In the Matter of an Arbitration between

BROWN COUNTY

and

BROWN COUNTY SOCIAL SERVICES PROFESSIONAL EMPLOYEES

Case 531
No. 50944
INT/ARB-7291
Decision No. 28221-A

Appearances:

Mr. Dennis W. Rader, Attorney, of Godfrey & Kahn, S.C.: representing the County.

Mr. Frederick J. Mohr, Attorney at Law; representing the Association.

Before:

Mr. Neil M. Gundermann, Arbitrator.

Date of Award: May 19, 1995

ARBITRATION AWARD

Brown County, Wisconsin, hereinafter referred to as the County, and the Professional Employees Association of Brown County Department of Social Services, hereinafter referred to as the Association or Union, reached an impasse in their negotiations of a contract for the years 1994 and 1995. The parties reached impasse on the salaries to be incorporated into the 1994-95 contract. The parties selected the undersigned through the appointment procedures of the Wisconsin Employment Relations Commission to hear and determine the matter in dispute. A hearing was held on February 20, 1995, in Green Bay, Wisconsin. The parties filed post-hearing briefs on April 3, 1994.

Association's Final Offer:

1994	Wage Increase:	2.89%
	Total Package:	2.56%
	No insurance increase	
1995	Wage Increase:	2.79%
	Total Package:	2.44%
	No insurance increase	

In the event that there is an insurance decrease, one-half of the amount of the decreased cost to the County as compared to 1994 will be added to the salary schedule for 1995 as an across-the-board increase in addition to the foregoing wage increase.

County's Final Offer:

1994	Wage Increase:	2.79%
	Total Package:	2.56%
	No insurance increase	
1995	Wage Increase	2.79%
	Total Package:	2.44%
	No insurance increase	

ASSOCIATION'S POSITION:

The Association contends that the statutory criteria requires the arbitrator to take into consideration changes in circumstances during the pendency of the arbitration proceedings, including only the actual costs of a package when those costs are known at the time of the arbitration hearing.

In order to compare the relative merits of the parties' positions, an examination must be made comparing the "total package cost" method demanded by the County during negotiations. The Association presents information based on actual costs, whereas the County is urging that it be allowed to rely on data which is fictitious and no longer applicable. Of relevance in this case is the determination of contributions toward medical and dental insurance for the year 1995.

Before the County was aware that the insurance premiums would decrease, it offered a total package which would require an employe to absorb the first, full 7% of any increase. Because of the uncertainty, the County sweetened this early offer by agreeing to rebate an increase of less than 7%.

During the September mediation session, it became apparent there would be no insurance increase and there was a potential decrease for 1995. At that time the Association offered to accept the County's "total package costing" method of bargaining. The Association did not demand that if insurance rates decreased the amount saved be applied to the salary schedule. Instead, the Association made the reasonable offer to split any decrease in premiums with the County, but was rebuffed.

The County's final offer provides for a total package concept of costing but ignores the decrease in insurance premiums. The County urges that a fictitious cost structure be considered as a basis for finding in its favor. To be consistent with the County's approach, no consideration should be given to any factors which changed after the County made its initial offer based on projected costs. To be consistent with the projected cost concept urged by the County, no consideration should be given to any comparable contracts which were settled after that time. Likewise, no consideration should be given to actual inflation numbers. Instead, consistency would require that all projections as of May, 1994, be the basis for an arbitration decision. Such an approach is absurd and has failed to be adopted by any arbitrator under the Wisconsin interest arbitration decisions.

The statute requires the arbitrator to rely on the best and most accurate information available when rendering a decision. Only the Association has presented actual cost data for 1995, and that data must be accepted as the basis for the arbitration decision.

The County obtained a number of settlements, however, only one of the settlements was reached after it was known that there would be a decrease in the insurance premiums. During negotiations the County insisted on total package costing which was a divergence from prior negotiations in which actual wage rates were compared. According to the County's data, the settlements reached by the County with other bargaining units disclose total package settlements for 1994 of 2.56%, and total package settlements for 1995 of 2.44%.

The Association's final offer falls within these figures; its final offer represents a total package increase of 2.64% for 1994, and 1.99% for 1995. Stated in other terms, the Association's total package increase over the two years is 4.63% or .37% under the total package increase demanded by the County.

The cost of the County's final offer is substantially less than its stated final offer cost. The County's final offer actually results in a 2.56% increase for 1994, and a 1.27% increase for 1995. The County's final offer cost is 1.17% less over the two-year period than its stated final offer and stated settlement costs for other internal comparables.

