ARBITRATION OPINION AND AWARD

In the Matter of Arbitration

Between

RUSK COUNTY (Highway Department)

And

AFSCME LOCAL 1425, AFL-CIO

CASE 88
NO. 54698
INT/ARB 8065
Decision No. 29258-A

Impartial Arbitrator

William W. Petrie
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Post Office Box 320
Waterford, WI 53185-0320

Hearing Held

Ladysmsith, Wisconsin
April 20, 1998

Appearances

For the County

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between Rusk County and AFSCME Local Union 1425, AFL-CIO, with the matter in dispute the terms of a renewal labor agreement covering a bargaining unit of Highway Department Employees, covering January 1, 1997 through December 31, 1998.

After the parties' preliminary negotiations had failed to result in full agreement on a renewal labor contract, the Union on December 10, 1996 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 by November 24, 1997, the Commission on December 8, 1997 issued certain *findings of fact, conclusions of law, certification of results of investigation and an order requiring arbitration*, and on January 5, 1998 it issued an *order appointing arbitrator*, directing the undersigned to hear and decide the matter.

A hearing took place in Ladysmith, Wisconsin on April 20, 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, the last of which was received by the undersigned on August 10, 1998.

THE FINAL OFFERS OF THE PARTIES

The final offers of the parties, hereby incorporated by reference into this decision, disagree in only a single area, the cents per hour increases to be implemented on July 1, 1997 and July 1, 1998 in conjunction with the agreed-upon, 1% general wage increases on these dates.

(1) The parties agree to increase wage rates by 2% on January 1, 1997 and on January 1, 1998, and by 2% on July 1, 1997 and July 1, 1998.

(2) The Union proposes to increase wage rates by 14 cents per hour effective July 1, 1997 and July 1, 1998, while the Employer proposes to increase wage rates by 7 cents per hour on these two dates.

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.
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> 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. 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 UNION

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 parties are in agreement that the primary comparables should include the six counties contiguous to Rusk: Barron, Chippewa, Price, Sawyer, Taylor and Washburn; they disagree, however, relative to the County proposed inclusion of the City of Ladysmith.

(a) The Union does not believe the City of Ladysmith, a wall-to-wall unit ranging from Librarians to Street Commissioner, should be considered a primary comparable.

(b) There is no evidence that the duties performed by Ladysmith street workers are similar to those performed by the County Highway Crew; indeed, the County does not use the City of Ladysmith for comparing other positions as reflected in Employer Exhibits #38-#41.

(c) On the above bases, the Union urges that the City of Ladysmith should be, at best, a secondary comparable.

(2) It urges that the "*factor given greatest weight*" criterion does not apply to the dispute at hand, and that the "*factor given greater weight*" criterion should be applied in accordance with the following considerations.

(a) The Union readily admits that Rusk County is not among the wealthiest in the State of Wisconsin, but urges that it is not without resources.

(b) The most recent available 1994 data reveals that per capita income had risen 7.23% over the previous year, well above state average of 4.87%.

(c) Sales tax revenue increased 7.29% in 1995-96 and 7.5% in 1996-97, which represents an additional $36,000 available to the County.

(d) Property values increased in excess of 6% per year in 1994-96, and the County can well afford the Union's offer.

(e) Times are about as good as they get in Rusk County and, if anything, the "factor given greater weight" criterion supports arbitral selection of the final offer of the Union.

(3) In evaluating the final offers of the parties, the following wage comparison information is material and relevant.

(a) The wage settlement pattern within the County consists of the following:

Units	1997	1998
Courthouse and Social Services (Non Pro)	2% 1/1 1% + $0.07 7/1	2% 1/1 1% + $.07 7/1
Social Workers	3% 1/1 $0.14 7/1	3% 1/1 $0.14 7/1
Nurses	3% 1/1 $0.14 7/1	3% 1/1 $0.14 7/1
Sheriff's Deputies	$.39	Not Settled

The County is thus proposing increases equal to that of the Courthouse and the Social Workers units, and the Union is proposing increases equal to the wage lift of the Social Workers and Nurses, with costs to the County reduced by going to 2/1 splits rather than 3% increases effective on January 1 of each year.

(b) The wage settlement pattern among external comparables consists of the following:

Counties	1997	1998
Barron County	2% 1/1 1.5% 7/1	2% 1/1 1% 7/1
Chippewa County	3%	3%
Price County	3%	3%
Sawyer County	3%	3%
Taylor County	3%+$.25/hr.	3.5%
Washburn County	3%	3%

It is fair to say that the general pattern is 3% with the exception of Taylor County, and both parties have proposed increases in excess of the general pattern, in large measure due to the effect of the Taylor County settlement.

