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BEFORE THE ARBITRATOR

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In the Matter of the Petition of  
DANE COUNTY ATTORNEYS ASSOCIATION  
To Initiate Arbitration Between  
Said Petitioner and  
DANE COUNTY  
-----

WISCONSIN EMPLOYMENT RELATIONS COMMISSION  
: Case 142  
: No. 50703 INT/ARB-7237  
: Decision No. 28219-A  
:  
:

ARBITRATION AWARD

Appearances:

William Haus, Kelly & Haus, Attorneys at Law, 148 East Wilson Street, Madison, WI 53703-3478, for the Dane County Attorneys Association.

John E. Anderson, Godfrey & Kahn, A.C., Attorneys at law, 131 West Wilson Street, Madison, WI 53701-1110, for Dane County.

Dane County Attorneys Association, hereinafter referred to as the Association, and Dane County, hereinafter referred to as the County, having between October 8, 1993, and March 18, 1994, met on two occasions in efforts to reach an accord on a new collective bargaining agreement to succeed an agreement which expired on December 25, 1993, covering all regular full-time attorneys and all regular part-time attorneys in the employ of the County, except confidential and supervisory employees. On March 18, 1994, the Association filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the WERC, requesting that the latter agency initiate arbitration pursuant to Sec. 111.70(4)(cm)6, of the Municipal Employment Relations Act, and following an investigation conducted by a WERC Commissioner, on three dates in May, June and July 1994, which investigation reflected that the parties were deadlocked in their negotiations, and by October 27, 1994, the parties filed their final offers, and on November 9, 1994, the WERC issued an Order, wherein it determined that the parties were at an impasse in their bargaining, and therein the WERC certified that the conditions for the

initiation of arbitration had been met, and further, wherein the parties were ordered to proceed to final and binding arbitration to resolve the impasse existing between them, and therein the WERC submitted a panel of arbitrators from which the parties were to select a single arbitrator. After being advised by the parties that they had selected the undersigned, the WERC, on December 22, 1994, issued an Order appointing the undersigned as the Arbitrator to resolve the impasse existing between the parties by issuing a final and binding award, by selecting either of the total final offers proffered by the parties to the WERC during the course of its investigation.

Pursuant to arrangements previously agreed upon, the undersigned conducted hearing in the matter on May 16, 1995, at the City-County Building, Madison, Wisconsin, during which the parties were afforded the opportunity to present evidence and argument. The hearing was transcribed, and initial and reply briefs were received by the Arbitrator by August 31, 1995.

The Final Offers

During their negotiations the parties reached accords on all provisions to be included in their bargaining agreement covering the period from December 26, 1993 to December 26, 1995, except the provision relating to wage increases to be implemented during the term of said agreement. The final offers of the parties reflect the percentage increases proffered by each of them as follows:

<u>Effective Date</u>	<u>Association Offer</u>	<u>County Offer</u>
12/26/93	2.0%	2.0%
6/26/94	1.5%	1.5%
12/25/94	2.0%	2.0%
6/25/95	2.0%	1.5%
10/29/95	3.5%	-0-

### The Statutory Criteria

Sec. 111.70(4)(cm)7 of the Wisconsin Statutes sets forth the following criteria applicable to interest arbitration disputes involving the municipal employees involved in the instant matter:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
- e. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
- f. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost-of-living.
- h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The Bargaining Unit - Present and Past

The bargaining unit involved herein covers all regular full-time and regular part-time attorneys, excluding confidential and supervisory personnel, in the employ of the County, occupying the following classifications:

<u>Classification</u>	<u>No. of Positions</u>
Assistant Corporation Counsel	9.5
Court Commissioner	8.0
Child Support Enforcement	7.5

The Assistant Corporation Counsels serve as the "law firm" for the County and represent it before administrative agencies, state and federal courts. They also provide counsel to County agencies, and they draft ordinances, resolutions and contracts. The Court Commissioners conduct contested hearings and issue decisions involving juvenile, criminal, traffic, family, mental health, and small claims matters. The Child Support Enforcement attorneys perform duties drafting criminal complaints for felony abandonment and extradition cases, and prosecute paternity actions and child support enforcement litigation at the trial and appellate levels.

Effective January 1, 1990, Assistant District Attorneys, who were previously included among the attorneys in the bargaining unit involved herein, became employees of the State of Wisconsin. It should be noted that although the Assistant District Attorneys became State employees as of January 1, 1990, their wage rates as State employees were arrived at in negotiations on May 7, 1993, retroactive to January 1, 1990.

Cost Increases Which Would Be Generated by the Final Offers

During the course of the hearing the Association presented a tabulation reflecting its calculations as to the total costs which would be generated by the final offers, as follows:

<u>Date</u>	<u>Association Offer</u>		<u>County Offer</u>	
	<u>Percentage Increase</u>	<u>Dollar Increase</u>	<u>Percentage Increase</u>	<u>Dollar Increase</u>
12/26/93	2.0	\$918,102	2.0	\$918,102
6/26/94	1.5	929,072	1.5	929,072
12/25/94	2.0	946,625	2.0	946,625
6/25/95	2.0	667,761	1.5	960,053 (a)
10/29/95	3.5	306,612 (b)	-	-
Total Cost		\$3,766,162		\$3,751,852
Base Cost		3,582,112		3,582,112
Additional Cost		184,050		169,740
Percentage Increase		5.1%		4.7%

(a) From 8/25/95 through end of agreement

(b) From 10/29/95 through end of agreement

The Association contends, as reflected in its tabulation, that the total dollar cost difference between the two final offers is \$14,310.

