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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

BEFORE THE ARBITRATOR

In the Matter of the Petition of

LOCAL 1947, AFSCME, AFL-CIO

To Initiate Arbitration
Between Said Petitioner
and

Case 112
No. 52142 INT/ARB-7543
Decision No. 28451-A

MONROE COUNTY

Appearances:

Daniel Pfeifer, Staff Representative, appearing on behalf of
the Union.

Ken Kittleson, Personnel Director, appearing on behalf of the
Employer.

INTEREST ARBITRATION AWARD

Local 1947, AFSCME, AFL-CIO, (herein "Union") having filed a
petition to initiate interest arbitration pursuant to Section
111.70(4)(cm), Wis. Stats., with the Wisconsin Employment Relations
Commission (herein "WERC"), with respect to an impasse between it
and Monroe County (herein "Employer"); and the WERC having
appointed the Undersigned as arbitrator to hear and decide the
dispute specified below by order dated July 13, 1995; and the
Undersigned having held a hearing in Sparta, Wisconsin, on
September 18, 1995; and each party having filed post hearing
briefs, the last of which was received October 31, 1995.

ISSUES

The parties final offers constitute the statement of the
issues. This dispute is with respect to the collective bargaining
agreement for calendar 1995 and 1996. The following is my summary
of the issues in dispute.

1. Health Insurance Employee contribution: Article 15 currently
provides that the employee's contribution to health insurance
premiums is: 13% or \$28.00 of the single health insurance monthly
premium, whichever is less. 13% or \$66.50 of the family health
insurance monthly premium, whichever is less. The Employer
proposes to increase this to \$31 and \$75, respectively, for
December 1, 1995, for the January 1, 1996, premiums. The Union
proposes no change in the current agreement.

2. Retirement Contribution: Article 20 currently requires the employer to pay the employee's Wisconsin Retirement Fund contribution of 6.2%, which was the full contribution required by the fund during the term of the contract. Effective January 1, 1996, the contribution requirement for both employee and employer will increase to 6.5% each. The Union proposes that the Employer increase its payment of the employee's contribution to 6.5%. The Employer proposes to keep the employer's pick up of the contribution at its current contract level.

3. Wages: The Union proposes a 3.25% across-the-board increase effective January 1 of each year of the agreement. The Employer proposes a 2.5% across-the-board increase effective January 1 of each year of the agreement.

POSITIONS AND DISCUSSION

Under Sec. 111.70(4)(cm), Wis. Stats., the arbitrator is required to select the total final offer of one party or the other, without modification. The arbitrator is required to make that determination by reviewing the offer of each party in the light of standards specified in the statute. Those standards are:

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

The weight to be given any one issue in a party's final offer or any one standard is left to the discretion of the arbitrator.

1. External Comparison Group

a. Positions of the Parties

The Employer relies upon the following counties and cities for its external comparison group: Buffalo, Crawford, Jackson, Juneau, La Crosse, Pepin, Richland, Sauk, Trempealeau, Vernon, and Wood Counties and Cities of Sparta and Tomah. The Employer argues that both parties agreed to use these as comparables in a dispute with the highway department decided by Arbitrator Reynolds in 1990, and that the Union should not be permitted to change the agreed upon comparable pool. The Employer argues that its based its selection of the comparison group not only upon geographic location, but population, property tax rates, equalized valuation, per capita income and adjusted gross income. The Employer also argues that the Arbitrator should take into account the recent budget amendments requiring that the arbitrator give equal weight to private sector comparisons. The Employer uses the 1995 wage summary prepared by DILHR for the Western Wisconsin Service Delivery Area (many of the same comparison counties as used by the Employer).

The Union takes the position that it agrees with the Employer's proposed list of comparable public employers, except for Buffalo and Pepin Counties which are not contiguous and which are much smaller counties. The Union also argues that, Buffalo, Pepin and Crawford Counties do not have a nursing home and, therefore, they have no employees in comparable classifications and the nursing home at Trempealeau is not organized and should, therefore, not be considered. The Union also notes that Trempealeau County refused to provide any wage or other data to the Union. The Union

admits that the parties did agree to the use of the Employer's comparability pool in a 1990 case before Arbitrator Reynolds, but that case involved the highway department and Arbitrator Reynolds did not actively establish a comparability pool.

