ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between BURNETT COUNTY And BURNETT COUNTY COURTHOUSE AND SOCIAL SERVICE EMPLOYEES, AFSCME LOCAL 279-A, AFL-CIO	CASE 79 NO. 54837 INT/ARB 8096 Decision No. 29204-A

Impartial Arbitrator

William W. Petrie
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Hearing Held

Siren, Wisconsin
March 17, 1998

Appearances

For the County

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between Burnett County and the Burnett County Courthouse and Social Service Employees, Local #279-A, AFSCME, AFL-CIO, with the matter in dispute the terms of a renewal labor agreement covering a bargaining unit of Courthouse and Social Service Employees, and spanning January 1, 1997 through December 31, 1998.

The parties met in preliminary negotiations and, following their inability to reach full agreement, the Union on January 31, 1997 filed a petition with the Wisconsin Employment Relations Commission seeking final and binding arbitration of the impasse pursuant to Section 111.70(4)(cm)(6) of the Wisconsin Statutes. During the preliminary investigation by a member of the Staff of the Wisconsin Employment Relations Commission, the parties exchanged final offers on September 25, 1997, the Commission on October 8, 1997 issued certain *findings of fact, conclusions of law, certification of results of investigation and an order requiring arbitration*, and on October 28, 1997 it issued an *order appointing arbitrator*, directing the undersigned to hear and decide the matter.

A hearing took place in Siren, Wisconsin on March 17, 1998, at which time both parties received full opportunities to present evidence and argument in support of their respective final offers, and each thereafter closed with the submission of post hearing briefs and reply briefs, after which the record was closed by the undersigned effective June 17, 1998.

THE FINAL OFFERS OF THE PARTIES

The final offers of both parties, hereby incorporated by reference into this decision, define four areas of disagreement: the *general wage increases* during the term of the renewal agreement; the *number of classifications and*

their slotting within the wage structure within two occupations; and the status of a red-circle rate for one employee.

(1) The proposed general wage increases are as follows:

(i) *Both parties propose* 3% increases effective January 1, 1997.

(ii) *The Union proposes* a 3% increase effective January 1, 1998, while *the Employer proposes* a 2% increases effective January 1, 1998 and an additional 1% increase effective July 1, 1998.

(2) Within a new *Child Support Specialist Occupation*, the parties propose as follows:

(i) *The Employer proposes* a new **Child Support Specialist-Entry** classification, to be slotted into **Pay Grade III**, and a new **Child Support Specialist** classification to be slotted into **Pay Grade VI** in the wage structure.

(ii) *The Union proposes* a new **Child Support Specialist** classification to be slotted into **Pay Grade VI** in the wage structure.

(3) Within the current *Economic Support Specialist Occupation*, the parties propose as follows:

(i) *The Employer proposes* the retention of the **Economic Support Specialist-Entry** *classification in* **Pay Grade III** *in the wage* structure.

(ii) *The Union proposes* that the *prior* **Economic Support Specialist-Entry** classification be re-titled **Economic Support Specialist I**, and reslotted into **Pay Grade VI** in the *wage structure, and that the prior* **Economic Support Specialist** classification be retitled to **Economic Support Specialist II**.

(4) The parties propose as follows relative to the previously agreed upon *red-circle rate for Economic Support Specialist Janice Wieser.*

(i) The Employer proposes the elimination of the 35¢ per hour red-circle premium paid to Ms. Wieser due to the parties agreed upon pay grade adjustment for her classification.

(ii) The Union proposes the retention of the 35¢ per hour red-circle premium paid to Ms. Wieser.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Arbitrator to utilize the following criteria in arriving at a decision and rendering an award:

> "7. 'Factor 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 legislature to an 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.
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> 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 greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.
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> 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:
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> 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.
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> d. Comparisons 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 performing similar services.
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> e. Comparisons 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. Comparisons 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 in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost-of-living.

h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, 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 hearing.

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."

POSITION OF THE ASSOCIATION

In support of the contention that its is the more appropriate of the two final offers before the Arbitrator, the Union emphasized the following principal considerations and arguments.

(1) The two final offers, in addition to what is summarized above, reflect the fact that the parties have reached agreement on many changes in the renewal agreement.

(a) Article 25, Section 25.02 is modified to provide new travel time, departure and return times for meal reimbursement eligibility.

(b) Wage Grades VII and VIII are added to the agreement, providing starting, six month, twelve month and eighteen month wage rates.

(c) The following classifications were upgraded in the wage structure or increased in wages, effective 7/1/97: *Mapping/GIS Specialist*, from Grade VI to Grade XIII; *Zoning Technician*, from Grade IV to Grade V; *Economic Support Specialist II*, from Grade V to Grade VIII; *Child Support Specialist* (currently Secretary II), from Grade III to Grade VI; *Child Support Specialist* (currently Legal Secretary in Child Support), from Grade IV to Grade VI; *Deputy Positions*, from Grade IV to Grade V; *Bookkeeper* in County Clerk's Office, from Grade VI to Grade VII; and *Custodian*, increased 50¢ per hour.

(d) The following additional changes in the appendix were agreed upon: elimination of the *Energy Assistance Outreach Worker*,

in Grade I; elimination of the *Community Work Experience Program Coordinator*, in Grade VI; elimination of *red-circle wage status* for Linda Anderson; elimination of *Terminal Operator I*, in Grade III; elimination of *Terminal Operator II*, in Grade IV; reclassification of *Terminal Operator II* in County Clerk's Office to *Deputy County Clerk*.

(e) The following classifications were upgraded in the wage structure or increased in wages, effective 7/1/98: *Benefit Specialist I*, from Grade II to Grade III; *Benefit Specialist II*, from Grade III to Grade IV; and *Custodian*, increased 50¢ per hour.

(2) The Union proposed comparables provide a more appropriate basis for arbitral evaluation of the parties final offers than does the County proposed comparables.

(a) The Union proposes that the four contiguous counties of Barron, Douglas, Polk and Washburn, plus demographically similar Sawyer County, constitute the most appropriate comparability groups whether one relies primarily on similarities in demographics or on precedent.

(b) The various demographic characteristics of the Union proposed comparables include the following.

(i) A *shared labor market*, shown by the commuting patterns for Barron, Douglas, Polk, Rusk, Sawyer and Washburn counties.[1]

(ii) Consideration of *per capita property value* and *recreational housing*: the County's *per capita wealth* is among the highest in the State, with a significant percentage consisting of so-called *recreational housing*; of the additional counties proposed by the Employer, only Bayfield county is similar on these two criteria.[2]

(iii) In terms of *per capita income*, the most comparable Union proposed counties are Barron, Sawyer and Washburn.[3]

(iv) In terms of the *year end unemployment rate for 1997*, Burnett County's 4.8% is most comparable to the 5.1%

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[1] Citing the contents of Union Exhibit 12.

[2] Citing the contents of Union Exhibits 13(d) and 14.

[3] Citing the contents of Union Exhibit 13(a).

rate in Barron County and the 4.0% rates in Polk and Douglas counties.[4]

(v) The County proposed inclusion of Rusk County as a primary comparable was rejected in the parties' only prior interest arbitration proceeding and, other than similarity in population, it fails to fulfill the generally accepted measures for establishing comparability; at best, it should be considered a secondary comparable.[5]

(3) That the Union's positions are favored on the various impasse items before the Arbitrator.