The County produced exhibits reflecting its calculations as to the costing of both offers. Said costs related to the following:

Salaries and Wages	Social Security	Longevity
Disability Insurance	Health Insurance	Life Insurance
Workman's Compensation	Dental Insurance	Retirement

The County acknowledges that the costs generated by each of the offers are identical for the first year of the bargaining agreement. According to the County, the costs generated during the first year of the agreement total \$58,995, or 3.25% over the costs of the last year of the previous agreement. The County's calculations also indicate that the first year of the agreement involved herein generate costs in the amount of \$1,888,941.

According to the County, the offers generate the following costs

generated by both offers for the second year of the bargaining agreement:

	<u>Association Offer</u>	<u>County Offer</u>
Dollar Increase	\$77,203	\$61,120
Percentage Increase	4.04%	3.20%

The County calculates that the offers generate the following total costs for the two years of the agreement:

	<u>Association Offer</u>	<u>County Offer</u>
Dollar Increase	\$2,020,908	\$1,984,258
Percentage Lift Over Previous Agreement	5.81%	3.89%

The County contends that:

"From an actual wages standpoint, the parties are approximately \$12,556 apart; the actual package difference is approximately \$16,083. Based upon the lift the parties are approximately \$28,615 apart on wages and \$36,650 on package costs."

The Statutory Criteria Considered by the Parties

The parties focused their evidence and argument on the statutory criteria relating to the external and internal criteria, as well as to the cost of living. The Association submits that the most appropriate and significant external comparables are the bargaining units of attorneys in the employ of the State of Wisconsin, one represented by the Wisconsin State Attorneys Association, and the other, by the Association of State Prosecutors. The Association urges that the attorneys in the employ of the City of Madison also be included among the appropriate external comparables. The latter attorneys are in a unit represented by the City of Madison Attorneys Association.

The County proposes that the primary comparability for the external comparison criterion must be based upon the ten largest (by population) counties in the State, excluding Milwaukee County. Said counties are as follows:

Brown            Marathon            Racine            Sheboygan            Waukesha  
 Kenosha        Outagamie            Rock            Washington            Winnebago

The County maintains that the wages paid to the attorneys in the employ of the City of Madison may be helpful in portraying the local settlement trends within the local economic area. It also contends that the internal comparables, namely the employees of the County, employed in seven additional separate bargaining units, are appropriate to be considered by the Arbitrator in reaching his award.

With respect to the cost of living criterion, both parties contend that said criterion supports their individual offers. No other statutory criteria, except those discussed herein, were deemed significant by either of the parties.

Evidence Adduced With Respect to External Comparables

Appendix A attached hereto, reflects pertinent data applicable to attorneys in the employ of the ten counties which the County contends should be considered as constituting as the most comparable external group of employers.

Based on the final offers and the exhibits presented herein, the following comparisons are generated:

	<u>1993</u> <u>Hourly</u> <u>Rate</u>	<u>1995</u> <u>Hourly</u> <u>Rate</u>	<u>Two Year Increase</u>	
<u>Assistant Corp. Counsel</u>				
<u>10 County Average</u>				
Minimum	\$18.22	\$19.62	\$1.40	7.68%
Maximum	\$23.52	\$25.34	\$1.82	7.74%
<u>Association Offer</u>				
Minimum	\$15.86	\$17.10	\$1.24	7.82%
Maximum	\$31.60	\$34.08	\$2.48	7.85%
<u>County Offer</u>				
Minimum	\$15.86	\$16.96	\$1.10	6.94%
Maximum	\$31.60	\$33.79	\$2.19	6.93%

Judicial Court Commissioner

10 County Average

Minimum	\$20.91	\$22.39	\$1.38	7.08%
Maximum	\$26.99	\$28.89	\$1.90	7.04%

Association Offer

Minimum	\$21.86	\$23.58	\$1.72	7.87%
Maximum	\$31.60	\$34.08	\$2.48	7.85%

County Offer

Minimum	\$21.86	\$23.39	\$1.53	6.70%
Maximum	\$31.60	\$33.79	\$2.19	6.93%

The data reflected in Appendix A was garnered from an exhibit produced by the Association (Asso. Ex. 62). Said exhibit set forth the following, reflecting the number of attorney positions in the employ of the counties indicated and the nature of their employment:

Brown County - There are 3 full-time Ct. Comm. with salary ranges from \$46,660 - 61,188. There are 5 Asst. Corp. Coun. with a salary range of \$38,229 - 49,302. It normally takes 5 years to progress through the range.

Kenosha County - There are no full-time Ct. Comm. There are 4 Asst. Corp. Counsel. It takes 7 years to progress through the pay ranges. The attorneys do not do any child support enforcement, CHIPS or TPR proceedings.

Marathon County - There are 3 full-time Asst. Corp. Coun. and 2 part-time Ct. Comm. who also have private law practices. The Asst. Corp. Coun. are part of the AFSCME unit composed of courthouse workers with any advanced degree.

Outagamie County - There are 3 full-time Asst. Corp. Coun. and 3 full-time Ct. Comm. The Ct. Comm. salaries range from \$42,319 - 54,597. The Asst. Corp. Coun. are not involved in any CHIPS or TPR proceedings.

Racine County - There are 6 full-time and 2 part-time Asst. Corp. Coun. They do not do CHIPS or TPR proceedings. The 1996 salary range is \$39,351 - 60,273. It takes 9 years to move through the salary schedule. There is one full-time Family Court Commissioner and 1 full-time Judicial Court Commissioner. The salary range is \$40,000 - 65,000 plus longevity pay of 3%. The Ct. Comm. are not part of the bargaining unit.