b. Discussion

The use of external comparisons to Buffalo and Pepin Counties has very little meaning in this unit in that those employers do not have medical care facilities. They do have a bearing with respect to other aspect of wages and benefits uniform to all public employees. The Employer has a legitimate substantial interest in uniformity of its benefit system and, accordingly, I would give substantial weight to the determination as to this issue by arbitrators in units more directly affected by the outcome. In a 1990 case in the highway unit the parties agreed to use those counties and Arbitrator Reynolds adopted that agreement. Both counties are the most geographically remote of the Employer's comparison group. I note Pepin is substantially smaller both with respect to area and population. Buffalo is the next smallest in the Employer's comparability group, but Sauk and Crawford are about the same size. Both share comparable equalized value per capita with Monroe County, but the two have significantly smaller property tax bases than any of the other comparables. Pepin's personal income history since 1969 has usually, but not always, closely paralleled that of Monroe County. Buffalo County has a much higher personal income than any of the comparables agreed to by the parties, except La Crosse. Buffalo is included in the same area with Monroe for statistics provided by the Department of Industry, Labor and Human Relations. Under these facts, I have included Buffalo County, but not Pepin County.

2. Retirement

a. Positions of the Parties

The Employer "notes for the record" that an increase in pension was not discussed during negotiations and first arose as an issue when the Union filed the petition for arbitration. The Employer has traditionally paid the employee's 6.2% and the Union has not offered a quid pro quo for the change in status quo. It argues that the proposed increase constitutes a \$15,652 total package increase and is not warranted for the reasons discussed below.

The Union concedes that it first raised this issue in the investigation, but it notes that the Employer did not raise an objection to the issue being raised at that time and first raised the issue at the hearing herein. The Union relies upon comparison to other comparable public health institutions. It notes that all those employers either pay the full contribution or have agreed to pick up the increase, except La Crosse and Vernon which are open

for negotiations in 1996, and Sauk County which settled in February, 1995, which was before they could have been aware of the increase. The Union notes that this increase did not affect protective service employees and, therefore, could not have been an issue in the Sheriff's unit settlement.

b. Discussion

An objection to an issue in a final offer is a matter appropriately addressed to the WERC investigator during the course of the investigation of the petition for arbitration. The Employer did not raise that objection to the WERC. The fact that a matter was not raised in negotiations is also an "other factor" which is ordinarily considered in collective bargaining. Ordinarily arbitrators should be unwilling to adopt positions not discussed in collective bargaining; however, under the facts of this case, I am satisfied that the Employer had an adequate opportunity to discuss this specific issue. The Union indicated that the increase in the Wisconsin Retirement System contribution was not announced until shortly after February, 1995. The WERC's findings in this case indicate that the petition for interest arbitration was filed January 20, 1995, with the investigation in April, 1995. The proposal for an increase in retirement contribution is a purely economic issue. It does not involve sophisticated administration. It constitutes a reasonable form of alternative distribution of an appropriate total package increase and the parties had a full opportunity to discuss it during the investigation and mediation by the WERC. Under these circumstances, the Employer had an adequate opportunity to discuss this issue.

The Union's comparisons to other counties' indicates that the issue has not yet been addressed by La Crosse which is negotiating for 1996. Richland and Wood Counties automatically picked up the increase and Sauk County settled its agreement before the increase was adopted. The Union is correct that the trend among comparable counties tends to favor its position, but it is too early to tell. The sheriff's unit is under a separate retirement system and is not affected. The Union's position is favored on this issue.

3. Health Insurance

a. Positions of the Parties

The Employer argues that the agreement has specified that the employee pay 13% of the monthly health premium to a specified limit for many years. Historically, the parties have adjusted the dollar limit so that employees have paid 13%; thus, the Employer's position constitutes status quo and the Union has not offered a quid pro quo to change the status quo.

The Union relies upon comparisons to health insurance contributions among comparable public health institutions. It

notes that all five for which information is available pay the full single premium and four of the five for which percentage information can be computed pay a greater percentage of the family plan than Monroe County. All of these employers offer at least one plan in which they contribute more to the family premium than the Employer here contributes. It concedes that the Employer pays more for its single plan contribution than other counties. The Union also takes the position that it is inappropriate to raise the caps every year because they would effectively become meaningless.

b. Discussion

Employer exhibit 13 demonstrates that since 1983, with rare exceptions the parties have adjusted the expressed employee maximum contribution so that the employee contribution has continued at about 13%. The current maximums exceed the amount the employee's are actually contributing, but not by enough to meet the likely insurance premium increase and maintain the 13% contribution. The Union is not entirely correct that regularly increasing the maximums would leave them without meaning. The Employer's position is strongly supported by this practice and the Sheriff's department settlement.

