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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between

BUFFALO COUNTY COURTHOUSE EMPLOYEES
WCCME, AFSCME, AFL-CIO

and

BUFFALO COUNTY

Case 59
No. 53994
Int/Arb-7945
Decision No. 29145-A

Appearances: For the Union — Daniel Pfeifer, Staff Representative

For the County — Richard J. Ricci, Esq., Weld, Riley, Prenn & Ricci

Before: Fredric R. Dichter, Arbitrator

DECISION AND AWARD

On July 28. 1997, the Wisconsin Employment Relations Commission, pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act, appointed Fredric R. Dichter to serve as arbitrator to issue a final and binding award. The matter involves an interest dispute between the Buffalo County Courthouse Employees, hereinafter referred to as the Union and Buffalo County, hereinafter referred to as the County. A hearing was held on October 13, 1997 at which time the parties presented testimony and exhibits. Following the hearing the parties elected to file briefs. Those briefs have been received by the arbitrator. The arbitrator has reviewed the exhibits and briefs filed by the parties in reaching his decision.

ISSUES

The parties reached agreement on most of the items to be included in their initial agreement, including the overall wage increase for the last two years of the agreement. All the tentative agreements are incorporated into this Award. The following are the outstanding issues.

The UNION OFFER:

Employees who were hired prior to January 1, 1996 shall be placed on the wage schedule according to the "1996 Lane" of Appendix B effective January 1, 1996. Effective each January 1 thereafter, employees hired prior to January 1, 1996 shall receive an additional year of advancement, within their wage scale, until they are placed at the "Yr 6" step.[1]

Employees hired after January 1, 1996, shall progress through the wage schedule based on their anniversary date of employment. Progression through the wage schedule shall be based on calendar time.

THE COUNTY OFFER:
Salary Scale/Position Classifications maintained.

BACKGROUND

Buffalo County had a population of 13,660 in 1996. The total population grew by just over .5% since 1992. It is located in Western Wisconsin. The Courthouse employees were unrepresented until recently, when they joined AFSCME. There are 18 employees in the bargaining unit. The agreement in dispute here is the first contract between the parties. All of the employees, except one, are paid according to a wage scale established by the County prior to

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[1] The Union offer seeks to reclassify each of the bargaining unit employees to a higher classification.

the employees becoming represented.[2]

STATUTORY CRITERIA

The parties have not established their own procedure for resolving impasse over the terms for a new collective bargaining agreement. They have agreed to binding arbitration under the Municipal Employment Relations Act. Section 111.70(4)(cm)7 provides that an arbitrator consider the following in reaching a decision:

> 7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall consider and give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on the expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator shall give an accounting of the consideration of this factor in the arbitrator's decision.

Section 7g then reads:

> 'Factor given greater weight'...The arbitrator shall consider and give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

Section 7r sets forth the other factors an arbitrator must consider:

a. The lawful authority of the Municipal Employer.
b. Stipulations of the parties.
c. The interests and welfare of the public and the financial

[2] The Highway Patrol Superintendent is in the bargaining unit. The parties have agreed that once the incumbent retires this will become a supervisory, non-represented position. The Union has proposed a wage for this position in 1996 that is greater than the 3% increase offered by the County. The parties have agreed upon a 3% increase for the position for 1997 and 1998.

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

APPROPRIATE COMPARABLES

The County and AFSCME have been involved in interest arbitration over the years in different bargaining units. The parties and arbitrators have generally agreed upon a set of comparables. The County urges that the same set of comparables be used in this proceeding. They include the following Counties:

Clark
Dunn
Jackson
Monroe
Pepin
Pierce
Trempealeau

The Union seeks to exclude Pepin and Trempealeau from the

list. It argues that the employees in the relevant classification in those two Counties are not represented. It contends that comparing wages of non-represented employees with those of represented employees should not be done. Conversely, the County maintains that Pepin and Trempealeau should not be excluded simply because the employees in those Counties are not represented. It cited several cases to support its position. It noted that Arbitrator Oestreicher in Mount Horeb S.D., (Dec. No 7301) held that while the fact that employees in some of the jurisdictions are non-union is a factor to be considered by the Arbitrator "it should not result in the exclusion of non-represented employees units from the comparable pool."[3]