Rock County - There are 2 full-time Ct. Comm. who are not members of the bargaining unit. There are also 2 part-time Ct. Comm. who contract separately with the county. The salaries for Ct. Comm. are negotiated by each Ct. Comm. on an annual basis and there is no formal process for an annual review. The 2 full-time Ct. Comm. are earning \$51,296 and \$53,091. There are 6 Asst. Corp. Coun. who are



organized. 4 work in child support enforcement and 2 work for social services. The salary ranges are from \$31,088 - 55,436 and it normally takes 5 years to progress through the salary range.

Sheboygan County - The county contracts with a private attorney to serve as Corporation Counsel. He also has a private law practice and uses his associates as Asst. Corp. Coun. There are 2 full-time Ct. Comm., one of whom works half-time as a law clerk for the judges.

Washington County - No data.

Waukesha County - There are 3 full-time Judicial Ct. Comm. and one Family Court Commissioner. There are 6 Asst. Corp. Coun. The Asst. Corp. Coun. were organized with the Asst. District Attorneys prior to 1990, but have not formed a new unit since the ADA became state employees. The Ct. Comm. were never part of the bargaining unit. The salary range for the Asst. Corp. Coun. is \$32,939 - 59,175. It takes 10 years to progress through the steps. The Ct. Comm. top salary is \$62,300.

Winnebago County - There is one full-time Asst. Corp. Coun. and 2 full-time Ct. Comm. A large part of the County legal work is contracted out to private lawyers.

The County did not question the Association's data contained in Asso. Ex. 62.

#### Attorneys In State Employment

The Association submits that the most appropriate and significant external comparables are the attorneys in the employ of the State of Wisconsin, employed in two bargaining units, separately represented by the Wisconsin State Attorneys Association (WSAA) and the Association of State Prosecutors (ASP). The attorneys represented by the WSAA perform duties comparable to the duties performed by the Court Commissioners in the employ of the County, e.g. serving in quasi-judicial capacities, conducting hearings, creating records and issuing final and binding decisions. The Court Commissioners of the County also issue arrest warrants and conduct preliminary hearings in criminal matters. From exhibits provided by the Association, the Arbitrator has calculated the following data, comparing the hourly rates of the County Court Commissioners with the hourly rates of the State attorneys performing Administrative Law Judge duties, represented by WSAA:

1993		
	<u>State Admin. Law Judges</u>	<u>County Court Comm.</u>
Starting Hourly Rate	\$16.32	\$15.86
Maximum Hourly Rate	\$39.26	\$35.07

1995			
	<u>State Admin. Law Judges</u>	<u>Asso. Offer</u>	<u>County Offer</u>
Starting Hourly Rate	\$16.96	\$17.30	\$16.96
Maximum Hourly Rate	\$40.79	\$38.26	\$37.46

According to the Association, the State Attorneys represented by the ASP, are in pay range 14, and the County's Assistant Corporation Counsel have common skills and abilities, e.g. providing legal counsel, drafting agreements, preparing legal opinions and memoranda, as well as representing their respective principals in litigation. While State attorneys are limited to administrative hearings, County attorneys also appear in state and federal courts. The Arbitrator, from the exhibits produced by the Association, has prepared the following comparisons between the hourly rates paid to the County attorneys and the State attorneys represented by the ASP:

1993		
	<u>State Prosecutors</u>	<u>County Asst. Court Counsel</u>
Starting Hourly Rate	\$17.33	\$16.30
Maximum Hourly Rate	\$43.50	\$35.95

1995			
	<u>State Prosecutors</u>	<u>Asso. Offer</u>	<u>County Offer</u>
Starting Hourly Rate	\$17.76	\$17.77	\$17.09
Maximum Hourly Rate	\$44.59	\$39.29	\$37.77

Attorneys in the Employ of the City of Madison

Both parties submitted evidence relating to the attorneys in the employ of the City of Madison. The County prepared a tabulation reflecting the maximum hourly rates (excluding longevity payments) paid to City and County attorneys from the year 1988 through the years covered by the offers involved herein, reflecting as follows:

<u>Year</u>	<u>County</u>	<u>City</u>	<u>Difference</u>
1988	\$25.53	\$27.17	- \$1.64
1989	\$26.30	\$27.99	- \$1.69
1990	\$27.06	\$29.11	- \$2.05
1991	\$29.43	\$30.43	- \$1.00
1992	\$30.51	\$31.65	- \$1.14
1993	\$31.44	\$32.91	- \$1.47
1994	\$32.87	\$33.90	- \$1.03
1995	\$34.03 County	\$35.28	- \$1.25 County
	\$35.40 Assn.	\$35.28	+ \$0.12 Assn.

