

STATE OF WISCONSIN
ARBITRATION AWARD

: In the Matter of the Arbitration between :
: JACKSON COUNTY :
: and :
: JACKSON COUNTY HUMAN SERVICES EMPLOYEES :
: LOCAL 2717-B, WISCONSIN COUNCIL 40, :
: AFSCME, AFL-CIO :
: -----

Re: Case 109 No. 52394
INT/ARB-7603
Decision No. 28623-A

APPEARANCES: For Jackson County: Mr. James Michael DeGracie, Corporation Counsel/Personnel Director, Jackson County Courthouse, 307 Main Street, Black River Falls, Wisconsin 54615.

For the Union, Jackson County Human Services Employees, Local 2717-B: Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Route 1, Box 333, Sparta, Wisconsin 54656.

The Union represents a collective bargaining unit of all regular full-time and regular part-time employees of the Jackson County Human Services Department, including professional employees but excluding confidential, supervisory, and managerial employees. They have had a collective bargaining agreement that expired on December 31, 1994. Bargaining had commenced on November 3, 1994. After exchanging initial proposals the parties met on two occasions for further negotiations. On March 22, 1995, the Union filed a petition with the Wisconsin Employment Relations Commission for arbitration pursuant to the provisions of Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On May 18 and May 31, 1995, a member of the WERC staff met with the parties to mediate the dispute. The parties then submitted final offers and on December 22, 1995, the WERC investigator/mediator reported to the Commission that the parties remained at impasse. On January 2, 1996, the WERC certified that conditions precedent to initiation of arbitration as required by Sec. 111.70(4)(cm)6 had been met and on February 5, 1996 notified the undersigned that he had been appointed arbitrator in this matter.

A hearing was held in Black River Falls on April 24, 1996. The parties were given opportunities to present evidence from witnesses and in documentary form and to cross examine the witnesses. There was no written record made other

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than the arbitrator's handwritten notes. At the conclusion of the hearing the parties agreed to exchange written briefs through the arbitrator at the end of May. There were some delays in the preparation of briefs, and they were finally exchanged on July 30, 1995. The hearing is considered closed as of that date.

THE ISSUES TO BE ARBITRATED

The final offers of the parties are attached to this document. The County's final offer is marked "Attachment A" and the Union's final offer is marked "Attachment B."

The arbitrator is obligated under the Act to choose the entire final offer of one of the parties.

POSITIONS OF THE PARTIES

The positions of the parties on external comparability is unclear. The Union proposes to use what it states are the comparables established by two previous arbitrations involving this unit. These are Imes's Decision No. 18409-A, 7/2/81 and Vernon's Decision No. 20461-A, 1/31/83. In those decisions the Union asserts that a first level of comparability consisting of Adams, Buffalo, Clark, Eau Claire, Juneau, and La Crosse, a second level of Wood, and a third level consisting of Monroe and Trempealeau Counties was found to be appropriate. At the hearing the County did not introduce any comparability evidence and says in its brief that "At the hearing . . . the County agreed with the Union that Adams, Buffalo, Clark, Eau Claire, Juneau, LaCrosse, Wood, Monroe, and Trempealeau counties should be looked at as comparable." In its brief, in addition to citing the Vernon decision, the County quoted approvingly from two other previous Jackson County interest arbitrations, (Haferbecker in Decision No. 21878-A, January 1985; and Rice in Decision No. 24531-A, October, 1987) in which arbitrators reached varying conclusions regarding comparable counties.

Without going into any great detail, it is my opinion that the Union's comparables do not lend support to its position on this issue. In comparison with the County offer to pay 95 percent of both single and family premiums Adams County pays 90 percent of the premiums for both single and family coverage. Buffalo County pays 100 percent of single and 80 percent of family coverage. Clark County pays 100 percent of single and 85 percent of family premiums. Juneau County pays 100 percent of single and 81 percent of family. La Crosse County pays 90 percent of both. Monroe County pays 80 percent of both with a cap on employee contributions. Trempealeau County pays 100 percent of single and 82.5 percent of family. Only Eau Claire County pays 100 percent of both.

