

FREDERICK P. KESSLER
ARBITRATOR

111 2

GRANT COUNTY (COURTHOUSE)

and

GRANT COUNTY EMPLOYEES UNION
LOCAL 918, AFSCME, AFL-CIO

DECISION
CASE 66, NO. 54705,
INT-ARB-8068

Decision No. 29200-A

A. INTRODUCTION

On November 11, 1997, this arbitrator was advised that he had been selected to hear the interest arbitration proceeding between Grant County, Wisconsin, (hereinafter referred to as "the County") and Local 918, of the American Federation of State, County, and Municipal Employees, AFL-CIO (hereinafter referred to as "the Union"). A hearing was scheduled for January 6, 1998, at the Grant County Courthouse in Lancaster.

The hearing began at 11:00 a.m. Witnesses testified and exhibits were received. The hearing concluded at 2:30 p.m. The parties agreed that briefs would be submitted by March 10, 1998. By agreement, time was extended for submission of both Post Hearing briefs and Reply Briefs. The final Reply Brief was received May 1, 1998.

B. APPEARANCES

The County appeared by Jon E. Anderson and Kim M. Gasser of the law firm of Godfrey & Kahn, S.C. They called as their witness County Personnel Director Frank Matel. Also present was County Board Chair Neil Gunderman.

The Union appeared by David White, Staff Representative for Wisconsin Council 40, AFSCME, AFL-CIO. He called as his only witness, Linda Orr, an Office Assistant for the County. Also present were Local 918 officers Bryon Rewey, President, Cecilia Fishnick, Treasurer, and Ruth Rotramel, a Bargaining Committee member.

Vincent Miller, Administrator for the City of Lancaster and Linda Adrian attended the hearing as observers.

C. PERTINENT STATUTES

Municipal Interest arbitration disputes are governed by Chapter 111, Wisconsin Statutes. The factors that an arbitrator may consider are specifically enumerated in Sec. 111.70(4)(cm)7. These factors are:

111.70 Municipal employment (4) (cm)

7. "Factors given greatest weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall 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 expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. "Factor given greater weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. "Other factors considered." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

- 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 employees 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 employees generally in public employment in the same community and 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 employees in private employment in the same community and 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 proceeding.

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 public service or in private employment.

D. FINAL OFFERS

1. Final offer of the County.

1. **Article 27 - Duration:** Amend section 27.02 to provide for a two year agreement, commencing January 1, 1997 through December 31, 1998.

2. **Appendix A - Hourly Wage Rate:** Revise Appendix A, Hourly rates to reflect the following:

a. Effective January 5, 1997 increase all rates by 3%.

b. Effective December 28, 1997 increase all rates by 3%.

2. Final Offer of the Union.

1. **Article 9 - Job posting.** Amend Section 9.02 as follows:

9.02 Selection: The most senior applicant in the classification (who meets minimum job related qualifications) will be awarded the vacancy. Classifications are listed in Appendix A. If no one in the classification applies for the posting, the most senior qualified applicant (who meets minimum job related qualifications) shall be selected provided that among internal applicants, no junior employee is objectively superior on the basis of skill and ability. In such case, the objectively superior junior employee shall be selected.

2. Article 21 - Insurance. Amend Section 21.01 and 21.02 by adding the following:

The Employer agrees to maintain the current practice relating to the payment of 100% of the family premium for married employees where both spouses are employee of Grant County.

3. Appendix A - Hourly Wage Rates

- a. Increase all wages by 2% effective January 1, 1997.
- b. Increase all wages by 2% effective July 1, 1997.
- c. Increase all wages by 2% effective January 1, 1998.
- d. Increase all wages by 2% effective July 1, 1998.
- e. Re-assign Linda Orr and Connie Miles from Office Assistant to Office Systems Assistant.

E. POSITION OF THE UNION

Sec 111.70 (4)(cm) provides that an arbitrator must give the "greatest weight" to any state law or directive placing limits on expenditures or revenues on the unit of government that is subject to the arbitration proceeding. Those limitations are not applicable in this case. The County cannot claim that the "greatest weight" factors act as a bar to the acceptance of the Union's final offer. No law or directive prevents the County from raising the money to pay for an increase under either of the two final offers.

The County has not argued that the tax rate freeze would have any impact in this dispute. The County has the legal authority, if it chooses, to enact a .05% local income tax. It has not done so despite the substantial tax revenue that would result from such an enactment.

The statute next provides that "greater weight" factors such as local economic conditions be examined by the arbitrator. In this case, the local economy does not impact decisively in support of either party's offer. The "greater weight" factor must be examined when compared with the economic conditions in Grant County and the comparable counties.

Arbitrator Gil Vernon, in case involving Professional Unit Employees, has found that comparable employers to the County are Columbia County, Crawford County, Green County, Iowa County, LaCrosse County, Richland County, Sauk County, Vernon County, Unified Board of Grant and Iowa County, and the City of Lancaster.