From additional exhibits presented by the parties the minimum and maximum monthly average salaries generated by the final offers presented herein compare to the monthly average salaries paid to Madison City attorneys as follows:

Madison City Attorneys

	<u>1994</u>		<u>1995</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Maximum</u>
Assistant City Atty. III	\$4,044	\$5,327	\$4,166	\$5,488
Assistant City Atty. IV	\$4,433	\$5,834	\$4,567	\$6,010

Association Final Offer

	<u>1994</u>		<u>1995</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Maximum</u>
Assistant Corp. Counsel	\$2,849	\$5,676	\$2,976	\$5,926
Judicial Court Comm.	\$3,928	\$5,676	\$4,111	\$5,977

County Final Offer

	<u>1994</u>		<u>1995</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Maximum</u>
Assistant Corp. Counsel	\$2,849	\$5,676	\$2,949	\$5,877
Judicial Court Comm.	\$3,928	\$5,676	\$4,068	\$5,902

Criteria Relating to Internal Comparables

Date presented during the course of the proceeding reflected that the settlements reached by the County with the labor organizations representing non-supervisory employees in other bargaining units for the years 1988 through 1995 disclosed the following percentage wage increases granted to the employees in the units indicated compared to the increases granted to County attorneys for the years 1988 through 1993, as well as the percentage wage increases proffered in each of the offers for the years 1994 and 1995:

<u>Unit</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>
Professional Social Workers	2.56	3.00	3.50	4.00	3.66	3.50	2.75	2.75
Health Care Prof.	2.56	3.00	5.00	5.00	3.70	4.00	2.75	2.75
Craft Employees	1.80	\$ .41	3.50	4.00	ND	ND	2.75	2.75
Highway, Airport, Zoo and Exposition	2.56	3.00	3.50	4.00	ND	ND	2.75	2.75
General other Non-Professionals	2.56	3.00	3.50	4.00	3.25	3.50	2.75	2.75
Non-supervisory Sheriff Deputies	2.56	3.00	3.50	3.90	3.50a	3.50b	2.50	2.75c
Attorneys	2.56	3.00	3.50	3.00	3.70	3.50		
				Asso. offer			2.75	3.58
				County offer			2.75	2.75

- ND - No data
- a - Plus \$.15 per hour effective 1/1/92
- b - Plus \$.20 per hour implemented last day of contract, costed against 1994 contract year
- c - Plus \$.20 per hour implemented last day of contact, costed against 1996 contract year

Cost of Living Increases

The County produced exhibits reflecting consumer price indices for the years 1992, 1993, 1994, and through March 1995, which disclosed the following data for the first three months of 1995:

National Consumer Price Index

<u>Month</u>	<u>All Urban Consumers</u> <u>Annual Increase</u>	<u>Urban Wage Earners and Clerical Workers</u> <u>Annual Increase</u>
1/95	2.8%	2.9%
2/95	2.9%	3.0%
3/95	2.9%	3.0%

Small Metro Areas - North Central States Price Index

<u>Month</u>	<u>All Urban Consumers</u> <u>Annual Increase</u>	<u>Urban Wage Earners and Clerical Workers</u> <u>Annual Increase</u>
1/95	3.5%	3.5%
2/95	3.3%	3.3%
3/95	3.3%	3.6%

Positions of the Parties

Proposed External Comparables

Ten Largest Counties

The County contends that the "primary comparability for the external comparison criterion must be based on the ten largest counties in the State (excluding Milwaukee County)", based on the population in each of those counties. In support thereof it calls to the Arbitrator's attention that in three previous interest arbitration awards involving the attorneys in its employ, Arbitrator Frank Zeidler "examined the highest paid counties in the State", in his 1979 award; that Arbitrator Fred Kessler "examined the limited pool of Racine and Brown Counties",

in the latter's 1985 award; and that Arbitrator Jay Grenig "identifies the use of the ten largest counties in the State (excluding Milwaukee County)" in the latter's 1986 award, and concluded that said ten counties should be utilized in comparing the parties' offers", and that in said award Arbitrator Grenig indicated that "considering population, geographic size, and the function of the attorneys employed by said counties, it is concluded that the ten largest counties, excluding Milwaukee County, should be utilized in comparing the parties' offers. Because Rock County has not settled at the time of the hearing, it will not be utilized as a comparable."

The Association argues that in proposing the "ten counties" as the most comparable external group of employers, the County fails to take into account the very different circumstances that prevail in most of said counties, including the privatization and part time nature of the legal work performed by attorneys serving many of said counties, the population disparities, and the fact that most of the attorneys performing said services are not organized. In its reply brief the Association concludes its opposition to the consideration of the "10 county" group as the most external comparable group as follows:

"Of the ten largest counties, only three are organized with respect to their attorney employees. One would expect that counties that unilaterally determine the wages of their employees would tend to have lower wages than counties who engage in collective bargaining to determine wage levels.

The ten largest counties appear to vary dramatically from Dane County in how they go about meeting their need for the type of services performed by the members of this bargaining unit. None have the fully developed Corporation Counsel office that Dane County maintains. Most of the counties have very few employees in the attorney positions. Much of the work is performed by part time people either as employees or as private contractors. These attorneys often maintain private practices in addition to their work for their respective counties. For example, Kenosha is not organized and it has no full time Court Commissioners or Assistant Corporation Counsels. Kenosha uses private practitioners who provide these services on a part time basis in addition to

conducting their private law practices. Sheboygan County contracts with a private attorney to serve as Corporation Counsel. He maintains a private practice and uses the associates in his private practice to serve as corporation counsels. Sheboygan County has two full-time court commissioners, one of whom works part time as a clerk for the judges. Winnebago County has one full time Assistant Corporation Counsel and two full time Court Commissioners. A large part of the County's legal work is contracted out to private practitioners.

It does not make a lot of sense to rely on "comparables" that vary so greatly in how they function and how they go about meeting their needs. There is no information in the record as to what these counties pay to private practitioners for performing the comparable services that are performed by the Dane County Attorneys Association. There is no information in the record as to what work is done by county employees and what work is sent out to private counsel. The largest complement of employees in the alleged comparables is in Racine County, where the County employs 6 full time and 2 part time assistant corporation counsels, none of which handle CHIPS and TPR proceedings. The court commissioners are not included in the bargaining unit.