According to the testimony of its own Risk Manager, the County's contribution toward insurance premiums from its budget

are reduced by 11% and 14%, respectively. Therefore, the County's argument that its 2.79% increase in each of the years represents a total package increase of 5% over both years is a sleight of hand.

During negotiations, the County insisted upon a total package cost settlement of 5% over the two-year period. The Association's final offer of 4.63% is well below the County's demand and is more reasonable than the County's two-year total cost increase of 3.83% which results in an annualized increase of less than 2% each year.

Historically, the County has held a leadership role among the comparables; however, its leadership role has been significantly eroded since the parties' 1989-1990 contract arbitration. The evidence discloses that the County, as a percentage of comparable pool averages, in 1988 had wage rates which were 116.4% of the average. By 1993, it was 109.3%. Under the Association's final offer that figure will be 108.2% for 1994, and under the County's final offer that figure will be 108% for 1994.

At the time of the last arbitration in 1988, the top rate in the County was 16.4% above the comparable pool. In five years that leadership role has shrunk to only 9.3%. Under either final offer, the gap will be less than 9%. In terms of dollar amounts, in 1988 the County was $2.15 per hour above the comparable pool. Under the 1994 offers, the actual dollar gap will have decreased to $1.41 or $1.43 depending upon which offer is awarded.

Only one of the comparables settled for 1995, Outagamie County, and the settlement is for a 3.75% wage increase which will result in further erosion of the County's position compared to the comparables.

For 1994, the average percentage settlement among the comparables was 3.80%. The Association's final offer is .9% below the comparable settlements, establishing that its final offer is eminently reasonable.

The County's total package cost calculations are the most appropriate criterion to use when considering the Consumer Price Index (CPI) because it is based not only on wages but includes a number of factors including medical costs. As compared to the CPI, acceptance of the County's final offer results in a windfall to the taxpayers of the County at the expense of the individual employes. One reason the bargaining unit employes have lost a significant portion of their leadership role among the comparables is the absorption of increases in medical costs by employes. Now that the employes have worked with the County to successfully reduce those costs, the County wants to keep the entire windfall itself. The County's argument is inconsistent with its prior practice of requiring employes to suffer reduced wage increases when medical costs have substantially increased. The Association's final offer is consistent with the shared risks that the parties have experienced over the years.

The Association requests that its final offer be awarded.

COUNTY'S POSITION:

The County contends that the internal settlement pattern supports its final offer. Arbitrators have consistently recognized that internal settlements should be given great weight in interest arbitration cases. This is particularly true where there is a history of the bargaining unit in arbitration having

accepted internal wage settlements. In this case this bargaining unit has accepted, with the exception of an arbitration decision, the settlement pattern established for the rest of the County's employes from 1986 through 1993. Based on the Union's historical consistency with the internal pattern of settlements, it is clear that the internal comparables deserve primary consideration by the arbitrator.

It is significant to note that no other bargaining unit has received wage increases based on insurance savings. For 1994, 92% of the employes have settled, and for 1995, 62% of the employes have settled. A decrease in health insurance costs was not included in any bargaining unit's total package and no other County bargaining unit received the premium "savings" in the form of wage increases. Deviating from the internal settlement pattern by providing this unit with an additional wage increase derived from so-called insurance "savings" would have a detrimental effect on future negotiations with the County bargaining units. Arbitrators have opined that a party who wishes to break from the internal pattern of settlements must provide clear and convincing evidence to justify its proposal and the Association has failed to do so in this case.

Evidence submitted by the Association establishes that the County's Social Workers rank among the highest paid among the Association's comparables. Under either final offer, the County's Social Workers will continue to be among the highest paid among the comparables. The Association failed to establish a reasonable basis for deviating from the internal settlement pattern.

The Association should not be rewarded for stalling negotiations until after the final insurance rates were established when other bargaining units have already settled. Acceptance of the Association's final offer would undermine the integrity of the bargaining process. The County's position is that all units should share in the reduction of premiums in the same fashion.

Some of the units reached a settlement with the County when the County still believed there was going to be an increase in insurance premiums. The initial estimate was for an increase of 15% which seemed excessive and was revised to 10%. Based on that information, the County proposed and calculated a 7% increase in insurance benefits to five of the bargaining units that settled before the final cost of premiums was determined. Additional contract settlements were reached after it was known that there would be no increase in the insurance premiums; however, it was not known that there would be a decrease. There were additional settlements after it was known that there was going to be reduction in the cost of insurance premiums. None of the settlements provided for an increase in wages as a result of the reduction of the insurance premiums.