(4) In terms of *external classification wage comparisons* by ranking, the following data are material and relevant.

(a) That the Patrolman classification in Rusk County ranked 6th of 7 in 1996, it would move to 7th of 7 under the County's final offer, and would retain its rank under the Union's final offer.[1]

(b) That the Mechanic classification in Rusk County ranked 7th of 7 in 1996, and will remain so ranked under either of the two final offers; under the County's final offer, however, the classification would move to 25 cents per hour below Sawyer County, rather than remaining 11 cents per hour below Sawyer County under the Union's final offer.[2]

(c) That the Heavy Equipment Operator classification ranked 6th of 7 in 1996, and will remain so ranked under either of the two final offers; under the County's final offer, however, the classification would move from 19 cents per hour to 5 cents per hour ahead of Taylor County, while the Union's final offer would maintain this differential at 19 cents per hour in 1998.[3]

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[1] Citing the contents of Union Exhibit #13(A).

[2] Citing the contents of Union Exhibit #13(B).

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

(5) In terms of *external and internal comparisons*, the positions of the parties are as follows.

(a) The *Union's final offer* is very much in keeping with the County's settlement with the Social Workers. In 1996 the Rusk County Social Worker II classification was ranked 7th of 7 and 15 cents below the closest comparable; under the current settlement, the classification will move to 6th of 7 and 13 cents per hour ahead of Price County in 1998.[4]

(b) The *Union's final offer* would result in the following: the Mechanic classification would maintain its prior rank and wage differential; the Patrolman classification would retain its prior rank and would lose 2 cents per hour on its wage differential; the Heavy Equipment Operator classification would maintain its prior rank but would fall from 19 cents per hour to 11 cents per hour ahead of Taylor County.

(c) The *Employer's final offer* would result in the following: the Patrolman classification would decline in rank to 7th of 7, and would decline in wage differential from 3 cents per hour ahead to 13 cents per hour behind Taylor County; the Mechanic classification would remain ranked 7th of 7, but would decline in wage differential from 11 cents per hour to 25 cents per hour below the nearest comparable; the Heavy Equipment Operator classification would remain ranked 6th of 7, but would decline from 19 cents per hour to 5 cents per hour ahead of Taylor County.

In summary and conclusion, it submits that the Union's offer should be selected by the Arbitrator for the following basic reasons: the final offer of the Union comes closer to maintaining comparable rank and prior wage differentials among the external comparables; and those in the Highway Department should not be treated worse than the County's internal settlement with the Social Workers.

In its reply brief the Union emphasized or re-emphasized the following principal considerations.

(1) The County's arguments relating to the *greatest weight* criterion, are inconsistent with 1995 and 1996 increases in property value in Rusk County, and with the fact that it had sufficient monies to

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[4] Citing the contents of Employer Exhibit #38.

grant its non-represented employees wages increases of 5% or more for 1998.

(2) The County's arguments relating to the *greater weight* criterion, are based upon mixed economic data including 1995 increases in personal income, 1995 and 1996 increases in per capita property value, and increases in recreational housing units between 1980 and 1990.[5]

(3) A variety of considerations persuasively support the exclusion of the City of Ladysmith from the primary external comparables, including the fact that it has not yet settled for 1998, its contract duration is on a different time frame, and certain benchmark comparisons urged by the County have no Ladysmith equivalents.

(4) That the evidence of record indicates no internal settlement pattern, despite County arguments attempting to rationalize the settlements as part of such a pattern, and no history of wage bargaining between the parties on the basis of such internal settlements.[6]

(5) That various County *assertions* relating to the parties' current bargaining history are unsupported by evidence in the record.[7]

(6) In connection with the *external comparables* criterion, the Union seeks to achieve a modest catchup, as recently gained by the Taylor County Highway Unit, through the use of its proposed split increases. The Union utilized benchmarks are reasonable, and while neither party proposes a 3% adjustment, both have proposed split increases providing yearly 3% lifts, with their sole difference the additional cents per hour adjustment each July 1.

(7) The Employer's *cost-of-living* based arguments improperly utilize incremental wage increases and total package costing, and do not utilize the appropriate base period.[8]

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[5] Citing the contents of Union Exhibits #10(a), #10(d) and #11.

[6] Also citing the decision of *Arbitrator Vernon* in Sauk County, Dec. No. 26359-B (11/12/90).

[7] Also citing the decision of *Arbitrator Baron* in Sheboygan County, Dec.No. 26675-A (7/13/91), and distinguishing the Employer cited decision of *Arbitrator Dichter* in Buffalo County, Dec. No. 29145-A (1/22/98).