The one time when the ten largest counties were used as comparables by Arbitrator Grenig he did not use them exclusively. Indeed, Arbitrator Grenig noted that Dane County was "unique" and he continued to use the State of Wisconsin and the City of Madison as comparables."

#### The Attorneys in the Employ of the State and the City of Madison

The Association contends that various attorneys in the employ of the State of Wisconsin, in Pay Range 13, perform duties and responsibilities similar to those County attorneys classified as Court Commissioners, and that various State attorneys in Pay Range 14 perform duties and responsibilities similar to those performed by County attorneys classified as Assistant Corporation Counsel. It submitted exhibits, not contested by the County, reflecting, among other data, a comparison of the maximum hourly rate paid to said County attorneys and to said State attorneys in Ranges 13 and 14 since December 1984 through June 1995, as well as a comparison of the maximum hourly rates presently paid to said State attorneys from June 1995 through December 31, 1995, with the maximum hourly rates which would be generated for said period to County attorneys by each of the offers involved herein. The Arbitrator has attached Appendix B to reflect such comparison.

The Association emphasizes that "at least since 1984 through 1990 the salaries of County attorneys were ahead" of State attorneys performing similar duties and responsibilities. It points out that in June 1993 the State reached accords with the labor organizations representing said State attorneys, providing "for substantial increases and they leapfrogged quite substantially over the wage levels then in place," applicable to County attorneys, and that said increases to said State attorneys were implemented retroactively to include the year 1990. It should be noted that at the time such accords were reached, County attorneys, who were responsible for the prosecution of criminal cases, had already been transferred to State employment, and, further, that at the time the 1991-1993 State bargaining agreement had been reached the Association representatives were engaged in the bargaining of the 1993-1995 County agreement and were not aware that the agreements covering the State attorneys provided for retroactive increases to cover the year 1990 and beyond.

In its brief it points out:

"The current Madison Attorneys' contract has for its term January 1, 1994 through December 31, 1995.....provides for wage increases totaling a 7% (lift) for 1994-1995, with increases taking effect on or about January 1, 1994, about midway through 1994, on or about January 1994, about midway through 1995 and a lift at the end of the contract (the pay period that includes January 1, 1996). The DCAA's final offer of 9% for 1994-1995 is \$.76 per hour lower than the Madison Attorneys and a mid-point salary that is \$1.50 per hour below that to the Madison Attorneys.....The DCAA offer in the present case would narrow the gap between the City Attorneys and the DCAA, while the County's offer would widen the gap. It should also be noted that City Attorneys have quicker access to the top of the salary schedule as compared to the DCAA bargaining unit employees and they enjoy a greater level of career earning."

The Association introduced exhibits to support its argument that the County, as indicated in previous interest arbitration cases involving its attorneys, "has not maintained a consistent posture" with respect to the impact of State and City of Madison attorneys as meaningful external



comparables, setting forth that:

"In the past, the County argued that the State of Wisconsin and the City of Madison are the most appropriate comparables on the basis that these were the comparables historically used by the parties in bargaining and because of the concentrated labor market for attorneys presented by these public employer comparables. Now the County argues that it is time for a change with regard to the pool of comparables. It argues this based upon the assertion that the change in the law which made Assistant District Attorneys state employees has destroyed or negated the comparability in the work performed by State of Wisconsin attorneys as opposed to the attorneys in the bargaining unit...

First, it should be noted that in its prior arguments as to comparability, the County relied on historical comparisons and the concentrated labor market for attorneys' presented by the State, County and City municipal employers. Certainly these two factors have not changed.

.....Indeed the change in the law regarding who the employer was did not affect the duties and responsibilities of the various positions.

The record is replete with uncontroverted evidence and testimony as to the comparability and similarity in duties as between the County attorneys and the attorneys who work for the State of Wisconsin and the City of Madison. In comparing duties and responsibilities there does not need to be absolute congruity in what the comparables do; working in similar areas of law and performing duties of comparable complexity and responsibility should also be a basis for comparability.

Dane County still draws its attorneys from the same market as the State and the City of Madison. The County offers no cogent facts beyond its mere assertions that the comparability between the bargaining unit and the State of Wisconsin has become 'illogical'."

The County maintains that the movement of the County's Assistant District Attorneys to State Employment, effective June 1, 1990, "eliminates the perceived comparability between Dane County and the State of Wisconsin". It emphasizes that:

"All of the prior interest arbitration decisions between Dane County and the DCAA preceded the 1990 legislative change. Consequently, it was logical for arbitrators to utilize the State of Wisconsin as a comparable because there were comparable employment positions within the County and the State. Arbitrator Grenig noted the similar job functions in his 1986 decision when he commented:

Because the Wisconsin Attorney General's Office and the City of Madison attorneys perform functions similar to those of members of the bargaining unit here and perform

those functions in the same community, these two employers should also be utilized in comparing the parties' offers.

Arbitrators Kessler and Zeidler also reviewed the State of Wisconsin data in their decisions involving the DCAA in 1985 and 1979, respectively.

Given the composition of the DCAA bargaining unit from 1979 to 1986, comparisons with the State of Wisconsin, at that time, were logical. The same circumstances no longer exist, however. It simply is inappropriate to continue to place significant weight on a particular public sector employer when comparable job duties, job responsibilities and positions no longer exist."

In its reply brief the County continues as follows:

"The DCAA's assertion that the State settlements should be controlling in this dispute is without support in the record. None of the prior interest arbitration proceedings between the parties placed primary and controlling emphasis on the State settlements - nor should that occur now. The County has shown that, since the employment relationship changed on January 1, 1990, the comparability with the State employees has diminished. Moreover, the County has shown that its final offer is completely justified based upon sound arbitral standards - it is wholly supported by the internal bargaining unit settlements and is fair and equitable when viewed in terms of comparability with the City of Madison Attorneys' settlement and other County settlements."