The Union cited a significant number of cases that took a point of view contrary to that espoused in the above cases. Many of the arbitrators in the cases cited by the Union point to the fact that wages for the non-represented employees were "unilaterally" established by the Employers.[4] These arbitrators found that it was not fair to compare those wages with wages that were obtained through the collective bargaining process.

This arbitrator is particularly persuaded by comments made by Arbitrator Baron in Merton Joint School District 39 (Dec. No. 27568-A). Arbitrator Baron was also dealing with a first contract.

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[3] The County in its brief also quoted from Arbitrator Vernon in Holmen S.D. Arbitrator Vernon concluded that non-union wages can influence union wages, and should be included in the comparison.

[4] Washburn School District (Kirkman, Dec. No. 24278); Monoma Grove School District (Kessler, Dec. No. 28399-A)

She had to address economic and non-economic issues. She held that:

> ... the economics of wages and hours are better analyzed in light of what has happened at the bargaining tables of organized school districts than with conditions of employment which have been unilaterally imposed... This arbitrator is of the opinion that a consideration of union status is necessary to reach a reasoned decision.

The rationale of those arbitrators which have excluded non-represented employees from the comparable list is compelling, especially here, where a first contract is involved. There is no history for this unit. While the overall history of the County and AFSCME as to the appropriate comparables might normally dictate that the same list be used here, that factor is outweighed by the fact that two of the normal comparables are non-union. I agree with the Union's arguments, and the arbitrator's cited by the Union and shall exclude Pepin and Monroe from the list. That still leaves five separate Counties in the list. That number is sufficient.

THE PROPOSED RECLASSIFICATION

It is to the parties credit that in a first contract they have been able to agree upon as much as they have. The only issue before me is the placement on the schedule of the classifications in the bargaining unit. The Employer seeks to maintain the status quo. It does not agree that any of the classifications in the bargaining unit should be moved.[5] The Union maintains that they all should.

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[5] It should be noted that there is no disagreement between the parties as to what the wages that are paid at each step of each scale are to be. The parties have also agreed upon a 3% increase in 1997 and 1998 for all the bargaining unit employees. Thus, the only question is what wage that increase will be added to for each classification.

The following chart illustrates the present placement of employees and the proposed placement under the Union's proposal:

	Present Scale	Proposed Scale
Janitor	A	E
Dep. Reg. in Probate	C	F
Deputy Clerk of Ct. 1	C	F
Deputy Count Clerk	C	F
Exten. Admin Sec.	C	F
Exten. P.T. Sec.	C	F
Dep. Reg. of Deeds	C	F
Deputy Treas./Cler. Asst.	C	F
Personnel Clerk	E	G
Dep. Clerk of Ct. II	E	G
Emerg. Govt. Director	E	J
Highway Office Asst.	E	G
Land Conserv. Admin Asst.	E	F
Law Enforce. Admin Asst.	E	F
Cty Bookkeeper/Dep. Clerk	F	I
Dep. treas/Sys. Oper.	F	I

In order to minimize the immediate impact of its proposal, the Union has proposed that employees not be placed on the same step on which they are presently located. Instead, they have proposed that employees hired before 1/1/96 be placed on the lowest step in their new scale that would give them a raise. For example, the janitor is presently at step 6 on Scale A. In 1995, the top rate for Step 6 of Scale A was $8.12. Step 6 is the highest rate. The Union proposes that the janitor be moved to Scale E. Step 6 for Scale E in 1996 is $11 per hour. The rate at Step 1 of Scale E is $8.89. Since a rate of $8.89 would be a raise, this is where the custodian would be placed under the Union proposal. He would then move up the scale each year until he reached the maximum.

