Weld, Riley, Prenn & Ricci sc

Attorneys At Law

Joel L. Aberg*
John Robert Behling
Tanya M. Bruder
Mindy K. Dale
Richard D. Duplessie
Christine A. Gimber
Thomas J. Graham, Jr.
Anders B. Helquist
Melissa A. Kirschner*
M. Laurie Klinkhammer
Pamela M. Macal
Donald R. Marjala
Thomas J. Misfeldt
G. Scott Nicastro
Brian M. Nodolf
Michael F. O'Brien
Jack A. Postlewaite
Kathryn J. Prenn
Thomas B. Rusboldt
Ryan D. Schuetz
Victoria L. Seltun*
William J. Spangler
Ryan J. Steffes
William H. Thedinga
William G. Thiel
Jacob P. Torgerson
Andrea M. Voelker
James M. Ward
Paul H. Weinke
Stephen L. Weld
William J. Westerlund

Of Counsel:
Frederick W. (Ted) Fischer

Emeritus:
Geo. Michael Carroll
Richard J. Ricci

Stevens L. Riley, 1932-2000

Weld, Riley, Prenn & Ricci, S.C.

A Wisconsin Limited Liability Entity

3624 Oakwood Hills Pkwy.
P.O. Box 1030
Eau Claire, WI 54702-1030
715-839-7786
FAX 715-839-8609
Menomonie: 715-235-4216

www.wrpr.com

*Also licensed to practice in Minnesota

FIFTH ANNUAL WERC PUBLIC SECTOR LABOR RELATIONS CONFERENCE

AND THE WINNER IS . . .

A Discussion of the Past Year in Interest Arbitration

April 30, 2009

Presented by:

Mindy K. Dale

WELD, RILEY, PRENN & RICCI, S.C., was originally formed on January 1, 1991, by the seven attorneys who staffed the Eau Claire office of Mulcahy & Wherry, S.C., a Milwaukee based firm. The practice originally focused only on labor and employment law. Our practice has evolved to emphasize not only labor and employment law, but also worker's compensation, municipal, zoning, administrative, estate planning, business, and civil litigation. Our goal is to provide high quality lawyering to our clients by continuing to look for ways to represent our clients better, more efficiently, and more economically.

➤ **MINDY K. DALE**: Shareholder. Practices in the areas of public and private sector management labor law, employment law, and municipal, school, and administrative law. Graduate of Indiana University (BS with high distinction) and Indiana University School of Law (Order of Coif). Member, State Bar of Wisconsin (Labor Law Section), Eau Claire County Bar Association, Wisconsin School Attorneys Association, Eau Claire Regional Arts Council, WorkSource Wisconsin Employer Advisory Board, and Director of Legal and Legislative Affairs for the Chippewa Valley Society for Human Resource Management. Formerly associated with the Labor and Employment Law Department of Barnes & Thornburg in Indianapolis, Indiana, and served as Assistant Corporation Counsel, Eau Claire County.

* = case discussions greatest or greater weight factor or makes reference to the status of the economy.

2008 - EARLY 2009 INTEREST ARBITRATION DECISIONS

1. Clark County (Courthouse Nonprof), Dec. No. 32092-A (McAlpin, 1/7/08). This is one in a series of arbitrations in which Clark County attempted to implement a drug and alcohol policy without including the policy in the collective bargaining agreement, and it was the sole issue in this arbitration. Arbitrator McAlpin concluded that there was no reason not to include the policy since the Employer could simply implement the policy unilaterally. He found the external and internal comparables to favor the Employer and noted that whether implemented by an interest arbitrator or by the Employer unilaterally does not change the Union's right to grieve the policy itself. The County's final offer was selected.

2. City of Fitchburg (Police), Dec. No. 32133-A (Hempe, 1/14/08). Three issues were in dispute, including the term of the agreement, health insurance contributions, and wage increases. This case is unusual in that the health insurance issue took a back seat to the Union's proposal to implement a 2-tier wage schedule. The Union proposed a 3-year term, with wage increases of 2% on January 1, 2006, 1% on December 31, 2006, and 3% on January 1 of both 2007 and 2008 as well as the creation of a second wage tier applicable to employees hired on or after the date of the arbitrator's award. The Union's offer would also include a 2008 addition of a 7-year step and a 15-year step on the wage schedule, substantial reductions in the first four steps of the "new" wage schedule, and ultimate replacement of the phased out current schedule with the "new" tier of the two-tier schedule. The Employer, on the other hand, proposed a 2-year term with a 2% wage increase in 2006, 3.5% in 2007, and an additional 1% on the first complete month following the arbitrator's award. The City argued that decreasing the wage rates of the first four steps of the wage schedule eliminates the City's advantage in being able to attract qualified applicants and the restructured wage schedule results in wage compression between the new patrol officer rates and the rates for detectives.

Arbitrator Hempe concluded that the Union had not demonstrated the existence of any significant or unanticipated problem, nor did its final offer include any quid pro quo. With respect to the health insurance contribution, the Union proposed a reduction from 105% of the lowest cost option to 100% on October 1, 2006, and to 97.5% of the lowest cost option on January 1, 2007. The City, on the other hand, proposed maintaining the 105% contribution level until the first calendar month following the arbitration award, at which time the City's contribution would be reduced to 97.5% of the lowest cost option. Arbitrator Hempe noted that the health insurance issue receded from its usual prominence in labor disputes due to the parties' agreement that the percentage of contribution will be the same at the end of the contract term. The City's final offer was chosen.

3. City of Franklin (DPW), Dec. No. 32113-A (Yaeger, 1/28/08). The issues for the 2006-08 contract term included wages and the health insurance deductibles. Both parties agreed to 3% wage increases each year, but the City offered an additional 25¢/hour in 2007 after receipt of the arbitration award as a quid pro quo for implementation of an in-network deductible, which also would not take effect until after issuance of the arbitration award. The Union's wage proposal included an additional 25¢ in both 2007 and 2008,

while it proposed no in-network deductible and a lower out-of-network deductible than proposed by the City. Arbitrator Yaeger rejected the Union's argument that a 25¢ quid pro quo (equivalent to $520/year) was insufficient to those employees who take family coverage and incur the $600 family deductible, stating that while the employee's out of pocket expenses may exceed the value of the quid pro quo and thus diminish his/her annual increase, that impact is not across the board like it would be were the proposal to be for employees to pay a greater share of the monthly premiums, because here the cost to the employee is based on usage rather than solely upon being a covered employee. The City's final offer was supported by four of the six internal units which voluntarily settled, where three of the four agreed to a very similar package, while the Firefighters did not implement a deductible but also did not receive any quid pro quo for other insurance changes. The external comparables did not support the Union's wage demand and no catch-up was warranted, persuading Arbitrator Yaeger to select the City's final offer.

*4. Buffalo County (Courthouse), Dec. No. 32181-A (Dichter, 2/15/08). The primary issue was wages, with the County proposing a 2% wage increase in both 2007 and 2008, while the Union requested a 1.5% split increase in January and September of 2007, 2% in January, 2008, and another 0.25% in July, 2008. The County argued that the greatest weight factor favored its proposal because offering more than a 2% wage increase was beyond its financial ability given the levy limitations imposed by the legislature. Buffalo County had been held to a 2% levy increase
in recent years because of new construction growth less than 2% and had already reduced employee hours, not filled vacancies, and delayed other expenditures, such as an upgrade in the Courthouse computer system. Because of the minimal cost difference in the parties' proposals, Arbitrator Dichter found that a determination that the greatest weight factor supported the County could not be made until examining the external comparables. The County's wage offer was below the average, as were its wage rates, but not one of the external comparables was limited by law to the minimum raise in the tax levy, and Arbitrator Dichter noted that the one-time increase in the levy by 3.8% in 2008 gave the County no reason to believe that its financial situation would get better in the future.