Those comparable counties are appropriate to consider in this case. Once comparable units of government have been established in a prior arbitration case they should not be disturbed in subsequent arbitration disputes, unless significant changes have occurred which render some of them no longer comparable. The parties should be able to have the predictability and stability in their bargaining relationship that results from the application of the same comparable group. This is especially important in the ability of the parties to resolve their own disputes rather than relying on arbitration. Arbitrator Vernon's comparable counties were relied on by Arbitrator Krinsky in a second case involving the Professional Unit employees.

While professional employees are not involved in this bargaining unit, the comparable groups used in the prior dispute involving professionals will be helpful here. Arbitration cases involving Courthouse employees and professional employees often use the same comparable groups. Examples of that pattern include cases involving Iowa, Columbia, Richland and Sauk counties.

The County's five proposed comparable units of government, differ from Krinsky's and Vernon's. The County's proposed group is weighted heavily toward small counties. The population of the five counties averages 17,932 in 1997. Grant County has a population of 49,567, almost three times the average in the proposed comparable counties. The largest county in their proposed group has a population of 21,616. The Union's proposed population group has an average of 37,162, which is considerably closer to the County's population.

Many arbitrators have held that geographic contiguity is not the only consideration to be used in determining appropriate comparable units of government. Some arbitrators have found that counties similar in size, even though not contiguous, should be included in comparability groups, as more meaningful measures for resolution of future disputes.

The local economic conditions do not favor either offer. Per capita income in Grant County rose between 1994 and 1995 at a rate of 3.76%. This was the fifth highest rate among the Union's comparable units of government. The evidence submitted by the County may indicate that the County has had the slowest growth in per capita personal income among the comparable government units in the last 25 years. That time period, however, artificially deflates the current economic picture of the County. This labor agreement is only for two years, not twenty-five. During 1997 and 1998, the two years of the contract, the County has kept up economically with comparable counties. Between 1993 and 1995, there has been a steady increase in the income ranking in Grant County in contrast to the comparables.

Property values in the County have enjoyed a resurgence in the past five years. The County's 41.7% increase was faster than the statewide rate increase of 35.8% in property values. When equalized valuation is considered, the County's equalized valuation is almost identical to the average in the comparable group of counties.

The internal settlements the County has made with its other bargaining units favor Union offer. The Sheriff's Department settlement resulted in a wage increase of 4% with an effective date of January 5, 1997.

The pattern of external settlements in the comparable counties favor Union offer. Under the County proposal, comparable units in eight of the twelve counties received a higher percentage increase than the proposal here. Under the Union's final offer, only four comparable units would receive a greater increase. The Union offer is closer to the average comparable increase than the County's offer.

An analysis of benchmark positions favors Union offer. The Office Assistant position ranked seventh among the twelve comparable governments in 1996. The legal secretary position ranked eighth out of ten units which had a comparable position. The Fiscal Clerk, Deputy Register of Deeds, and Economic Support Specialist positions (at the minimum rate) also ranked below average. Only the position of Deputy Clerk of Court ranked above the average in comparable counties.

The effect of the final offers for 1997 has been considered in relation to the comparable units of government. The Office Assistant position ranks eleventh (minimum) and twelfth (maximum) among the comparables under both final offers. The Legal Secretary's relative position would be unchanged under either offer. Both those positions would be closer to the average under the Union final offer than under the County offer. The Fiscal Clerk's relative rank would decline under the County offer, while it would retain its rank under the Union offer. The position of Deputy Register of Deeds would retain its relative rank under either offer, but the Union offer would place it closer to the average. The Economic Support Specialist would decline in relative rank under both offers, but would be closer to the average under the Union final offer. Only the Deputy Clerk of Court position would be closer to the average rate under the County's final offer.

A similar analysis cannot be done to measure the impact of the proposals for 1998. Only five of the proposed comparable units of government have settled their labor agreements for that year. When those units which have settled are considered, the pay increase in the County's final offer is well below average for the settled counties, while the Union's offer is only slightly below the average. The 1998 comparable settlements support the Union's final offer.

The County has "cherry picked" positions in it's proposed list of benchmarks in order to make it's offer look better. The Economic Support Lead Worker is compared with positions that are not similar in Crawford and Richland County. The position's the County has used as benchmarks represent only 17 of the 86 employees in the bargaining unit. The County only then compares the starting rates for those employees, rather than the maximum rates which will cover most employees for the bulk of their careers. Consequently, the County benchmarks are not particularly reliable or helpful in the application of the statutory criteria.

The County, in it's arguments, assumes that certain settlements for 1998, in other counties, will be at 3%. These counties and their unions have not settled their labor agreements. Consequently, this conclusions unfounded. Only two settlements for 1998 in the comparison group does not provide a broad enough pattern to support it's conclusions.

The County uses 1995 as it's base year to support some of it's historical rankings. The proper base year is 1996. It voluntarily settled it's labor agreement in 1996. The result was that wage rates increased and the rankings changed. To use the 1995 ranking in this arbitration distorts the percentage adjustments most recently agreed upon.