The Union seeks to increase the wage of the Highway Patrol Supervisor from $13.67 to 14.42 in 1996. The County proposes a 3% increase. The salary for 1996 would be $14.08.

The Union proposal for the three years would cost an additional $94,923. In 1996, it would be $21,062. This includes not only the increase in base wage, but also the role-up costs associated with that increase. If one considered only the amount paid in wages, the total additional cost for the three years would be $78,635, of which $17,399 would be incurred in 1996. In 1995, the total compensation costs to the County for this bargaining unit were $503,937. $350,234 were paid in base wages. The Employer proposal would give employees a 3.8% increase. 0.8% of that increase is step movement and 3% is the general wage increase. Under the Union proposal, the average increase would be 8.8%.

POSITION OF THE UNION

The County has significant reserves, which it regularly invests, and on which it earns interest. It has a fund balance of over $1.33 million, and reserves for 1997 in excess of $167,000. It is not facing any economic difficulties. It is financially able to pay for the increases sought. The greatest weight and greater weight factors set forth in the Statute are not controlling here.

The County has reclassified other positions in the past. It has also granted wage increases in excess of the 3% offered here to non-represented employees, such as the Highway Commissioner. It granted greater than a 3% increase to County Board members. Thus, there is precedent to deviate from the 3% given to the other bargaining units.

External wage settlements are not relevant in this case. It is

a first contract. External settlements are only useful once wages have been set through collective bargaining. It is more relevant to look to the actual wages paid by others. This is the only chance the Union has to establish what the appropriate wage should be for the employees in this bargaining unit. The Union is not proposing to change the status quo. This contract established that status quo. The Union has provided the arbitrator examples of numerous arbitration decisions where arbitrators have so held. Thus, the Union need not offer a quid pro quo, nor is it required to justify changing a status quo. No status quo yet exists.

The Union has found the weighted average of the wages paid by the comparables for each of the positions in this bargaining unit. Only the positions in dispute are relevant. Looking to compare the wages of other non-bargaining unit classifications, as the County has done, is not relevant. The Union has proposed reclassifying the employees to place them on the scale at a wage that is equal to that paid in the comparable jurisdictions. In order to reduce the impact of those moves, the Union did not place the employees at their same step. This considerably lowered the cost to the County of the Union proposal.

POSITION OF THE COUNTY

Because the Union will be unable to show justification for its proposed reclassification, the greater weight and greatest weight factors probably do not control the outcome in this case. It should be noted, however, that the County is under a mandated maximum tax

levy. Until recently, this has not posed a problem for the County. For 1998, the County had to use its reserves to cover the 1998 budget. The Union proposal would require an even greater use of those reserves. This factor favors the County. Similarly, the greater weight factor favors the County. Of all the comparable Counties, Buffalo has had the smallest increase in population. The average income is also the lowest. The total value of the property within the County is near the bottom.

The County has agreed to a 3% wage increase with all the other bargaining units. An internal pattern has been established. This pattern should be respected. Varying from that pattern will cause the County to lose credibility with the other bargaining units. The burden is on the Union to justify deviating from the established pattern. The wages of these employees versus their counterparts in the comparable jurisdictions are not "unique." Wages paid by the County are generally lower than those paid in other jurisdictions for all classifications. The maximum rate under the Union proposal is actually higher than the average of the comparables. The Union has failed to meet its burden.

The Union's reference to the County's decision to pay certain non-represented employees greater than 3% is misplaced. There were special factors present that are not present here. In one case, professionals were making less than administrative assistants. The County rectified that situation. The Union has offered no evidence that this same situation exists here.

The external comparables do not carry a great deal of weight

in this case. To the extent that external comparables are relevant, it favors the County. The 3% offered by the County is greater than the increase given in the comparable Counties.

