 (Vernon, 7/91). Arbitrator Vernon observes in this award that:

> It is well established that where an internal pattern exists it deserves great deference, particularly where such a pattern has been historically observed. (Employer brief at p. 5.)

The Employer argues that the Courthouse and Paramedic settlements account for 46% of its organized work force. The Employer argues there is an emerging pattern of settlement, here; it is 3% for 1994 and 2.5% for 1995. The Employer notes that arbitrators follow this settlement pattern when wages fall within a reasonable range of the rates paid by comparable employers. That is the case, here. Again, the Employer emphasizes that a decision in favor of the Union would only encourage unions to look to arbitration rather than voluntary collective bargaining to achieve settlement, Marinette County, 22910-A (Malamud, 4/86).

The Employer deflects the Union's argument that the Paramedic settlement did not follow the pattern. The Employer maintains that this collective bargaining unit already receives the time and a half plus holiday pay when working on a holiday that was granted to the Paramedics in this round of bargaining.

The Employer emphasizes that this unit's compensation package includes the ability to use sick leave for care of dependents; and the ability of Equipment Operators II to move to the higher classification through a

proficiency exam. The Employer emphasizes that the higher Nurses' settlement was necessary to meet market forces. The increase in rates was necessary to recruit and retain nurses.

The Employer maintains that the City of Superior is a secondary comparable. In this case, the data is available from the five primary comparables. Accordingly, the Arbitrator's decision should be based on the primary comparability pool.

The County argues that the Iron County settlement should not be referenced or relied upon in this case. Iron County bought out a cost of living provision. Accordingly, it is much higher than the settlement pattern adopted by any comparable suggested by either the Employer or the Union. The Employer emphasizes there is no compelling reason in this case to deviate from the internal settlement pattern.

With regard to the cost of living criterion, the Employer notes that the internal settlement pattern should govern. In any case, the increase in the cost of living on the National Index for the first half of 1994 approximates 2.5%. Accordingly, this criterion supports the adoption of the Employer's final offer.

The wage proposal made by the Employer is reasonable and it meets the interest and welfare of the public criterion. On the basis of the above criteria, the Employer urges that the Arbitrator select the Employer's final offer for inclusion in the two year successor Agreement for 1994 and 1995.

DISCUSSION

Comparability

The Arbitrator addresses the comparability issue. Then, the wage issue is analyzed and determined.

The Union proposes the City of Superior as a comparable. The Employer asserts that the comparability group which it proposes, Ashland, Bayfield, Burnett, Sawyer, and Washburn counties have served as the comparability pool for the parties in several interest awards and over a course of many years. The Union responds by noting that in an interest arbitration proceeding before this Arbitrator for the 1990-1991 Agreement, the Employer proposed a comparability grouping including Iron and Taylor counties. The Union agrees with the Employer that Taylor County should not serve as a comparable. However, the Union argues that Iron County, as well as, the City of Superior should be added to the comparability group.

The Iron County settlement involved the buyout of a cost of living adjustment clause. It is a unique circumstance. As a result, the percentage increases and the wage levels generated as a result will not be relied upon by the Arbitrator. Whether Iron County should be included as a comparable may be addressed by the parties, in the future.

The Employer argues that the City of Superior should not serve as a primary comparable. It notes that the primary comparables have all settled for calendar year 1994. The Employer urges the Arbitrator to rely on the data generated by the primary comparables without reference to the City of Superior.

In the 1990-91 proceeding before this Arbitrator, the Union attempted to establish the City of Superior as the sole comparable to Douglas County. It attempted to establish parity between the two units. Here, the Union attempts to include the City of Superior as a comparable to Douglas County. The Union places greater emphasis on the disparity between the wage rates of the City of Superior Public Works Department employees and the Highway Department employees, here.