In its brief the Union states: "The Union takes the position that the external comparables do not carry much weight for the instant case." The County brief states: "The County argues that the most important comparable is within the County." The County has three other bargaining units. The courthouse unit, represented by this same union, has agreed to the health

insurance provision that the County has offered in this proceeding. The Sheriff Department unit, represented by a police union, has a provision for a \$10 contribution by single employees and \$15 for family coverage. The parties are in negotiations for a renewal of that agreement. A highway employee unit represented by the Union in this proceeding is also in negotiations.

In terms of cost during the period that this agreement is in effect there is very little difference between the two final offers. Both final offers provide \$25 per month "quid pro quo" wage increases. In the Union's final offer single employees would contribute \$11.25 per month and employees with families \$25 per month toward the health insurance premiums. Single employees would gain \$13.75 per month and those with families would come out even. In the County's offer the 5 percent contribution for single employees in 1996 would be \$10.75 per month and the family premium contribution would be \$27.00. In the first year, therefore, family health insurance would cost those employees with families \$2.00 per month. Single employees would have a wage increase of \$14.25 per month.

If the provision chosen as the final offer in this proceeding remained unchanged in future labor agreements the advantages and disadvantages to employees and employer would change depending upon whether premium costs continue to rise or might decline. But this award concerns only the terms of the current prospective labor agreement. I reiterate: On this issue there is very little difference monetarily between the two final offers. If health insurance costs continue to rise as they have for many years, and if the principle of a percentage contribution continued in future contracts, then choosing the County offer would provide future advantage for the Employer in the sense that members of the unit would be required to make higher dollar contributions. In that circumstance, i.e., continuing rising health insurance costs, choosing the Union's final offer would be an advantage to employees in the unit. But in view of recent experience concerning health costs, we cannot assume that increases will continue. We do not know.

Both parties presented testimony and made arguments concerning cost of living. But since the stipulated wage increases are within the limits of the 1994 and 1995 rises in the Consumer Price Index, and since the costs involved in the final offers of the parties are minimal, cost of living has little relevance as a factor to be considered.

The proposal of the Union for a wage increase for the position of Social Service Aide II involves an incumbent of that position with seventeen years of service in the Human Services Department. After seven years as a typist she became a Social Service Aide I in 1986 and, after some recommended training, a Social Service Aide II in 1989. In this bargaining unit the parties have six salary grades (they are termed classifications in the labor agreement) for non-professional employees. The employee just described (hereafter designated as the Social Service Aide II) is in Classification IV. The Union proposes that she be placed in Classification V.

To support its position on this issue the Union introduced as a witness a professional social worker from the bargaining unit who supervises the work of the Social Service Aide II. With the aid of a job description of her work that he had written, the witness testified that except for not testifying in court

proceedings, as Social Workers do, she performs essentially all the functions of a professional social worker. Other written exhibits introduced by the Union at the hearing describing her work and the work of professional social workers purported to show the following: Except that she does not testify in court, does not handle protective service cases, and is generally assigned less complex cases, her case load (50 to 60 cases) is much the same as the case load of the professional social workers.

In cross examination the Director of the Human Services Department clearly testified that the Social Service Aide II exercised more judgment in her job than either the Economic Support Specialist II or the Child Support Specialist III, who are both in Classification V. He was then asked "Who has the most similar duties to (the Social Service Aide II)?" His reply: "The Social Worker I." On the most recent wage scale (1994) the Social Service Aide II, who has been at the 48th month top of scale for three years, is paid \$2,024 per month. The beginning rate for Social Worker I is \$2,161 per month. At another point in the hearing the Human Services Director was asked in cross examination: "How much time is spent supervising (her) work?" His response: "I have assumed she is ok. She is mostly out of the office and I have not been with her. Probably no one knows."

The County's general position on this issue seems to be that the Management Rights clause in the labor agreement gives it the sole right "To hire, promote, assign and retain employees in positions with the County. . ." It views the Union's final offer on this issue as a promotion and not properly the subject of collective bargaining nor within the authority of the arbitrator. But as the Union points out in its brief, the County could have asked the Commission for a declaratory ruling on this issue but did not. I assume, therefore, that I have authority to make an award on this issue.

In its brief the County cites a quotation from a grievance award by Arbitrator Whitley P. McCoy as quoted in Elkouri and Elkouri (Fourth Edition), page 563. The quotation says in part:

. . .absent a contract right in favor of the employees or a contract restriction on a company, the latter may ignore not only seniority but also even skill, ability, and physical fitness. The employees must obtain benefits at the bargaining table, not from arbitrators. Arbitrators are bound by the contract under which they are arbitrating.