The Union is seeking to reclassify the positions in this bargaining unit. The burden falls upon it to show that there is an inequity that exists and that its proposal corrects that inequity. The Union must also show that the positions it wants to reclassify are more complex than the positions remaining on the original scale after the reclassification. Arbitral precedent holds that reclassification must be justified by a change in the relationship between the positions sought to be reclassified and other classifications. It is their relationship to each other that dictates whether reclassification should be made. There are positions in other bargaining units that use the same pay scale as these employees. The Union has not introduced any evidence to show a change has taken place that justifies placing employees here at a higher level than those left behind. Furthermore, if done at all, reclassification should occur at the bargaining table, not in arbitration.

Reliance on the actual wages paid by comparable Counties is an improper method for obtaining reclassification. Arbitrators have uniformly rejected that methodology. In addition,, some of the comparisons used by the Union are not for like positions. The Union often used the wages paid to higher classifications for comparison, when using a lower classification would have been more appropriate. This action increased the average wage for the comparables.

The Union has not supported the higher pay for the Highway Patrol Superintendent. Buffalo County is the only County that includes this position in the bargaining unit. The employee does not have the authority given to the position in those Counties.

DISCUSSION

The issue presented by this case and the arguments of the parties are certainly not the normal type of issues that arise in interest arbitration. The Employer asserts that because it is the Union that seeks to reclassify employees the burden is upon it to support any change from the current level. The Union counters that this is a first contract, and that the rules are different because of that. Each has cited arbitral precedent to support its point of view. Because the parties have such differing views on this important matter, it will be addressed first. After establishing the standard, the statutory elements will be examined as they relate to the facts of this case.

The Employer contends that the party seeking reclassification must prove that the need for the change exists. The starting point would be the circumstances that exist at that time. That is the status quo. The Employer cited numerous cases that addressed the issue of reclassification. Those cases held that when a Union sought reclassification it must show that "there is an inequity" and then show that its proposal corrects that inequity.[6] The Union counters that where conditions have been unilaterally determined by

[6] Vilas County Courthouse (Michelstetter, Dec. No. 27896-A)

the employer prior to the employees obtaining representation, no status quo has yet been established. It argues that negotiations start from ground zero, and it is not until the culmination of those negotiations that the status quo is determined. It notes Arbitrator Malamud in Village of East Troy (Dec. 2716-A) also addressed a first contract and the question of what is the status quo. He concluded that:

> What will be the status quo in the context of this collective bargaining agreement is precisely what is at stake in this arbitration proceeding.[7]

He then held that while the conditions that existed are given "considerable weight" that it was "inappropriate to burden either side with the requirement of changing the status quo."

I find that the cases cited by the Employer are more appropriate to the situation where bargaining is occurring over a renewal agreement. Where, as here, there is a first contract, I agree with the rationale of the arbitrators cited by the Union. This is the Union's first chance to address problems which may have led to the representation in the first place. To require the Union to meet the burden that it would face when seeking to change the status quo, when it had no hand in establishing that status quo, would be unfair. Therefore, I shall not place upon the Union that burden. The Union does not have to show an inequity exists as it would have to with later contracts. Instead, the Union must only prove that the factors set forth in the Statute are tipped in its

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[7] See also Crivitz School Dist. (Chatman, Dec. No. 24217-A): Merton Jt. School Dist., supra.

favor.

The Relevant Factors to be Considered in this Case

The process of adopting a method for analyzing the parties proposals in this case at first blush seems perplexing. I have found that this contract, in essence, is going to establish the rates for the classifications involved here. Therefore, if one views this case as one would if asked to set a wage for a new classification it becomes less daunting. Parties and arbitrators have often been required to set a wage when a new classification is created. The method of doing that is well established. It is that proven methodology that shall guide me in this case.[8]

Greatest Weight

There is a tax levy limitation on this and all counties. The tax rate of the County has declined over the years. Its tax revenue has increased in each of the reported years. There is nothing in the record to indicate that the County is currently taxing at the

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[8] In analyzing the parties proposals, it is apparent that some of the information that would have assisted me in the analysis is not available. Given the unique nature of this case, and the issue presented that is not surprising. Since each arbitrator probably views the matter a little differently, it is difficult for the parties to know what each arbitrator may believe is relevant. This arbitrator certainly recognizes that fact. Furthermore, the burden of trying to find and put together everything that might be considered helpful by an arbitrator is a difficult and costly endeavor. The parties did an excellent job in putting together what they have. It is from this information that I had to make my determination.

maximum rate permissible by law. After considering this factor, I find that is not of significance here.