[8] Citing the following arbitral decisions: *Arbitrator Malamud* in City of Beloit, Dec. No.22374-A (11/14/85); *Arbitrator Kerkman* in Brown County, Dec. No. 26207-A (5/23/90); *Arbitrator Freiss* in Vernon County, Dec. No. 26360-A (9/9/90); and *Arbitrator Petrie* in Village of Pulaski, Dec. No. 26981-A (5/14/92).

(8) Times are as good as they get in Rusk County, and selection of the Union's final offer is particularly favored by either internal or external comparisons, and by the need to at least maintain rankings among external comparables. Accordingly, that arbitral consideration of the statutory criteria favors selection of the final offer of the Union.

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) Both the "*greatest weight*" and the "*greater weight*" statutory criteria support arbitral selection of the final offer of the County.

(a) Under the law, that the Arbitrator must give *greatest weight* to state laws and administrative directives which limit the employer's expenditures and revenues, and under the *greater weight factor* the Arbitrator must consider local economic conditions.

(b) In connection with the *greatest weight factor*, it is noted that since 1993 the County has been under a statutory mandate which limit's its revenues, and it cannot exceed its 1992 mill, except to provide for future debt.[9] The law provides for an increase in future debt levies upon authorization of 3/4 of the County Board, and the Board was forced to authorize an increase in levy by a full mill in 1994, when it voted to borrow 4.8 million to remodel its courthouse and jail to bring them into compliance with federal OSHA regulations.[10] Both before and after this increase in the debt limit, the County has been levying within a small fraction of its maximum levy rate since 1993.

(i) The unfortunate aspect of the statutory mill rate freeze is that County ability to raise additional tax revenues is based solely on increases in values and, therefore, it imposes more stringent limits on counties experiencing slow growth in their equalized values.[11]

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

[10] Citing the contents of Employer Exhibit #18.

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

(ii) Rusk County is one of those counties experiencing slow growth in its equalized value.[12] When compared to the comparable counties, Rusk County had the lowest increase in equalized value during the five year period 1992-1996, only a 27.08% increase versus a high of 57.61% increase in Sawyer County.[13] Although taxing to its maximum potential, the County's growth in tax revenue has been more limited than the comparables due to slower growth in its equalized value.

(c) In connection with the *greater weight factor*, the County's slow growth in population, low income levels, and high unemployment rate reflect poorer economic conditions than in neighboring counties.

(i) Rusk County is fairly comparable to the contiguous counties in terms of *population*, with the exception of Chippewa and Barron.[14] It has, however, seen less than a 1% growth in population in the five year period 1992-1996, the lowest among comparable counties.[15]

(ii) Rusk County's low income level is compounded by its high unemployment; during 1995, 1996 and 1997 it had the highest unemployment rate among comparable counties, the 12th highest rate in the entire state, and a 1997 rate more than twice the state average.[16]

(iii) While the above factors show a less than thriving local economy, the Union chooses to ignore and/or fails to recognize that it is the local taxpayer who must pay the tax bills issued by the County. The local county taxpayers are, however, struggling to get jobs, much less jobs that pay well.

(d) The law requires the Arbitrator to place *greatest weight* on the evaluation of the statutory tax levy limits under which the County must operate, and directs him to place *greater weight* on local economic conditions.

(2) The contiguous counties and the City of Ladysmith represent an appropriate pool of *external comparables*.

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[12] Citing the contents of Employer Exhibit #17.

[13] Citing the contents of Employer Exhibit #17.

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

[15] Citing the contents of Employer Exhibit #23.

[16] Citing the contents of Employer Exhibit #27.

(a) The parties agree to the inclusion of the various counties, and only the City of Ladysmith remains in issue.

(b) The County proposes inclusion of the City of Ladysmith because it is the county seat for Rusk County, it employs street department employees who perform similar work, its employees operate similar heavy equipment, its employees perform similar snow plowing and road work, its street department employees are part of the same labor market, and its employees vie for the same jobs.[17]

(c) Accordingly, the County proposes a primary external comparison group composed of the City of Ladysmith and the Counties of Barron, Chippewa, Price, Rusk, Sawyer, Taylor and Washburn.

(3) The Union's final offer represents a departure from the pattern of *internal settlements*.

(a) The County's final offer is more closely aligned with the voluntary settlements reached within the other County bargaining units for 1997-1998, namely the support staff and the professional unit.[18]

(b) An internal settlement pattern has been established of wage adjustments in return for concessions or quid pro quos.

