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In the Matter of an Arbitration between

FLORENCE COUNTY BOARD OF SUPERVISORS

and

HUMAN SERVICE EMPLOYEES ASSOCIATION OF FLORENCE COUNTY

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Case 31
No. 52156
INT/ARB 7620
Decision No. 28546-A

Appearances:

Mr. Robert W. Burns, Attorney, Godfrey & Kahn, S.C.; representing the County.

Mr. Patrick J. Coraggio, Labor Consultant, Labor Association of Wisconsin, Inc.; representing the Association.

Before: Mr. Neil M. Gundermann.

Date of Award: April 17, 1996.

ARBITRATION AWARD

The Florence County Board of Supervisors, Florence, Wisconsin, and the Human Service Employees Association of Florence County, hereinafter referred to as the Association, reached an impasse regarding certain terms and conditions to be included in their 1995-1996 collective bargaining agreement. The parties selected the undersigned from a panel provided by the Wisconsin Employment Relations Commission to hear and determine the matter in dispute. A hearing was held on February 9, 1996, in the Florence County Courthouse in Florence, Wisconsin. Post-hearing briefs were exchanged through the arbitrator on April 1, 1996.

Association's Final Offer:

APPENDIX B

	Effective 1-1-95 (2.5%)	Effective 1-1-96 (3.5%)
James Dunkel Social Worker III	2745.16	2841.24
Janell White Clerk IV	2110.03	2183.89
Cheryl Neuens Economic Support	1665.37	1723.66

County's Final Offer:

APPENDIX B

	1-1-95	1-1-96
James Dunkel Social Worker III	2735.95 (2.2%)	2818.83 (3.0%)
Janell White Clerk IV	2100.13 (2.0%)	2159.78 (2.8%)
Cheryl Neuens Economic Support	1663.36 (2.4%)	1718.76 (3.3%)

BACKGROUND:

The parties' collective bargaining agreement contains two appendices relating to the salaries to be paid bargaining unit employes, Appendix A and Appendix B. Appendix A, which consists of four steps, a hiring rate, a 6-month rate, a 12-month rate and a 24-month rate, is the salary schedule for employes who are on the "regular" salary schedule. There are three employes who are paid in excess of the salaries contained in Appendix A and these employes have been placed on what is designated as Appendix B.

For the 1995-1996 contract, the parties have agreed to a 2.5% increase for 1995 and a 3.5% increase for 1996 for those employes

on Appendix A. In calculating the increases for Appendix A employes, the parties applied the percentage increases to the first and second step of each classification to arrive at the dollar amount for each classification in those steps, and then applied the step II dollar amount to steps III and IV for each classification.

The parties could not agree on the method to be followed in determining the dollar amount of the increases to be granted the Appendix B employes. The Union's final offer represents an increase in the salaries of Appendix B employes of 2.5% for 1995 and 3.5% for 1996 arrived at by applying those percentages to the previous years' salaries for each of the three employes. The County's final offer provides that the dollar amount applied to Appendix B employes would be the same dollar amount applied to the to the second step of the classification on Appendix A.

When the parties were unable to an reach agreement, the matter was submitted to arbitration.

ASSOCIATION'S POSITION:

It is the Association's position that its final offer is the more reasonable of the final offers before the arbitrator taking into consideration the appropriate statutory criteria. A review of the final offers establishes that the only issue between the parties involves the salaries to be incorporated into Appendix B.

The Association notes that it agreed to the establishment of the new classification Social Worker I with a starting rate $200.43 lower than the starting salary for a Social Worker II. This affords the County an opportunity to save money in the employment of social workers in the future.

The County has reached an agreement with its represented and non-represented employes for an increase of 2.5% for 1995 and 3.5% for 1996. Thus, there is no issue regarding the County's ability to pay the same increase for the employes on Appendix B that it has agreed to pay those employes on Appendix A. The total difference in the final offers for employes on Appendix B is $1,051.20. The Director of the Department, Robert J. Macaux, reluctantly testified that he was able to return $112,000 to the County in 1995.

It is noted by the Association that a long-term employe resigned and her duties were divided among the remaining employes with Janell White's work load receiving the greater portion of the work previously performed by the employe who resigned. In response to White having assumed a greater work load, the County has offered White an increase which is less than the cost of living and less than what the employe who resigned would have received if she had continued her employment with the County. The County has made no effort to replace the employe who resigned.

The Association also asserts that its proposed comparables are more reasonable than the comparables proposed by the County because the Association has included contiguous counties as well as other agencies within the immediate area. There has been no prior arbitration proceeding between the parties, thus there is no established group of comparables to which either party can point. The Association proposes the following comparables: Forest, Iron, Langlade, Lincoln, Marinette, Oconto, Oneida, Price and Vilas.