Greater Weight

The gross income of the County residents is lower than the average. The tax rate is slightly less. On the other hand, the wages paid are less also. I do not find that the economic condition of the County has worsened recently. The record does not reveal an economic trend in the County that differentiates it from the trends in the comparable Counties. I do not find that there is anything in economic well being of this County that triggers this factor.

External and Internal Comparables

The parties are in total disagreement with regard to the importance of external comparables. Not only do they disagree upon the importance of them to this issue, but they also disagree as to what it is that the arbitrator should look to when and if evaluating external comparables. The Employer stresses that when a case involves a reclassification, the use of external comparables is irrelevant. It then adds that even if the arbitrator did look at external comparables this factor favors the Employer. The 3% increase it has offered is greater than the average increase given by the comparables. The Union argues that since this is the first contract one does not look to the wage increases granted by others, but, instead, to the actual wages paid by the comparables. It is trying to set the wage for the first time. Therefore, it notes, what others are paid for the same work is all that matters. Again, cases were cited by both sides.

I have extensively examined all of the cases cited by the parties, as well as others. In doing so, certain conclusions have been reached by me. External comparables are important in this case. Normally, the average increase that was granted is the only thing to which the interest arbitrator looks. The premise from which that review stems, however, is that the parties have through negotiation already established the relationship between the wages of the employees involved in the dispute and the wages of the appropriate comparables. Maintaining that agreed upon relationship becomes the critical factor. I have already held that there is no status quo from which my analysis is to begin. This contract is the opportunity that the parties have to establish the relationship from which all subsequent negotiations and possibly arbitrations, will flow. Therefore, I conclude that the relevant information in this proceeding as it relates to the external comparables are the actual wages paid by each of them to the classifications in dispute.

The Employer points out that the wages paid to various classifications in other bargaining units in the County are below average when compared to wages paid for the same classification in the comparable Counties. It introduced the wages of several other classifications to make its point. The Union argues that this information is irrelevant. I do not agree. This agreement is not negotiated in a vacuum. Its effects go beyond just this bargaining unit. If in this first contract the employees received parity with the comparables, what does that portend for future bargaining in

the other units? Those units received a 3% raise. What if after that increase they continued to be paid less than the average wage of their counterparts elsewhere. I find that if the evidence shows that the relationship between the pay of this bargaining unit's employees and the pay of the employees in the same classifications in other jurisdictions would be better than the relationship between the employees in other bargaining units and their counterparts, that fact would weigh against adopting the higher pay proposed by the Union. Conversely, these employees have a right to expect that they will not fare any worse than their fellow employees who work in other bargaining units. Thus, if the relationship of these employees to employees in the same jobs in the comparable Counties would be worse under the Employer's proposal, that fact would work against the Employer proposal.

The Union has calculated what it claims is the average wage paid by the comparables for each of the positions in the bargaining unit. It then looked at the wages paid for each scale on the salary schedule.[9] It placed the employee at the scale that was closest to the average wage. Since the wages on the scale are already set, it is impossible to get the wage exactly at the average. Therefore, some beginning and maximum salaries for the positions exceed the average and some are lower. More are above than below.

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[9] The Employer contests the Union's choice of comparable jobs. It believes that some of the classifications utilized for the comparables are not the same as those in the bargaining unit. For the most part, my calculations in this section have used the classifications for the comparables provided by the Employer.