But that citation relates to a grievance arbitration. The issue here relates to the terms of an agreement, specifically in which classification (grade) a position is to be placed on the wage schedule. In an interest arbitration under the Wisconsin statute, where the Employer has not questioned the suitability of the issue at the time of a hearing or by asking for a declaratory ruling, it seems clear that it is arbitrable.

As part of its position on this issue the County introduced testimony at the hearing that purported to show that past practice was to have the Director of the Human Services Department make initial decisions on reclassification of employees and that issues of the level of payment were negotiable with the Union. In this case the Union had proposed initially that this employee should

be raised from Social Service Aide II to III and that her classification (grade) should be raised from IV to VI. The County's response had been that this proposal should have gone initially to the Director of Human Services and that his recommendation should have been reviewed by the Personnel Committee and approved or disapproved by the County Board. But in its final offer the Union changed its proposal to a simple demand that the Social Service Aide II position be raised from Classification IV to Classification V. This proposal was not accepted by the County and the Union argues that the County position that the matter should have gone through the Director, the Personnel Committee and the County Board has no foundation in past practice, that this is a wage issue and properly the subject of negotiation, and in the absence of agreement, a proper subject of arbitration.

The other position of the County is that the Union has offered no "quid pro quo" for the increase in grade for the Social Service Aide II. In response the Union makes two arguments: First, the Social Service Aide II position is para-professional and belongs in Classification V with the para-professional positions of Economic Support Specialist II and the Child Support Specialist III, which are the only other positions in Classification V, and that it is not a clerical position like Typist III and Clerk III, the only other positions in Classification IV. The Union's second argument is that the Social Service Aide II position is similar to the Long Term Support Social Worker I, a professional position. These two arguments combine to show, to the satisfaction of the Union, that the position of Social Service Aide II is misclassified in Classification IV since her work warrants having the position reclassified to Classification V. If the position has been misclassified, any "quid pro quo" argument is irrelevant.

OPINION

As indicated above, the parties' positions on external comparables are confusing. The Union's external comparables do not support its position. At the hearing the County introduced no testimony on comparables. In its brief it states that at the hearing it had agreed with the Union's comparables. Yet in its brief it argues that comparables in two other previous cases, which it cites, should be considered.

Since both parties stress internal comparables, since there is no evidence of a prevailing practice in the external comparables, and since there is very little difference in expense between the two offers, if this were the only issue, my decision would favor the County for the reason that this Union has already negotiated a labor agreement in another bargaining unit that contains the County's final offer on health insurance.

The other issue is very different and the reasons for the County to take the position I have described are unclear. Testimony at the hearing indicated that: (1) The Social Service Aide II position description is similar to that of the social workers. Much of the wording in the duties, knowledge, and skills sections of the two job descriptions is identical. And although it is clear that the Social Service Aide plays a secondary role, much of the description of program responsibility in the job descriptions is similar. (2) Except that she does not testify in court, does not provide services to adults in need of protection, and has less complex cases, she carries a case load similar to the

case loads of the social workers. (3) The Director of her department testified in cross examination that she is required to exercise more judgment than two other aides in the higher classification and that she works with very little supervision. (4) That the proposal to reclassify her into Classification V is a wage action that is subject to negotiations, not a position reclassification that the Employer asserts should be initiated by the Director and carried through the Personnel Committee and the County Board. And finally, if the County maintains as it does in its brief, that this issue is not subject to arbitration, then it ought to have asked WERC for a declaratory ruling.

On the second issue the Union's final offer is preferable. In these interest arbitration cases under Wisconsin Statute 111.70, where one party's entire offer must be adopted, the arbitrator often regrets the necessity of adopting part of the package. This is the case with the health insurance issue.

Although there is very little monetary difference between the two positions and it is a close call, the County's position is preferable. On the issue involving the Social Service Aide II, however, the Union's position is preferable by a wide margin.