The exclusion of a City unit from a comparability pool for a county employer occurs in arbitration proceedings involving law enforcement personnel. In those cases, arbitrators recognize the difference in functions performed by deputy sheriffs as contrasted to police officers.[1]

The Arbitrator is mindful of the well accepted arbitral principle that the comparability grouping accepted by the parties should not be altered from year to year. Agreement to a comparability grouping should not prevent the inclusion of other municipal employers who are clearly comparable to the municipal employer involved in the dispute and whose employees are part of the same labor market as the employees who are the subject of this arbitration dispute. The employees in the Public Works Department of the City of Superior on occasion work on the same road as Douglas County Highway Department employees. The City of Superior and Douglas County hire from within the same labor market. The two employers use the same classifications of employees.

The Arbitrator can find no reason for excluding the City of Superior as a comparable. The Union is not "cherry picking," selecting only those comparables which support one's position. In the Award below, the Arbitrator includes the City of Superior as one of six comparables. The City is one of six comparables to Douglas County (Highway Department). The Arbitrator does not provide any greater weight to the rates paid by the City of Superior, in the comparability analysis which follows.

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[1]See Marathon County (Highway Department), 27035-B (Malamud, 6/92).

Internal Settlement Pattern

The Employer argues the existence of an emerging internal settlement pattern among the seven units with which it bargains collectively. The Employer settled at 3% and 2.5% with the Communication Workers Local 4646 which represents 85 courthouse clerical employees. The County has settled with the Paramedics unit, as well. These two settlements are identical to the County's final offer in this proceeding, namely, 3% effective January 1, 1994, and 2.5% effective January 1, 1995.

The Employer settled substantially above the "pattern" with the Nurses' unit. The Arbitrator recognizes the unique conditions which required the Employer to settle at a level above the pattern it wished to establish with the other bargaining units. The Arbitrator concludes that the Nurses' settlement does not undermine the Employer's attempt to establish a settlement pattern for the 1994 and 1995 contracts.

The Arbitrator agrees with the County's position that the Paramedic settlement is in accord with the Employer's intended settlement pattern. The holiday pay adjustment is unique to the operation of the Paramedic unit. In across-the-board settlements, the parties must have the flexibility to make adjustments to rates for a particular classification or position or to bring certain benefits in line with the benefits enjoyed by other bargaining units without destroying the character of the overall settlement. There are limits to the non-costing of such adjustments. Where the adjustments are made to a significant portion of the unit, it should be costed as part of the across-the-board settlement. There are unique circumstances which arise in each collective bargaining unit. An analytical framework which does not take those unique circumstances into account will rigidity the collective bargaining process.

The Arbitrator concludes that the Employer has not established a pattern of settlement. Three other collective bargaining units are in arbitration. These units represent slightly less than half of the employees employed by Douglas County. Settlement patterns are accorded substantial, if not determinative, weight by arbitrators for the very reason that such patterns are difficult to achieve. Where the arbitrator is confronted with a holdout unit, it is in such case that the pattern of settlement receives substantial weight. However, where that pattern is emerging, the Arbitrator finds that the absence of an established pattern does not compel the acceptance of the Employer's position even though its offer is reasonable.

Wages - Comparability

There are two dimensions to the wage analysis. This Arbitrator accords the greatest weight to the wage levels paid by an employer to its employees. The second dimension to the wage issue concerns the year to

year increase provided by each offer. In this case, that dimension of the wage issue is analyzed primarily under the cost of living criterion. The Equipment Operator I (Heavy Equipment) with 11 employees at that classification, the Equipment Operator II (Light Equipment) with 8 employees in that classification, and the Mechanic-Partsman classifications with 6 employees serve as the benchmark classifications for comparing the rates paid by comparables. Twenty-five of this Employer's 35 employees work in one of these three classifications. Not all the employers differentiate among the various classes of equipment in their wage and classification schedules. Ashland County does not employ a Mechanic. Ashland, Bayfield, and Sawyer counties do not have a Light Equipment Operator classification. Since only two of the comparables retain Equipment Operators II (Light Equipment) in their classification structure, even though the City of Superior does employ this classification, the results are three comparables which use this classification. There is insufficient data on which to rely for a comparability analysis at this classification. For that reason, the Arbitrator accords the comparison of the rates paid the light equipment classification no weight.