The job reclassification proposal is justified by the evidence. The work performed by Ms. Orr is management of a system, the telephone system. Ms. Orr's job is more than merely answering the phone. She must convey information to the public about the County's government. Her job has now evolved into that of an Office Systems Assistant and it should be reclassified as such. The County errs when it argues that Ms. Orr would report to a supervisor who is in the same classification as she is seeking. That argument is not supported by evidence.

The health insurance proposal by the Union merely codifies the present practice. The County is attempting to make a change in the coverage. It is not material if the benefit was ever negotiated or not, it was still terminated on January 1, 1997, and was part of the constellation of benefits that employees received. Under these circumstances a, quid pro quo is not required. It is not necessary for a "benefit" to be negotiated for it to be valid. In this case, the benefit was an implied term of the labor agreement. The County is trying to end that benefit and no quid pro quo is required to prevent elimination of an implied contract condition. The union is merely trying to keep a benefit provision that already exists. No internal inconsistency occurred regarding this benefit until the County unilaterally changed the practice which is at issue here.

The Union has shown the need to change an unjustified arbitration decision in which an unqualified non-bargaining unit member was awarded a job. The decision was absurd. It permits arbitrary action by the County because someone can meet the minimum qualifications for a job, yet not be qualified for the job, as the arbitrator's ruling required. The decision allowed the County to add qualifications for a position after the posting period for the vacancy has ended. That means the County being able to add new conditions to the qualification requirements for any position.

F. POSITION OF THE COUNTY

The County's proposed list of comparable counties is more reasonable than the list proposed by the Union. Grant County is located in the southwest corner of Wisconsin. Only four counties are contiguous to Grant County. They are the only counties in the County list. The governmental units proposed by the Union are too far distant geographically and are outside of the labor market in which most county employees reside.

The five counties, not on the County's list, that are submitted by the Union, are not comparable to Grant County. Their average income is much higher. The four counties proposed by the County, have a lower average income than Grant County, and are much closer to Grant County when adjusted gross income is compared.

A compact regional labor market is a significant factor in the measuring the ability to recruit and retain employees. A broader geographical based group of counties, particularly when it involves nonprofessional bargaining units does not reflect the reality of the labor pool available. The Courthouse unit is not units of employees who have specific, particular skills that have a limited local market. They could seek employment in the private sector in Grant County, while a Psychiatric Social Worker may have to look farther away for a similar job.

Any evaluation of the County's economic conditions must take into consideration it's growth and economic base. It has been one of the slowest growing counties in Wisconsin for the past twenty-five years. It's predominant base is an agricultural economy.

The non-professional nature of this bargaining unit means it should not be included in the same group of comparable units of government as a "sister" unit consisting of professional employees. Social workers, and other professional's, must have more formal education. Their jobs are not as easily transferable as the Courthouse unit employees. A social worker may need to search for a new job in some of the Union's comparable counties. Most of the employees in the Courthouse unit would not have to look as far away to find similar work.

The professional unit was established in 1986 for social workers, nurses and land conservationists; each group had unique duties. This is the first time that the employees of the employees have gone to arbitration. It is not unnecessary to use a group of counties that was established for a dissimilar unit.

The County's final offer is more consistent with the comparable counties, both in ranking of jobs and in level of wage increases that have been granted. When the two final offers are compared regarding the minimum hourly wage rates, the County's offer carries forward the ranking of the jobs to the same position where they were during the prior year. In three of the four positions, the County's wage rate was ranked second. That ranking was carried forward under the final offer.

When the maximum rates are reviewed, similar results are found. Grant County and Iowa County alternate between first and second rank for most of the positions. In addition, the County's offer more closely conforms to the average rate of pay for the positions, except for the position of Administrative Support Assistant. The Union's final offer will reward the employees with average pay well over the comparable average. Because of the wage rate being currently paid, this is not a case where a "catch-up" raise is necessary.

The wage increase percentage of the settlements in the comparable counties supports the County's offer. The labor agreement settlements in Crawford and Lafayette County provided wage increases that placed their average increase between the final offers in this case. Those settlement's should be given weight because Grant County significantly increased wages, above average wage increase in the comparable counties, in 1995 and 1997. The Richland County wage increase is not finally implemented until the last day of the labor agreement. That, in effect, makes Richland's contract nearly identical to the County's offer.

Even when using the Union's comparable group, the County final offer is more consistent with settlement pattern of the other units of government. The wage increase that the Union calculates, in the five counties with split year wage adjustments, did not occur in the percentage described by the Union, but at a substantially lower rate. In Green County, this should be 2.5%, not 7%. When all the labor agreement settlements are examined for the two year period, they support the final offer of the County more than that of the Union.

The prior bargaining history of the parties shows that the County is willing to provide adequate compensation adjustments to their employees. The initial Labor Agreement between the parties became effective March 26, 1993. In 1994, wages were increased, by negotiation, from January 1, to December 31, from 7.8% in the lowest range, to 10.8% in the highest range. On July 1, 1995, the wage schedule was restructured with further double digit increases. This was followed by a 2% and 3% in 1996. Given those increases, the parties cannot contend that there is a need for a "catch-up" solution to a gross wage disparity.