#### The Internal Comparables

In its initial brief the County propounds that the internal settlement pattern established by the settlement pattern between the County and the labor organizations representing five additional bargaining units, subject to Sec. 111.70 of the Municipal Employment Relations Act, "demands the acceptance of the County's offer", setting forth the following in support thereof:

"With all five of these units settled, the pattern is quiet apparent - a 2.00%/1.50% split year increase for both calendar years 1994 and 1995. In each year, the cumulative lift for those bargaining units equals a 3.50% increase and is identical to the County's final offer. None of the other bargaining units who are governed by the 111.70 statutory criteria received a wage increase in 1995 which equals the cumulative wage lift of 7.50% that the Association is

proposing here.<sup>1</sup>

Within Dane County, the pattern of settlements reflects a consensus among the bargaining units of what is considered to be a fair and equitable wage increase for the 1994 and 1995 calendar years. Acceptance of a wage offer which generates a 'lift' which is, quite simply, a 4% higher than that voluntarily accepted by the other bargaining units should not be adopted, nor would such action be condoned..."

The Association, in its initial brief, argues as follows:

"It is true that the County's offer to the DCAA for the contract term at issue follows the same pattern of wage increases contained in contracts with AFSCME, the social workers, and the health care employees. However, the County has not been uniform in its internal wage settlements. The most prominent departure from this pattern occurred on October 16, 1994, when the Sheriffs received a voluntary 4% wage increase that no other unit was provided. The first two increases included in this contract term were reversed as to the Sheriffs unit (this is not significant in terms of dollars involved, but it is certainly a deviation from the 'pattern'. The Sheriffs also received a \$.20/hr. increase to take effect on December 26, 1995, on top of the 1.5% increase that all other internal units received effective 6/25/95.

The 'pattern' of internal settlements has not been absolutely and uniformly applied in prior contract terms either. For example, the 1991-1993 agreements displayed significant variability throughout. (U. Ex. 23). Internal uniformity has not been the pattern and there is no particular logic in treating a diverse group of employees as if they are in the same bargaining unit. The separation of employees into appropriate bargaining units is a recognition that they have varying community of interests and varying circumstances that warrant separate collective bargaining.

.....Dane County's internal settlements contain deviations from the pattern of increases granted to other units.....There are unique circumstances -- the need to mitigate recent salary disparities with the State Prosecutors and the State attorneys - that justify the DCAA's final offer in this case. Thus, far from deviating from a well-established pattern of internal

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<sup>1</sup> It should be noted that said five units include (a) General Non-Professionals, represented by AFSCME; (b) Social Workers, represented by Professional Social Workers, AFSCME; (c) Highway, Airport, Zoo and Expo Non-professional, represented by Teamsters; (d) Professional Health Care, represented by UPQHC; and (e) Craft employees, represented by Craft unions.

settlements, acceptance of the DCAA's final offer will not set a potential disruptive precedent for other County employees. Dane County voluntarily has already broken the pattern in its contracts both in the contract term involved in this case and in previous contract terms."

The County, in its reply brief, reiterates its argument that the "primary and controlling emphasis must be placed on the internal settlements within Dane County", arguing that:

"The internal settlement pattern is also an excellent indicator of the local economic conditions and a likely barometer of where the parties would have settled, had they been able to do so voluntarily. Arbitrators will not, for the most part, award a final offer which exceeds the internal pattern because doing so would encourage other internal bargaining units to hold out for a higher settlement during the next round of negotiations."

In response, in its reply brief, the Association points out that the County has totally disregarded its voluntary settlement with the Deputy Sheriffs in discussing internal comparables, arguing that:

"During the 1993-95 time frame, the Deputy Sheriff's contract includes a maximum step for all pay ranges that is 4% above the previous maximum. This increase in the maximums is scheduled for October 16, 1994. (U. Ex. 21). None of the other bargaining units received a similar increase. The Sheriff's unit also will receive a 20 cent per hour increase across the board on December 26, 1995. This increase, although mandated by the terms of the 1994-95 collective bargaining agreement, is to be costed against the successor contract -- it is a lift which none of the other units received."

The Association concludes its position on "internal comparables" as follows:

"The notion that internal comparables are sacrosanct and should never allow for deviation within the group is simplistic, unfair and lends itself to manipulation by employers. It is not the job of Arbitrators to make strategy and attempt to manipulate future collective bargaining results. Arbitrators should do what is right in particular circumstances, using their best judgement as applied to the statutory criteria and the particular facts of a case. Being the last to settle is certainly not a sufficient justification to award any unit a higher settlement; neither is it a sufficient justification, as suggested by the County, to award any unit a lower settlement. The County's internal comparable analysis is deceptive because of its failure to even consider

and address the contract settlement involving the Deputy Sheriff's unit."

#### The Cost of Living

The County points out that, at the time of the hearing herein, the March 1995 Consumer Price Index-Urban statistics reflected a 2.9% increase over the March 1994 rates. In the previous months, said index continued to hover at or near that 2.9% rate, thus justifying and supporting a 3.5% wage rate increase, and that it does not support a 7.5% increase presented by the Association.