The parties' tentative agreements included changes in health insurance which would increase the out-of-pocket costs to employees as well as implementing a 15% premium contribution for single coverage. Those same changes were imposed in 2006 on two of the County's internal units via arbitration for the 2005-06 contract term, when all County units received the same wage increase, and the County was now in arbitration with the remaining three units, all of which voluntarily agreed to the health insurance changes upon receipt of arbitration awards, but rejected the County's proposed 2% wage increases in 2007 and 2008. Arbitrator Dichter rejected the Union's argument that its proposed wage increase was an appropriate quid pro quo for the health insurance changes because both Arbitrator Grenig and Arbitrator Hempe, in those prior arbitrations, found that no quid pro quo was needed to gain the health insurance changes. Arbitrator Dichter concluded that the greatest weight factor favored the County and there were simply not enough of the other factors pointing in favor of the Union to overcome that single factor in this case.

A secondary issue in this case was the Union's proposal to award overtime "to the most senior employee available in the Department." However, the Union had shown no need for the change and there was no support among the comparables for the additional language. Arbitrator Dichter determined that this is one of those occasions where one side throws in a proposal assuming that its proposal on the major issue will carry the day. However, the County's offer was selected.

*5. Buffalo County (Law Enf.), Dec. 32131-A (Vernon, 2/28/08). Only wages were at issue, with the County proposing 2% wage increases in both 2007 and 2008, and the Union proposing 2%/1% split increases in both years. The County relied heavily on budget constraints to demonstrate that the County has some very real problems, which Arbitrator Vernon noted were problems not faced by most of the comparable counties. However, the 2% levy limit, which was the reason for the County's proposed 2% wage increase, was raised to 3.86% only days before the hearing, providing the County an additional $208,937 in available tax levy monies in 2008, when the difference in total compensation between the parties' offers approximated $15,500.

Arbitrator Vernon weighed the County's financial challenges against the actual wage rates and concluded that the County's offer would make a bad situation worse, while even under the Union's offer employees would fall further behind the external comparables. He noted that employees "don't spend percentages at the grocery store. They spend dollars." The disparity in wages between the County and the external comparables, at the same time that Buffalo County employees pay 20% of the health insurance premiums, which was much more than other law enforcement personnel generally earning more money, was fatal to the County's final offer.

6. Fond du Lac County (Highway), Dec. No. 32174-A (Flaten, 3/17/08). The three issues presented to the Arbitrator included the Union's proposed additional 5¢/hour over and above the 3% wage increase, an additional floating holiday, and deletion of the language which authorizes the Employer to shut down operations for two weeks and forces Union members to take a paid furlough from work during that period. The Highway employees were underpaid in terms of the external comparables, and the external comparables also supported the additional floating holiday. With respect to the contract language, it had never been used and it was agreed it could be abandoned. However, Arbitrator Flaten concluded that the matter of most consideration was the fact that the parties reached a mediated tentative settlement to that effect which was rejected by the County's Personnel, Finance and Taxation Committee and not even allowed to be put to a vote by the full County Board. The Union's final offer was selected.

*7. City of Oshkosh (Professionals), Dec. No. 32148-A (Dichter, 3/18/08). The main issues in dispute were wages and health insurance contributions. The City proposed wage increases of 2.25% in 2007 and 2.75% in both 2008 and 2009. The Union proposed split increases of 2% on January 1 and 1% on July 1 in 2007, 2008 and 2009. The City offers four health insurance options - two PPO plans (one with an HRA and one without an HRA) as well as two EPO plans (one with an HRA and one without an HRA). In this case, HRA means Health Risk Assessment. The City's final offer increases the employee contribution

by 1% in each of the three years, but employee contributions are capped at a dollar amount. Those dollar caps also increase each year. Under the Union's final offer, the employee contribution remains at 7% each year for the PPO Non-HRA and EPO Non-HRA plans, at 5% for the PPO w/ HRA, and at 4% for the EPO w/ HRA. However, the Union proposes no increase in the dollar cap for plans w/ HRA options and only a $5 increase in the cap each year for the two non-HRA options.

Arbitrator Dichter rejected the City's argument that the greatest weight and greater weight factors favored the City. With respect to levy limits, Oshkosh had the largest increase in new construction of all the comparables, and Arbitrator Dichter noted that the key is whether the levy limitation has had more of an adverse impact on this community than was true in the comparables. He concluded that it did not. With respect to the greater weight factor, Arbitrator Dichter noted that it was not the general economic slowdown in the country which the City relied on, but how this locality is faring when compared to other surrounding localities that was key here. He did not find the City economically disadvantaged, even though the average income in the City was below average when compared to the external comparables, because the percentage growth in income exceeded that of the comparables by almost 3.5%, more than that of the comparables.

There was no internal settlement pattern; only the Police unit (in addition to the Fire Chiefs and Police Supervisors) had voluntarily agreed to the same health insurance and wage package. The remaining five units were proceeding to arbitration. Externally, Arbitrator Dichter concluded that while the City has paid higher premiums, employees had not been paying less than their counterparts, and the differential between the City's contribution and the external average had remained relatively constant between the prior contract term and 2007. Arbitrator Dichter found fault with both proposals, concluding that the health insurance concessions sought by the Employer were tied to less than average wage increases while, at the same time, the Union's wage proposal was in conjunction with no increase in the employee cap on insurance. He concluded that the wage issue tipped the scale towards the Union, despite the major deficiency in the Union's insurance proposal, and selected the Union final offer.

*8. Rusk County (Professionals), Dec. No. 32250-A (Eich, 3/19/08). The only issue was wages, with the Union arguing the need for catch-up. The County proposed split wage increases of 2% on January 1 and 1% on September 1 in both 2007 and 2008. The Union proposed a 3% wage increase in 2007 and the same 2%/1% split proposed by the County in 2008, along with an additional 5¢/hour on December 1, 2008. Arbitrator Eich concluded that the "greater weight" factor, i.e., the local economic conditions, and internal comparables favored the County's offer. Internally, all units had settled on the same wage increase proposed by the County, and the County's evidence established that Rusk County was one of the slowest-growing of the comparables, with an equalized valuation ranking well near the bottom, an adjusted gross income per tax return ranking of 70th among Wisconsin's 72 counties, a rank of last among the comparables in median household income, one of the higher unemployment rates in the state, and a history of resorting to raids on the general fund to keep its levy within acceptable limitations. Externally, the

County's wage rates were not at the bottom, and Arbitrator Eich was not persuaded by the Union's catch-up argument. He selected the County's final offer.

*9. Buffalo County (Highway), Dec. No. 32180-A (Krinsky, 3/24/08). The Union's final offer included the addition of CDL language and split wage increases of 1.5% on January 1 and September 1, 2007, as well as a 2% increase on January 1, 2008 and a 25¢ increase on July 1, 2008. The County proposed a 2% wage increase in both 2007 and 2008 and no CDL language. With respect to the CDL issue, Arbitrator Krinsky found no compelling reason to select the Union's proposed language and was persuaded by the County's argument that there was no established pattern with respect to the nature of CDL provisions among the external comparables. He suggested, however, that the parties continue to attempt to negotiate mutually acceptable language.