The total increase agreed to by the parties for 1995 and 1996 is 6%. For Appendix "B" employes the County has proposed increases

ranging from 2.0% to 2.4% for 1995, and from 2.8% to 3.3% for 1996. Additionally, employes in other bargaining units were offered additional compensation for uniform allowances and additional time off not offered employes in this bargaining unit.

There has been a gradual phasing out of Appendix "B" employes. Originally there were five employes on Appendix "B" and now there are only three. The County's intent to reduce the amount of increase for Appendix "B" employes in the manner proposed by the County represents an attack upon the employes and serves to diminish their morale in a small agency.

Arbitrators have consistently subscribed to the theory that internal wage patterns should not be disturbed. The County has offered an increase of 2.5% for 1995 and 3.5% for 1996 for represented and non-represented employes. Those increases granted to represented employes were the result of collective bargaining where the parties reached voluntary settlement. There is no justification for granting Appendix "B" employes a lesser increase than that which has been granted to all other employes.

It is undisputed that the arbitrator's role in this proceeding is to select the final offer which best reflects where the parties would have settled voluntarily if they had been able to do so. The pattern of voluntary internal settlements in this case provides unquestionable support for the Association's final offer and avers that it be accepted by the arbitrator.

Whenever it is argued that a group of employes are entitled to a larger increase due to being below the average wages, the employer typically argues that someone must be below average, and,

even if the employer recognizes that the employes are below the average, that the difference cannot be made up in a short period of time. Arbitrators have frequently accepted both of these arguments.

Such arguments should be given equal weight when the Association is defending its above average wage position. It is frustrating to the Association that it is forced to arbitrate a dispute in which the difference between the parties comes to the paltry sum of $1,051.20. This frustration is compounded by the fact that the Association has made concessions regarding Appendix "B" employes in the past. As a result of those concessions, those employes whom the County regarded as overpaid were placed on a separate salary schedule which ends when the employes terminate their employment with the County.

When taking into consideration the overall level of compensation received by employes in the bargaining unit, the evidence establishes that in some areas the employes are better off than their peers while in other areas they are equal to or below the total compensation received by their peers. One benefit which the employes do not enjoy but which is enjoyed by comparables is longevity pay. This a benefit received by almost all of the comparables.

Another area where the employes are behind is the area of health insurance where the employes have agreed to contribute 5% of their health insurance premium, a higher percentage than in most of the comparable counties. While the Association concedes that employes of other counties contribute to their health

insurance premiums, the contribution by employes in this bargaining unit does not place the employes in a superior position compared to other employes.

Although the County may seek to draw attention to the private sector, the Association contends that any such attempt would be misplaced as there are no real comparables. Any attempt to compare White's position to positions in other counties is also misplaced without job descriptions for those positions to which her position is being compared.

For all of the above reasons, the Association requests that the arbitrator award its final offer.

COUNTY'S POSITION:

The County submits that the appropriate comparables in this case include the following counties: Forest, Langlade, Marinette, Oconto, Oneida and Vilas. These are the counties which other arbitrators in disputes involving other counties have deemed to be comparable and should be adopted by this arbitrator. The Association has proposed the inclusion of Lincoln but that county has not been grouped with the County in other groupings of comparables.

According to the County, the parties' historical settlement pattern supports its final offer. Since the inception of the reversed Appendices, the wage increases for the pertinent schedules have been as follows:

	1991	1992	1993	1994
Appendix A	3%	83.33	3.5%	3.5%
Appendix B	3%	83.33	3.0%	3.0%

For the past three years the Association has agreed to offers which are similar to the County's offer currently on the table. The Association has not given a clear and plausible reason why the parties should deviate from the established settlement pattern. It is a longstanding principle that the voluntary bargaining package of the parties should be respected. See Pacific Gas & Electric Co., 7 LA 529 (1947).

The Union claims its employes want to be treated "fair" and the same as other employes. However, granting the same percentage increase offered to Appendix A employes clearly cannot represent fairness when it results in more dollars to Appendix B employes--especially when the employes on Appendix A perform the same job duties as those listed on Appendix B and earn less to start with. That, in light of the established settlement pattern, should lead the arbitrator to find the County's offer preferable.

Association Exhibit 12 outlines wages paid to comparable County Social Workers III. James Dunkel, an Appendix B employe, is the highest paid among the Association's comparables. For 1993, 1994 and 1995, Dunkel received increases, under either of the final offers, in excess of the increases granted in the comparables for that time period. He is, and will continue to be, the highest paid Social Worker III among the comparable counties under the County's final offer. His wage rate is $3.00 above the average. There is no reason to apply a percentage that results in additional monies on top of a salary which is already above the comparables internally as well as externally.