(a) The *previously agreed upon red-circle rate for Janet Wieser* should be continued on the following principal bases.

(i) Ms. Wieser had previously been the *Lead Economic Support Specialist* and paid at Wage Grade VI, 35¢ above the Wage Grade V specialist which she was then leading.

(ii) The Employer eliminated the lead position in 1992, incidental to the creation of a supervisory position, at which time the parties agreed that she would be retained at 35¢ above the maximum rate of an Economic Support Specialist "...*for as long as she is in that position.*"[6]

(iii) That the duration of the red-circle status for Ms. Wieser was unique, that she has continued to remain in the ESS classification since that time, and that the parties' original agreement must stand.

(b) The County proposes to create two new classifications, *Child Support Specialist I and II*, while the Union proposes a *single new classification, Child Support Specialist;* the position of the Union is favored on the following principal bases.

(i) The duties of what is now called a CSS are currently being performed by employees classified as Secretary II and Legal Secretary; during the course of bargaining in 1996 a Secretary II position opened and

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[4] Citing the contents of Union Exhibit 14(b).

[5] Citing the contents of Union Exhibit 9, the January 8, 1982 decision of *Arbitrator Fogelberg,* Dec. No. 18922-A (1/82).

[6] Citing the contents of Union Exhibits 1 and 21(b).

was filled by Wanda Doskey, the President of AFSCME Local 279A.

(ii) The County's final offer states that a CSS represents a new title for the position of Secretary II, and incorrectly states that there is only one employee in the "currently Secretary II" position. There are, in fact, two Secretary II employees and, under the terms of the County's offer, both must be paid at the rate of a CSS; this is what the offer states and it must be enforced, in that neither party can come to the hearing and argue that they don't mean what they say in their final offer.

(iii) The County's offer does not provide for a mechanism to move from a CSS I to a CSS II, other than supervisory discretion. The refusal of the Employer to promote an employee from one classification to another violates no provision of the agreement, which is worrisome because both employees are carrying the same workload and are performing the same duties according to supervisory testimony.

(iv) Three of the five comparables have only one CSS classification.

(v) The CSS Supervisor testified at the hearing that there were no job descriptions showing the differences between the proposed two CSS classifications; she indicated that the work was assigned alphabetically and, other than keeping a closer eye on the new employee, she was expected to pull her full share of the case load.

(vi) The real reason for county proposal for two classifications is the Supervisor's apparent belief that an employee with only twenty months experience should not make as much as one with several years of experience; that this belief furnishes no appropriate basis for creating artificial job titles with no distinctions in duties and responsibilities.

(c) The Union proposal for the Economic Support Specialist I classification to be advanced from pay grade III to pay grade VI is favored on the following principal bases.

(i) There is currently an 89¢ per hour differential between the top rate of an ESS I and the top rate of an ESS II; under the Union's proposal the difference would change by 6¢ to 83¢ per hour; under the County's final offer the differential between the two classifications will increase to $2.18 per hour.

(ii) The 1996 top rate of $10.06 ranks Burnett County last among the comparables at the ESS I position and, under the Union's final offer it would continue to be below 3 of the 5 comparables (i.e., Douglas, Polk and Sawyer); the County's final offer would cause the classification to continue to rank last, and to fall further behind in average hourly rates.

(d) That the Union proposed 3% general wage increases to be implemented on January 1 of 1997 and 1998, is favored on the following principal bases.

(i) This issue affects all bargaining unit employees and is the dominant issue in these proceedings.

(ii) The County offer of a 2%/1% split increase in 1998 is supported by neither the internal nor the external comparables.

(iii) **Internal comparisons** show that the Nurses unit received 2%/1% split increase in 1998 *in addition to a 10¢ increase on 12/1/98*; the Highway unit received a 2%/1% split *plus an extra paid holiday*, the *Jailer/Dispatchers unit received 2% increases on both January 1 and July 1, 1998*, and the Sheriff's Deputy unit received 2%/1% split increases.

(iv) **External comparisons** show that Barron County has not yet settled, but that Douglas, Polk, Sawyer and Washburn counties provided *non-split* 3% increases in 1998.[7] Among County proposed comparables, Ashland and Bayfield had *non-split* 3% increases in 1998, Rusk County provided 2%/1% split increases *plus an additional 7¢ per hour* effective 7/1/98 in its courthouse non-professional unit, and 3% *plus an additional 14¢ per hour* for its Social Workers.

(4) That the final offer of the Union should be selected in these proceedings on the following summarized bases.

(a) The "*factor given greatest weight*" arbitral criterion has no application to the case at hand.

(b) The "*factor given greater weight*" criterion mandates the arbitrator to "...give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r."

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[7] Citing the contents of Employer Exhibit 29.

This criterion favors the final offer of the Union on the following bases: sales tax revenues are up 10.6% in 1996-97; the per capita income rank for the County went from 67 to 54 between 1989-1995; property value increased over 23% between 1994-1996; and the County's per capita property value ranks 8th in the State of Wisconsin.[8]

(c) That the Janice Wieser red-circle commitment for "as long as she holds the position" should be fully credited in these proceedings.

(d) In connection with the Child Support Specialist dispute, the County should not be allowed to break one position into two, merely on the basis of the belief that equality of wages should not "*come too soon,*" without demonstrating real and meaningful differences in the positions.

(e) In connection with the Economic Support Specialist occupation, it is inappropriate to create such a large gap between the ESS I and the ESS II classifications as proposed by the County.

(f) In connection with the deferred general wage increases, the only internal comparable which settled on the basis of a 2%/1% split increase in 1998 was the Sheriff's Deputies; and all of the external comparables which have settled, agreed upon non-split 3% general increases in 1998.

(5) In its reply brief the Union emphasized or reemphasized the following principal considerations and arguments.

(a) In connection with the makeup of the primary external comparables, the Employer arguments citing *past practice* and *commonly accepted standards for determining comparability* should not be credited by the Arbitrator.

(i) Its *past practice arguments* were based upon testimony that the County had internally utilized a three-county set of Rusk, Sawyer and Washburn counties for comparison purposes, not that any mutual past practice had existed between the parties.

(ii) The parties' bargaining history did not indicate any *mutual consideration* of Rusk County as a primary comparable, and it was rejected for comparison purposes by the Arbitrator in the parties' only prior interest arbitration.[9]

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[8] Citing the contents of Union Exhibits 13(a) and 13(d).

[9] Reiterating its reliance upon the decision of *Arbitrator Fogelberg* in Burnett County, Dec. No. 18922-A (1/82).

(iii) The County's reliance upon the *socio-economic conditions* cited by another arbitrator involving other parties, is misplaced, in that arbitral consideration of such factors would exclude Rusk County.[10]

(iv) The rationale underlying County's arguments urging inclusion of Rusk County, despite its rejection in the parties' prior interest arbitration, has been rejected in other interest arbitration decisions.[11]

(v) In a Rusk County arbitration the parties stipulated to a comparability group which excluded Burnett County.[12]

(vi) The County's apparent motivation to include Rusk County is apparently to enhance its position relative to the Child Support Specialist classifications; that only two of the entire set of eight counties urged by the Employer use "two tiered progression," and only within the three county group of Rusk, Sawyer and Washburn can it cite support for its position.

(b) Despite the Employer's arguments to the contrary, the *general wage increase impasse item* is the primary issue in these proceedings.

(i) The position of the County is unsupported by any persuasive evidence.