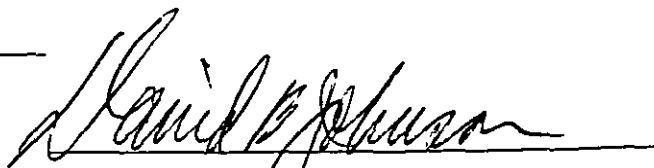
I have considered all the factors, a. through j., that I am required to consider under Sec. 111.70(4)(cm)7. and have made appropriate comments, particularly concerning the applicability of factors d., e., and g. above. The other factors do not require specific comment since they are not relevant

AWARD

The Union's final offer is adopted as the award in this proceeding.

Dated: August 26, 1996

at Madison, Wisconsin



David B. Johnson
Arbitrator

Name of Case: JACKSON COUNTY (HUMAN SERVICES)
CASE 109 NO: 52354 INT/ARB- 7603

The following, or the attachment hereto, constitutes our final offer for the purposes of arbitration pursuant to Section 111.70(4)(cm)6, of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me. Further, we (do) (~~do not~~) authorize inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted to the Commission.

10/2/95 (Date) James M. DeHaive (Representative)

On behalf of: Jackson County

JACKSON COUNTY
COLLECTIVE BARGAINING WITH
HUMAN SERVICES EMPLOYEES
LOCAL 2717-B, AFSCME, AFL-CIO

Jackson County submits the final offer to the Arbitrator with the understanding that it is voluntarily agreeing to have this matter heard before an Arbitrator.

COUNTY'S FINAL OFFER

1) ARTICLE 14 - INSURANCE

HEALTH INSURANCE. Effective January 1, 1996, the Employer will pay 95 % of both the family and single premiums of the agreed to health insurance program, including major medical coverage. The Employee shall pay 5% of both the family and single premiums of the agreed to health insurance program, including major medical coverage.

2) Effective January 1, 1996, the wage schedules shall be increased by \$25.00 per month as compensation for the health insurance premium that the Employee is required to pay per #1 of the County's final offer. The \$25.00 per month increase shall be added to the wage schedules after the January 1, 1996 across the board wage increase is calculated.

3) All provisions not addressed in the County's final offer or the stipulations of the parties to remain as in the 1993-1994 collective bargaining agreement between the County and Local 2717-B.

Dated this 2nd day of November, 1995.

On behalf of Jackson County



James Michael DeGracie
Jackson County Corporation Counsel/
Personnel Director

Attachment B

Name of Case: JACKSON COUNTY (HUMAN SERVICES)
CASE 109 NO. 52394 INT/ARB 7603

The following, or the attachment hereto, constitutes our final offer for the purposes of arbitration pursuant to Section 111.70(4)(cm)6, of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me. Further, we (do) ~~not~~ authorize inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted to the Commission.

10/2/95 Daniel A. Giff
(Date) (Representative)

On behalf of: Jackson County Human Services
Employees, Local 2717-B, AFSCME, AFL-CIO

JACKSON COUNTY HUMAN SERVICES EMPLOYEES, LOCAL 2717-B,
AFSCME, AFL-CIO

Union's Final Offer

1) ARTICLE 14 - INSURANCE

HEALTH INSURANCE. The Employer will pay 100% of both the family and single premiums of the agreed to health insurance program, including major medical coverage. Effective January 1, 1996, the employee contribution to the single plan premium shall \$11.25 per month and the employee contribution to the family plan premium shall be \$25.00 per month of the agreed to health insurance program, including major medical coverage.

Employees who retire between the ages of 55 and 65 and who have at least 10 years of service shall be eligible to participate in the group health insurance program for a maximum of 5 years, providing that said employee pays the entire premium.

- 2) Effective 1/1/96, the wage schedules shall be increased by \$25.00 per month as a "quid pro quo" for the health insurance contributions as cited in number 1. The \$25.00 per month increase is to be added on to the wage schedules after the 1/1/96 ATB wage increase is calculated.
- 3) Equity Adjustment - Effective January 1, 1996, the Social Services Aide II position shall be deleted from Classification IV of the Clerical and Para-Professional wage schedule and placed in Classification V of the Clerical and Para-Professional wage schedule. The current Social Services Aide II shall be placed at the 36 month pay grade and advance to the 48 month pay grade after one (1) year.
- 4) All provisions not addressed in the Union's Final Offer or the Stipulations of the Parties to remain as in the 1993-1994 collective bargaining agreement between the Parties.

Dated this 12th day of December, 1995

On Behalf of Local 2717-B



Daniel R. Pfeifer
Staff Representative