The Union has not supported the proposed health insurance, job reclassification, and job posting changes, all of which are contract enhancements. No quid pro quo is offered to the County. The Union has failed to show a compelling need for the changes. In light of those failures, the proposed revisions should be rejected.

The practice that the County followed by paying 100% of the family premium when both of the employees worked for the County, rather than the 85% it paid for other family plan employees, was done because it was cheaper for the County than paying 100% for two single employees. The recent cost increases in health insurance make this no longer the cost beneficial. The County's decision to pay 100% for married county employees was not a policy incorporated in the Labor Agreement. It was a unilateral action taken by the Personnel Director, which was never authorized by the County Board. The County Board has now rescinded the practice because it was never the result of a meeting of minds between the County and the Union. It is not a binding past practice which can only be changed through negotiation,

No justification has been offered for either clerical reassignment, or modification of job posting language, the Union has proposed. The change would place Ms. Orr in a position of reporting to a person in her same classification. Her duties are not substantially greater than the other two Office Assistants. The Labor Agreement provides a process for the reclassification of a job by initiation of a petition. That was not done here. That is the proper way to achieve the result sought by Ms. Orr.

Public interest and public welfare supports the County's final offer. Grant County is not a prosperous county. Over the past 25 years, the County has had one of the smallest average per capita increases in income, 6.6%. This compares poorly to the state average of 7.2% over the same time. The County also experienced a slow growth in property values, at a rate of almost half that of what the rest of the state did. It ranked 2nd last among the counties in the state.

The Consumer Price Index for the first eleven months of 1997 showed an increase of 2.2%. This is 1.8% less than the increase requested in the Union's final offer.

G. DETERMINATION OF COMPARABLES

Three criteria are considered by arbitrators in determining comparable units of government in interest arbitration cases; these criteria are geographic proximity, similarity in size, and similarity in character.

Geographic proximity is important because it is a good measurement of the market place for many jobs. Some people are willing to travel only a limited distance to seek employment. Marketplace factors, particularly for less skilled or entry level positions, may make geographic proximity the primary concern.

Similarity in size is important for some jobs because it determines the ability of some government units to perform some functions. A law enforcement agency in a city with a population of 2,000 is less likely to have a detective, or drug control officer, than a city with a population of 50,000. Some functions can be performed because of economy's of scale. A similarly titled job in a large community may perform different functions than that job title in a smaller community. A deputy clerk in a multi-branch court system may only handle juvenile or civil proceedings, whereas that job in a single branch court may also need to know probate, criminal, traffic, and family procedures.

Similarity in character is significant because it tends to reflect both a unit of government's ability to pay and the nature of the functions that the employee is expected to perform. A suburban community may demand land use planning functions from a county, while a rural county may be more concerned with highway maintenance. An urban community or county may have to deal with more public assistance and law enforcement resources.

Both sets of proposed comparable units of government have some deficiencies. The County's proposed list is limited to adjacent counties; all have a substantially smaller population than Grant. Most are in the same labor market with Grant. The Union's proposed list contains some counties that are far geographically from the same labor market. At least one, LaCrosse, that is substantially different demographically.

Because a particular group was used for a unit of professional employees does not make the same group appropriate for the Courthouse employees in the same county. The employment markets for the different bargaining units are dissimilar. That dissimilarity must be recognized when deciding what counties are a comparable group for this contract.

Grant County is surrounded by rural, agricultural counties. It also has a large suburban population. The southwestern portion of the County has many residents who work in Dubuque, Iowa, which merely requires a short commute over the Mississippi River Bridge. The Villages of Dickyville and Hazel Green, and the town of Jamestown are predominately suburban.

Grant County, according to the 1990 census, also contains five cities or towns with populations of more than 2000 and less than 10,000 persons. No community has more than 20% of the County's population. In most counties in Wisconsin, one city, usually the county seat, dominates the population of the county. The County also contains a State University with a significant student and faculty population, but which does not dominate the County.

The county that resembles Grant more than any other is Sauk County. It has four communities with populations between 2,000 and 10,000. It had 50,897 persons in 1996, compared with Grant's 49,442. It also had some suburban residents who commuted to Madison. Portions of Sauk County were geographically closer to Lancaster, in Grant County, than parts of Richland and Iowa Counties. Adding Sauk to the comparable counties preserves the market concerns shown in the County's list, but adds a county similar in size, and closer in character, to Grant County.

The following counties, Crawford, Iowa, Lafayette, Richland and Sauk are the most appropriate to include as the comparable units of government for this arbitration.

H. COMPARISON OF WAGE OFFERS

1. Greatest Weight Factors

Neither side has offered any arguments based on any statutory limitations regarding the County's ability to pay the wages in the final offer of either party. Therefore, that does not effect the outcome.