Under the "greatest weight" factor, the County presented a long list of the budget cuts it had made in 2006 and 2007 to stay within its budget, including reductions in planned road reconstruction, a 64-hour reduction in hours in 2007 for all County employees except law enforcement, elimination of three Highway positions through attrition, purchasing used vehicles for law enforcement, and not filling the County Administrator position after the incumbent resigned. Arbitrator Krinsky found that the greatest weight actor favored the County's final offer, recognizing that the County's ability to raise new funds was hampered significantly by the levy limit caps and lack of growth and, as a result, the County had been struggling to stay within its budget and meet its obligations.

At the time of the hearing, two of the County's five units had voluntarily agreed to the County's proposed 2% wage increase in 2007 and 2008, and the Law Enforcement and Courthouse units had gone to arbitration and were awaiting an arbitration award. Subsequently, Arbitrator Dichter issued a decision in the Courthouse case, favoring the County's final offer, while Arbitrator Vernon accepted the final offer of the Union in the Law Enforcement arbitration (resulting in 2%/1% split increases each year). Arbitrator Krinsky concluded that the County's final offer should be supported with respect to the internal comparables as it attempts to maintain internal consistency in its treatment of all units. Despite the fact that the County's final offer resulted in further deterioration in relationship to the median wage and average wage of the external comparables, thereby favoring the Union's offer, he concluded that the CDL issue, the greatest weight factor, and internal comparability favored the County's final offer.

Of particular note here is the fact that the Union had voluntarily agreed to health insurance changes which would be implemented after receipt of the arbitration award and it argued that its higher proposed wages represented an appropriate quid pro quo for the health insurance changes. Arbitrator Krinsky rejected that argument, noting that health insurance was not an issue in dispute, the parties had agreed to the health insurance changes voluntarily and without conditions, and the health insurance changes are the same changes which had been previously put into effect for two other units as a result of arbitration awards by Arbitrator Hempe (Paraprofessionals) and Arbitrator Grenig (Law Enforcement), neither of which required a quid pro quo for the changes.

10. Clark County (Social Services Paraprof.), Dec. No. 32091-A (Greco, 4/1/08). The primary issue was the County's proposal to implement a drug and alcohol policy which Arbitrator Greco characterized as something novel by wanting an interest arbitrator to rule on the reasonableness of its policy and find that the policy should be adopted as a separate, stand-alone work rule which does not reside within the four corners of the parties' agreement. He disagreed with Arbitrator McAlpin's view (Dec. No. 32092-A) that adoption of the policy will not change the Union's right to grieve the policy itself. He found the language of the policy unreasonable and lack of support among the external comparables. Also at issue was a wage adjustment for the Economic Support Specialist position, deletion of the six-month wage step, and the Union's proposed reclassification language. Having found the proposed policy to be the primary issue, the Union's final offer was selected.

11. Rice Lake Area School District (Custodians/Laundry Workers), Dec. No. 32191-A (McGilligan, 4/4/08). Both final offers included a 3% wage increase for 2005-06 and 2006-07; the Union proposed the same 3% wage increase in 2007-08 while the District proposed a 3.5% wage increase in the third year as a quid pro quo for implementing a dollar amount health insurance contribution in lieu of the existing 95% Employer contribution. Arbitrator McGilligan concluded that the dramatic impact of health insurance costs on the District demonstrated a need for change and the teacher unit's recent adoption of the District's dollar cap, as well as the same contribution by non-represented employees, supported the District's final offer. The external comparables slightly favored the District's proposed dollar cap on the employer's contribution, and both internal and external comparables supported the reasonableness of the District's .5% quid pro quo for the health insurance change.

The Union's proposals to provide double time for all hours worked on a holiday and to provide 3 weeks of vacation after 7 years instead of the existing 8 years were rejected because support among the external comparables was limited and the Union had demonstrated no need for the change nor offered a quid pro quo. Another issue in dispute was the District's proposal to add language allowing the District to vary starting and ending times up to one hour by providing 48 hours notice. The District's argument that the schedule changes which had been made by mutual agreement would no longer violate the contract was rejected because Arbitrator McGilligan concluded that many of the changes in work hours, if they continue as they have in the past, would still violate the contract, and there is language in the contract which would allow the present practice to continue. Because the work hours issue was the only issue favoring the Union's offer, the District's final offer was selected.

12. Clark County (Highway), Dec. No. 32090-A (Honeyman, 4/18/08). The sole issue here was the Union's proposal to codify in contract language a 30 to 40-year past practice of guaranteed overtime for shop mechanics. The proposal was made after the County gave notice at the outset of negotiations that it intended to terminate the past practice at the conclusion of the then current contract. Arbitrator Honeyman concluded that the County was the "agent of change, incurring the traditional obligation to justify its effects," and it was the lack of a quid pro quo which was fatal to the County's offer.

13. City of Monona (Fire), Dec. No. 32036-A (Malamud, 4/23/08). This case is unusual in that the Union sought to reduce the existing 10% employee health insurance contribution to the 5% being paid by all other City employees. The 10% contribution was implemented via an arbitration award for the 2004-05 contract when the Firefighters also received a 3.5% wage increase each year as a quid pro quo. In the meantime, however, all other City bargaining units had agreed to a 5% employee contribution for 2005-06. With respect to wages, the Union proposed a 2.5% wage increase each year; the City proposed a 2% increase each year. Arbitrator Malamud determined that the Union's wage offer, the strong pattern of benefits established by the Employer for health insurance, and what he characterized as part of a quid pro quo of an additional 5% contribution made by these employees in 2004 and 2005, when no other bargaining unit contributed anything towards health insurance premiums, was sufficient to select the Union's final offer. However, the Union's final offer also included the addition of two personal days, a new benefit, and it was the Union's demand for additional time off that was fatal to its case. Arbitrator Malamud noted that "The temptation to include zingers or proposals that cannot be justified frequently undermines what would ordinarily be a reasonable final offer; the one that should be adopted. Here, the Union persists for the second arbitration case in a row to propose an increase in time off. There just is no apparent reason or basis for this demand. It significantly increases the cost of running the department. In this case, the Union offer on wages and health insurance is preferred. The addition of the time off benefit defeats its proposal."

*14. City of Oshkosh (PW/Parks/Trans), Dec. No. 32150-A (Engmann, 4/25/08). The issues here were the same with respect to wage increases and health insurance contributions as in the arbitration with all other City units. In this dispute, however, the City also proposed a change which added steps in the wage schedule for Transit Operators and added an initial step that is 5% less than the current initial step for all other positions, starting with the 2009 pay schedule. Arbitrator Engmann concluded that settlements with only one bargaining unit, as well as the nonrepresented employees and the supervisory groups which do not have access to arbitration, does not provide an enforceable internal settlement pattern. He found the Union's proposed freeze on the percentage contribution and the dollar caps for health insurance a huge problem for the Union, while, at the same time, finding that the continually increasing percentage contribution and the increase in dollar caps under the City's final offer also to be unreasonable.

With respect to the greatest weight and greater weight factors, Arbitrator Engmann found that because of the levy limit caps, there was a slight preference for the City's final offer, but not enough to determine the outcome, and he offered no analysis with respect to the greater weight factor, other than to state that it favored neither party.

The City's attempt to grandfather existing employees with respect to health insurance contributions and wage rates and require all employees hired after January 1, 2009, to pay the difference between the "basic" EPO health insurance plan and the more expensive PPO plan, while at the same time adhering to a revised wage schedule which reduces the start rate and lengthens the time required to reach the maximum wage rate, was fatal. Under the City's offer, for employees hired after January 1, 2009, the number of months

to reach the maximum on the wage schedule for Transit Operators would increase from 12 months to 60 months and the starting wage rate would be reduced from $18.05 to $13.58. For all other positions, a new starting wage rate would be added at 5% less than the current starting wage rate. Arbitrator Engmann concluded that the City tried to accomplish too much by raising the percentage contributions toward health insurance at the same time it increased the dollar caps, by proposing much too drastic of a change for what it perceived as an inequity in the wage rates for Transit Operators, and by adding an initial step at less than the status quo, with little support in the comparables and no quid pro quo. The Union's final offer was selected.