(i) In exchange for a 3% wage increase on January 1 of each year, and a 14 cent wage adjustment each July 1, the professional unit agreed to the following changes: a pay lag of five working days by holding back one day's pay from the last pay period each month, until the five-day lag is fully implemented, thus reducing wages for one day per month for the first five months of the year; and a cap of 22 days on the maximum number of vacation days, for all employees not already at the 23 day maximum.[19]

(ii) In exchange for a 2%-1% split increase each year and an additional 7% each July 1, after the 1% increase, the support staff agreed to the same five-day pay lag accepted for the professional unit.[20]

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[17] Citing also the decision of Arbitrator Sherwood Malamud in Douglas County(Highway Department), Dec. No. 288215-A (3/19/95).

[18] Citing the contents of Employer Exhibit #37.

[19] Citing the contents of Employer Exhibit #42.

[20] Citing the contents of Employer Exhibit #43.

(iii) The Union in the case at hand has been unwilling to negotiate any changes in contract provisions to facilitate agreement to the same internal wage increases negotiated for other bargaining units. While the Highway Department already has the five day lag agreed upon in the professional unit, other possibilities, such as the vacation day limitation, could have been agreed upon by the parties.

(iv) In essence, the Union demands wage increases in excess of the 7 cent adjustment agreed upon in the support staff unit and comparable to the 14 cent adjustment agreed upon in the professional unit, while agreeing to absolutely nothing in return.

(v) Arbitrators agree that a settlement pattern among internal comparables should be respected.[21]

(vi) Arbitrators should strive for the settlement the parties would have arrived at over the bargaining table, and consistency among employee groups represents what most likely would have been achieved in a voluntary settlement.

(4) The burden is upon the Union to demonstrate compelling reasons why it should be treated differently than the *internal settlement pattern*.

(a) Arbitrators have required the *hold-out* party to justify why it should be an exception to a settlement pattern.[22]

(b) The Union has demanded the wage increase greater than that voluntarily accepted by the other internal units, without making any concession.

(c) The County's wage offer recognizes and gives consideration to the Union's desire to gain wage rates closer to the average among external comparables.

(i) The external comparables have been used by the parties in many past negotiations.

(ii) The County agreed to split increases on January 1 and July 1, to provide the necessary lift without the

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[21] Citing the decision of Arbitrator Stern in City of Manitowoc (Waste Water Treatment Plant), Dec. No. 17643-A (1/81).

[22] Citing the following arbitral decisions: *Arbitrator Hutchison* in Rock County, Dec. No. 17229-B (9/80); *Arbitrator Vernon* in City of Madison (Firefighters), Dec. No. 21345 (11/84); *Arbitrator Haferbecker* in Jackson County (Sheriff's Department), Dec. No. 21878 (2/85).

added cost of one-time increases; in addition to external comparisons, however, the County must continue to consider internal comparables.

(iii) A Comparison of the maximum wage rates for benchmark classifications within the support staff and the professional units to comparable classifications within the external comparison group, demonstrates that the highway employees are far better off than the employees in these two units.[23]

(iv) The County submits that the need for a wage adjustment for its professionals and support staff is well documented when compared to the average of their external comparables; yet these same employee groups were willing to give something in exchange for a wage adjustment. The Union, on the other hand, makes no similar offer and demands 7 cents per hour higher wage adjustments than the support staff unit, when at the same time the wage rates paid to highway employees are generally much closer to the average wages of their external comparables.

(v) The County agrees that highway employees should not fare any worse than other Rusk County employees in other bargaining units, and based upon comparisons of the maximum wage rates provided under the County's final offer with the external comparables, it is clear that they are being compensated better than other represented County employees.

(vi) The County has awarded higher wage increases to non-represented employees in 1998, but only to the extent required to hire and maintain its non-represented employees.[24] While the County's non-represented employees would also like to have their wages increased to the average paid among comparables, the economic condition of Rusk County makes this prospect extremely unlikely, in that the County's lower than average wages reflect the reality of economic conditions in the County.

(vii) Based upon internal settlements, as well as comparison of maximum wage rates paid to internal support staff and professional employees with the average wages paid to their external counterparts, Highway employees are

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[23] Citing comparison summaries contained in its brief, compiled from data contained in Employer Exhibits 40-41, 38-39 and 31-343.

[24] Citing the contents of Employer Supplemental Exhibit 2.

not being unfairly treated and, in fact, they fare better than the County's other employees.

(5) The County's offer is consistent with *wage settlements among the external comparables* and, when viewed in terms of wage rate increases, exceeds the majority of the external comparables.