(ii) The position advanced by the Union that issues involving the entire bargaining unit should be weighted more heavily by arbitrators has substantial support.[13]

(iii) The County's incremental costing of the proposed wage increases has been rejected by various arbitrators.[14]

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[10] Referring to the Employer's reliance upon the decision of *Arbitrator Imes* in City of Bloomer, Dec. No. 22638-A (12/85).

[11] Citing the decision of *Arbitrator Engmann* in Monroe County, Dec. No. 29105-A (11/97).

[12] Citing the decision of *Arbitrator Baron* in Rusk County, Dec. No. 28253-A (7/95).

[13] Citing the decisions of *Arbitrator Fogelberg* in Clark County, Dec. No. 22202-A (9/85), *Arbitrator Vernon* in Dane County, Voluntary Impasse Procedure (12/86), and *Arbitrator Rice* in City of Prairie du Chien, Dec. No. 23445-A (9/86).

[14] Citing the decisions of *Arbitrator Imes* in Jackson County (Social Services), Dec. No. 18409-A (7/81), *Arbitrator Malamud* in City of Beloit, Dec.

(iv) Even more confusing is the County's use of total wage and package costing, while producing no similar data for internal or external comparison purposes; that the dispute at hand involves whether the general 1998 wage increase should be 3% or a 2%/1% split, and not other imaginary numbers.

(v) The County's wage proposal is not even supported by the internal comparables, in that only in 1997 has it rewarded all employees comparably; in 1998 the Highway unit received a 2%/1% split increase plus an additional holiday, the Nurses unit received a 2%/1% split in addition to an additional 10¢ per hour, the Jailer/Dispatchers unit received a 2%/2% split increase, and only the Deputies received a pure 2%/1% split increase. Internal comparability arguments under similar circumstances have been rejected by various arbitrators.[15]

(c) Despite the fact that it is not the dominant item, the *Child Support Specialist impasse item* is a serious issue.

(i) In this connection that the County's Child Support Specialist Supervisor testified to her belief that it took an initial period of 18 months with supervision before a newly classified employee could work independently.

(ii) No job descriptions or records were adduced by the Employer in support of the above testimony and, in the absence of definitive evidence, this opinion should not be credited.

(iii) Historically the CSS work has been performed by employees classified as Secretary II, and they followed an 18 month wage progression to the top of the rate range for the position; this *status quo* should be determinative, and the Employer should not be able to unilaterally add an additional two years to reach the top wage rate for the occupation.

(iv) There is no evidence in the record to support the Employer urged analogy between the CSS occupation and

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No. 22374-A (11/85) and Green Bay Area School District, Voluntary Impasse Procedure (2/87), and *Arbitrator Petrie* in Village of Menomonee Falls, Dec. No. 25101-A (8/88),

[15] Citing the decisions of *Arbitrator Vernon* in Sauk County, Dec. No. 26359-B (11/90), and *Arbitrator Baron* in Sheboygan County, Dec. No. 26675-A (7/91).

the two tiered ESS occupation; this County argument is not supported by external comparisons.

(v) There is insufficient evidence in the record to support the Employer proposed creation of a two tiered CSS occupation, a change in the negotiated status quo ante.

(d) In connection with the ESS I classification the Union urges maintenance of the prior two wage grade differential between the *ESS I and ESS II classifications*, while the County proposes movement to a five wage grade differential. That the Employer has failed to substantiate the need for its proposed change, and there are no employees in the ESS I classification.

(e) That neither of the Employer advanced arguments support its *proposed elimination of the red-circle wage rate for Ms.* Weiser, and such proposed change remains inconsistent with the parties' earlier commitment to maintain her red-circle differential "...for as long as she is in the position."

On the basis of all of the above considerations the Union relies principally upon external comparisons in support of its position on the 1998 general wage increase, it urges that the County has failed to support its proposed two tiered CSS occupation, it submits that the Employer has failed to substantiate an increased spread between the ESS I and ESS II classifications, and argues the lack of an appropriate basis for any abrogation of Ms. Wieser's previously agreed upon red-circle rate.

POSITION OF THE COUNTY

In support of its contention that its is the more appropriate of the two final offers before the Arbitrator, the County emphasized the following principal considerations and arguments.

(1) That the County proposed *primary and secondary comparables* provide a more appropriate basis for arbitral evaluation of the parties' final offers than does the Union proposed comparables.

(a) The *parties agree* on five counties to be used as comparables, Sawyer, Washburn, Barron, Douglas and Polk.

(b) The *County proposes* the addition of three counties, Rusk, Ashland and Bayfield, and that the eight counties be divided

into primary and secondary comparables; that the primary comparables should consist of those counties being most similar to Burnett County.[16]

(c) Pursuant to the above, *the primary comparison pool* should consist of **Rusk, Sawyer and Washburn counties**, and *the secondary comparison pool* should consist of **Ashland, Barron, Bayfield, Douglas and Polk counties**.

(d) The *County proposed comparables* are based upon past practice and various commonly accepted standards for determining comparability, while the *Union proposed comparables* appear to be based solely upon the fact that they are contiguous to Burnett County.

(i) In their only prior interest arbitration, Sawyer and Washburn Counties were arbitrally determined to be the only comparables.[17]

(ii) The County proposed primary and secondary comparables are justified by comparison on the bases of *population, full value tax data, levy rates, income data, land classification data.*[18]

(iii) The Union proposed comparables are based in large part upon geographical proximity, which does not alone create comparability.[19]

(2) The *Child Support Specialist* issue, despite Union arguments to the contrary, is the crux of the dispute at hand.

(a) Both final offers propose the creation of a new *Child Support Specialist Classification* slotted into *Pay Grade VI*, and the County also proposes a *Child Support Specialist-Entry Classification* slotted into *Pay Grade III*.

(b) The County's offer treats the *Child Support Specialist Occupation* the same as the *Economic Support Occupation*, each

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[16] Citing the contents of Employer Exhibit #22.

[17] Citing the decision of *Arbitrator J. C. Fogelberg* in Burnett County Highway Department, Dec. No. 18922-A (1/8/82).

[18] Citing the contents of Employer Exhibits 24, 25, 26, 27 and 28, and Union Exhibits 12 and 13(c); also citing the decision of *Arbitrator Morris Slavney* in Trempealeau County(Social Services), Dec. No. 26389-A (12/90).

[19] Citing the decisions of *Arbitrator Sharon Imes* in City of Bloomer, Dec. No. 22638-A (12/85), and *Arbitrator Robert Mueller* in City of Whitewater, Dec. No. 25554-A (1989).

with an *entry level classification in Pay Grade III*, and a *specialist classification in Pay Grade VI*. That the County's offer would maintain parity between the two classifications.

(c) *Under the County's offer two employees who began performing* CSS duties in 1991 and in 1995 would be classified as Child Support Specialists, while a third employee who began to perform such duties in 1996 would be classified as a Child Support Specialist-Entry.

(d) The County's Child Support Administrator recommended the use of an entry level classification because of the need for a great deal of training prior to gaining proficiency as a Child Support Specialist.[20]

(i) She cited the need for a thorough knowledge of federal regulations, state statutes, economic support activities and the care system.

(ii) She also described the need for a two week training course offered by the State of Wisconsin, good data entry and communications skills, the ability to handle a case load of up to 500 cases, a steep learning curve, and the need for significant day-to-day supervision during initial periods on the job.

(iii) The County proposal is designed to address the need for day-to-day supervision due to the steep learning curve.