Currently slightly more than half of the unit employees who receive a health insurance benefit, receive the family plan health insurance benefit. Of the 10 external comparable counties, all but 5 pay the full single premium, 3 pay 95% or more, the other two pay about 90% of the single premium. 4 pay 95% or more of the family premium, 1 pays 91.5%, 1 pays 88.9%, 3 pay 80 to 83%, 1 pays 75%.

The Employer changed carriers effective for 1995. Its 1994, monthly premiums were \$208.90, single; \$515.98 family. The change resulted in a very moderate increase in single premium and a \$25 per month reduction in the family premium. The 1995, premiums are \$212.06 (single) and \$490.79 (family).

The Union offered the following comparisons for the 1995 year

	single	family
Jackson	\$165.00	\$410.00
Juneau		
(WCA)	175.80	497.84
(HMO)	157.58	445.95
La Crosse		
(reg.)	170.38	454.41
(Mon.)	140.12	372.44
Richland		
(WCA)	241.12	627.12
(HMO)	195.63	525.24

Sauk

(Dane)	158.27	427.32
(HMO)	164.84	436.83
(WCA)	202.69	498.63
Vernon	185.75	464.13
Wood	236.86	592.14

Thus, Monroe still has one of the higher single and family premiums. There are no private sector comparisons on this issue. These external comparisons do not make a compelling case for changing the parties current practice. Indeed, reducing the employee's percentage contribution in 1996, may be counter-productive in the effort to hold down the size of premium increases. Accordingly, the Employer's position is favored on the health insurance issue.

4. Wages and Total Package

a. Positions of the Parties

The Employer argues that its proposal with respect to wages is consistent with all of the offers it made to other units of the county. It argues that internal comparisons support its position in that its offer was accepted by the sheriff unit and the unrepresented "unit". This offer will maintain the unit's status among comparable unit's and the unit's substantial lead over private sector comparisons. The Union's offer would be burdensome on taxpayers.

The Employer argues that the arbitrator should give weight to recent changes and attempts to change Sec. 111.70(4)(cm), stats., and should give heaviest weight to private sector comparisons. It offers the Department of Industry, Labor and Human Services, wage survey for the Western Wisconsin service delivery area to demonstrate that it pays its employees well by comparison to the private sector. DILHR has designated this statistical area as a "low wage" area. From this survey, it argues that Union employees exceed private rates by \$1 to \$2 per hour. It argues that its offer should be adopted on this basis.

The Employer asserts that wage rates in this unit are near average for the comparables. The Employer challenges the Union's use of wage rate comparisons to the Developmental Disabilities Technician and Psychiatric Technician at the Wood County Norwood institution, as shown on Union exhibit 12. It argues that Wood County employs nursing assistants at that institution and that nursing assistants should be compared to nursing assistants at Rolling Hills. Accordingly, the Employer argues that Union exhibit 12 is unduly inflated and should not be given any weight. The Employer notes that based upon its exhibits the nursing assistant starting rate is 3.6% below average and slightly above average at

the maximum rate. The LPN is slightly above average at the minimum rate and 6.8% above average at the maximum rate. Thus, in its view, evidence shows that the rates which were voluntarily negotiated are essentially comparable to other public sector rates.

The Employer also notes that per capita income in Monroe County is one of the lowest among comparable counties and the property tax per capita base is generally the same as other rural counties. It believes that this is a factor dictating wage restraint.

The Employer notes that in assessing the impact of the total cost the three issues presented here must be considered as a whole. The Employer argues that total package costing may be unfair to it because of the savings which accrued to it in 1995 with respect to health insurance. Thus, the Employer's 1995, offer is 1.88% total cost. The Union's offer for 1996, is an unreasonable 4.45% total cost because it contains a limitation on employee health insurance contribution and retirement increase.

On November 1, 1995, shortly after all of the briefs filed in this matter were mailed by the parties, the Employer submitted a copy of the arbitration award by Arbitrator Oestreicher in the professional social worker unit for the 1995-6 contract term. It later submitted the arbitration award for the social service non-professional unit. It argued that these awards should be admitted because they are public record and should be given whatever weight the arbitrator deems appropriate.

The Union offered wage comparisons to other public health institutions in the positions of nursing assistant, LPN, cook and housekeeper. It notes that the vast majority of employees in the unit are nursing assistants and, thus, that position should be given heaviest weight. It argues that Norwood should not be excluded from these comparisons just because it is a wage leader.