(a) Because of the split increases and extra cents per hour adjustment included in the final offers of both parties, it is somewhat difficult to compare the parties' proposed wage increases with the settlements of the external comparables. The wage settlements for the external comparables range from a low of 35 cents per hour for the City of Ladysmith in 1997 to a high of 3% plus 25 cents per hour for Taylor County in 1997; in percentage increase terms, the settlements range from a low of a 2%/1% split in Barron County in 1998, to a high of 3.5% in Taylor County in 1998.[25]

(b) The County's wage offer fares very well when compared to the wage settlements of the external comparables. Its split increases of 2% on January 1 and 7 cents plus 1% on July 1 generates a 3.55% total wage increase in 1997, and a 4.29% total wage increase in 1998.[26] When measured in terms of a total percent increase in wages only, the wage offer is very competitive and it more than keeps pace with the external comparables.

(c) When converted to cents per hour increases at the maximums of the four classifications with the largest numbers of employees, i.e., the foreman, equipment operator, large truck driver and laborer classifications, the 1997 wage increases under the County's offer exceed all external comparables except Taylor and Barron Counties.[27]

(d) Despite local economic conditions, it is clear that the County has demonstrated a willingness to improve upon its wages, and for the Union to achieve its desired gains it must acknowledge that negotiating is a give and take process.

(e) Based upon a review of both percentage and cents per hour increases and the external comparables, it is clear that the County's final offer is the more reasonable. The County has attempted to provide a necessary wage "lift", but any further increases must be met with the give and take of

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[25] Citing the contents of Employer Exhibit #30.

[26] Citing the contents of Employer Exhibit 4.

[27] Citing cents per hour comparisons derived from Employer Exhibits 31, 32, 33 and 34.

bargaining. The support staff and the professional unit have negotiated for the adjustments which they received, and the Highway unit has thus far failed to do so.

(6) The *interests and welfare of the public* are better served by the wage increases provided under the Employer's offer.

(a) While the County does not profess an inability to pay, it does assert an unwillingness to pay the Union's higher wage demand and to reward the Union for unreasonably holding-out.

(b) An evaluation of the interests and welfare of the public is not limited to ability to pay, but rather involves a balancing of the need to retain employees versus the County taxpayers' willingness to finance any increases needed to retain those employees.[28]

(c) The wages paid to unit members are not forcing an exodus from the County's employ, and it is not difficult to believe that the County's taxpayers, whose income ranks 68th out of 72 Wisconsin Counties, would be better served by the County's final offer.

(d) The "general public interest" is better served by not rewarding the Union for holding-out for more substantial wage increases than those negotiated within other County bargaining units, particularly when the wage rates of the Highway employees are more closely aligned to the external wage rates than other County bargaining units.

(7) The cost-of-living criterion favors selection of the County's final offer.

(a) Cost-of-living data for 1997, the first year of the renewal agreement, shows a rapid decline in the rate of increase from January through December, and only a nominal total increase during the calendar year.[29]

(b) The total package costs of the County's final offer is 2.32% in 1997 and 5.56% in 1998, the comparable costs of the Union's final offer is 2.57% in 1997 and 6.05% in 1998.

(c) When measured against the rapid decline in the CPI, it is clear that the County's final offer is the more reasonable under the cost-of-living criterion.

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[28] Citing also the decisions of arbitrators Marvin F. Hill in Wittenberg-Birnamwood S.D., Dec. No. 24359-A (8/87), and Robert Reynolds in Edgerton Education Ass'n, Dec. No. 23114-A (1986).

[29] Citing the contents of Employer Exhibit 29.

In conclusion, based upon the facts, relevant case law and arbitral authority, the following considerations compel selection of the final offer of the County: (1) its final offer would provide a fair and reasonable wage increase based upon both internal and external comparables; (2) the Union's final offer departs from the internal pattern of offering some concession in return for an additional wage adjustment, and it has failed to establish why it should be treated differently than internal comparables by demanding the same or better wage increases without offering any concession in return; (3) the wage increases provided by the County's final offer, when evaluated in terms of both percentage and cents per hour, exceed the wage increases in the majority of external comparables; (4) a comparison of the disparity between the wage rates provided under the County's offer with the wage rates of the external comparables, demonstrates that the Highway unit is not unreasonably compensated when compared to the disparity between the wage rates of the County's other units and the wage rates of their external comparables; (5) given the County's local economic conditions and the cost-of-living index, the County's wage offer better serves the "interest and welfare of the public."

In its *reply brief* the County emphasized or re-emphasized the following principal considerations.

(1) Contrary to the argument advanced in the Union's brief, that the County's reasons for providing wage adjustments in all its bargaining units which exceeded the general patterns, had little to do with the negotiated wage adjustments in Taylor County.