(iv) Two of the three primary comparable counties have recognized the validity of a two tiered progression in this area.[21]

(v) The County's wage offer is competitive at the entry level and is the highest among primary comparables.[22]

(vi) The Union urged comparison between the Payment Counselor position in Barron County and the Child Support Specialist position in Burnett County is not valid; that the Barron County position requires a college degree, is in a professional bargaining unit, and is comparable to the Social Worker I, and Burnett

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[20] Citing the *testimony of County Child Support Administrator Donna Gregory*.

[21] Citing the contents of Employer Exhibits 30-31, showing two tiered positions in Rusk and Washburn counties.

[22] Citing the contents of Employer Exhibits 30-31.

County's most experienced CSS would not even be eligible to apply for a Payment Counselor position in Barron County.[23]

(vii) The Union argument that the four step wage progression in the CSS position negates the need for a second level classification should not be credited; this argument is not only inconsistent with the treatment of the ESS classifications, but testimony at the hearing also established that new CSS workers are generally not able to work on an independent basis, without significant supervision, until they have been on the job for eighteen months to two years, after which they still must gain additional knowledge to gain maximum proficiency.[24]

(viii) The County's proposal to create both CSS entry and CSS classifications had nothing to do with Ms. Doskey's Union activities, but was rather based upon her length of service within the CSS occupation, her current level of proficiency, and the need for additional experience and supervision prior to qualifying for the higher level classification.

(ix) Despite the Union's arguments to the contrary, the County proposal to create two classifications within the CSS occupation is reasonable in light of the complexities of the positions, and supported by external comparables.

(3) The Union's proposal to *upgrade the entry level Economic Support Specialist* is without justification.

(a) As with the County's proposed two classifications within the CSS occupation, the ESS occupation currently contains two classifications, the Economic Support Specialist-Entry and the Economic Support Specialist classifications.

(b) Both parties propose to upgrade the ESS classification from pay grade V to pay grade VIII, and the Union also proposes to upgrade the ESS-entry classification from pay grade III to pay grade VI.[25]

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[23] Citing the testimony of Ms. Prenn, and the contents of Union Exhibit 23(a).

[24] Citing the *testimony of Ms. Gregory.*

[25] The Union also proposes to rename the two classifications to Economic Support Specialist I and II.

(c) In response to the anticipated Union catch up arguments, that the County's proposal would result in ESS-entry wage rates which exceed both Rusk and Ashland counties, while the Union's proposal would move this classification ahead of Rusk, Washburn, Ashland and Barron counties in *one fell swoop*. There is simply no justification for a wage boost of such magnitude, particularly in light of the absence of any recruitment or retention problems.[26]

(d) Stated simply, the Union has simply failed to demonstrate any appropriate basis for its proposed three pay grade upgrade, resulting in a wage boost of $1.61 per hour in a single year.

(4) The County's *across the board wage increase offer* is consistent with both the internal and external settlement packages.

(a) There is no dispute as to a 3% across-the-board wage increase effective January 1, 1997; they differ relative to 1998 increases only to the extent that the Union proposes another 3% increase effective January 1, 1998, while the Employer proposes a 2% increase effective January 1, 1998 and an additional 1% increase effective July 1, 1998.

(b) The offer of the County is consistent with both the internal and the external comparables.

(c) All of the County's other unionized units have voluntarily settled at a 3% increase for 1997 and a 2%/1% split increase for 1998.

(d) While additional increases were implemented for both nurses and for dispatcher/jailers, these increases must be considered in light of the actual costs of various reclassifications agreed upon by the parties in the case at hand.[27]

(e) Despite the Union's argument that there had never been a so called "lock step" internal settlement pattern within the County, in that some units had historically received cents per hour increases and others had historically received percentage increases, all 1997-1998 contacts resulted in 3% across the board increases in 1997 and 2%/1% split increases in 1998, with additional adjustments for certain employees,

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[26] Citing the decisions of *Arbitrator William Petrie* in Village of East Troy, Dec. No. 26906-A (2/92), and *Arbitrator George Fleischli* in Marathon County (Health Department), Dec. No. 26030-A (1/90).

[27] Citing the contents of Employer Exhibit 10, the County submits that the 2%/1% split increases proposed by it in 1998, would result in a 4.07% actual wage increase.

which pattern is reflected in the County's final offer in these proceedings.

(f) Arbitrators are in general agreement that where there is a settlement pattern among comparables, the pattern should be respected unless it results in a disparity in wage levels.[28]

(g) That while other County employees received 1997-1998 increases not received in the bargaining unit at hand, such increases were justified by other considerations.

(i) The additional holiday for highway employees in 1997 was accompanied by the following concessions: expanded County authority to determine when vacancies should be filled; expanded trial periods in connection with promotions; deletion of employee ability to use accumulated sick leave in periods of seasonal layoffs; deletion of restriction on County authority to determine location of garages; changed language governing work hours; and elimination of automatic one-half hours of overtime in connection with a Partsman leaving the position.[29]

(ii) The above described situation is distinguishable, in that the courthouse/social services unit did not offer similar concessions during the negotiations process.[30]

(iii) The extra 10¢ increases for nurses was occasioned by a need to maintain historic parity with the wage rates paid to Washburn County's nurses.[31]

(h) Despite the Union's arguments to the contrary, there is a pattern among Burnett County's internal units, the County's offer meets this pattern, an employer cannot simply depart from a consistent settlement pattern with other employee

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[28] Citing the decisions of *Arbitrator Gil Vernon* in Iowa County(Sheriff's Department), Dec. No. 27554-A (12/93), *Arbitrator James Stern* in City of Manitowoc (Waste Water Treatment Plant), Dec. No. 17643-A (1/81), *Arbitrator Robert Mueller* in Waukesha County (Dec. No. 22324-A (12/85), *Arbitrator Zel Rice* in City of Milwaukee, Dec. No. 25223-B (9/88), *Arbitrator Gil Vernon* in City of Appleton (Police), Dec. No. 25636-A (4/89), *Arbitrator Neil Gundermann*, Oneida County, Dec. No. 26116-A (3/90), and *Arbitrator Milo Flaten* in DouglasCounty (Law Enforcement),Dec. No. 27594-A (8/93).

[29] Citing the *testimony of Mr. Schuster*.

[30] Citing the contents of Employer Exhibits 5-6.

[31] Citing the *testimony of Mr. Schuster*.

groups without losing future credibility within other bargain units, and arbitrators recognize this principle.[32]

(i) A review of external comparables reveals no inequity which would warrant the Union's higher wage demand. As the union will emphasize, the pattern is 3%, but the upgrades and extra wage increases for eleven job classifications contained in the both final offers far exceed this 3% pattern; the Employer's final offer provide 5.28% and 4.07% increases for 1997 and 1998, while the Union's final offer provides for 5.54% and 4.79% respectively.[33]

(j) The County's final offer results in wage rates in line with the external comparables. While it does not provide for wage leadership among these comparables, neither does it place the CSS or the ESS employees at the bottom of the comparables: in 1998, Rusk, Sawyer and Washburn counties have lower CSS-entry and CSS wage rates than Burnett County; in terms of ESS-entry rates for 1998, the County's offer will exceed Rusk and Ashland counties, and its 1998 ESS rates will exceed Rusk, Washburn, Ashland and Douglas counties.