The County funds its insurance program through a self-insurance program, and the County maintains an "internal service fund" which is the equivalent of an insurance trust. The internal service fund is strictly for funding insurance and no wages can be paid out of that insurance fund. The money contributed to this fund is contributed by the County and the employes on a ratio of

95%/5% for a basic family plan and the County paying full premium for both the family and single plan for the Health Savings Plan. It is recommended that 25% of expected annual claims be reserved in the internal service fund on a continuing basis.

In mid-1994, when budgeting for 1995, the County was advised that it would have more money in the internal service fund than was anticipated. There had been a $6.8 million expense projected for 1995, but upon review of the level of the fund balance, it was decided that fund revenues of $6.3 million would suffice for 1995.

In preparing the health and dental self-insurance fund budget for 1995, it was recognized that the fund balance was more than was financially necessary. Therefore, the 1995 employer and employe contributions were reduced to allow for a $500,000 reduction in the fund balance for 1995. This resulted in a reduction in employer and employe premium contributions of approximately 11% for health insurance and 14% for dental insurance.

The County and its employes had already overpaid into the internal service fund to the tune of approximately $500,000, which could not be backed out of the fund. The benefit of overfunding is now coming back to the parties in the form of reduced premium payments in the same proportion in which the money was paid.

The Association is seeking one-half of the total temporary reduction of insurance premiums for 1995. This would result in the County paying three times for the temporary reduction. First, by the County paying in most of the monies which resulted in the

excessive revenue; second, by giving employes one-half of the reduction this year; then third, by paying for the increase next year. There is nothing in the Union's proposal that the County not pay 95% of the premium for the following years.

The County would not only be paying one-half of the insurance savings for 1995, but it would be paying the savings in the form of an increased salary forever. Had the Association proposed to take a "lump sum" savings for 1995, or taken a decrease on its portion of the health insurance premium and limited its "grab" to one year, at least some argument could be made that the proposal was a one-shot situation. Even though there is no insurance language to be included in the agreement, the result of the Union's proposal would be to memorialize the savings in higher wages which would continue forever because it would be incorporated into the salary schedule.

As to the external comparables, the County argues that the appropriate comparables were established in a prior arbitration decision and should serve as the external comparables in this case. Arbitral authority stands for the proposition that external comparables should be consistent in order to provide the parties with a degree of predictability in their bargaining. The Union has submitted no rationale for the comparables which it has proposed and which are different from those adopted by an arbitrator previously.

The County contends that its salary schedule provides Social Workers with a higher earning potential than the comparable counties. This occurs because the County, unlike some of the

comparables, does not require a vacant position exist before an employe can advance to a higher classification. Other counties require a Social Worker to have a master's degree before advancing. The County does not have such limitations.

Additionally, the County provides either one or two days per year with pay for an employe to obtain credits for advancement. A benefit offered by none of the comparables.

A comparison of total compensation demonstrates that the County's final offer is preferable to that of the Association. For 1994, under the County's final offer, Social Workers will receive between $2.60 and $6.77 per hour more in total compensation than their comparable counterparts. This is due to the superior fringe benefits provided by the County including dental benefits and paid casual or training days.

If the CPI is measured over a five-year period, from 1990 through 1995, Social Workers cumulative wages increased 18.2% under the County's final offer. During the same period the rate of inflation, as measured by the CPI, has increased by 13.9%. Under the Association's final offer, the Social Workers' wages will cumulatively increase by 19.03% compared to the increase in inflation of 13.9%.

The County respectfully requests that its final offer be awarded by the arbitrator.

DISCUSSION:

Although both parties make reference to external comparables and the cost of living as measured by the CPI in their respective arguments made in support of their positions, the fundamental

issue in this case involves the County's insistence on using the total compensation approach to bargaining, and, the subsequent effect that a reduction in the insurance premiums should have on such an approach.

There is inherently nothing wrong with using the total compensation approach to the bargaining process. Such an approach more accurately reflects the total cost of labor to the employer, and, the total compensation received by the employes. Such an approach can also more accurately reflect the emphasis the comparables may have placed on wages and fringe benefits. There are circumstances when a bargaining unit may be more interested in either wages or fringes based on the desires of the parties. A comparison of wages only fails to reflect the cost of fringe benefits, and therefore fails to accurately reflect the total labor costs to the employer and the total compensation received by the employes. It would seem that total costs would be a more accurate means of portraying wages and fringes for the purpose of comparing the total compensation of the comparables.