(2) The Union's defense of its final offer is based entirely upon maintenance of rank and wage differentials with external comparables, which is unpersuasive on two bases: *first*, its proposed benchmark comparisons are based only upon those positions for which rank will change; and, *second*, the only changes in rank are based upon the extraordinary negotiated increases in Taylor County.

(3) Maintenance of rank should not be a deciding factor when comparables may have negotiated better than average wages to correct deficiencies or inequities of their own.[30]

(4) The Union's arguments overlook the better than average, 1997 and 1998 cents per hour wage increases under the County's final offer.[31]

(5) The Union's assertion that they "should not be treated worse than the Social Workers" ignores the fact that the Social Workers gave up a vacation day and accepted a five-day pay lag in exchange for their enhanced wage adjustment.

(6) Both the Courthouse Employees and the Social Workers agreed to certain language changes in exchange for extra wage adjustments, which adjustments should not be extended to the Union in this case, because it refused to engage in give and take negotiations in support of its higher wage demand.

(7) The reasonableness of the County's offer has been clearly demonstrated, and the Union should not be rewarded through the arbitration process for its unwillingness to more fully bargain during the negotiations process.

FINDINGS AND CONCLUSIONS

As emphasized by the undersigned in many prior decisions and as urged by the Employer in these proceedings, Wisconsin interest arbitrators operate as extensions of the contract negotiations process and their normal goal is to attempt to put the parties into the same position they would have occupied but for their inability to reach full agreement at the bargaining table. In attempting to achieve this goal, the neutrals will normally closely examine the parties' *past practice* and their *negotiations history* in applying the various applicable statutory criteria, both of which factors fall well within the scope of Section 111.70(4)(cm)(7r)(j) of the Wisconsin Statutes.

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[30] Citing the following arbitral decisions: *Arbitrator Byron Yaffe* in Oak Creek-Franklin Joint Schools, voluntary impasse procedure (2/21/83); and *Arbitrator Zel Rice* in Slinger School District, Dec.No.26757-A (7/16/91).

[31] Citing summary data derived from Employer Exhibits #31-#32.

The arbitral criteria principally emphasized by either or both of the parties in the presentation of their cases, included the *greatest weight* and the *greater weight* factors, *external and internal comparisons*, the *interest and welfare of the public*, and *cost-of-living considerations*, each of which will be separately addressed by the undersigned prior to applying the various criteria, reaching a decision, and rendering an award.

The Greatest Weight and Greater Weight Factors

In this connection, it is noted that the various statutory criteria were not originally prioritized by the Wisconsin Legislature, and arbitrators therefore normally assigned weight to them in the final offer selection process in accordance with their normal relative importance at the bargaining table. Recently, however, the statutory criteria were modified to limit such arbitral discretion in their application under two sets of circumstances.

(1) They now mandate application of 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 employer.*"

(2) They now also provide 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.

Prior to the addition of the new criteria, an employer's *ability to pay* was not normally given *controlling weight* in the final offer selection process, in the absence of a showing that it *lacked the ability to pay* one of the final offers. If either or both of the above factors now apply in a particular impasse, an employer's *relative ability to pay* must be accorded the appropriate statutory weight.

In applying the two new criteria, it is emphasized that the specified *limitations on expenditures or revenues* must be present to trigger the

application of the "*greatest weight*" criterion, but the "*greater weight*" criterion does not require such limitations and it can apparently be applied 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*.

As emphasized by the County and as clearly spelled-out in Employer Exhibits #15, #16 and #18, it has been precluded by law from exceeding its 1992 mill rate, except to provide for future debt, and has thus been operating within a small fraction of its maximum levy since 1993. This mill rate freeze has limited its growth in tax revenue to increases in property values and, as clearly reflected in Employer Exhibit #17, it has experienced only a 27.08% increase in equalized value since 1992, the lowest among the primary external comparables and less than one-half the 57.61% increase experienced by Sawyer County during the same period. Despite the fact that the Employer is not alleging an inability to pay, therefore, it is clear to the undersigned that the "*greatest weight*" factor must be applied by the undersigned in the final offer selection process in these proceedings.[32]

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[32] Despite the Union's arguments relating to the fact that property values in Rusk County are increasing and that the County may have sufficient money to fund the additional increases sought by it, there is no direct correlation between the percentage increases in property values and proposed percentage wage increases, and inability to pay is not a prerequisite to arbitral application of the *greatest weight* criterion.