(k) The County's offer is consistent with both the internal and the external settlement patterns, and it results in competitive wage and settlement rankings and includes numerous upgrades which significantly boost the effect of the across-the-board increases. While the Union's offer matches the external settlement pattern, it is inconsistent with the more important internal settlement pattern. Accordingly, the County's offer is the more reasonable and it should be selected by the Arbitrator.

(5) The County's proposal to *eliminate Janice Wieser's red-circle rate is reasonable, since her position receives a substantial* classification upgrade under both parties' final offers.

(a) In 1992 an ESS Supervisor position was created and the parties agreed to eliminate Ms. Wieser's Lead ESS position, and they also then agreed that she was to receive 35¢ over the top ESS rate.[34]

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[32] Citing the decisions of *Arbitrator Hutchison* in Rock County Dec. No. 17229-B (9/80), *Arbitrator Gordon Haferbecker* in City of Appleton (Waster Water), Dec. No. 17618-A (6/80); *Arbitrator Gil Vernon* in City of Madison (Firefighters), Dec. No. 21345 (11/84), and *Arbitrator Gordon Haferbecker* in Jackson County (Sheriff's Department),Dec. No. 21878 (2/85).

[33] Citing the contents of Employer Exhibits 1 and 29.

[34] Citing the *testimony of Mr. Schuster*, and the contents of Employer Exhibit 36 at page 18.

(b) The County's final offer proposes to eliminate Ms. Wieser's 35¢ red-circle rate for two reasons: *first*, she is no longer responsible for any supervision of ESS workers; and, *second*, the parties final offers provide for an increase from $11.30 in 1996 to $12.48 in 1997, an increase of 10.4% or $1.18 per hour. In light of these considerations, there seems little justification for an additional 35¢, which would bring her 1997 increase to 13.5% or $1.53.

(c) Despite the arguments of the Union that the red-circle rate agreement for Ms. Wieser was written in special terms, the parties could not have foreseen in 1992 the significant future increases for this position.

(d) On the above bases, the County's final offer contains a reasonable response to the upgrade of the ESS position and that it should be adopted by the Arbitrator.

(6) Arbitral consideration of the *interests and welfare of the public* and the *cost-of-living* criteria, favor the final offer of the County.

(a) While the County does not allege an *inability to pay* in applying this criterion, it does assert an *unwillingness to pay* the Union's higher wage demand.

(b) The deferred wage increase components of the offers of the parties do not accurately portray the total wage increases for those in the bargaining unit, because both final offers include numerous classification upgrades within the wage structure; accordingly the total impact of the negotiated wage increases far exceed the across-the-board increases.

(i) Under the County's final offer that fifteen unit employees will receive significant classification upgrades and/or extra wage adjustments in 1997, and under the Union's final offer seventeen employees would receive such additional wage increases.[35]

(ii) The average 1997 wage increase under the County's and the Union's offers would be 67¢ and 72¢ per hour, respectively; indeed, under the County's final offer ten employees would receive 1997 hourly wage increases in excess of $1.00 per hour.

(iii) While the Union may point out that its proposal would cost only $3500 more in 1997, it will cost $13,800

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[35] Citing the contents of Employer Exhibits 9 and 11.

more in 1998, for a total cost differential of $17,300 for the two year period.[36]

(iv) The statutory criteria include arbitral consideration of the so-called cost-of-living, in the final offer selection process.[37] The offers of both parties exceed increases in the appropriate cost-of-living index, thus favoring the final offer of the Employer.[38]

(7) In its reply brief the County emphasized or reemphasized the following principal considerations and arguments.

(a) That the Union's characterization of certain classification upgrades as "*labor market adjustments*" was an attempt to downplay the significance of the numerous upgrades agreed upon by the parties.

(b) That the Union's citation of *certain commuting patterns* in support of its proposed external comparables was both incomplete and unpersuasive, and urged that arbitrators had not found commuting patterns to be a standard indicator of comparability.

(c) That the Union's reliance upon "*per capita wealth*" and/or "*recreational housing data*" in support of its proposed comparables was misplaced, in that the County proposed comparables were just as appropriate on these bases.

(d) That Burnett County is not a wealthy county merely because much of its land is owned by supposedly wealthy non-residents; that Burnett County's tax rate remains higher than Sawyer, Barron, Douglas and Polk counties, indicating that County residents are still hard hit.[39]

(e) That when the Janice Wieser red-circle status was agreed upon by the parties "for as long as she is in that position", they did not contemplate that her position would later be upgraded to a significantly higher pay grade, pursuant to which she would receive, under the County's

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[36] Citing the contents of Employer Exhibit 13.

[37] Citing the decisions of *Arbitrator Richard U. Miller* in Columbia County, Dec. No. 22890-A (4/86), *Arbitrator Jay E. Grenig* in City of New Berlin, Dec. No. 19820-A (12/82), and *Arbitrator June Miller Weisberger* in Manitowoc County (Highway Department), Dec. No. 19942 (5/83).

[38] Citing the contents of Employer Exhibits 13 and 16.

[39] Citing the contents of Employer Exhibit #26.

final offer, a 1997 wage increase of $1.18 per hour or 10.4%.

(f) In connection with the Child Support Specialist issue, that of ten Secretary II positions, only two are being moved into CSS positions, and the County's final offer clearly indicates that one Secretary II, Jackie Baasch, and one Legal Secretary, Penny Scalzo, would be reclassified to Child Support Specialist positions, and that one other employee, Wanda Doskey, would be classified as a Child Support Specialist-Entry Level.

(g) That the Union's claim that Ms. Baasch and Ms. Doskey are "carrying the same workload and performing the same duties according to the Supervisor's testimony" is simply inaccurate; in response to its complaint of a lack of automatic progression between the County proposed CSS I and CSS II classifications, that Supervisor Gregory testified that she had every intention of recommending Ms. Doskey's reclassification as soon as she is at the appropriate workload and level of proficiency; that Ms. Gregory further testified that job descriptions would not be put into place until the present dispute is resolved, not that no job descriptions existed or were intended.

(h) Contrary to the two classifications within the ESS occupation, the Union's offer provides no entry level classification for a beginning CSS employee.

(i) Contrary to the Union's insinuation, there is no basis for concluding that the County's CSS proposal was motivated by any vendetta against the Local Union President.

(j) In connection with the ESS issue, the parties mutually agreed to a significant upgrade of the ESS II classification, which obviously created a larger differential between the ESS I and the ESS II classifications.

(k) As argued earlier, the across-the-board wage increase is not the dominant issue in these proceedings; rather, that the CSS dispute forms the crux of the underlying dispute.

(l) As argued earlier, there is an internal settlement pattern supporting a 2%/1% split wage increase in 1998, even though the nurses received an extra 10¢ per hour, the highway unit received an extra holiday, the dispatcher/jailer unit received a 2%/2% split increase, and the instant unit received numerous and significant classification upgrades.

(m) That the multitude of classification upgrades under the County's final offer resulted in a 5.28% total 1997 wage increase and a 4.07% total 1998 wage increase, thus

exceeding both the internal and the external settlement patterns.

(n) That the considerable costs of the classification upgrades agreed upon by the parties should factor in the Arbitrator's deliberations; when the cost of these upgrades is considered, the County's final offer is more reasonable.

On the basis of all of the above considerations it urges that the final offer of the County should be selected by the Arbitrator in these proceedings.