*15. Oshkosh Public Library, Dec. No. 32153-B (Shaw, 4/26/08). Both the Library and the Union's final offers mirror those of the other units in arbitration for the 2007-09 contract term with respect to health insurance contributions and wage increases. With respect to health insurance contributions, Arbitrator Shaw found both offers as proposing a change in the status quo, with the Library's offer increasing the health insurance contributions and dollar cap amounts each year and the Union's offer freezing both the percentage amounts and dollar caps at the 2006 level for HRA (health risk assessment) participants, thus altering the pattern of increasing those amounts over the life of the agreement. The trend among the external comparables demonstrated an increase in the amount of premium contributed by employees, resulting in a conclusion that the Union's offer of freezing the employee contribution rates at the 2006 level for the three years of the agreement was contrary to the trend and would widen the gap with the comparables. The Library's offer was slightly more reasonable when comparing the external comparables, but there was no internal settlement pattern with only one of the six units settled. With a trend toward increased employee contributions, coupled with a 20% increase in the PPO premium in 2005 and a 19% increase in premiums in 2008, Arbitrator Shaw found the Library's offer more reasonable and concluded that no quid pro quo was required on that proposal alone.

However, proposing concessions for new hires that would require they pay the difference between the higher cost PPO plan and the basic EPO w/ HRA plan, in conjunction with lower starting wage rates for new hires, while at the same time the Union had stipulated to changes in the health insurance plan design and prescription drug co-pays, was fatal to the Library's final offer. That was particularly the case when the wage increase under the Library offer was found to be below the level of the external comparables. Arbitrator Shaw determined that without a compelling need for the Library's concessions from new hires, some quid pro quo is required, and he essentially rejected the Library's stance that no quid pro quo was required for its health insurance and wage proposal for new hires because existing employees were grandfathered.

While Arbitrator Shaw found the Union's proposed freeze on employee contributions toward health insurance for those who participate in the HRA to be a significant change in the status quo, which was not supported by the comparables and for which it had shown no compelling need, and where he found the stipulated plan design changes an insufficient quid pro quo for the Union's proposed change, he nevertheless found the Union's final offer to be the more reasonable of the two.

Arbitrator Shaw offered extensive analysis of the greatest weight and greater weight factors, establishing that the greatest weight criterion requires consideration of the City's ability to raise revenues and live within the revenue caps the State legislature has imposed, in comparison with the other cities in the comparables and a determination of whether one offer has a disproportionately negative impact on the City's ability to live within the levy limit cap. Because of its growth in net new construction and the largest percentage increase in full value among the comparables, he concluded that the City had fared better than its comparables as far as its ability to raise revenues under the levy limits, and he concluded that the $26,990 total dollar difference over the three-year contract term, as a percentage of the Library's total annual revenues of approximately $3.6 million each year, is measured in thousandths of a percent. Despite the Library's argument that it had to reduce staff in both 2006 and 2007 and had reduced services in order to live within the budget required by dint of the levy limits, Arbitrator Shaw concluded that the greatest weight criterion favored neither party because of the small difference in terms of the impact of the two offers.

Similarly, while the City relied on the fact that median household income ranked last among the comparables and its property tax levy per capita was above the average, the Union had shown that Oshkosh was above the average among the comparables in population growth; led the comparables in percentage of growth in full value, per capita value, and adjusted gross income – even though the adjusted gross income of its residents was still almost $3,600 below the average of the comparables; had the second lowest levy rate and the second highest equalized value; and had the highest percentage change in equalized value, giving Arbitrator Shaw reason to conclude that the City's local economy was faring better than that of its neighbors. Again, because of the relatively small difference in the cost of the two offers, he concluded that the greater weight factor did not favor either offer.

16. Racine Unified S.D. (Painters), Dec. No. 32135-A (Roberts, 4/26/08). The issue was the Union's proposal to lower the age of eligibility for early retirement benefits. Under the Union's proposal, employees with 30 years of service who elect to retire between the age of 58 and 62 years of age would be eligible for group health insurance, single or family, with the District paying the entire cost. Currently, employees must be 62 years to be eligible for early retirement benefits. The Union's final offer also included the addition of fully paid life insurance until age 65. The Union relied on internal comparability to support its early retirement benefit, but Arbitrator Roberts concluded that because some internal groups do not provide for early retirement benefits as early as age 58, while others allow for health insurance at that age but with differing requirements for years of service or retiree contributions, there was no convincing support for the Union's proposal. He also concluded that because there was no clear consistent pattern among the internal or external comparables, and because the early retirement proposal is a substantial benefit improvement, a quid pro quo is required.

Arbitrator Roberts rejected the Union's argument that it had provided a quid pro quo because it accepted a wage freeze over the 2-year term of the prior collective bargaining agreement, noting also that the tentative agreement for this 2-year term allowed for a wage reopener each year as well as a reopener on employee health insurance contributions.

The District's proposal was favored with respect to life insurance because there was no consistent pattern among the internal comparables and the Union was seeking an improvement in that benefit without a quid pro quo. The District's final offer was selected.

17. Monroe County (Law Enforcement), Dec. No. 32254-A (Krinsky, 5/8/08). Two issues in dispute were wages and a 1994 Letter of Understanding. The County proposed wage increases of 2% in January of 2007 and 2008, as well as a 0.5% increase on July 1, 2008, while the Union's final offer included 2%/1% split increases in January and July each year. The County proposed eliminating the Letter of Understanding which relates to hours of work and stated: "It is the intent of the parties that matters relating to hours of work regarding bargaining unit employees shall be addressed and resolved by mutual agreement of the Local and the Department Head; accordingly, all matters/practices relating to hours of work under Article 5 shall continue, unchanged, unless a change is mutually agreed upon by the Local and the Department Head." The County's wage offer was supported by the internal comparables, where 5 of the County's 7 units had voluntarily accepted the County's offer. However, comparison with the external comparables showed that even under the Union's offer County wages would deteriorate.

Arbitrator Krinsky concluded that if wages was the only issue, he would have been inclined to favor the County's position of maintaining uniformity in its internal wage settlements, but the Letter of Understanding issue tipped the scales in the Union's favor because of the long history of maintaining the letter of understanding and the lack of any discussion or bargaining in the current round of negotiations prior to the County's proposal to delete the letter. He pointed out that the County had offered no persuasive evidence or testimony that the existence of the letter of understanding had caused any difficulties for the parties or that a problem now existed which could only be remedied by elimination of the letter. The Union's final offer was selected.

18. Monroe County (Highway), Dec. No. 32286-A (Dichter, 5/12/08). Both parties' wage offers were consistent with that of the Law Enforcement unit (referenced above in #14). On the wage issue, the Union argued the need for catch-up. However, internal comparability strongly favored the County, while external comparability slightly favored the Union. The Union argued and was able to show that the Highway employees compared less favorably to the external comparables than did County employees in other bargaining units, including Social Services, Courthouse and Corrections. However, Arbitrator Dichter was not convinced that now was the time to make an adjustment.