Based upon these wage comparisons, it concludes that Monroe County pays its nursing assistants at about the average of the comparables. The Union argues that exhibit 12 should be given weight in that the Developmental Disabilities Technician and Psychiatric Technician positions both require a nursing assistant certification and duties similar to nursing assistants in this bargaining unit.

The Union also notes that LPN's are paid slightly less than average. However, Cooks receive \$.88 per hour less at the minimum and \$.43 per hour less at the maximum than average. Housekeepers are underpaid \$.51 less at the minimum and \$.23 per hour less at the maximum when compared to the wage rates at other comparable public health facilities. The Union notes that some other institutions have longevity benefits which should be considered in making wage comparisons.

The Union argues that the arbitrator should give less weight to the Employer's wage comparisons because some counties have two homes. The Employer only included the lower paying homes of those counties in its comparisons. The Union also objects to the Employer's use of DILHR data because it includes private sector information and because there is no comparison of job duties. Alternatively, the vast majority of cooks are in the pay range \$7.00 to \$9.99, while Monroe's 1994 cook pay range was \$6.12 to \$7.96. Similarly, the vast majority of LPN's are in the \$10 to \$11.99 range, while Monroe's 1994 LPN rate was \$9.53 to \$11.42.

The Union notes that four of the nine comparable counties have longevity and Monroe County is not a leader in vacation. Thus, the total compensation criterion favors the Union's position.

The Union also heavily relies upon comparison to the average wage rate increases for other public sector health institutions for 1995. (There is insufficient data for these institutions for 1996.) All of these institutions settled for wage increases of 3% or better, with an average of 3.8%. The Union also relies upon the Non-metro Area Urban Wage Earners and Clerical Workers CPI indexes for December 1994 and 1995. It notes that the total change is 3% and 3.8%, respectively. It argues that its annual wage increase more nearly meet this criterion than the Employer's. In the alternative, it would argue that if the same comparison were to be made on the basis of total package, the Union's position would still be more preferable.

The Union disagrees with the Employer's position that a settlement pattern exists. The unrepresented employees do not have collective bargaining and, therefore, have not negotiated anything. The sheriff unit settlement is not comparable because they did not have an increase in pension contribution and because it is only 30 employees (11% of county employees).

The Union also argues that from 1989 to 1993, Monroe County per capita income increased by 21.3%. From 1994 to 1995, it had a property value increase of 6.6%. From 1993 to 1994 Monroe County reduced its property tax rate from 6.76% to 6.59%. Thus, it denies that its offer is unduly burdensome to taxpayers. Crawford, Juneau, Richland, and Vernon Counties also suffered equal or greater reductions in incomes, but gave wage increases comparable to the Union's.

After the briefs were mailed, the Employer submitted the arbitration awards involving the social service professional and another award involving the non-professional unit. The Union objected to the admission of these awards on the basis that the record was closed prior to the preparation of the exhibits.

b. Discussion

The vast majority of employees in this unit are nurse's assistants (93), most of whom are full-time. There are about 15 each of the LPN's, cooks and housekeepers. More than half of the LPN's are part-time. In view of the structure of the unit, the heaviest weight in wage-rate comparisons is appropriately placed on the nursing assistant position, followed by the other three positions.

The Union heavily relied upon 1994 wage rate comparisons to "average" wage rates in organized public sector health institutions in the comparable counties. Some counties have separate facilities. For example, Wood has its Norwood and Edgewater facilities. Norwood apparently has some dangerous patients. The Union's comparison shows that these counties pay significantly more for the same jobs in one facility than the other. The Union has counted these counties twice in the averages. Additionally, Wood County generally pays very well by comparison to all other counties and consistently pays about \$1.50 per hour more at its Norwood facility than any of the other comparison counties. Wood County has a significant interest in paying above the prevailing market because of the effect of the Marshfield Clinic facility. The result of this form of analysis is to skew the averages in favor of the Union. By comparison, the lowest paying county, Jackson County, which has a low starting wage for all, but the LPN position, does not significantly skew the results of the comparison.

The result of this form of analysis is apparent in the Union's nursing assistant comparison. Monroe pays its nurse's assistants \$6.99 to start and \$8.15 maximum. The "average" of the Union's data shows \$6.87 start and \$8.16 maximum, but without Norwood and Jackson, the averages are \$6.71 start and \$7.87. Even taking into account longevity, nursing assistants at Monroe are paid well in comparison to these averages.