No data was presented concerning the 1993 wage rates paid to Department of Public Works employees of the City of Superior. Accordingly, the Arbitrator provides the 1993 rates for the County comparables agreed to by the parties. For 1994, the rates are broken out with and without the City of Superior. The following analysis is based upon Union Exhibits 6C-1, 2 and 3; Union Exhibit 11, Employer Exhibits 13 and 14, as well as reference to the individual contracts included in the Union's book of exhibits.

In 1995, there are settlements only in Washburn County and the City of Superior. That provides insufficient data on which to base a comparability analysis. The application of this comparability criterion "d" is based on the parties' offers for 1994.

The average rate paid to Equipment Operators I (Heavy Equipment) in 1993 was $11.91 as compared to the Douglas County rate of $11.87. The average rate paid by comparable employers to employees in this classification for 1994, excluding the City of Superior, is $12.38; with the City of Superior the average is $12.68. The Union's final offer generates a rate at this classification of $12.29. The County's offer generates a rate of $12.23.

The Arbitrator accords the Heavy Equipment Operator classification, Equipment Operator I, greater weight in the context of this dispute. In their stipulation of agreed upon items, employees in the Equipment Operator II classification may proceed to the higher classification of Equipment Operator I after 24 months in the lower classification and upon demonstrating proficiency in the operation of three of four Class I pieces of equipment.

At the Mechanic classification, the average paid to this classification by the five comparable county employers in 1993 was $11.98. Douglas County paid $11.94 to its Mechanics in 1993.

In 1994, the average rate paid by the comparables at this classification increases to $12.50, without the City of Superior, and to $12.67 with the City of Superior included in the average. The Union offer would increase the rate to $12.36 for 1994. The Employer's offer would increase the Mechanic rate to $12.30.

Both with the City of Superior and without the City of Superior included in the average rate for 1994, the rates paid by Douglas County decline relative to the average at both the Equipment Operator I (Heavy Equipment) classification and the Mechanic classification. The deterioration from the average is greater at the Mechanic classification. This decline is the product of the Employer's below average percentage across-the-board increase. The comparable counties have settled at an average of 3.55% for 1994.[2] For 1994, the Union offer is on the mark. The Employer offer is one-half of 1% below the average in the first year of this two year contract.

The Employer argues that the higher settlements agreed to by the comparable counties reflect the health insurance contribution concessions made by the unions representing the highway department employees of the comparables. Bayfield added a 100/300 deductible to their insurance program. In Burnett and Sawyer Counties, employees with single coverage agreed to contribute 12% of the premium. In Washburn, the settlement reflects employee contribution for single coverage at 10% of the monthly premium. In addition, the health insurance changes go into effect in 1994. Although it is difficult to establish the precise trade-off between wage rate and insurance contribution, it does serve to explain the Employer position. Consideration of the two tentative agreements reached by these parties which included a 10% premium contribution for employees taking single coverage in Douglas County, provides additional support to the County's position.

The Union's final offer brings the wage rates closer to the average paid by the comparables. On balance, the Arbitrator concludes that under this criterion, the Union's final offer is preferred.

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[2]The split settlement in Burnett County of 3% and an additional 1% six months into the agreement is costed at 3.5% for purposes of establishing the across-the-board percentage increase. Similarly, the split settlement in Washburn at 3 and 1.6% six months into the agreement is costed at 3.8% by the Arbitrator. The wage levels generated by these increases are given their due weight through the wage level analysis above in which only the year end lift rates were considered by the Arbitrator.

Wages - Total Compensation

The Employer pays 100% of the health insurance premium for both family and single coverage. Three of the comparables reached agreement on a 10% employee contribution towards premium for single coverage beginning in 1994. The City of Superiorpays 100% of the premium for single coverage and 95% of the premium for family coverage. Data was not submitted concerning the cost of monthly premiums among the comparables. In addition, data concerning the number of employees taking single and family coverage in Douglas County was not submitted. However, in the context of the total compensation issue, the insurance contribution by the Employer tends to support the Employer's position here.[3]

The most significant support for selection of the Employer's final offer is reflected in the parties' stipulations of agreed-upon items. In this Agreement, employees classified as Equipment Operators II may proceed to the highest classification of Equipment Operator I after 24 months in the lower classification and by demonstrating proficiency in the operation of higher rated equipment. This is a unique and substantial benefit. Accordingly, the Arbitrator concludes that this criterion provides substantial support for the selection of the Employer's offer for inclusion in the successor Agreement.