FINDINGS AND CONCLUSIONS

The underlying dispute consists of two items which are commonly handled in the statutory interest arbitration process in Wisconsin, the *implementation date(s) of the 1998 general wage increase* and the *placement in the wage structure of the classifications within the Economic Support Specialist occupations*. The items relating to *whether the Child Support Specialist occupation should contain one or two classifications*, however, personally impacts upon one employee, Local Union President Wanda Doskey, and the dispute relating to *the red-circle status of Janet Wieser* is also personal in nature; while both of items are properly before the Arbitrator in these proceedings, such personalized disputes do not readily lend themselves to resolution in the interest arbitration process.

Prior to reaching a decision and rendering an award in this proceeding, the undersigned will offer some preliminary observations relative to the *nature of the interest arbitration process*, the *normal application of the statutory arbitral criteria in Wisconsin*, the *makeup of the intraindustry comparison group in these proceedings*, the *significance of the negotiated status quo ante*, the *cost-of-living criterion*, and the *interests and welfare of the public criterion*, in the normal final offer selection process. *Thereafter, the components of the final offers of the parties will be*

individually addressed, and the more appropriate of the two will be ordered implemented by the parties.

The Nature of the Interest Arbitration Process

As the undersigned has emphasized in many prior decisions, interest arbitrators operate as extensions of the normal contract negotiations process, and their primary role is to attempt to put the parties into the same position they would have occupied but for their inability to achieve complete agreement at the bargaining table. In attempting to achieve this goal, Wisconsin interest arbitrators will normally closely examine the parties' *past practice* and their *negotiations history* in applying the various applicable statutory criteria.[40] Wisconsin's final offer procedure, which normally limits an arbitrator to selection of either final offer *in toto*, is intended to motivate the parties to reduce their areas of difference and to move close to agreement prior to submission of an impasse to arbitration. If this process is successful, arbitrators may succeed in putting the parties into the same position they would normally have reached at the bargaining table, but if the parties remain significantly apart on various impasse items, the arbitrators may need to select from two final offers, neither of which represents the agreement the parties would normally have reached at the bargaining table.

It is next noted that the Wisconsin Legislature has relatively recently mandated that statutory interest arbitrators place the ***greatest weight*** upon "*...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

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[40] Both the *past practice* and the *negotiations history* of the parties fall well within the scope of Section 111.70(4)(cm)(7r)(j) of the Wisconsin Statutes.

employer." It has also provided for ***greater weight*** to be placed upon *"...economic conditions in the jurisdiction of the municipal employer"* than to the remaining arbitral criteria contained in Section 111.70(4)(cm)(7r) of the Statutes. If either or both of the above factors apply to a particular impasse, they must be accorded the appropriate statutory weight. The requisite *limitations on expenditures or revenues* must be present to trigger the application of the "*greatest weight*" criterion, but the "*greater weight*" criterion presumably can apply in at least two ways: *first*, by ensuring that an employer's economic conditions are fully considered in *the composition of the primary intraindustry comparables;* and, *second*, by ensuring that the economic costs of a settlement are fully considered in relationship to the *"..economic conditions in the jurisdiction of the municipal employer."* In other words, *like employers should be compared to like employers*, and *undue and disparate economic burdens should not be placed upon an employer without appropriate statutory consideration of comparable economic conditions.* Without unnecessary elaboration, the undersigned will merely note that there are no apparent limitations in the record sufficient to trigger the application of the *greatest weight* criterion.

In considering the remaining statutory criteria the undersigned notes that it is widely recognized by interest arbitrators that comparisons are normally the most frequently cited, the most important, and the most persuasive of the various arbitral criteria and, in the absence of strong evidence to the contrary, the most persuasive comparisons are normally the

so-called *intraindustry comparisons*.[41] These considerations are described as follows in the respected book by Irving Bernstein:

> "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the Union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill...Arbitrators benefit no less from comparisons. They have the appeal of precedent...and awards, based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.
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> "a. *Intraindustry Comparisons*. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. Most important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.
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> A corollary of the preeminence of the intraindustry comparison is the superior weight it wins when found in conflict with another standard of wage determination. The balancing of opposing factors, of course, is central in the arbitration function, and most commonly arises in the present context over an employer argument of financial adversity."[42]

The Employer in the case at hand, however, urges that internal rather than external comparisons should be the principal comparison utilized in the final offer selection process, principally based upon *past practice* and/or *negotiations history*. Bernstein addresses, as follows, the reluctance of

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[41] The terms *intraindustry comparisons* derive from their long use in the private sector. The same principles of comparison are used in public sector interest impasses, in which situations the so-called *intraindustry comparison groups* normally consist of other similar units of employees employed by comparable governmental units.

[42] Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, pages 54, 56, and 57. (footnotes omitted)

arbitrators to modify comparisons previously established and utilized by the parties in their past negotiations and/or arbitrations.

> "This, once again, suggests the force of wage history. Arbitrators are normally under pressure to comply with a standard of comparison evolved by the parties and practiced for years in the face of an effort to remove or create a differential. When the Newark Milk Company engineers asked for a higher rate than in New York City, the arbitrator rejected the claim with these words: 'Where there is, as here, a long history of area rate equalization, only the most compelling reasons can justify a departure from the practice.
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> The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment, and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..."[43]

The Employer is on sound "*theoretical*" ground, therefore, in urging that the undersigned should not disturb a *mutually established wage history of uniformity in internal bargains reached in various separate bargaining units within the County*, and that such internal comparisons would thus take precedence over external comparisons. The Union is quite correct, however, in emphasizing the prerequisite of *mutuality* in any such finding, and in urging that the Union had neither formally agreed to, nor informally acquiesced in such internal uniformity. In addition, the evidentiary record falls far short of establishing a uniform 1988 wage history, where only the highway unit settled at the 2%/1% wage increase offered by the County in these proceedings, despite its arguments as to why the nurses and the law enforcement units had

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[43] The Arbitration of Wages, pages 63, 66. (footnotes omitted)

exceeded the 2%/1% wage increase "*pattern.*"[44] Accordingly, the undersigned has preliminarily concluded that no appropriate basis has been established for affording determinative weight to internal comparisons in applying the statutory comparison criteria in these proceedings.

What next of the parties disagreement relative to the composition of the external comparison pool, whereby the Employer urges a *primary comparison group* consisting of Washburn, Sawyer and Rusk counties, and a *secondary comparison group* consisting of Douglas, Barron, Polk, Bayfield and Ashland Counties, and the Union proposes a *single comparison group* consisting of Washburn, Sawyer, Douglas, Barron and Polk counties. This is not a matter of first impression, since in the parties' prior interest arbitration in 1982, Arbitrator Fogelberg had been faced with a similar dispute as to the primary external comparison group, with the Union then urging an external group composed of Barron, Douglas, Polk and Washburn counties, and the County also then urging a group composed of Sawyer, Washburn and Rusk counties. After evaluating the comparability criteria based arguments of the parties, the Arbitrator identified Washburn and Sawyer counties as the primary comparables, thus rejecting Rusk, Barron, Douglas and Polk counties.[45] In arguing their respective positions in the case at hand both parties now agree that Washburn and Sawyer should remain primary comparables, and they additionally agree that Douglas, Barron and Polk should also qualify as either primary or secondary comparables. Accordingly, the Arbitrator has preliminarily concluded that these five counties, in addition to Burnett County, should comprise the appropriate external intraindustry comparison group in these proceedings. In

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[44] See the contents of Employer Exhibit 17.