The Union also proposed adding language related to summer hours and loss of a CDL license. The parties have a side agreement addressing summer work hours, which has been modified over the years to the agreement of each party. Arbitrator Dichter found no reason to add new language to the contract where there has been no showing of need. On the CDL issue, under the Union's proposed language, an employee who loses their CDL for reasons not arising out of or during the course of employment or unrelated to criminal activity would be placed into an open patrolman position, subject to availability of work as determined by management, for a period not exceeding 13 months. Arbitrator Dichter agreed that there was no clear pattern with respect to the language or practices of

the external comparables, but he also agreed that the new Rules which result in the loss of a CDL license for traffic offenses while off-duty does provide impetus for the Union's proposal. He found it a reasonable proposal, addressing a problem created by the new Rules, and a proposal of no cost to the County, thus lessening the need for a quid pro quo. But the CDL issue was not enough to tip the scale in favor of the Union, and the County's final offer was selected.

*19. City of Oshkosh (Cler-Paraprofs), Dec. No. 32149-A (Bielarczyk, 5/12/08). Again, the City's final offer on health insurance contributions and wages was identical to that offered to all other City units, including the same changes for new hires with respect to employees contributing the difference between the EPO plan w/ HRA and the higher priced PPO plan and the new starting wage step 5% less than the current start rate. The Union's final offer included the same wage proposal included in the final offers of the other internal units. This unit had also stipulated to the same changes in the health insurance plan that would be implemented for all internal groups. With respect to the health insurance issue, while both offers provide incentive for employees to participate in the HRA, the City's proposal would have employees paying up to 10% of the premium if they chose not to do so, a level not supported by the external comparables. Arbitrator Bielarczyk found that requiring new hires to pay as much as 25% of the premium for the PPO plan was not supported by any of the external comparables.

The greatest weight and greater weight factors were found to not favor either final offer. Arbitrator Bielarczyk noted that the greatest weight factor is a question of whether the State imposed levy limitations prevent the employer from paying the Union's final offer; it is not an ability to pay argument. The City argued that selection of the Union's offer would force it to make changes in services to maintain its budget, but Arbitrator Bielarczyk conclude that the approximately $85,000 difference in cost over the three-year contract term, which amounted to less than one tenth of one percent of the City's budget, was too small a difference to conclude that the levy limitations had any impact on either final offer. Similarly, while the City demonstrated that City residents had the lowest median household income, and the Union established that Oshkosh was the fastest growing community in terms of population, per capita value and adjusted gross income, the greater weight factor favored neither offer because of the small difference in cost between the two offers.

Arbitrator Bielarczyk concluded that the only factor favoring the City's final offer was the flaw in the Union's final offer which freezes employee contribution caps for PPO and EPO participants that enroll in the HRA, which is clearly contrary to what the parties have done in the past and contrary to what the comparables are doing. He noted that the City's final offer was unreasonable by attempting to change too much of the health insurance contributions at one time, with a low wage offer, and a salary schedule change for new hires.

20. Forest County (Sheriff's Dept.), Dec. No. 32213-A (Dichter, 5/14/08). The sole issue was the County's proposal regarding health insurance. Under its final offer, health insurance deductibles would increase to $1000/$1500/$2000 and an HRA plan would be added with contributions to the HRA equivalent to the difference between the high

deductibles and the existing $200/$400/$600 deductibles, with the HRA monies rolling over from year to year. The County's final offer would add a co-pay provision for prescription drugs, requiring that employees pay the difference between the cost of brand name or formulary drugs and generic drugs when a generic drug equivalent is available, unless the treating physician certifies the brand or formulary drug is medically necessary. While implementation of the health insurance changes was effective for the nonrepresented employees and voluntarily accepted by the other two bargaining units, the Union argued that the settlement with the other units occurred after all three units filed for arbitration and should therefore not be considered by the Arbitrator. Because the internal comparables strongly favored the County, and the external comparables demonstrated no pattern and therefore favored neither side, the County's final offer was selected.

With respect to the prescription drug changes, Arbitrator Dichter noted that this proposal would only result in additional cost to the employee if the employee or their family member chose to use a brand name drug even though it was not required by the physician and if the employee chose not to use the HRA to pay the difference. He did not find that provision unreasonable because steering employees to lower medical or prescription costs is characteristic of most plans.

21. City of Cuba City (Electric/Water Utility), Dec. No. 32346-A (Honeyman, 5/21/08). This arbitration concerned an initial collective bargaining agreement, with the sole issue being wages. The Union's wage offer created wage classifications of Lead Line Tech and Journeyman Line Tech, representing a 3% increase, while at the same time creating apprentice rates. The City's offer amounted to a 2.5% increase for the lineworker employee (who does not work full-time as an electrician but also does snowplowing and wastewater treatment plant work) and an 8% increase for the employee with the higher level of responsibility. The City argued that there was no need for apprentice rates because the City has no intention of hiring an apprentice. The Arbitrator concluded, however, that the wage rate for the junior lineworker fell short when compared to the externals as well as the internals when factoring in the amount of time spent performing non-electric work. The Union's final offer was selected.

With respect to comparability, this was the first bargaining unit of any kind with the City, and Arbitrator Honeyman found appropriate external comparables to include utilities within 70 miles, with a concentration on utilities which are within eight places smaller and eight places larger than Cuba City. The Union relied only on union groups, which the Arbitrator concluded did not distort the comparisons.

22. Clark County (Courthouse Prof.), Dec. No. 32093-A (Engmann, 5/30/08). This is one of four Clark County arbitrations in which the County's final offer included the implementation of a drug and alcohol testing policy, without reference to the policy in the collective bargaining agreement. Prior to this decision, Arbitrators Bellman and Greco selected the Union's offer; Arbitrator McAlpin selected the County's offer. Arbitrator Engmann agreed with Arbitrator Bellman that the County was attempting to bypass the traditional and longstanding process of how work rules and policies have been implemented by employers and challenged by unions (through the grievance process) and

that, once ordered into the contract via interest arbitration, only through interest arbitration could it be challenged as unreasonable. Arbitrator Engman opined that the Commission determined that some part of the final offer must be anchored in the contract and it was the County's proposed abrogation of the traditional method of implementing and challenging work rules and its assertion that its final offer did not include any language to be included in the collective bargaining agreement which prompted him to select the Union's final offer.

23. Milwaukee County (Sheriff's Dept.), Dec. No. 32154-A (Petrie, 6/4/08). Three issues remained in dispute, wage increases, the Union's proposed changes to the contractual grievance procedure, and its proposed addition of language related to a sick leave/absenteeism policy. Arbitrator Petrie concluded that the Union's proposed changes in the grievance procedure and sick leave area addressed significant mutual problems and therefore required little or no significant quid pro quo. With respect to wages, the County proposed four 1% wage increases – on November 4, 2007, April 6, 2008, June 29, 2008 and October 5, 2008, in addition to a $250 lump sum payment to each employee assigned a work week of 20 or more hours per week. The Union proposed 1.5% wage increases on both January 1 and July 1 of both 2007 and 2008. The County's argument that its wage proposal was consistent with the uniform wage increases for all of its employee groups was rejected on the basis that other internal units enjoyed various concessions and benefits not included in the County's final offer here. External comparables supported the Union's wage offer, resulting in selection of the Union's final offer.

*24. Madison Metropolitan School District (Support Staff), Dec. No. 32195-A (Malamud, 6/8/08). The sole issue in dispute was the District's proposal to eliminate the existing WPS PPO statewide health insurance plan and instead offer three HMO plans from three different carriers, at no cost to employees, with the option of employees selecting POS or PPO options offered by those carriers but paying the difference between the amount paid by the District for the highest cost HMO and the cost of the POS/PPO plan. The District-proposed plan was the same benefit negotiated with the custodian and food service units as well as that provided to the administrators. The Union proposed no change to the health insurance plan in effect, allowing employees to continue to have the choice of coverage in the GHC HMO or under the WPS plan, with employees required to pay 10% of the premium for the higher cost WPS plan while having the entire premium paid for the GHC-HMO plan.