Cost of Living

The Arbitrator agrees with the Union position that the Consumer Price Index for the North Central states including Wisconsin non-metro area index for Urban Wage Earners and Clerical Workers most closely describes the market basket analysis which serves as an indicator for the application of this criterion. In 1993, that index increased by 2.6%. Accordingly, the Employer's final offer more closely approximates that figure for 1994. In 1994, the cost of living under that index increased by 3%. It is equidistant between the final offers of these parties.

Arbitrators recognize that the pattern of settlement established by the comparables most accurately reflects the manner in which comparable employers in the same region of the state accommodate to the increase in the cost of living. In 1994, settlements among the comparables averaged

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[3]The Union argues that there is insufficient data on insurance. No evidence was submitted on its cost in terms of monthly premium, and the total package cost in Douglas County for the Arbitrator to make any determination in terms of this interest award. The Arbitrator agrees with this Union argument, if the Employer had attempted to change the premium contribution in this arbitration proceeding. However, in the context of an analysis of the overall compensation criterion, the data submitted is sufficient to apply this criterion.

3.55%. This provides substantial support to the adoption of the Union's final offer.

The Consumer Price Index for 1994 supports the selection of the Employer's final offer. The index for 1995 is equally supportive of both final offers. The pattern of settlement among the comparables supports the Union's final offer. The Arbitrator concludes that this criterion supports the selection of the Union's final offer for inclusion in the successor Agreement.

Such Other Factors

These parties have reached three tentative agreements prior to proceeding to arbitration on the wage rates to be paid Highway Department employees under the 1994 and 1995 agreement. The Employer argues that this factor should be accorded substantial weight. The Employer, at pp. 4-5 of its brief, states the following concerning the tentative agreements:

> It is the position of the County that arbitration is an extension of the bargaining process and the arbitration award should be the selection of the final offer, in its entirety, which would be the closest to what the voluntary agreement would have been if a voluntary agreement would have been achieved. The best evidence of what a voluntary agreement would have been is the three (3) tentative agreements which had been reached between the Union and the County. Three times the parties left the bargaining table with the expectation of a settlement and three times it was rejected by the Union. The rejection of one tentative agreement can be frustrating, but certainly can happen from time to time. The parties should have some leeway in rejecting a tentative agreement, but three rejections of tentative agreements seems unreasonable. These tentative agreements were not unilateral decrees from the employer, but a set of compromises worked out and agreed to by representatives of the Union and the County. The hard work of negotiations becomes meaningless if the rank and file are allowed to reject tentative agreements and then are rewarded with increases which exceed those agreed to by almost a majority of represented employees of the County and the increases previously agreed upon. An award of the Union's final offer would only send the message back to the rank and file that rejecting final offers can be rewarded.

The Union does not address this argument in its brief, nor does it address this issue in its presentation at the hearing.

Generally, there are three positions which an arbitrator may take relative to the consideration of the rejection of tentative agreements in an interest arbitration proceeding. Under one argument, an arbitrator should not consider tentative agreements, at all. Tentative agreements represent offers of settlement. If arbitrators impose tentative agreements on the party whose principal rejects such agreement, then negotiators may be reluctant to enter into tentative agreements. In the above quotation, the Employer recognizes that negotiators must be given sufficient latitude to risk saying "yes" on behalf of their principal without risking arbitral imposition of the tentative agreement in an interest arbitration proceeding.

Another view is to give a tentative agreement determinative weight. After all, it represents the best efforts of the parties' bargaining committees. They viewed the tentative agreement reached as a reasonable compromise of the matters in dispute. If, indeed, the arbitration process is merely an extension of the collective bargaining process, the agreement reached by the parties is the best evidence of what a voluntary agreement would look like.