Ms. White, who is classified as a Clerk IV, has been with the County since February, 1973. Prior to her current position, she was a stenographer. At the hearing the Association appeared to be claiming that White is entitled to a higher increase because she has been given "additional" tasks as a result of the resignation of another employe. This case is not a reclassification grievance. Thus, the Association's argument on job duties is irrelevant to the issues in this final offer arbitration.

According to the County, White is already paid well above the average for her job classification, and she is also the highest paid of any employe in a similar classification among the comparables. Under Appendix A, only one county pays an employe in a classification similar to a Clerk IV a higher salary, and White's salary is above that paid to a Clerk IV on Appendix A.

When comparing the Clerk IV position to deputy clerks of comparable counties, the County ranks well above the average, especially considering White's salary. Even if the arbitrator determines that White's job responsibilities have increased as alleged by the Union, there is no justification for the Association's offer when reviewing the comparables and the internal settlement pattern.

The last position on Appendix B which is in dispute is that of Economic Support occupied by Cheryl Neuens. The Economic Support position in the comparables shows an average of $10.47, while Neuens will receive a minimum of $10.97 under the County's final offer. Only Oconto and Marinette pay more than Neuens will receive under the County's final offer.

Significantly, both Appendix A and B employes' wages are higher than those received by Dane County personnel and the private sector. While the County is not contending that Dane is a comparable county, it is a large metropolitan employer and illustrates the problem recognized by the parties to the instant dispute when they "froze" any future progression onto Appendix B.

It is asserted by the County that information provided by the Department of Industry, Labor and Human Relations establishes that both the County's Clerk IV and Social Worker III classifications are compensated at a higher wage than those paid by the private sector.

The County further argues that its relative status among the comparables will not deteriorate by acceptance of its final offer. It will continue to exceed the average for a Social Worker III on Appendix A by $1.12, for Clerk IV on Appendix A by $1.38; and for Economic Support on Appendix A by $.37. For those employes on Appendix B, Dunkel will receive $3.01 above the average, White will receive $3.59 above the average, and Neuens will receive $.50 above the average based on the County's final offer. The amounts will be even greater under the Association's final offer.

According to the County, the external comparables and total compensation data reveal the County's wage offer is reasonable. Arbitrators weigh the total compensation provided to employes rather than narrowly looking at wages only when determining the reasonableness of the parties' offers. See Clintonville School District, Dec. No. 23061-A (May, 31, 1986, Weisberger); Plymouth School District, Dec. No. 26487-A (10/26/90, Zeidler).

County personnel will receive between $2.11 and $6.46 more per hour in total compensation than their comparable counterparts under the County's offer. Further, both final offers contain enhancements applying to all unit employes, which the arbitrator should take into consideration when assessing the fairness of the County's offer to Appendix B employes.

In addition to superior wages, the employes receive dental insurance, where only three of the nine comparables provide this benefit. Employes are entitled to 10 days of vacation after one year, where only two of the comparables offer a similar benefit. Employes can accumulate up to 146 sick days, more than any of the comparables; and the County pay 100% of WRS, while only three of the comparables provide 100% payment.

The County contends it is offering an adequate wage increase to its employes. Section 111.77(6)(3) directs the arbitrator's attention to the cost-of-living factor. A review of the evidence establishes that the County's total package for 1995 is 4.06% and for 1996 it is 4.38%. Under the Union's proposal the total package would be 4.26% for 1995 and 4.57% for 1996. There is no doubt that the County's final offer exceeds the cost of living as measured by the CPI.

It is emphasized by the County that it is offering Appendix B employes the same dollar increase it is offering Appendix A employes. It is the County's position that employes on both appendices perform the same job responsibilities. As such, they should receive the "same" increase.

The County directs the arbitrator's attention to Outagamie County Professional Police Association, Case LXV No. 25505, MIA-462, Dec. No. 17720-A (November, 1980, Haferbecker). In that case the Union argued that red-circled employes should receive the "same" increase as other employes because they suffer the same effects from inflation. Arbitrator Haferbecker rejected the Union's contention and concluded that the employer's position provided for progress toward bringing the pay rates in line with other positions. This case is completely on point to the case decided by Arbitrator Haferbecker. The County is more than willing to provide Appendix B employes with a wage increase which is equal (in dollars) to the increase received by Appendix A employes.

If the arbitrator awards the Association's final offer, the gap between Appendix A employes and Appendix B employes will widen. Even though the gap is still significant, increasing by a dollar amount versus a percentage controls the gap.