Arbitrator Malamud accorded weight to the greatest weight factor, acknowledging the budget gap between revenues and expenses, that the District has taxed to the extent permitted by statute, and that the funds generated are inadequate to continue services without making cuts in program and staffing, which staffing cuts have had an impact on this unit. He expressed concern over the Employer's attempt to have the tail wag the dog by altering a 30-year pattern where this unit received the same health insurance as the much larger teacher unit. However, the cost of the WPS plan exceeded the amount paid by the external comparables, and the migration of unit members from the higher cost WPS plan to the GHC HMO plan also supported the District offer. He concluded that the Employer had established a need for the health insurance change, but the agreed upon wage

increases of 2.5% and 2.9% did not provide a quid pro quo for the change. He did, however, select the District's final offer.

25. Shawano County (Law Enf.), Dec. No. 32169-A (Torosian, 6/17/08). The sole issue presented to the Arbitrator was the County's proposal to change the work schedule of the Investigators so there is an investigator regularly scheduled on weekends. The status quo included a Monday-Friday work week with coverage on weekends on an on-call basis. The Union's final offer was selected, in large part, because the County's proposed work schedule was not consistent with its proposed language. Arbitrator Torosian noted that arbitrators can interpret final offers, but they cannot modify final offers, and interpreting the County's final offer as explained at the hearing would put the parties in a position of arguing whether the Arbitrator had modified the Employer's final offer. Given that the parties would be entering into negotiations for a successor agreement in about six weeks, he found it more reasonable that the language be clarified and fully discussed in upcoming negotiations.

26. City of Oshkosh (Firefighters), Dec. No. 32152-A (Flaten, 6/30/08). This is the fifth of five interest arbitrations with City of Oshkosh bargaining units in which the City's final offer included the same wage increases and change in health insurance contributions which was voluntarily accepted by the Police unit. Arbitrator Flaten found the City's proposal to increase health insurance contributions to 6% in 2008 and to 7% in 2009 more reasonable than the Union's attempt to maintain the exact same percentage and dollar cap that existed in 2006 for all three years of the 2007-09 contract term, particularly with what he characterized as "precipitous, almost scandalous, increases in health insurance premiums" and where employees would be contributing less on a proportionate basis than they did before. He viewed the settlement with the Police unit as supportive of the City's final offer. The Union's final offer also included a proposal to pay Paramedics or EMT's who transport patients outside of Winnebago County a premium pay of $75 per transport and a proposal to change the company that administers their deferred compensation plan. He observed that the transport of patients does not involve emergencies or extra work since the paramedic is then taken off duty to answer 911 emergency calls, and there was no reason shown for changing the administrator of the deferred compensation plan. He characterized the Union's final offer as a "further grasp at more benefits" and selected the Employer's final offer.

27. City of Monroe (Dispatchers), Dec. No. 32267-A (Bellman, 7/7/08). The primary issue in this dispute, and that which determined the outcome, was the City's proposal to implement a 5% employee health insurance contribution in the second year of the contract term, while the Union proposed to maintain 100% paid health insurance. While external comparables show support for an employee contribution, lack of internal support was fatal to the City's final offer. The City's unrepresented employees were not required to contribute toward premiums, and this 5-member unit was the first of three City units to enter negotiations since the City elected to propose a premium contribution. Arbitrator Bellman noted that the City's apparent attempt to gain a persuasive position with its other represented employees by its final offer to its smallest group of represented employees, and without affecting its unrepresented employees, should not be supported, and he

concluded that none of the other issues in dispute were of sufficient practical consequence to justify an award to the contrary. The Union's final offer was selected.

28. Village of Caledonia (Police), Dec. No. 32260-A (McAlpin, 7/7/08). The only issue in dispute was the Union's request to add an additional 1.27% to the maximum rate for the top patrol officer, investigator and shift commander. The reason for the Union's proposal was that the unit of supervisory sergeants received new longevity pay (which had previously been folded into the salary in 1992), whereas the Police unit already enjoyed the longevity benefit. Neither party relied on external comparisons. The Union relied on the sergeants' settlement; the Village relied on the other internal comparables. Arbitrator Bellman concluded that the Union was attempting to change the status quo with respect to the differential between the police officer and sergeant wages and that the Union had failed to justify a deviation from the status quo. He selected the final offer of the Village.

29. City of Seymour (DPW), Dec. No. 32228-A (Yaeger, 7/15/08). Both parties proposed a change in the status quo by changing the Employer's health insurance contribution under the State's Group Health Plan. Under the City's final offer, the "105% if the lowest cost qualified plan" contribution would be reduced to 100% in 2007, to 95% in 2008, and to 92.5% in 2009 – all based on the premium of the lowest cost qualified plan in the employer's service area. Under the Union offer, there would be no change in the previously existing 105% of the lowest cost qualified plan in 2007, but the City's contribution would be changed to 92.5% of the premium of all qualified plans in 2008, and reduced in 2009 to 90% of the premium rate of all qualified plans. However, if the cost of the plan selected by the employee is more than 105% of the lowest cost qualified plan, the employee shall pay the difference. There was no internal support since the only other bargaining unit, the Police, was also in arbitration over the same issue.

Arbitrator Yaeger therefore relied entirely on external comparability and concluded that "the only apples to apples comparison that can be made is when the plans are identical." He therefore limited his comparisons to only 3 of the 10 external comparables – those which also offered the State health insurance plan. After analyzing the employee cost in each year under each final offer, he concluded that both final offers represented a huge increase in cost to the employees over the three-year term of the agreement and opined that employees shouldn't be expected to assume a greater and greater percentage of the cost of insurance in a very short period of time. He rejected the City's argument that adopting the Union's final offer, which does not steer employees to the lowest cost plans, will have the effect of diminishing competition among providers and undermining the State Program's model. He also rejected the City's argument that the Union's offer was ambiguous because it did not explicitly address the situation if an employee selects a "non-qualified" plan and how the employer/employee premium payments will be calculated. He agreed with the Union that if the City believed the language was ambiguous it should have raised that issue with the Commission's Investigator, but since it did not it will have to live with the ambiguous language for only one contract year. He selected the Union's final offer.

30. City of Seymour (Police), Dec. 32229-A (Greco, 7/16/08). The issue is identical to that described above in the dispute with the Public Works unit. Unlike Arbitrator Yaeger in that case, Arbitrator Greco evaluated the health insurance contributions for all external comparables and concluded that employee contributions under the City's offer would be less each year than all the comparables for the lowest cost health plan, although that would not be the case for the higher cost plans. He therefore found that the external comparables were mixed and did not favor either party's offer.

Arbitrator Greco also made the observation that what the City pays must be considered as well and agreed with the City that the State Plan was founded upon an employer basing its contribution on the lowest cost provider because it provides steerage through competitive bidding, which is the key to holding down health care costs. He concluded that this case turned upon whether the need to maintain such competitive bidding for the lowest priced health plan outweighs the right that employees have to select their own health care providers, a choice that gets more difficult to make if employees must pay much higher insurance premiums to exercise that right. He therefore found the City's final offer more reasonable.