In my review of the wages paid by the comparables, I found that the wages paid by the County in other bargaining units was on average 90% of the wages paid by the comparables.[10] The bargaining unit employees wages under the Union proposal are 98% of the average. I have already held that the Union is correct when it argues that the external wage of the comparables is the starting point, but it was not correct when it then argued that the average wage paid by the comparables should ipso facto become the wages paid here. The evidence, in fact, shows that, at least for the examples provided, the employees of this County who work in other bargaining units receive less than the average. Given that fact, the Union proposed wage is just too high. If I adopted the Union proposal, the internal harm to the County would far exceed the harm to these employees if I refused to adopt it. One could easily see the other units also asking for parity in the future. That is something they have been willing to do without in the past. On the other side of the coin, the Employer proposal is too low. Under the Employer proposal, the wages for this bargaining unit would be 85% of the average of the comparables. Some upward movement would seem to be in order.

It is clear that neither proposal is in keeping with the wage percentage relationship that appears to exist in the other units. It is too bad that the law precludes an arbitrator from fashioning a remedy. Unfortunately, the limitations placed upon arbitrators

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[10] Unfortunately, the number of examples provided is small. A larger sampling would have been preferred. However, it is all that is available for use.

out of fear that they tend to split the baby has often prevented arbitrators from giving the just result that they, and hopefully the parties, would believe to be appropriate. As it stands, I must either leave these employees paid too low or move them too high. This really is Hobson's choice. Consequently looking just to the wages paid elsewhere, I find the external factor favors neither party.

There is an additional component to any analysis of wages to be paid to classifications. One can not look simply to the wages of the employees in the jobs in question. There is also a relationship between the wages paid for these jobs to the wages paid for other jobs. What is a position paid when compared to another position that, perhaps, has a greater or lesser skill level involved? There is both an internal and external element to this comparison.

Internally, other bargaining units use the same scale as is used here. There are several employees at the same level that these bargaining unit employees are presently situated. If the bargaining units employees are placed at the scale where the Union proposes, the others will fall behind. The County argues that the skills of those other classifications must be compared with the skills of the employees whom the Union proposes moving. The problem with the County's position is that it assumes that the initial placement was correct. If I assumed that, I would in essence be agreeing with the Employer that the Union needs to justify any "change" in classification. I have already found that change presupposes a status quo, and that no status quo has yet been established.

Therefore, how these employees related to other employees in the County before is not a factor that I will consider.[11]

It would be interesting and helpful to know what the relationship is between the classifications involved and the classifications left behind in other jurisdictions. In City of Monroe, (Johnson, Dec. No. 26942-A), cited by the Union, the Union introduced the wage of the wastewater plant operator. This classification was not involved in the dispute. The water plant operators were. Arbitrator Johnson found that the evidence demonstrated that water plant operators in other jurisdictions were paid more than wastewater operators. The Employer proposal would have given them less. This fact was relevant to his determination. If the employees in the other classifications are paid less elsewhere than the classifications involved here, this would give additional support to the Union position. If they are paid more or the same, this would favor the Employer. The Health Aide is a classification that can be readily compared. The average wage paid by the comparables has a beginning wage of $8.38 and a top wage of $9.94. The bargaining unit classifications presently on the same scale as the Health Aides are the Extension Secretary, Deputy Clerk

[11] If this arbitrator knew how the wages were set to begin with, I might be more inclined to agree with the Employer as to the relevance of this comparison. Was a job analysis done? Were the skills needed for the jobs compared to the skills of other jobs? If accepted objective criteria were used, the argument of the Employer would be more persuasive. Such analysis is traditionally used when setting new wages, and there would be no reason not to consider that fact here. It may be that the wages were set so long ago that this information does not exist. Without it, I cannot simply assume that the Employer made its placements using these accepted principals.

and Deputy Register of Deeds. In other jurisdictions, these classifications receive between $1.00 and $2.00 more than the Health Aide. The Union proposal would give these classifications approximately the same differential as is present in the comparables. The Employer proposal makes for a much smaller differential. This classification comparison would favor the Union. Given the numerous grades within some of the other classifications, such as the Economic Support Specialist, it is impossible to determine which classification to use as the basis for comparison. The figures for other classifications is not available. I am then left the with the health aide alone for my review. Using just the Health Aide to ascertain a relationship between jobs for the comparables is simply too small of a sample to provide any meaningful data. Therefore, I find that the absence of enough information makes this factor of little value to my analysis.