The Union attempts to downplay the cost to the County by claiming it only costs the County an additional $1,051.20 for two years. However minor as that may seem to the Union, it will have a significant impact as time progresses. Not only is the dollar impact going to be apparent in future years, the impact on morale will also become an issue.

Based on the evidence, the County respectfully requests that the arbitrator award the final offer of the County.

DISCUSSION:

There is only one issue in dispute in this case, and that issue involves the amount of increase employes on Appendix B should

receive for 1995 and 1996. The Union argues employes on Appendix B should receive an increase of 2.5% for 1995 and 3.5% for 1996, the same percentage increase being given to employes on Appendix A. The County argues that employes on Appendix B should receive an increase, in dollars, equal to the dollar increase they would have received if they were on Appendix A.

It is asserted by the Union that increases of 2.5% and 3.5% cannot be deemed to be excessive, therefore, increases of that amount are reasonable for employes on Appendix B. While it is true that increases of 2.5% and 3.5% are not excessive, it is also true that if those same percentage increases are applied to the salaries of employes on Appendix B it represents an increase, in dollars, in excess of what those employes would have received if they were on Appendix A.

The parties have bargained the appropriate salaries to be paid bargaining unit employes and those salaries are contained in Appendix A. The parties are cognizant of the fact that three employes are paid in excess of those negotiated salaries and those employes were placed on Appendix B. Rather than "red circling" those employes on Appendix B, i.e., freezing their salaries until the salaries contained in Appendix A catch up, the parties have negotiated salary increases for those employes on Appendix B.

Once the parties have determined the appropriate salaries to be paid to bargaining unit employes, as expressed by Appendix A, there is really no rationale for expanding the differential between those employes on Appendix A and those employes on Appendix B, as those employes on Appendix B are already paid in excess of the

rates negotiated by the parties. Under the Union's final offer, the differential between Appendix A and Appendix B would widen. Under the County's final offer, the dollar differential between Appendix A and Appendix B would remain the same, and those employes on Appendix B would continue to enjoy a higher salary than their counterparts on Appendix A.

According to the testimony of Mr. Dunkel, employes on Appendix B have received a smaller percentage increase than those employes on Appendix A since 1991. This suggests the parties have been cognizant of the results of granting the same percentage increase to Appendix B employes as is applied to Appendix A, i.e., the widening of the gap between the salaries on the appendices.

While both parties make reference to comparables in support of their respective positions, comparables are really of little relevance in the instant dispute as the parties have agreed to the salaries to be paid to those employes on Appendix A. The issue in this case does not involve comparables, but rather the level of increased compensation which is appropriate for those employes who are receiving salaries in excess of those negotiated for Appendix A.

It is asserted by the Association that White's work load has increased as a result of the resignation of an employe whom the County has not attempted to replace. If the Association believes that White is entitled to additional compensation as a result of her increased work load, that issue involves either the appropriateness of her classification or the appropriate compensation for her classification. Even assuming, *arguendo*, her

work load has increased, such an increase is not a valid argument to support an increase for *all* employes on Appendix B.

The parties have recognized that three employes on Appendix B are paid in excess of the rates provided for employes on Appendix A, and the County's final offer to grant the same *dollar* increases to those employes as granted to employes on Appendix A is the more reasonable of the final offers before the arbitrator. The alternative would result in Appendix B employes receiving a greater increase than Appendix A employes despite the fact the parties have recognized that they are already paid in excess of the negotiated rates for their classifications.

It should also be noted that employes at steps III and IV are receiving the same dollar increase as those employes at step II. Thus, they are receiving increases slightly less than 2.5% or 3.5%. The Union's position would grant those employes in Appendix B a greater percentage increase than employes at steps III and IV of Appendix A.

Arbitrators do place considerable weight on the internal pattern of settlements, but where the application of the pattern would result in employes already being paid above the negotiated rates receiving an even higher salary, such pattern becomes less relevant than it might otherwise be. Although the Association contends that the arguments generally advanced by employers where employes are paid less than the comparables should be conversely applicable where employes are paid more than the comparables, such argument would be more persuasive if the County had not proposed

any wage increase for those employes on Appendix B. If this were the case, the Association could argue that Appendix B employes should at least retain their relative position vis-a-vis Appendix A employes. They do so under the County's final offer.

After having given due consideration to the statutory criteria, the evidence introduced by the parties, and the arguments advanced by the parties, the undersigned makes the following

AWARD

That the County's final offer be incorporated into the 1995-1996 collective bargaining agreement.

Neil M. Gundermann, Arbitrator

Dated this 17th day
of April, 1996 at
Madison, Wisconsin.