



Analyze This!

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In order to succeed you must fail, so that you know what not to do the next time.

~Anthony J. D'Angelo,
The College Blue Book

Council 40 Arbitrations of 2009:

- Racine County**
(Nursing Home)
- Village of Winneconne**
(DPW/Village Employees)
- Columbia County**
(Highway)
- Outagamie County**
(Highway)
- Wausaukee School District**
(Support Staff)
- Rice Lake School District**
(Support Staff)
- City of Menomonie**
(DPW)
- Langlade County**
(Professionals)
- Kewaunee County**
(Highway)

2009 YEAR IN REVIEW: INTEREST ARBITRATION OUTCOMES

2009 was a rough year for units that headed to interest arbitration. There were fewer cases than in past years and the number of union wins was dismally low. The economy and its impact on local finances surely had an impact – both at the bargaining table and in the arbitrations. I kept the same quote used in last year's arbitration review, as there were a lot of lessons learned in 2009 that will help in future bargains and arbitrations.

In total, there were 28 interest arbitration decisions awarded in 2009 involving public sector county, municipal and school district support staff employees. The following is a breakdown of the win/loss record in the aggregate as well as by union:

2009 Interest Arbitrations

Total Arbitrations	28
Union Wins	10
Employer Wins	18

	COUNCIL 40	WPPA	LAW
Total	9	4	2
Union Wins	3	3	0
Employer Wins	6	1	2
Split Decisions	-	-	-
	WEAC	IAFF	ALL OTHERS
Total	4	2	7
Union Wins	1	0	3
Employer Wins	3	2	4
Split Decisions	-	-	-



IMPORTANT LESSONS OF 2009 TO REMEMBER FOR 2010

◆ The National Economic Crisis

Throughout the first half of 2009 reference to the current recession appeared in arbitration awards despite never having been mentioned by either party. Arbitrators speculated that local economic conditions mirrored the nation's economic performance. Such rationale was troubling given there was no direct evidence in the record as to local conditions or the employer's finances. Unions were able to effectively counter such thinking in the second half of the year by citing rationale indicating that the employer must clearly demonstrate dire economic circumstances to warrant adoption of a final offer solely because of its lower cost.

◆ Comparables, Comparables, Comparables

Internal and external comparables continued to be the decisive factors in arbitration awards. Differential treatment of units by employers resulted in many of the union wins in 2009. Arbitrators showed an intolerance for employers who reached a voluntarily settlement with one unit and then arbitrated a lower package with a different bargaining unit. Likewise, arbitrators continued to rebuke efforts by units to achieve provisions greater than the settlement pattern, particularly when it came to fringe benefits.

◆ A Winning Strategy

A review of the 2009 awards in which unions prevailed indicate that units fighting off concessions were more successful on average than units seeking gains. The current financial climate appears to have made arbitrators more conservative when it comes to the addition of a new benefit or the expansion of an existing one. The exception to this would be law enforcement units, who were able to achieve wage adjustments despite tough economic times. One factor leading to these units' successes is that they arbitrate under a different bargaining law than non-protective employees.

◆ Tentative Agreements

In some recent cases the bargaining history included a rejected tentative agreement. The rejection of the tentative agreement occurred because of many reasons including changed circumstances and a misunderstanding at the bargaining table. With rising uncertainties and tough bargains ahead, the rejection of tentative agreements is likely to occur with increasing frequency in 2010. Arbitral treatment of rejected tentative agreements varies significantly, and as such, arbitrator selection is crucial in these types of cases.

IMPORTANT CASES OF 2009:

- ◆ Racine County, Village of Winneconne and Western Wisconsin Technical College: As mentioned above, differential treatment of internal bargaining units did not prove a winning strategy for employers in 2009. Unions were able to prevail by demonstrating the lack of support for the employer's proposal. In fact, in Winneconne, the Arbitrator found that the settlement reached by the police demonstrated the unreasonableness of the employer's proposal and its lesser wage increase to the DPW bargaining unit.
- ◆ City of Franklin and the Racine County cases: These are part of a series of positive awards wherein unions were able to maintain or improve their post-employment health insurance benefits. These cases are similar in that the unions were able to successfully argue that recent changes to the health insurance benefit supported postponing significant changes to the retiree benefit in order to evaluate savings generated.
- ◆ Columbia County: This is one of the best arbitration decisions involving CDL language thus far. The Arbitrator adopted without questions that the need for change in the contract existed. The union was able to establish that the external comparables supported its proposed language. The testimony in the record as to the availability of non-CDL work and CDL-licensed employees was also key in the union's success.