Interests and Welfare of the Public- Financial Impact

The cost of the Union proposal is almost $100,000 more than the County proposal. In some jurisdictions, that figure would be only a small percentage of total costs. In this County, that figure represents almost 6% each year added to total payroll costs for this unit. That is a high percentage. Add to that, the fact that the costs will continue to increase while the employees move up the new scale. Employees that were previously at the maximum now start moving up again. This is on top of a 3% wage increase in the second and third years of the agreement. That is why the difference in the

costs of the proposals actually increases each year of the contract. That increase is locked into perpetuity. The increased costs simply outstrips the growth of the County. While the desire to catch-up in one fell swoop is understandable given the fact that this is the only time that the Union starts anew with these employees, the fact remains that what it seeks adds significant costs to the County that must be absorbed in a single contract. It may be too much in too short of period.[12] Furthermore, as I have already noted, it goes further than merely catching up, but actually puts these employees ahead of other County employees. Clearly, the recurring and increasing nature of the costs of the Union proposal would put a strong drain on the Employer's financial resources.[13] Perhaps if the Union had merely sought a reclassification along the lines as outlined in this decision or something similar to that the correct relationship could have been established without the full added cost of the current Union proposal. While some additional cost is justified, the total

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[12] See In School District of Butternut. (Briggs, Dec. No. 27313-A)

[13] The Union's proposal defers much of the wages of the bargaining unit members. This certainly keeps the initial cost of the proposal down. The Union is to be credited for this portion of their proposal. It certainly recognized the financial realities as they exist. However, I have found that this contract is setting the standard. While the contract only lasts through 1998, its effects, realistically go well beyond that year. To find, as the Union argued, that this contract establishes the status quo, and to then disregard the long range effect of my Award would be error. Therefore, while total cost is unquestionably a factor in any analysis of financial proposals, it is far from the only factor involved in this case. The long range effect must be part of the equation.

additional costs from the Union proposal are not.

Highway Patrol Superintendent

The Union compared the wages of this position with similar titles in other jurisdictions. The record revealed that this position in Buffalo County has less authority than similar positions in other Counties. It is a non-bargaining unit position elsewhere. That is so because of the supervisory nature of the position in those Counties. Given that difference, the comparisons used by the Union do not fit. There is no basis upon which the wage increase proposed by the Union for this position can be justified.

Conclusion

It has often been noted by arbitrators, that arbitration should "approximate the result of collective bargaining."[14] The record does not show that there is any collective bargaining that has taken place in the County that has given the result sought by the Union. Ruling in favor of the Union would not in my mind approximate a bargaining result. While the same could be said for the Employer proposal, I think that is less so. While I find that there is considerable merit to the Union's desire to increase the wages of these employees, I find that the factors when taken together simply do not favor the Union's proposal. I have little doubt from the evidence presented that the wages of these employees should be moved upward. It is just that they were moved too far and

[14] School District of Butternut (Briggs, Dec. No. 27313-A)

too fast. Granting the classification movement would be worse than not granting it. Hopefully, this decision will provide some guidance for the parties in the future that will allow them to accomplish the just result that the employees rightfully deserve. Unfortunately, adopting the Union proposal would not be that just result.

AWARD

The final offer of the County, together with the tentative agreements shall be incorporated into the parties agreement.

Dated: January 22, 1998

Fredric R. Dichter,
Arbitrator