*31. Milwaukee County (Nurses), Dec. No. 32241-A (Engmann, 7/29/08). The sole issue was whether the County's proposed 2007 wage offer of a 1% wage increase on November 4, 2007, in addition to a $250 lump sum payment made following the arbitration award, was more reasonable than the Union's proposed wage increases of 2% on January 1 and 2% on July 1 of 2007. The parties were in agreement on the wage increase for 2008 – 1% increases spread throughout the year (the arbitration award did not specify when those increases took effect). The County's reliance on an internal settlement pattern, because 82.5% of the County's represented employees voluntarily accepted the same increases, was rejected. The County's AFSCME unit, representing 78% of the County's represented employees, received a "no layoff" guarantee, a "no privatization" guarantee, and a "me-too" clause applicable to any higher voluntary wage settlement, and three other smaller units received two or three of those things in addition to the same wage offer made by the County here. None of those items were offered to the Nurses. Arbitrator Engmann concluded that there can be no enforceable internal wage settlement pattern in a situation where one or more of the employer's bargaining units received a benefit as part of the settlement which one or more of the units was not offered or did not receive, particularly a benefit which has a financial impact.

Although Arbitrator Engmann sympathized with the County's financial problems, he rejected the "greater weight" criterion as having more weight than a comparison with both the external comparables and the consumer price index. Arbitrator Engmann made no comparison of wage "increases", instead looking only at actual wage rates and how the parties' proposed wage rates compared in terms of a change in ranking and difference with the average of the minimum and maximum rates. Having shown that the Union's wage offer was much closer to the average minimum and maximum rates, he found the Union's offer preferable. The Union's final offer was selected for 2007-08.

32. Washington County (Highway), Dec. No. 32304-A (Petrie, 8/3/08). Two issues remained in dispute – the Union's proposed change in the summer hours schedule, which would eliminate a ½ hour unpaid lunch and would allow employees to end their work day at 4:00 instead of 4:30 p.m., and the Union's proposed increase in holiday pay, from 8 hours to 10 hours, for the July 4th holiday. The Union failed to provide any legitimate need for its proposed changes and offered no quid pro quo, and the external comparables fell short of supporting the Union's proposed changes. Arbitrator Petrie therefore selected the County's final offer.

33. Polk County (Sheriff's Dept. Field Officers), Dec. No. 32364-A (Torosian, 9/3/08). The primary issue in dispute was wages, with the County proposing the same 3% wage increase in both 2007-08 that was voluntarily accepted by the County's other six bargaining units. The Union's final offer, on the other hand, included graduated scale increases each year of 2.5% for deputies with less than 5 years of service, 3% for those with 5 years of service, but less than 10 years of service, and 4% for those with 10 years or more of service. The Union's demand for 4% wage increases for more senior officers was based on the 4% wage increases provided to the Sheriff in both 2007 and 2008, which the County attributed to the fact that the Sheriff was actually making less than the Chief Deputy. The Union argued, however, that the two supervisory positions of Chief Deputy and Lieutenant had received dramatic increases over the years (due to step movement increases), which ranked them number one among the external comparables and increased the disparity between the deputy's maximum rate and the supervisory salaries. Arbitrator Torosian found no compelling reason to deviate from the internal settlement pattern, noting that the external settlement pattern averaged a 3% increase and the deputy wages compared well with their external comparables, which is a more significant factor and carries more weight than comparison with the Sheriff and higher supervising employees, particularly when the supervisors are not part of a represented unit. The County's final offer prevailed.

*34. Crawford County (Sheriff's Dept., Highway, Courthouse), Dec. Nos. 32361-A, 32362-A, 32363-A, respectively (Shaw, 10/8/08). At issue for all three units was the wage increase for 2008 as well as the employee contribution toward health insurance. The County proposed a 3% wage increase with employee health insurance contributions of $15 for single and $40 for family coverage for the two highest cost plans of the three plans offered (within the State Group plan). The Union proposed a 2.5% wage increase and the status quo on health insurance contributions, i.e., no employee contributions. The parties agreed to consolidate the hearing on these issues, with the Arbitrator deciding that dispute independent of specific issues in the Sheriff's and Highway units. The only other bargaining unit, the Professionals unit, voluntarily agreed to the County's proposed 3% wage increase and the same employee contributions, along with an additional 5% on wages for a majority of the unit, but the County's reliance on one internal settlement was rejected as not establishing a pattern.

In responding to the County's argument that the greatest weight factor supports its final offer, Arbitrator Shaw agreed with Arbitrator Vernon's analysis in Monroe County, Dec. No. 31318-B (2005), that the employer must show in arbitration how the levy limits affect the reasonableness of the final offers in all relevant senses including, but not limited to,

affordability, economic prudence and the budgetary choices the adoption of the Union's offer would force. Because the County had offered little or no evidence in these regards to demonstrate that adoption of the Union's offer would cause the County to exceed its levy limits, unless it made cuts in other critical areas, and because it provided no evidence of what percentage of the County's total budget health insurance costs would constitute, he concluded that the greatest weight factor did not favor either party. In arguing the greater weight factor, the County showed that it was near the bottom of the comparables in full value of assessments, equalized value, percent change in net new construction, adjusted gross income and per capita income, and near the top of the comparables with regard to its tax levy rate and unemployment rate. Arbitrator Shaw determined that the County's position among the comparables is explained in good part by the fact that it has the second lowest population among the counties. The County offered "no hard figures" regarding expenditures and revenues, with the exception of showing that the amount of shared revenue it was to receive in 2008 was about the same as received in the prior two years, and he reasoned that for the greater weight criterion to have any impact, there has to be a better correlation drawn between the County's economic condition and the parties' respective economic offers than was made here, especially since the amount at issue regarding employee premium contributions was $34,140 for all three units, or only 0.4% of the County's 2007 wage and benefit costs, an amount likely to be negligible at most.

Arbitrator Shaw concluded that the external comparables supported an employee health insurance contribution, where 4 of the 7 comparables required an employee contribution of at least 10% or more and two other comparables required minimal employee contributions of 2% of the lowest-cost qualified plan and $34 (the equivalent of 3.5% of the lowest-cost qualified plan). The County's proposal represented a contribution of 2.9% and 2.95% of premiums for the two highest cost plans in 2008. He also addressed the Union argument that Crawford County employees have a $1000 deductible for the family plan and factored in the monthly cost of the deductible into the employee's total cost for deductibles and premiums. The results showed that the County's offer was still favored. He agreed that a quid pro quo is not required, or there is a reduced need for one, where the comparables heavily support the proposed change, as in this case, and noted that the County's proposed 3% wage increase, which was in the high end of the wage settlements for 2008, was sufficient to address any need for a quid pro quo. The County's final offer was selected on the wage increase and health insurance issues.

The additional issues in the Sheriff's Department unit included the County's proposal to eliminate language stating that "No part-time or seasonal employees shall work overtime unless all regular employees are working overtime or are unavailable for work" and its proposal to add Martin Luther King Day as a paid holiday. Based on the evidence regarding the dollar amount of overtime worked by unit personnel, Arbitrator Shaw concluded that overtime pay constituted a significant portion of employees' gross wages and the County's proposed change would substantially reduce such overtime pay. The County's argument that it wanted a larger pool of part-time employees, and that it needed to be able to offer them more hours to do so, in order to be able to fill shifts that are left vacant when full-time employees take vacation or are off on sick leave, was not supported by the evidence of numerous incidents where that had occurred, and Arbitrator Shaw

concluded that the quid pro quo of one additional holiday pales in comparison to the potential impact of the change on the compensation of these employees. The Union's final offer was found more reasonable on the Sheriff's Department issues.