The third alternative is to accord a tentative agreement some weight, but not determinative weight. Arbitrator Krinsky, in his award in City of Marshfield (Fire), Case 101, No. 45435, MIA-1611, succinctly sets out the rationale for according tentative agreements some weight:

> Both parties have made arguments about the relevance of the tentative agreement which was rejected by the Union. It is the arbitrator's view that rejected tentative agreements should not be controlling of the outcome of interest arbitration cases. This is because either party's negotiators must have the freedom to attempt to negotiate a tentative agreement, even at the risk that it will be rejected by their constituents. For an arbitrator to decide that a rejected tentative agreement must be implemented through arbitration, without seriously considering other evidence, would have the effect of making negotiators reluctant to take the risk of trying to reach a voluntary agreement, because the price of a rejection would be reviewed as too high.
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> A tentative agreement which has been rejected is entitled to some weight, however, in the arbitrator's opinion. It is one of the things which is appropriately considered under statutory criterion

> (h),[4] the "other factors" criterion which pertains to other factors normally taken into account in arbitration. The reaching of a tentative agreement is evidence that the negotiators mutually viewed the tentative agreement as a reasonable compromise to their differences. Neither party can then sustain an argument in arbitration to the effect that the terms of the tentative agreement are unreasonable.

Arbitrator Krinsky found for the union in that case. Here, the Union does not argue that the Employer's offer is unreasonable.

This Arbitrator agrees with Arbitrator Krinsky's analysis. This Arbitrator reviewed all the evidence presented by both parties; the tentative agreements are given some weight. The rejection of three tentative agreements, criterion "j" such other factors . . . provides support for the selection of the Employer's final offer in the successor Agreement.

Other Criteria

Both parties argue that the interest and welfare of the public criterion supports their position. The Arbitrator finds that neither has presented any data or significant argument with regard to this criterion which would serve to differentiate one offer from the other. The Arbitrator concludes that this criterion does not serve to distinguish between the offers of the parties. Similarly, the Arbitrator concludes that the following criteria do not serve as a basis for the selection of one final offer over the other for inclusion in the successor Agreement. Those criteria are: the lawful authority of the employer; comparability with employees in private employment.

SELECTION OF THE FINAL OFFER

The Arbitrator concludes that the comparability and cost of living criteria support the inclusion of the Union's final offer in the successor Agreement. The overall compensation and such other factors criteria support the inclusion of the Employer's final offer in the successor Agreement. It is apparent from this analysis that the Arbitrator must select between two reasonable final offers.

In this case in which the parties must anticipate economic conditions for the second year of the settlement, the tentative agreements reflect the

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[4]Under the municipal interest arbitration law affecting law enforcement and firefighter personnel, the "such other factor" criterion appears under "h". Under Sec. 111.70(4)(cm)7 that factor is noted at "j."

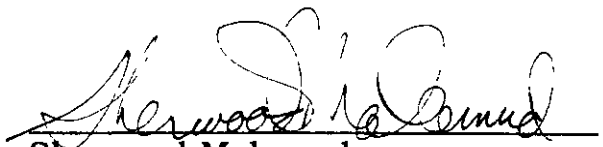
parties best guess as to how to address the anticipated change in the economy. It is significant in this case, because there is insufficient data to complete a comparability analysis for the second year of the agreement. The tentative agreements provide the view of both bargaining committees as to the appropriate wage increase for the second year of the Agreement, 1995, in light of the total compensation package that retains at 100% the Employer's contribution toward single coverage health insurance premium. The Union chose not to explain the basis for its rejection of three tentative agreements. The only other criterion which may be properly applied for 1995 for which there is sufficient data is the cost of living criterion. The comparability criterion and cost of living criteria do not establish an overwhelming preference for the Union's offer. Those criteria focus on the first year of the Agreement. In this case, the weight accorded the three tentative agreements, together with the reasonableness of the Employer's offer, support the selection of the Employer's final offer for inclusion in the successor 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 Douglas County, for inclusion with the stipulations of agreed-upon items that are attached hereto, in the successor Agreement for calendar years 1994 and 1995 between Douglas County and Douglas County Highway Department Employees Teamsters Local No. 346.

Dated at Madison, Wisconsin, this 19th day of March, 1995.