[45] See the decision of Arbitrator Fogelberg, Union Exhibit 9, at page 3.

this connection, the undersigned notes that while Douglas, Barron and Polk counties are significantly larger that the other members of the group, all six are reasonably compatible on the other "socio-economic" considerations of record, and there are no indications that the composition of this comparison group would be inconsistent with statutory "greater weight" criterion as discussed above.[46]

In the above connections, it is noted that Rusk County was not only previously rejected as a comparable by Arbitrator Fogelberg, but there is no evidence of significant change in its status since that time and the parties continue to disagree as to its use as a comparable; accordingly, the undersigned has concluded that it should be rejected as a comparable in these proceedings on the basis of this "*wage history.*" While Bayfield and Ashland counties are more geographically remote from Burnett County than the other five external comparables, the parties may elect to urge their use as so-called secondary comparables in the future.

It is next noted that when faced with demands for *significant change in the negotiated status quo ante*, Wisconsin Interest Arbitrators normally require the proponent of change to establish a *very persuasive basis for such change*, typically by showing that *a legitimate problem exists which requires attention*, that *the disputed proposal reasonably addresses the problem*, and that *the proposed change is accompanied by an appropriate quid pro quo*. They thus frequently assign significant weight to the earlier referenced *past practice* and *negotiations history statutory criteria* in the final offer selection process in contract renewal disputes, where one party is proposing significant change in the negotiated status quo ante.

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[46] See the contents of Employer Exhibits 22-28.

In next addressing *cost-of-living considerations*, it is noted that the relative importance of this arbitral criterion varies greatly with the state of the national and the Wisconsin economies. During periods of rapid change in prices, cost-of-living may be one of the most important criteria in wage determination but during periods of price stability, it declines significantly in relative importance. Parties sometimes overlook or fail to use the normal base period for applying cost-of-living considerations, as described in the following additional excerpt from Bernstein's book:

> "Base period manipulation...presents grave hazards. Arbitrators have guarded themselves against these risks by working out a quite generally accepted rule: the base for computing cost-of-living adjustments shall be the effective date of the last contract (that is, the expiration date of the second last agreement). The justification here is identical with that taken by arbitrators in the case of a reopening clause, namely, the presumption that the most recent negotiations disposed of all the factors of wage determination. 'To go behind such date,' a transit board has noted, 'would of necessity require a re-litigation of every preceding arbitration between the parties and a re-examination of every preceding bargain concluded between them.' This assumption appears to be made even in the absence of evidence that the parties explicitly disposed of cost-of-living in their negotiations. Where legislative history demonstrates that this issue was considered, the holding becomes so much the stronger."[47]

The cost-of-living data of record indicates that the Consumer Price Index for Non-Metropolitan Urban Areas in the North Central States, increased approximately 3.5% in calendar year 1995, 3.4% in calendar year 1996, and 2.0% in calendar year 1997.[48] The specific application of this criterion to the case at hand is considered below.

In next considering the *interests and welfare of the public criterion*, the County urged that while it had the ability to pay it was unwilling to pay the Union's higher wage demand, and that this position was supported by *cost-*

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[47] The Arbitration of Wages, page 75. (footnotes omitted)

[48] See the contents of Employee Exhibit 16.

of-living considerations considered in conjunction with the *interests and welfare of the public*. The weight normally placed upon the interest and welfare of the public criterion varies greatly with individual circumstances, and it has historically been assigned determinative weight in the final offer selection process under only two sets of circumstances: *first*, where an employer has established an absolute inability to pay, in which case it normally takes precedence over all other arbitral criteria; and, *second*, where the selection of one of the final offers would clearly necessitate a *disproportional or unreasonable effort on the part of an employer*. The second of these factors was addressed by the Legislature in the "*greater weight*" criterion discussed earlier, but since the Employer has advanced no suggestion or claim that it lacks the ability to fund either of the two final offers, the undersigned has preliminarily concluded that it does not significantly favor selection of the final offer of either party in these proceedings.[49]

The Implementation Date(s) of the 1998 General Wage Increase(s)

For the reasons indicated earlier the *internal comparisons* urged by the County are not entitled to determinative weight in these proceedings, and the parties are not in dispute that the *external comparables*, viewed apart from other negotiated increases and the remaining impasse items, favor the Union proposed 3% general wage increases effective January 1, 1997 and January 1, 1998, rather than the Employer proposed 2%/1% split increase during calendar year 1998. Indeed, in its post hearing brief, the Employer candidly indicated, in part, as follows:

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[49] The undersigned will emphasize at this point that application of the *interests and welfare of the public criterion* does not automatically favor arbitral selection of the least costly of two alternative proposals.

> "...Employer Exhibit 29 shows settlement information among the external comparables. As the Union will be sure to highlight, the settlement pattern is 3% -- the same as the Union's offer for both 1997 and 1998. Again, however, the County would note that the various reclassifications contained in both parties' final offers result in wage increases which far exceed the 3% pattern."[50]

Despite the arguments of the Union to the contrary, the *negotiated upgrading of classifications* within the wage structure is a legitimate item to include in the costing of the final wage increase offers of the parties, and the Employer's emphasis upon the undisputed fact of many bargaining unit employees receiving significant additional negotiated increases under either of the final offers, is quite legitimate.[51] These types of negotiated increases are readily distinguishable from, for example, previously negotiated *automatic progression* through the rate ranges for each classification, the cost of which would not normally be factored into general wage increase percentages for comparison purposes.

What, however, of the Union's argument that the County's usage of *total wage and package costing* was confusing, its charge that the County had failed to produce available similar data for the comparables, and/or that the external comparisons should be limited to whether the general wage increase for 1998 should be 3% or a 2%/1% split increase?[52] The Union's argument that the Arbitrator must infer that the Employer had the underlying data necessary to provide complete wage and package costing for the external comparables is

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[50] See the County's post-hearing brief at page 50.

[51] The extent of these negotiated classification upgrades and other wage increases is shown in Employer Exhibits 9 and 10, which indicate 50¢ per hour increases for two Custodians in each year of the agreement, in addition to fifteen other bargaining unit employees who would significantly benefit from classification upgrades in 1997 under selection of either of the two final offers.

[52] See the Union's post-hearing brief at unnumbered page 8.

less than persuasive, but it certainly has the right to argue that the cost of the negotiated classification upgrades should be minimized or disregarded by an arbitrator.

In light of the significant number of negotiated classification upgrades, the Arbitrator has preliminarily concluded that the County is correct that the wage increase components of the final offers of both parties exceed the 3% GWI pattern among the comparables and, on this basis, application of the external comparison criterion favors the final offer of the Employer rather than that of the Union.

It is next noted that the *cost-of-living* increases in 1995 and 1996 are also rather clearly exceeded by the final offers of either party, when the percentage increases represented by the agreed upon classification upgrades within the wage structure are added to the general wage increases proposed by each party. It is apparent, therefore, that arbitral consideration of the cost-of-living criterion also supports the lower final wage increase offer of the Employer in these proceedings.

The Red-circle Status of Employee Janet Wieser

In this area the Arbitrator is faced with the Employer proposed abandonment of the parties' previously negotiated agreement to maintain Ms. Wieser's red-circle rate at 35¢ above her ESS classification "*for as long as she is in that position.*" Although this is a rather unusual application of the principle, when faced with a demand for a *significant change in the negotiated status quo ante*, Wisconsin Interest Arbitrators normally require its proponent to establish a *very persuasive basis for such change*, typically by showing that *a legitimate problem exists which requires attention*, that *the disputed proposal reasonably addresses the problem* and that *the proposed*

change is accompanied by an appropriate quid pro quo, thus applying the previously referenced *past practice* and *negotiations history criteria*.