At issue in this case is: (1) the County's representation of total package costs; and (2) how the reduction in insurance premiums should be treated in the context of total package costing.

In computing its final offer total package costs for 1995, the County reflects no additional cost for health or dental insurance, continuing the cost based on the 1994 cost, $286,739.16 for health insurance and $37,752 for dental insurance. While the County asserts it used this method of costing other packages, this

method fails to reflect the actual package cost. It fails to reflect the $500,000 reduction in insurance premiums the employes and the County will have to pay in 1995 or the prorated savings for this bargaining unit as a result of the reduction in insurance premiums. Thus, the County's total package costs fail to reflect the actual cost of its final offer.

The County costs its final offer total package for 1995 at 2.44%, while the Association costs the County's final offer package for 1995 at 1.27%. The difference is due to the County costing its insurance premiums as being the same in 1995 as in 1994. The Association's costing reflects the reduction in insurance premiums for 1995. The fact that the County has costed all its settlements with a zero increase in insurance for 1995, rather than actual reduction, doesn't alter the fact that the actual costs were known to the parties at the time of the hearing. The undersigned is of the opinion that the total package costing of both final offers done by the Association more accurately reflects the actual costs and is the preferred method of costing the final offers.

This means that the County's total package cost, as stated in percentages, is 1.27% rather than 2.46% as asserted by the County. The County contends the costing should have no impact on the selection of a final offer arguing that the costing of its final offer for this bargaining unit was done in the same manner as the costing of the internal settlements voluntarily negotiated; and, the information regarding a reduction in the insurance benefits was not known when a majority of the other settlements were

negotiated. While these assertions may be true, this does not negate the fact that its final offer package costing for this unit fails to actually portray the costs of the package to the County.

The second issue to be addressed is the impact this difference in the costing of the final offers for 1995 should have on the selection of a final offer. The Union proposes that half of the savings resulting from a reduction of insurance premiums for 1995 be added to the salary schedule, in addition to the 2.79% increase contained in both final offers. The County is opposed to such an approach.

The County claims that if the Association's final offer is accepted the Association would be rewarded for delaying reaching an agreement, and, that the County would be paying for the one-time insurance reduction forever. The undersigned is not in a position to assess blame for the parties' failure to reach an agreement in a more timely manner. Thus, the undersigned cannot accept the County's argument that this bargaining unit would be rewarded for being dilatory in reaching an agreement if its final offer is accepted. The other argument advanced by the County is more persuasive, i.e., that the County would be paying for the insurance savings in perpetuity as the savings would be incorporated into the salary schedule without any compensating reduction in the event the premiums increased at some future date.

Unquestionably, the County received a temporary reduction in its costs for insurance. The reduction was more significant to the County as it contributes 95% of the family plan premium and 100% of the single plan premium.

The Association's desire to participate in this reduction in some meaningful way is not unreasonable. The Association argues that in prior bargaining, when the total package approach to bargaining was demanded by the County, bargaining unit members were charged with insurance premium increases which effectively reduced the amount of wage increases the employes received. Therefore, the Association asserts, when there is a reduction in the insurance premiums, the employes should share in that reduction. The Association's position has merit. However, the approach proposed by the Association presents a problem.

Specifically, by applying half of the reduction in the insurance premiums to the salary schedule the Association's final offer converts what may be a temporary savings into a permanent savings for the employes. The amount added to the salary schedule would be permanently part of the salary schedule under the Association's final offer and would provide no mechanism for removing the monies from the salary schedule if in subsequent years the insurance premiums increased. The Association could have achieved its objective of sharing in the savings resulting from a reduction in insurance premiums for 1995 by proposing a lump sum payment for 1995 equal to one-half of the insurance premium reduction. The Association may have concluded that by seeking only one-half of the savings its position would be more acceptable to the County; however, the savings would be made permanent to the extent the savings were incorporated into the salary schedule.

Although the undersigned accepts the Association's costing of the respective final offers, the undersigned is not persuaded that the Association's proposal to incorporate one-half of the reduction in insurance premiums into the salary schedule is an appropriate means by which to share in a temporary reduction in insurance premiums. Therefore, the undersigned must award in favor of the County's final offer. Based on the above facts, discussion thereon, and consideration of the applicable statutory criteria the undersigned renders the following

AWARD

That all previously agreed to items and the County's final wage offer be incorporated into the 1994-95 collective bargaining agreement.

Neil M. Gundermann, Arbitrator

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