Sherwood Malamud
Arbitrator

Appendix A
Stipulated Agreements between
Douglas County and Teamsters Local 346
Highway Dep. Employees

January 17, 1995

Article 9 Section 3 Delete current language and replace with the following. A. Family/Medical leave is available to all employees who meet the legal eligibility requirements and will be administered accordingly. The Wisconsin Family Medical Leave (WFML) is available for a twelve month period beginning January 1st of every year. The Federal Family Medical leave (FMML) is available each year for a twelve month period on a rolling time frame. B. Eligible employees may elect or the department manager may require substitution of any accrued vacation, personal leave days, or compensatory time, as it applies under the Act(s). Under the FMML substitution of any accrued paid sick leave is for medical leave only. Under the WFML employees may substitute any accrued paid or unpaid leave for family or medical.

Article 10 Paragraph D The County will provide safety equipment required to meet OSHA standards. Employees electing to wear safety shoes in lieu of metatarsal guards shall be reimbursed for the cost of such safety shoes meeting A.N.S.I. standards up to $75 per year upon proof of purchase.

Article 17 Seniority - Section 1 A. Definition of seniority: County-wide seniority shall mean the length of service of an employee from his/her last permanent employment date with the County. The employee's seniority shall not be diminished by temporary layoff due to lack of work, shortage of funds, or any contingency beyond the control of either party to this agreement.

Article 17 Section 1 B. Definition of Work related classifications: Work related classifications shall be the following 5 classifications: a. Equipment Operators 1 and Equipment Operators 2; b.Working Supervisors; c.Mechanics, Premium Mechanics, and Shop Supervisor; d. clerical; and e. janitorial.

Article 17 Section 2 A. For overtime assignments, in cases other than when work is currently in progress, overtime work will be offered in the following order:

Article 17 Section 2 A. The most senior person at the portal within the work related classification. The employee with the least county-wide seniority at the portal within work related classification must accept the work. If no one within the portal can be reached the following order will be used.
B. The most senior person within the work related classifications.
C. The most senior qualified person outside of work related classifications.

Article 17 Section 2 B. Employees assigned to work on a Friday shall be assigned to continue such work on overtime on Saturday, when the work is scheduled prior to 3:30 pm on Friday, without regard to seniority. Weekend call outs will be done per Article 17 Section 2 A.

Article 17 Section 1 C. When an employee is promoted or transferred out of the collective bargaining unit to another job with the County so as to be excluded from the coverage of this agreement and is later returned to the unit by the County, he shall resume his seniority which he had as of the date of his transfer, but shall not be granted seniority credit for the time working in such non-bargaining unit job. Time spent working as the Interim Patrol Superintendent shall not be considered as working out of the unit for the purposes of this paragraph.

Article 24 Section 2 Rewrite as follows: "Normal working hours shall be from 7:00 am to 3:30 p.m. with a one half (1/2) hour unpaid lunch break commencing sometime between 11:00 a.m. and 11:30 p.m. The Head Bookkeeper and Bookkeeper shall have one (1) hour off for lunch."

Article 29, Section 1 D Employees shall have the option to use sick leave for absence due to illness in the immediate family of the employee where attendance of the employee is necessary. Immediate family for this purpose shall be defined as parents, spouse, children, grandparents, and minor wards of the employee.

Article 30 Replace $30,000 with $33,000

Article 32 Section 3 NEW SECTION: Effective January 1, 1995 a Number Two Operator (#2 Operator) with 24 consecutive months of service in that classification can, upon successful completion of a proficiency exam demonstrating competency on 3 of 4 class one types of equipment (dozer, loader, grader, excavator) be promoted to a Number One Operator (#1 Operator) at his current work reporting location. The exam will be designed and administered by a three person committee consisting of one #1 Operator, one Working Supervisor, and one management person. The exam will be updated as needed.

Article 37 Duration - Change all dates to reflect a two year agreement for 1994 and 1995. Delete section 5

Increase the Working Foreman pay rate by $0.25/ hour on 1/1/94
Interim Patrol Superintendent rate of pay: 13.32 on 1/1/94
13.65 on 1/1/95