The only Employer advanced basis for change is its unilateral determination that the negotiated upgrade of the ESS classification and Ms. Wieser's significant accompanying wage increase, have reasonably eliminated the need for continuation of her 35¢ per hour red-circle rate. Without unnecessary elaboration, it is clear that the Employer has failed to establish the requisite *very persuasive basis* for this *proposed change in the negotiated status quo ante*, and that arbitral consideration of the *past practice* and the *negotiations history* criteria thus clearly favor the final offer of the Union on this impasse item.

The Number of Classifications Within the Child Support Specialist Occupation

Both parties argued extensively on this impasse item with the Employer urging two classifications within the Child Support Specialist occupation, an entry level classification in Pay Grade III and a higher level classification in Pay Grade VI, and the Union proposing only a single Child Support Specialist classification in Pay Grade VI.

The number of classifications within particular occupations reflect a number of considerations, including how employees are recruited, and/or how work is organized and assigned by individual employers. In this connection it is noted that classifications with greater difficulty and complexity and/or those which require greater knowledge and experience are normally slotted into higher pay grades in the wage structure, and it is logical to infer that the time frame for progression to the top of the rate ranges for such classifications may be longer than for lower level jobs in the wage structure,

and logical also that such high level positions are frequently marked by multiple classifications within a single occupation.

On the above described bases, parties typically negotiate on the wage rates or rate ranges for the multiple classifications previously determined to be appropriate within various occupations, rather than negotiating on the existence of such multiple classifications. Although external comparisons are not nearly as persuasive an arbitral criteria on this impasse item, the diversity of employer approaches is reflected in the external comparables, where Douglas and Washburn counties use two classifications, while Barron, Polk and Sawyer counties use a single classification within the Child Support Specialist occupation, and where all of the comparables, for example, also use either two or three classifications within the Economic Support Specialist occupation.[53]

The Union criticizes the County's proposed two new classifications within the Child Support Specialist occupation on various bases, including its alleged failure to provide any criteria for promotion to the higher level classification but supervisory discretion, and the difficulty in challenging such a decision. The contract, however, contains no automatic progression from classification to classification within other multiple level occupations, which is not unusual in contemporary labor agreements. Contracts which provide for classification by *job description* will normally justify grievances where an employee can establish that he or she is actually performing the required work of a higher classification, and under those contracts which provide some form of *seniority promotion preference*, employees also have a

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[53] See the contents of Union Exhibits 17(h) and (l).

contractual vehicle for determining which employees may be entitled to particular promotions.[54]

On the above described bases and in consideration of the fact that employers normally determine the number of classifications within occupations on various bases, including those described above, the undersigned has preliminarily concluded that the Employer has reasonably proposed two classifications within the Child Support Specialist occupation, and that the Union has failed to establish a persuasive basis for this rather unusual component of its final offer.[55] Accordingly, the final offer of the Employer is favored on this impasse item.

The Wage Structure Placement of the Economic Support Specialist-Entry Classification

In this area the external comparisons are the most persuasive arbitral criteria. By the end of the current contract the Employer's final offer would move employees in this classification to $10.68 per hour, versus an $11.84 per hour average among the comparables, and would rank them fourth of the five applicable comparables. The Union's final offer would move employees in this classification to $12.02 per hour, versus the $11.84 per hour average among the other four comparables, and would rank them third of the five applicable comparables.[56] Viewed alone, therefore, the record supports this component of the Union's offer, but it must evaluated in conjunction with the other elements contained in the final offers.

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[54] See the contents of Article 8, entitled **PROMOTIONS**.

[55] Without unnecessary elaboration, the undersigned will note that the Union's unusual arguments in support of its position on this item based upon an "interpretation" of the Employer's final offer, are simply not persuasive.

[56] See the contents of Employer Exhibit 32.

Summary of Preliminary Conclusions

As addressed in greater detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions.

(1) The primary focus of a Wisconsin interest arbitrator is to attempt to put the parties into the same position they would have occupied but for their inability to achieve a complete settlement at the bargaining table. Due to the nature of the interest arbitration process, including the final offer format, it may be difficult, if not impossible, to render an arbitral decision identical to the settlement the parties might have or should have reached at the bargaining table.

(2) The Wisconsin Legislature has recently mandated that interest arbitrators are conditionally required to apply a *greatest weight* and/or a *greater weight criterion*, and if either or both apply to a particular dispute they must be accorded the appropriate statutory weight. There are no apparent limitations in the record sufficient to trigger the application of the *greatest weight* criterion.

(3) Although the remaining arbitral criteria are not prioritized, the *comparison criterion* is normally the most important and persuasive of these, and the so-called *intraindustry comparisons* are normally regarded as the most important of the various comparisons.

(a) The *internal comparisons* urged by the Employer cannot properly be afforded determinative weight in these proceedings.

(b) Washburn, Sawyer, Douglas, Barron, Polk and Burnett counties comprise the appropriate external intraindustry comparison group in these proceedings.

(4) The *proponent of change in the negotiated status quo ante*, must normally make a *very persuasive case* for such changes, basically by showing that *a legitimate problem exists* which requires attention, and that *the proposed change is accompanied by an appropriate quid pro quo*.

(5) The *interests and welfare of the public criterion* does not significantly favor the selection of the final offer of either party in these proceedings.

(6) In connection with the *general wage increase impasse item*, the Arbitrator has preliminarily concluded as follows.

(a) In light of the significant number of negotiated classification upgrades, the Arbitrator has preliminarily concluded that the County is correct that the wage increase

components of the final offers of both parties exceed the 3% GWI pattern among the comparables and, on this basis, *application of the external comparison criterion favors the final offer of the Employer rather than that of the Union.*

(b) It is next noted that the cost-of-living increases in 1995 and 1996 are rather clearly exceeded by the final offers of either party, when the percentage increases represented by the agreed upon classification upgrades within the wage structure are added to the general wage increases proposed by each party. It is apparent, therefore, that *arbitral consideration of the cost-of-living criterion also supports the lower final wage increase offer of the Employer in these proceedings.*

(7) The failure of the County to establish the requisite *very persuasive case* for the elimination of the *red-circle wage rate agreement governing employee Janet Wieser*, favors the final offer of the Union on this impasse item.

(8) That final offer of the Employer is favored in connection with the *impasse over the number of classifications to be contained within the Child Support Specialist Occupation.*

(9) The final offer of the Union is favored, when viewed alone, in connection with the impasse over *wage structure placement of the Economic Support Specialist-Entry classification.*

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, including arbitral consideration of all of the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes in addition to those elaborated upon above, the Impartial Arbitrator has preliminarily concluded that the final offer of the County is the more appropriate of the two final offers, when it is evaluated in its entirety and it will be ordered implemented by the Parties. The nature of the underlying dispute made the final offer selection process very difficult, and, unfortunately, did not result in an arbitral award closely approximating the agreement the parties might have reached across the bargaining table.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the County is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the County, hereby incorporated by reference into this award, is ordered implemented by the parties.

/s/ William W. Petrie
WILLIAM W. PETRIE
Impartial Arbitrator

August 14, 1998