2. Greater Weight Factors

Economic conditions in the county or community must be given "greater weight" by the arbitrator in an interest decision. Per capita income is one measure of the economic condition in the county. The County's income is second highest among the six comparable units, and exceeds the average for the six counties.

1995 Per Capita Income in Comparable Units

Crawford	15,821	
Iowa	16,483	
Lafayette	15,087	
Richland	15,670	
Sauk	<u>20,064</u>	
Average	16,625	
		<u>Rank</u>
Grant	16,729	2

Grant County, and the southwestern corner of Wisconsin, are part of the state where population stagnation or decline is occurring. The per capita income in Grant County increase by only 60% from 1982 to 1992. Wisconsin per capita income increased by 72% during the same period. Crawford, Iowa and Sauk counties grew faster than the state as a whole. LaFayette and Richland counties grew faster than Grant County, but below the state average. Although the income slow growth rate has been accelerated, the long term impact of slow growth must be recognized.

The economic factors, considered in the context of the comparable counties, weigh slightly in favor of the final offer of the County. The average income is slightly higher than the comparable group. The overall viability of the area is one of relative low growth.

3. Other Factors

(a) Financial Ability of Unit of Government

The parties have not raised any issue as to the ability of the County to pay for the proposed increase. The County has the authority to levy a sales tax, if it so chooses, or to increase property taxes in order to raise additional revenue.

(b) Internal Comparisons

The County granted a 4% wage increase to the Sheriff's Department employees effective January 1, 1997. None of the other bargaining units within the County had settled their contracts by the time of the hearing in this matter. The Sheriff's Department wage rate increase supports the argument that the Union's final offer is preferable.

(c) Comparison of wages, hours and conditions of employment.

External comparisons of wages, hours and conditions of employment have been a major consideration in determining the appropriate offer in interest cases. Before the external comparisons can be reviewed for 1997 and 1998, and their impact understood, the prior rankings for 1996 and comparisons with the other counties must be reviewed.

Only two of the counties in the comparable group had entered in labor agreements for 1998 at the time of the hearing. The information for the second year of the two year labor agreements is included. However, it will be given less weight because two agreements out of five counties is insufficient to be considered a pattern of settlement.

Each of the parties submitted a series of benchmark positions that they contended supported their diverse conclusions as to which final offer should be chosen. Only one of the benchmark positions, that of Deputy Clerk of Court, was the same. I have elected to consider all of the benchmarks offered by both parties in an effort to accurately determine the impact of the wage proposals.

The parties submitted evidence as to the comparable positions in all of the counties except Sauk. For Sauk County, I have read the Labor Agreement and have attempted to determine the comparable position based on job titles. The pay range I use from the Sauk Labor Agreement for 1997 was based on a 90% employer health insurance premium.

A difficulty with this ranking process is that inaccuracies could be inherent because Iowa County delayed in implementation of the pay increase until and November 1, and Richland County postponed the increase until December 31. Those delays mean that the counties may rank differently at different times of the year. Because of the delays, I chose the July 1, date for the Richland County increase and the January date for the Iowa County figures.

In 1996, four of the counties in the comparable group had a position similar to that of Office Assistant. The hourly rate paid in that classification was as follows:

	<u>1996 Office Assistant</u>		<u>Rank</u>	<u>Rank</u>
	<u>Minimum</u>	<u>Maximum</u>		
Crawford	8.31	10.16		
Iowa				
Lafayette	8.02	9.78		
Richland	7.77	8.84		
Sauk	<u>8.46</u>	<u>8.94</u>		
Average	8.14	9.43		
Grant	7.51	8.85	5	5

Grant County ranked fifth for the minimum rate and fourth for the maximum rate in 1996. It ranked last in both rates for 1997, under either of the final offers. The effective date of the increase in Richland was December 31, 1997, and in Iowa County, November 1, 1997. It was likely Richland's rate was below the Union final offer for both the maximum and minimum, and below the County offer's maximum rate for almost the full year. For this comparison, and all others, the rate used for the Union's offer for Grant County for 1997 is the rate beginning on July 1st.

	<u>Office Assistant</u>			
	<u>1997</u>		<u>1998</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Maximum</u>
Crawford	8.63	10.53	8.89	10.94
Iowa	9.88	11.02		
Lafayette	8.26	9.92	8.50	10.22
Richland	8.17	9.29		
Sauk	<u>8.78</u>	<u>9.28</u>		
Average	8.74	10.01	8.70	10.58
Grant				
Union	7.81	6	9.21	6
Employer	7.74	6	9.12	6

All five of the counties had a Legal Secretary, or similarly titled position. The rate for that position was as follows:

1996 Secretarial Assistant (Legal)

	<u>Minimum</u>		<u>Maximum</u>	
Crawford	8.40		10.24	
Iowa	10.96		11.19	
Lafayette	9.00		10.82	
Richland	10.10		11.17	
Sauk	<u>10.01</u>		<u>10.47</u>	
Average	9.69		10.78	
		<u>Rank</u>		<u>Rank</u>
Grant	8.20	6	9.64	6

Grant County was last in the rate paid both at the minimum and maximum level in 1996. Under either of the final offers, Grant ranked last in both rates for 1997. It should be noted that the effective date of the increase in Richland was December 31, and November 1, in Iowa County. Those dates would not effect the ranking for either of the final offers.