Utilizing the consumer price index for small metropolitan areas in the north central states, the Association indicates that the annual increases amounted to 3.5% during January 1995, 3.3% in February, and 3.6% in March. The Association contends that the "County's final offer barely keeps pace with increases in the cost of living in terms of lift, and that it falls short when actual earnings are computed. It claims that the Association's offer is closer to the cost of living for actual wages received under its proposal; however, the Association acknowledges that its offer exceeds the cost of living in terms of lift, because the Association is concerned about the reversal of its relative position with respect to its closest comparables and is trying to keep pace."

#### Discussion

##### The External Comparables

In its brief the County included a tabulation reflecting the average maximum hourly rates paid by the ten claimed most comparable counties with the maximum hourly rates which would be generated by the offers of the parties for the attorneys in the classifications of Assistant Corporation Counsel and Judicial Court Commissioner. According to the County its final offer applicable to the Assistant Corporation Counsel would generate a maximum hourly rate for 1995 of \$8.70 per hour over and

above the average maximum hourly of said ten counties; and that the Association's offer would generate a maximum hourly increase of \$10.07 above said average maximum hourly rate.

A similar comparison by the County, applicable to the classification of Court Commissioner, indicates that its offer results in a maximum hourly rate of \$34.04, or \$5.15 over and above the ten county average, while the Association's offer, according to the County, would generate an increase of \$6.52 per hour above the average.

The Arbitrator cannot accept the results of the County's comparisons, since the County based its calculations for the year 1995 on the maximum hourly rates which would be generated by the final offers during the last six months of the 1995 contractual year, rather than the average maximum hourly rates which would be generated throughout that contractual year. Thus the more accurate comparisons would be reflected as follows:

Assistant Corporation Counsel

<u>Year</u>	<u>Dane County Average Maximum Hourly Rate</u>	<u>10 County Average Maximum Hourly Rate</u>	<u>Dane County Exceeds Average</u>	
			<u>\$</u>	<u>%</u>
1992	\$30.52	\$22.92	\$7.60	33.2
1993	31.60	23.52	8.08	34.4
1994		24.34		
1994 (County)	32.47		8.13	33.4
1994 (Assn.)	32.47		8.13	33.4
1995		25.34		
1995 (County)	33.79		8.45	33.3
1995 (Assn.)	34.42		9.48	35.8

Judicial Court Commissioner (Employed in 7 Counties Only)

1992	\$30.52	\$26.43	\$4.09	15.5
1993	31.70	26.99	4.61	17.1
1994		27.95		
1994 (County)	32.63		4.68	16.7
1994 (Assn.)	32.63		4.68	16.7
1995		28.89		
1995 (County)	33.79		4.90	17.0
1995 (Assn.)	34.07		5.18	17.9

Except for the population figures and the amount of equalized value of the property situated in each of the counties in the County proposed most comparable external group of employers, the County produced no additional evidence for the inclusion of said counties in that group. While Rock County abuts the County of Dane, and thus it could possibly be considered as being in the same labor market as Dane seeking attorneys to fill its attorney positions, the same characteristic cannot be applied to the remaining counties proposed by the County. Furthermore, while all ten counties maintain positions of Assistant Corporation Counsel, three of the counties do not maintain positions of Judicial Court Commissioners. Also, as set forth heretofore, some of the counties utilized private sector attorneys to perform some of the duties similar to those performed by the attorneys in the employ of Dane County. Therefore, for the reasons set forth above, the Arbitrator cannot accept the County's contention that its county group constitutes the most comparable external group of employers.

The attorneys who are employed by the State of Wisconsin, a majority of whom are officed in Dane County, and thus the positions occupied by them exist in the same labor market where the County attorney positions

are maintained. The change in the statutes which transferred Assistant District Attorney positions from the counties to State employment did not, in the opinion of the Arbitrator, and as supported by the evidence, "eliminate the perceived comparability between the duties performed by the attorneys employed by the County and the State. There still exists the duties of the County attorneys, presently included in the bargaining unit, which are similar to the duties presently performed by State attorneys not performing criminal prosecutorial roles. The Assistant District Attorneys subsequent to becoming State employes performed the same duties as they performed while County employes.

It should be noted that the increases in hourly rates of pay to State attorneys in June 1990 did not result from the transfer of Assistant District Attorneys to State employment, but rather primarily following a study of said rates of pay generally, and the recognition by State officials that their rates of pay should be increased for the ultimate benefit to the citizens of this State. Appendix B reflects that in the five years (1984 through 1989) prior to the substantial increase in the maximum rates of State attorneys, those in Range 13 received an average maximum hourly rate of 12.9% below the rate applicable to County attorneys, and that State attorneys in Range 14 received an average maximum hourly rate of 2.0% below that received by County attorneys. After the wage increase to State attorneys, those in Range 13, from December 1991 through June 1995, said attorneys received an average of 11.1% over the maximum hourly rate paid to County attorneys during the latter period, while the average maximum hourly rate paid to State attorneys in Range 14 constitutes an increase of 17.1% over the rate paid to County attorneys.

At the time of the hearing herein salary rates for State attorneys



had not been established for the last six months of 1995. Assuming that no increase will be forthcoming to State attorneys for said six month period, the increase in the difference generated by the Association offer for said six month period would not exceed the average of surplus percentages experienced by State attorneys from December 1991 through June 1995.

With respect to the comparability with the attorneys in the employ of the City of Madison, it should be noted that from 1988 through 1994 the attorneys in the employ of said City received an average maximum hourly rate of \$30.45, compared to the average maximum hourly rate of \$29.02 paid to County attorneys, or 4.9% greater than the rate paid to County attorneys. The County's offer for 1995 would generate a maximum rate average of \$1.25 per hour (3.67%) below the rate paid to City attorneys, while the Association's offer, for the first time since at least 1988, would exceed the City's rate for 1995 by only 12 cents per hour on the average, less than 1.0% over and above the rate paid to City attorneys.