As also emphasized by the County, and as is particularly clear from the contents of Employer Exhibits #24 through #27, the economic conditions in Rusk County are both far from robust and compare unfavorably with the primary external comparables. In this connection, it is particularly noted that Rusk County has the lowest 1996 average *adjusted gross income*, *taxable income*, *average total income*, and *adjusted gross income per capita* among the primary comparables, it has the 7th highest *dependent population* and the 68th lowest *family income* among the 72 counties in the State of Wisconsin, and it has had the highest *unemployment rate* among the comparable counties in 1995, 1996 and in 1997, during which time its rate of unemployment was approximately twice as high as the average for the State of Wisconsin. Despite Union arguments that some economic figures are mixed, and citing a 1995 County increase in per capita income, 1995 and 1996 increases in per capita property values, and recent increases in recreational housing units, it is clear to the undersigned that the relative economic conditions in Rusk County necessitate significant weight being placed on the "*greater weight*" factor in the final offer selection process.

The Comparison Criteria

Section 111.70(4)(cm)(7) of the Wisconsin Statutes identifies various types of public and private sector comparisons for arbitral use in the final offer selection process, and it is widely recognized that *comparisons* are normally the most important among non-prioritized statutory arbitral criteria, and that so-called *intraindustry comparisons*, are normally the most important of the various types of comparisons.[33] As recognized by the undersigned in

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[33] The so-called *intraindustry comparison* terminology obviously derives from the private sector, but its use in the public sector normally refers to *external comparisons with similar units of employees employed by comparable*

many prior interest decisions, these considerations are well addressed in the following excerpt from 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.
>
> * * * * *
>
> 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."[34]

While the parties agree that the *primary intraindustry comparison group* for Rusk County in this dispute should continue to include Barron, Chippewa, Price, Sawyer, Taylor and Washburn counties, what of the Employer contention that the City of Ladysmith should be added to this group? The normal reluctance of arbitrators to modify intraindustry comparison groups previously utilized by parties is well addressed in the following additional excerpt from Bernstein's book:

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governmental units.

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

"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...

* * * * *

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 wage 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..."[35]

As described above, neither party to a dispute can normally expect an interest arbitrator to modify the parties' historical intraindustry comparison group, unless the proponent of such modification produces extremely persuasive evidence and arguments in support of such change. Without unnecessary elaboration, it is noted that the evidence and arguments advanced by the County fall far short of justifying such a change in these proceedings.

Following are the primary intraindustry wage increase comparisons data for 1997 and 1998.

Counties	1997	1998
BARRON	1/1 2.0% 7/1 1.5%	1/2 2.0% 7/1 1.0%
CHIPPEWA	3.0% ($.38/hr.)	3.0%
PRICE	3.0%	3.0%
SAWYER	3.0%	3.0%
TAYLOR	3.0% Plus $.25/hour	3.5%

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

WASHBURN	3.0%	3.0%
RUSK (County Offer)	1/1 2.0% 7/1 $.07 plus 1.0%	1/1 2.0% 7/1 $.07 plus 1.0%
RUSK (Union Offer)	1/1 2.0% 7/1 $.14 plus 1.0%	1/1 2.0% 7/1 $.14 plus 1.0% [36]

As urged by the Union, the 1997 and 1998 wage increase pattern among the primary intraindustry comparables was generally 3% per year, with the exception of larger negotiated increases in Taylor County, in apparent response to the fact that its benchmark wages had generally ranked last among the comparables in 1996. Although the final offers of both the County and the Union provide for greater than 3% lifts in each of 1997 and 1998, the Union is quite correct that various bargaining unit classifications in Rusk County have historically ranked either last or second to last among the primary comparables, and such low ranking would continue despite these negotiated 1997 and 1998 wage increases. *Other things being equal*, therefore, an arbitrator would normally conclude that the external comparison criterion favored wage increases which at least somewhat closed the gap and moved toward wage parity, as proposed by the Union. Now, however, both the *greatest weight* and the *greater weight* criteria provide that if *other things are not equal economically*, the relative weight of the comparison criteria become subordinate to these new criteria; as discussed above, both criteria are clearly applicable in the dispute at hand, and both favor the final offer of the County.

What next of the Employer's argument that the internal comparables should be accorded determinative weight in these proceedings? In this

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[36] See the contents of Employer Exhibits #30-#34, and Union Exhibits #13(a)-#13(c).

connection it is noted that internal consistency may be of paramount importance in connection, for example, with certain non-wage disputes, and/or it will normally be determinative where the parties' have an established negotiations history of uniform wage increases across internal bargaining unit lines. In the case at hand, however, the parties disagree only relative to the amount of the deferred wage increases during the term of the renewal agreement, they are relatively close together in their final offers, and they do not have a bargaining history of internal wage adjustment uniformity. Accordingly, no appropriate basis has been established to justify either determinative weight being placed upon the internal comparables, or greater weight being placed upon the internal versus the intraindustry comparables in this case.