Secretarial Assistant (Legal)

	<u>1997</u>		<u>1998</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Maximum</u>
Crawford	8.72	10.62	9.07	11.03
Iowa	11.45	11.68		
Lafayette	9.27	11.13	9.27	11.13
Richland	10.62	11.74		
Sauk	<u>10.36</u>	<u>10.84</u>		
Average	10.08	11.20	9.17	11.08
Grant		<u>Rank</u>		<u>Rank</u>
Union	8.53	6	10.03	6
Employer	8.45	6	9.93	6

All five of the counties had a position similar to that of Fiscal Clerk.

1996 Fiscal Clerk

	<u>Minimum</u>		<u>Maximum</u>	
Crawford	8.31		10.16	
Iowa	9.39		10.53	
Lafayette	8.36		10.04	
Richland	9.04		10.11	
Sauk	<u>8.94</u>		<u>9.43</u>	
Average	8.81		10.05	
		<u>Rank</u>		<u>Rank</u>
Grant	8.20	6	9.64	5

Grant County paid fourth highest at the minimum level and fifth highest at the maximum level for Fiscal Clerk in 1996. position. It would be last at the minimum pay rate and fifth at the maximum pay rate under both offers. Richland and Iowa's delay would not effect the final ranking of Grant County under either offer.

<u>Fiscal Clerk</u>				
	<u>1997</u>		<u>1998</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Maximum</u>
Crawford	8.63	10.53	8.98	10.94
Iowa	9.88	11.02		
Lafayette	8.62	10.34	8.87	10.65
Richland	9.49	10.63		
Sauk	<u>9.25</u>	<u>9.76</u>		
Average	9.17	10.46	8.93	10.79
Grant		<u>Rank</u>		<u>Rank</u>
Union	8.53	5	10.03	5
Employer	8.45	5	9.93	6

All the counties employed a Deputy Clerk of Court. That position paid as follows:

<u>1996 Deputy Clerk of Court</u>				
	<u>1996</u>		<u>Rank</u>	
	<u>Minimum</u>	<u>Maximum</u>		
Crawford	9.19	11.05		
Iowa	10.96	11.19		
Lafayette	8.72	10.47		
Richland	9.56	10.63		
Sauk	<u>9.65</u>	<u>10.13</u>		
Average	9.54	10.70		
Grant	10.02		<u>Rank</u> 2	<u>Rank</u> 1

Grant County's pay rate ranked second at the minimum and first for the maximum for this position. It would continue that ranking under either of the final offers.

<u>Deputy Clerk of Court</u>				
	<u>1997</u>		<u>1998</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Maximum</u>
Crawford	9.45	11.45	9.92	11.88
Iowa	11.45	11.68		
Lafayette	8.98	10.78	9.25	11.10
Richland	10.05	11.17		
Sauk	<u>9.99</u>	<u>10.48</u>		
Average	9.98	11.11	9.59	11.49
Grant		<u>Rank</u>		<u>Rank</u>
Union	10.42	2	12.26	1
Employer	10.32	2	12.13	1

The position of Deputy Register of Deeds is found in all of the county's. It paid as follows in 1996:

1996 Deputy Register of Deeds

	<u>Minimum</u>		<u>Maximum</u>	
Crawford	9.19		11.05	
Iowa	10.96		11.19	
Lafayette	8.72		10.47	
Richland	9.56		10.63	
Sauk	<u>8.70</u>		<u>9.18</u>	
Average	9.43		10.50	
		<u>Rank</u>		<u>Rank</u>
Grant	9.11	4	10.71	3

Grant County ranked fourth at the minimum pay level and third at the maximum pay level for the position of Deputy Register of Deeds. Under the Union offer it would rank third at both the minimum and the maximum. It would rank fourth for both under the County offer. The delay in Richland County's final offer would effect the ranking of both the Union and the County's final offer.

Deputy Register of Deeds

	<u>1997</u>		<u>1998</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Maximum</u>
Crawford	9.45	11.45	9.92	11.88
Iowa	11.45	11.68		
Lafayette	8.98	10.78	9.25	11.10
Richland	10.05	11.17		
Sauk	<u>9.00</u>	<u>9.50</u>		
Average	9.79	10.91	9.58	11.49
Grant		<u>Rank</u>		<u>Rank</u>
Union	9.48	3	11.14	4
Employer	9.38	4	11.03	4

All the County's employ Economic Support Specialists. They were paid as follows in 1996.