In the opinion of the Arbitrator the attorneys employed by the State of Wisconsin comprise the most comparable external group of employees, with the attorneys in the employ of the City of Madison coming in a close second.

#### The Internal Comparables

Previously set forth herein is a tabulation reflecting the percentage of wage increases received by the County employees in the various bargaining units from 1988 through 1995, including 1988 through 1993 applicable to County attorneys, as well as the percentage increases to the latter employees which would be generated by each of the offers herein for the years 1994 and 1995. An examination of the data set forth

in said tabulation reflects, at least in each year since 1988 through 1993, that the percentage of wage increases to the various units have not been uniform, and that it is only for the year 1995 that the County's offer would provide the attorneys with the same percentage increases granted to the classifications in six other internal units. The seventh unit, which includes the Deputy Sheriffs, received a 20 cent per hour increase applicable on the last day of 1995.

The County urges the Arbitrator to consider that the pattern of settlements in the County "reflects a consensus among the bargaining units of what is considered to be a fair and equitable wage increase for the 1994 and 1995 calendar years..." However, none of the bargaining representatives of the employees in said units represent the attorneys. Apparently the employees in the attorney bargaining unit, at least for the last six months of the 1995 agreement, are of the opinion that the County's offer is not fair and equitable to them. It should be noted that the average percentage increases granted from 1988 through 1995 to the employees in the Professional Social Workers and in the Health Care Professional units averaged 3.22% and 3.59% respectively per year, while the increases received, and to be received by the County offer, would average 3.10% per year, while the Association's offer would generate an average percentage increase of 3.20% each year for said eight year period. Under the circumstances involved herein, the Association's offer, differing only for the last six months of the 1995 agreement, is not deemed unreasonable by the Arbitrator, and it is more acceptable than is the offer of the County.

#### The Cost of Living

As of the date of the hearing herein, the last published cost of living index set for the March 1995 cost of living figures applicable to

Dane County indicated an annual increase of 2.9% over and above the March 1994 cost of living. Since the differences in the offers herein involved would become effective July 1, 1995, it appears to Arbitrator, since neither party has attempted to submit any update of the cost of living index since the March 1995 figure, that neither of the parties have deemed that said criterion has any significant impact on their respective offers.

Having considered the statutory criteria, and, the evidence and arguments presented by the parties, the Arbitrator, based upon the above and foregoing, concludes that the offer of the Association is favored over the offer of the County, and in that regard the Arbitrator makes and issues the following

Award

The Association's offer is to be incorporated in the 1994-1995 collective bargaining agreement between the parties, along with those provisions agreed upon during their negotiations, as well as along with those provisions in their expired agreement which they agreed were to remain unchanged.

Dated at Madison, Wisconsin this 2nd day of February 1996.

  
Morris Slavney, Arbitrator

<u>County</u>	<u>1994 Population</u>	<u>Equalized Property Evaluation (In Billions)</u>	<u>Asst. Corp. Counsel</u>		<u>Court Commissioner</u>	
			<u>Full Time</u>	<u>Part Time</u>	<u>Full Time</u>	<u>Part Time</u>
Brown	206,418	\$ 7.4	5 n/cb		3 n/cb	
Kenosha	135,449	5.3			4 n/cb	
Marathon	120,713	3.8	3 cb			2 n/cb
Outagamie	147,612	5.4	3 n/cb		3 n/cb	
Racine	181,366	6.3	6 cb	2 cb	2 n/cb	
Rock	143,108	4.3	6 cb		2 n/cb	2 n/cb
Sheboygan	107,604	3.6			2 n/cb	
Washington	102,437 (x)	No data	No data		No data	
Waukesha	323,507	19.2	6 n/cb		4 n/cb	
Winnebago	145,771	5.4	1 n/cb		2 n/cb	
Dane	389,677	15.2	17 cb (y)		8 cb	

n/cb - No collective bargaining

cb - Collective bargaining

(x) - 1993 figure

(y) - Includes 7.5 Child Support Attorneys

Percentage Differences Between State Maximum Hourly Rates  
and  
County Maximum Hourly Rates

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<u>Period</u>	<u>Dane Attys.</u>	<u>State Attys. Range 13</u>	<u>% Diff.</u>	<u>State Attys. Range 14</u>	<u>% Diff.</u>
12/84	\$ 25.66	\$ 22.97	- 11.7	\$ 25.43	- 0.9
12/85	26.56	23.89	- 11.2	26.45	- 0.4
12/87	28.34	24.96	- 13.5	27.64	- 2.5
12/88	29.19	25.97	- 12.4	28.76	- 1.5
12/89	30.10	25.97	- 15.8	28.76	- 4.6
12/90	32.67	29.45	- 0.3	32.57	- 0.3
12/91-12/92	33.87	37.60	+ 10.9	39.59	+ 16.9
12/92-6/93	34.90	38.72	+ 10.9	40.77	+ 16.8
6/93-12/93	35.26	39.80	+ 12.9	41.90	+ 18.9
12/93-6/94	35.95	39.80	+ 10.7	41.90	+ 16.6
6/94-12/94	36.49	40.79	+ 11.8	42.95	+ 17.7
12/94-6/95	37.22	40.79	+ 9.6	42.95	+ 15.4
6/95-12/95					
Asso. Offer	39.29	40.79	+ 3.8	42.95	+ 9.3
County Offer	37.77	40.79	+ 8.0	42.95	+ 13.5