On the above described bases the undersigned has preliminarily concluded that the City of Ladysmith should not be added to the established external intraindustry comparison group, that the intraindustry comparisons cannot be accorded their traditional weight in the final offer selection process, and that the internal comparisons are entitled to neither determinative nor enhanced weight in the final offer selection process.

The Cost-of-Living Criterion

The relative importance of the cost-of-living criterion varies with the state of the national and Wisconsin economies. During periods of rapid movement in prices it may be one of the most important arbitral criteria, while during periods of price stability it may be one of the least important factors in the final offer selection process. In the case at hand, both parties urged that cost-of-living considerations favored arbitral selection of its final offer.

The base period for arbitral consideration of cost-of-living normally begins with the last time that the parties went to the bargaining table, typically the effective date of the expired agreement. As described by Bernstein, however, the base period may vary based upon the parties' bargaining history.

> "Base period manipulation...presents grave hazards. Arbitrators have guarded themselves against such 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 beyond such a date,' a transit board has noted, 'would of necessity require a re-litigation of every preceding arbitration 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 the legislative history demonstrates that this issue was considered, the holding becomes so much the stronger.
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> This line of reasoning rests upon the past rather than the prospective behavior of the index, the former being the more common method of calculating a cost-of-living wage change. Where, as occasionally happens, the parties in their last negotiations discounted a future price movement, the expiration of the prior contract is not appropriate. In this contingency, presumably, the arbitrator would have to make an adjustment for the difference between the estimated and actual performance of the index."[37]

Because of the fact that the parties differ only on a portion of the deferred wage increases during the life of the agreement, the lack of significant evidence relating to their negotiations history on the prior agreement, and the recent relative stability of the Consumer Price Index, the undersigned has preliminarily concluded that the *cost-of-living criterion does* not definitively favor the position of either party and, accordingly, that it is not entitled to significant weight in the final offer selection process.

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[37] The Arbitration of Wages, pages 75-76. (footnotes omitted)

The Interests and Welfare of the Public Criterion

This criterion has been frequently urged for arbitral consideration by Wisconsin employers in conjunction with claims of economic difficulties or disparate demands upon local taxpayers, but it was traditionally entitled to determinative weight only under two sets of circumstances: *first*, where the record establishes an absolute inability to pay; and/or, *second*, where the selection of one of the two final offers would necessitate a disproportional or unreasonable effort on the part of an employer. Not only are neither of these factors present in the case at hand, but many more of the economically based employer arguments are now advanced under the *greatest weight* and the *greater weight* factors discussed above.

On the above described bases, the undersigned has preliminarily concluded that the interests and welfare of the public criterion cannot be assigned determinative or significant weight in the final offer selection process in these proceedings.

Summary of Preliminary Conclusions

As addressed in more significant 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 reach full agreement at the bargaining table. In so doing, they normally closely examine the parties' *past practice* and their *negotiations history*, both of which factors fall well within the scope of Section 111.70(4)(cm)(7r)(j) of the Wisconsin Statutes.

(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. The record clearly establishes that both of these criteria apply to the dispute at hand, both favor the final offer of the County, and they must be assigned appropriate weight in the final offer selection process.

(3) In connection with the comparison criterion, the undersigned has concluded as follows: that the City of Ladysmith should not be added to the established external intraindustry comparison group; that the *intraindustry comparison criterion* cannot be accorded its traditional weight in the final offer selection process; and that the *internal comparison criterion* is entitled to neither determinative nor enhanced weight in the final offer selection process.

(4) The *cost-of-living* criterion does not definitively favor the position of either party and, accordingly, that it is not entitled to significant weight in the final offer selection process.

(5) The *interests and welfare of the public criterion* cannot be assigned determinative or significant weight in the final offer selection process in these proceedings.

Selection of Final Offer

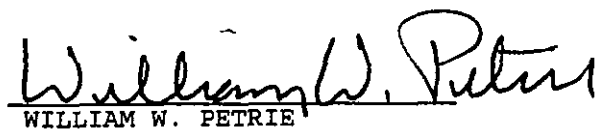
Based upon a careful consideration of the entire record in these proceedings, including all of the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes in addition to those elaborated upon above, the Impartial Arbitrator has preliminarily concluded that the final offer of the County is the more appropriate of the two final offers, and it will be ordered implemented by the Parties.

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.



WILLIAM W. PETRIE
Impartial Arbitrator

October 17, 1998