The Union also used the wage rates for Developmental Disabilities Technicians and Psychiatric Technician at Norwood instead of their nursing assistant position. Both of these positions require state nursing assistant certifications and share many of the duties of the Monroe County Rolling Hills Direct Care Provider (nursing assistant). The major difference between the Norwood and Monroe positions is that both Norwood positions essentially require that the occupant work as a part of the team to effectively intervene with acting out, assaultive or self-abusive residents. The Union's exhibits also indicates that Wood County does not employ LPN's at any of its facilities. It is, therefore, quite possible that Wood's positions may have a higher level of responsibility. These distinctions ordinarily merit higher pay. Accordingly, the evidence is insufficient to conclude that the two positions are comparable.

When one looks at the 1995 "private sector" data provided by

the Employer, data is included for about 1,100 nursing assistants, including private and public sectors. About half of the employees are paid in the \$6.00 and \$6.99 and slightly more than half at \$7.00 to \$7.99. This data tends to show that Monroe County's nursing assistants are probably well paid in comparison to the private sector.

A related situation occurs when looking at Union exhibit 13, wage comparisons for LPN's. The average shown there is \$9.55 start, \$11.55 maximum. Monroe pays \$9.53 start, \$11.42 maximum. As noted, Wood County does not employ LPN's. Sauk County pays its LPN's \$12.04 start to \$16.86 maximum. Monroe's starting wage is higher than every other comparison. Monroe's maximum rate is generally close to the rates paid by the highest paying counties besides Wood, even considering longevity. The private sector information shows that about 36% of the 117 LPN's reported were paid in the \$8.00 to \$9.99 range, 74% were paid in the \$10.00 to \$11.99 range. This suggests that Monroe County is comparable to the private sector. The available evidence is that Monroe's LPN's are well paid by comparison to other LPN's.

Monroe pays its cooks \$6.12 to start, \$7.96 maximum. Excluding Jackson's starting wage and Norwood, the averages are \$7.00 start, \$8.13 maximum. The private sector information submitted by the Employer tends to indicate that cooks here are paid better than in the private sector.

The Union offered data showing that for 1995, all of the 7 comparable counties reporting data gave wage increases in the range of 3% to 3.75%. There is insufficient data for 1996. This information uniformly favors the Union's 1995 wage position. There is no evidence as to private sector increases.

The Employer presented the total cost information. These figures are appropriately considered with the previous years CPI-W change. They are as follows

		Er.	Un.	yr.
Dec. 1994 CPI-W non metro areas	3.0%	1.88%	2.55%	'95
Dec. 1995 CPI-W non metro areas	3.8%	3.45%	4.45%	'96

By direct comparison, the first year heavily favors the Union, while the second year slightly favors the Employer. However, it is very important to note that the Employer's change of health insurance carrier is essentially the controlling factor for the first year. The savings by changing carrier reduced the Employer's total package by .35%. The health premium here is still one of the higher premiums paid among comparable counties.

Shortly after the briefs were mailed by the parties, the Employer submitted a copy of Arbitrator Oestreicher's award involving the same parties, but in the social service professional unit for the same term. The award was filed after the agreed upon

date for closing the record and, therefore, was not properly admitted to evidence. The Employer later submitted the arbitration award by Arbitrator Mc Alpin involving the non-professional social service unit. That award is not admitted.

The Employer has heavily relied upon the fact that it unilaterally implemented its position with its non-represented employees and that the sheriff's unit settled for the same offer it is making to this unit. Since 1989, every bargaining unit of the county has settled for the same final percentage amounts. While there has been a high degree of internal consistency, the fact that the Employer has unilaterally implemented a consistent package with its non-represented employees does not bear any weight in this proceeding. The Union is correct that the sheriff settlement ought not be determinative in this case. That is true because this unit is the largest county unit, the sheriff unit was not affected by the change in retirement, this unit has different revenue source considerations and this unit has substantial competition from the private sector.

The wage increase proposed by the Employer for 1995, is clearly less than that implemented by comparable public employers. It is likely to be less than that offered by the same employers for 1996.

However, under the facts of this case, I believe the offer of the Employer is to be preferred. Most of the wage rates in this unit are highly competitive with comparable public employers' and with the private sector. Under the offer of the Employer they will retain their essential position. Accordingly, the offer of the Employer is adopted.

AWARD

That the final offer of the Employer be adopted for the parties' collective bargaining agreement.

Dated at Milwaukee, Wisconsin, this 30th day of December, 1995.


Stanley N. Michelstetter II
Arbitrator