1996 Economic Support Specialist

	<u>Minimum</u>		<u>Maximum</u>	
Crawford	8.68		10.53	
Iowa	10.96		11.19	
Lafayette	9.00		10.80	
Richland	9.04		10.11	
Sauk (Range 4)	<u>11.09</u>		<u>11.55</u>	
Average	9.84		10.68	
		<u>Rank</u>		<u>Rank</u>
Grant	9.11	3	10.71	3

Grant County ranked third the minimum rate and maximum pay levels for the Economic Support Specialist position. It would become forth rank under the County offer and third under the Union offer for both the minimum and the maximum rate.

Economic Support Specialist

	<u>1997</u>		<u>1998</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Maximum</u>
Crawford	9.01	10.91	9.37	11.03
Iowa	11.45	11.68		
Lafayette	9.27	11.13	9.27	11.46
Richland	9.49	10.63		
Sauk	<u>11.48</u>	<u>11.68</u>		
Average	10.14	11.21	8.32	11.25
Grant		<u>Rank</u>		<u>Rank</u>
Union	9.58	3	11.14	3
Employer	9.38	4	11.03	4

All the Counties employ an Administrative Support Assistant, or a comparable position. Their pay rate is as follows:

1996 Administrative Support Assistant

	<u>1996</u>		<u>Rank</u>	
	<u>Minimum</u>	<u>Maximum</u>		
Crawford	8.40	10.24		
Iowa	9.16	10.30		
Lafayette	8.72	10.47		
Richland	9.04	10.11		
Sauk (Range 4)	<u>8.94</u>	<u>9.43</u>		
Average	8.85	10.11		
Grant	8.65		<u>Rank</u> 5	<u>Rank</u> 4

Grant County ranked fifth the minimum rate and fourth at the maximum pay levels for the Social Services Assistant position. It would become fourth rank at the minimum and maximum under the union offer and fifth rank at both under the County offer.

Administrative Support Assistant

	<u>1997</u>		<u>1998</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Maximum</u>
Crawford	8.72	10.62	9.07	11.03
Iowa	9.63	10.77		
Lafayette	8.98	10.78	8.87	10.65
Richland	9.40	10.52		
Sauk	<u>9.28</u>	<u>9.78</u>		
Average	9.20	10.49	8.97	10.84
Grant		<u>Rank</u>		<u>Rank</u>
Union	9.00	4	10.59	4
Employer	8.91	5	10.49	5

All the Counties employ a Social Services Assistant, or a comparable position. Their pay rate is as follows:

<u>1996 Social Services Assistant</u>				
	<u>Minimum</u>		<u>Maximum</u>	
Crawford	8.40		10.24	
Iowa	10.24		10.45	
Lafayette	8.36		10.68	
Richland	8.84		9.91	
Sauk (Range 4)	<u>8.94</u>		<u>9.43</u>	
Average	8.96		10.14	
		<u>Rank</u>		<u>Rank</u>
Grant	9.11	2	10.71	1

Grant County ranked second for the minimum rate and first for the maximum pay levels for the Social Services Assistant position. It would remain at those ranks under both offers.

<u>Social Services Assistant</u>				
	<u>1997</u>		<u>1998</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Maximum</u>
Crawford	8.72	10.62	9.07	11.03
Iowa	10.71	10.92		
Lafayette	8.62	10.34	8.87	10.65
Richland	9.20	10.31		
Sauk	<u>9.28</u>	<u>9.78</u>		
Average	9.31	10.39	8.97	10.84
		<u>Rank</u>		<u>Rank</u>
Grant		2		1
Union	9.48	2	11.14	1
Employer	9.38	2	11.03	1

All the Counties employ an Economic Support Lead Worker or a comparable position. The Richland County position is in dispute because it is not part of the bargaining unit in that County. Their pay rate is as follows:

<u>1996 Economic Support Lead Worker</u>				
	<u>Minimum</u>		<u>Maximum</u>	
Crawford	8.68		10.53	
Iowa	11.22		11.46	
Lafayette	9.35		11.22	
Richland	9.04		10.11	
Sauk (Range 9)	<u>10.72</u>		<u>11.19</u>	
Average				
		<u>Rank</u>		<u>Rank</u>
Grant	9.63	3	11.44	3

Grant County ranked third for the minimum rate and second for the maximum pay levels for the Economic Support Lead Worker. Under both offers, it would remain at the same minimum, but move to first place at the maximum rate.

Economic Support Lead Workers

	<u>1997</u>		<u>1998</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Maximum</u>
Crawford	9.01	10.91	9.37	11.33
Iowa	11.69	11.93		
Lafayette	9.63	11.56	9.92	11.90
Richland	9.40	10.52		
Sauk (Range 9)	<u>11.12</u>	<u>11.61</u>		
Average	10.17	11.31	9.66	11.62

Grant		<u>Rank</u>		<u>Rank</u>	
Union	10.42	3	12.26	1	
Employer	10.32	3	12.13	1	

When the rank of Grant County is fixed in each of the three years for each of the benchmark positions, the result is as follows:

	<u>1996</u>			<u>1997</u>	
	<u>Min</u>	<u>Max</u>		<u>Min</u>	<u>Max</u>
Office Assistant	5	4	Union	6	6
			Emp	6	6
Secretarial Assistant (Legal)	6	6	Union	6	6
			Emp	6	6
Fiscal Clerk	6	5	Union	5	5
			Emp	5	6
Deputy Court Clerk	2	1	Union	2	1
			Emp	2	1
Deputy Register of Deeds	4	4	Union	3	4
			Emp	4	4
Economic Support Specialist	3	3	Union	3	3
			Emp	4	4
Admin. Support Assistant	5	4	Union	4	4
			Emp	5	4
Social Services Assistant	2	1	Union	2	1
			Emp	2	1
Econ. Support Lead Worker	3	3	Union	3	1
			Emp	3	1

Fifteen of the categories for 1997 were above average, while 20 were below average. One was exactly at the average. Of those in the Union's final offer, 5 categories were above average (either 1st or 2nd), seven were average (3rd or 4th rank), and six were below average (5th or 6th rank). Of those in the County final offer, five were above average, six were average, and seven were below the average in rank.

The benchmarks disclose that the two final offers are very close. Both substantially kept the middle ranking that the County had in 1996. No substantial drops, and only one substantial increase, occur under either offer. An objective evaluation of the two offers would give a slight preference to the Union's final offer in comparison with other wage settlements in external units of government.

(d) Consumer Price Information.

The Consumer Price Index shows an increase of 2.2% for 1997. The wage increase that the County has proposed is closer to the CPI than that proposed by the Union. This factor supports the County's final offer.

I. HEALTH INSURANCE

Certain practices, though not specified in the Labor Agreement, may be binding on the parties and not altered unilaterally. Elkouri and Elkouri, in How Arbitration Works, 5th Ed., p. 632-33, examine the criteria by which a practice becomes binding on the parties, and is subject to alteration only by agreement. They state:

First, even assuming that a matter is such that it may otherwise be given "binding practice" effect as an implied term of the agreement, it will not be given that effect unless it is well established--strong proof of its existence will ordinarily be required. Indeed, many arbitrators have recognized that, as stated by Arbitrator Jules J. Justin: "In the absence of a written agreement, 'past practice', to be binding on both Parties, must be (1) unequivocal; (2) clearly enunciated and acted upon; (3) readily ascertainable over a reasonable period of time as a fixed, and established practice accepted by both Parties."

The health insurance provision was a past practice which cannot be unilaterally withdrawn. It was unequivocal, clearly enunciated, and readily ascertainable over a reasonable period of time. To alter it, the County should have negotiated with the Union. The Union's final offer is preferable regarding this issue.

J. RECLASSIFICATION

The reclassification proposal in the Union final offer should have been made with a quid pro quo to the County. Job reclassification is a subject that generally should be the subject of bargaining. An arbitrator should be involved in this only through the grievance process.

The Union has not met the burden of proof necessary to sustain the reclassification as part of this proceeding. It has not shown that the job duties are substantially greater or more complex than the other employees in the same class in the affected department.

There are other ways in which Ms. Orr's job could be reclassified without incorporating the request in the final offer package. The Labor Agreement provides a reclassification procedure by petition. The decision of the committee making the determination as to the appropriate classification could be grieved by the Union if the conclusion is contrary to the evidence or is arbitrary and capricious.

The evidence does not sufficiently support the Union's contention that Ms. Orr's duties have evolved from acting as a telephone receptionist to that of a Office Systems Assistant. "Conveying information to the public about government", as the Union describes her duties, does not unequivocally elevate her responsibilities to the classification the Union is seeking in this offer.

K. MODIFICATION OF JOB POSTING

The decision by arbitrator McGilligan, involving the interpretation of the intent of the parties in drafting language for the Labor Agreement, is not an issue that should be resolved in the final offer. This is more appropriately resolved through negotiation. The arbitrator's award cannot be appealed. To try to set aside a prior award through the process of an interest arbitration is inappropriate. The County's offer is preferred regarding this provision.

L. SUMMARY

The final offer of the County is preferred in the majority of relevant criteria. The evaluation of the wages shows that both offers are very close. The County's offer more accurately reflects the increases in the cost of living and the local economic factors. The proposal relating to health insurance favors the Union offer, because the practice has become binding. The County inappropriately discontinued the practice. However, the Unions proposal improperly attempts to add two provisions to the Labor Agreement which should be decided by negotiation. Reversal of a prior arbitration decision, and job reclassification of a particular employee should not be the subject of this arbitration. The County offer, which does not include such items in it's proposal, is preferred because they are the better dealt with through bargaining than through arbitration.

M. AWARD

The final offer of the County will be incorporated in the 1997-98 Labor Agreement between the parties.

Dated this 29th day of June, 1998,
at Milwaukee, Wisconsin

A handwritten signature in black ink, appearing to read "F. P. Kessler". The signature is written in a cursive style with a large initial "F".

FREDERICK P. KESSLER
Arbitrator