In the Highway unit, the County's final offer included modification of language in order to prohibit vacation buyback and taking or being paid for vacation before it is accrued, as well as requiring the direct deposit of paychecks. The County offered, in exchange, an 80¢/hour wage increase for Range 1 classifications (mechanics & shop foreman) and the addition of one floating holiday. Although the County showed no problems or abuse associated with the vacation buyback, the Highway unit was the only internal unit to allow for vacation pay before it is accrued. Both the internal and external comparables supported the County's proposal, and Arbitrator Shaw concluded that the additional holiday was an adequate quid pro quo for the County's proposal, while the direct deposit of paychecks had little real impact on either party. He found the County's final offer slightly more reasonable and preferred on these issues.

35. Racine County (Public Works), Dec. No. 32372-A (Roberts, 10/11/08). Wages were at issue, with the Union proposing 3% wage increases in both 2007 and 2008, while the County proposed a 2% increase in 2007 and a 2%/2% split increase on April 1 and October 1, 2008. External settlements did not strongly support either party's final offer, and only one internal unit – the six-member attorney unit – had voluntarily settled on the same wage increase and retiree health insurance changes as proposed by the County here. While the County argued financial constraints, Arbitrator Roberts concluded that the County had not demonstrated that its economic situation was distinguishable from the external comparables.

The County's final offer included an adjustment on retiree health insurance contributions for employees hired on or after January 1, 2008, which would require a 15% premium contribution (the same contribution paid by active employees) for those with 20 years of service and a 20% premium contribution for those with 15-19 years of service. (The arbitration award did not indicate what the status quo was with respect to retiree contributions toward health insurance.) The external comparables supported the County's retiree premium contribution, with 2 of the 8 external comparables providing no coverage for retirees, 4 counties requiring that retirees pay 100% of the premium, one county allowing for unpaid sick leave to be used toward premiums, and only one county providing fully paid insurance. The County's final offer was rejected, in large part, because the County did not meet the three-part test required to change the status quo. Arbitrator Roberts concluded that the County had not justified a need for the change because the parties had recently worked to restructure their health insurance and health care approaches in an attempt to stem those rising costs, and it was important to allow those processes to begin to work before immediately again imposing a change in the health insurance premium payment structure. Nor did the County offer any quid pro quo. In addition, Arbitrator Roberts noted that internal comparables carry significant weight when insurance benefit changes are at issue, and with only one unit settled, there was no internal support for the change.

36. Oneida County (Highway), Dec. No. 32366-A (Flaten, 10/21/08). The sole issue was the County's proposal to eliminate the existing health insurance benefits for employees who retire after 2008. After 2008, employees who retire would be paid contributions in diminishing amounts, to a Health Reimbursement Account, with the first contribution of $5,000 for those who retire in 2009 and payments diminishing by $1,000 each year until 2013, when payments would end. The record showed that the County's proposal had been made and rejected at the bargaining table, and Arbitrator Flaten noted that a litigant in a labor dispute should not be awarded something through arbitration which the litigant was unable to achieve through bargaining. He rejected the County's final offer because none of the internal comparables had accepted or agreed to the change, nor had a similar benefit reduction been made among the external comparables.

The Arbitrator rejected the County's request to modify its final offer to increase payments to $10,000, which would diminish by $2,000 each year, to reflect its increased offer to other county employees. However, the Union objected to the change, and Arbitrator Flaten abided by the Union's objection because the law does not permit changes in a final offer once it is certified.

37. Washington County (Soc. Serv. Para/Cler), Dec. No. 32424 (Vernon, 11/4/08). The sole issue in dispute was wages, with the County proposing 3% in both 2008 and 2009 and the Union proposing 2%/2% split increases in both years. There was a clear pattern of internal settlements at 3%, requiring the Union to justify deviating from the pattern. The bargaining unit consisted of positions, other than the economic support specialists (ESS), for which there was no simple means of comparison. The Union's argument that, under the County offer, its wage rates would continue to fall behind the average wage among the external comparables was rejected by Arbitrator Vernon because the Union's wage comparisons were based on job titles alone and for no apparent reason the Union picked the highest paid classification for comparison purposes when there were other job title positions paying less. He noted that the evidence, apart from the ESS wages, did not establish a wage disparity for about half the unit, and the difference for the ESS classification did not show a dramatic negative difference, nor was there evidence of turnover. The County's final offer was selected.

38. Manitowoc County (H.S. Prof.), Dec. No. 32312-A (Dichter, 11/20/08). The sole outstanding issue involved the pay rate for the Psychiatric Nurse in 2006 and 2007. The parties agreed to 3% wage increases in both years, but the Union's final offer included an additional 75¢ lift to the 2005 wage rate, prior to the agreed-upon 3% increase in 2006, at a cost of $1,560 over the term of the agreement. Arbitrator Dichter rejected the County's argument that a quid pro quo was required for the wage adjustment, even if a need for catch-up was shown. The Union argued that the wage rate should be comparable to that of the Social Worker because, it contends, the duties of the Psychiatric Nurse are closely related to the duties of the Social Worker, while the County argued that the better comparison was with the Public Health Nurse. Although the Union was able to show that adopting the County's proposed wage would put the Psychiatric Nurse in a worse position than six years earlier when compared to the external comparables, a comparison of the social worker wages in other counties to the psychiatric nurse within those counties

showed no pattern which would merit putting the County's psychiatric nurse at the top, and Arbitrator Dichter determined that the County had shown no change in the historical relationship between the Psychiatric Nurse and the Public Health Nurse that would justify a change in the wage relationship. The County's final offer was selected.

39. City of Milwaukee (Police Supervisors), Dec. No. 32301-A (Greco, 11/28/08). In an issue-by-issue arbitration for the 2004-06 contract, Arbitrator Greco selected the Union's proposed wage increases of 3.2% in 2004, 3.4% in 2005 and 3.3% in 2006 over the City's proposed 3% increase each year because the Union had shown a decline in the relative wage standings for sergeants and lieutenants over the past 20 years, and despite the parity which has existed historically with the Police Officer and Firefighter units, Arbitrator Greco agreed that parity could be broken where there has been "significant erosion" in relationship to the external comparables.

Arbitrator Greco rejected the Union's proposals 1) to add a new 7th step for the sergeants, 2) to make the $250 in variable shift assignment pay "pensionable," i.e., credited towards a member's pension, 3) to increase the dollar amount of "certification pay" payable each year to all members for being certified and maintaining their certification as a sworn law enforcement officer, as well as making $1,000 of that certification pay "pensionable," and 4) to eliminate the residency requirement for officers with over 20 years of service to the Department.

Arbitrator Greco selected the Union's proposals 1) to implement special duty pay wherein lieutenants would receive an annual lump sum payment of 1% of their base salary for filling in and assuming the additional duties and responsibilities of a captain (based primarily on internal comparability, and 2) to add language, as modified by the Arbitrator, providing a mechanism whereby members who were not promoted would be provided information related to tests and materials provided to the FPC regarding the applicant. Arbitrator Greco modified the language by eliminating the ability to grieve promotional matters.

Arbitrator Greco selected the City's proposal to add language related to duty disability retirement covering the procedure where doctors permanently selected by a Medical Council determine whether applicants are permanently and totally incapacitated, noting that the same provision was voluntarily accepted by the Police and Firefighter units and that there is a need for the change because it is far more efficient to have the same, permanently selected doctors to make the necessary determinations, which will provide greater uniformity in making their determinations.

*40. Lincoln County (Pinecrest Nursing Home), Dec. No. 32414-A (Yaeger, 12/2/08). The issues included the wage increases during the 2008-09 contract term as well as the Union's proposed addition of one personal or floating holiday. The County proposed a 2.5% wage increase each year, while the Union proposed a 2%/1% split increase in 2008 and a 1.5%/1.5% split increase in 2009. The Union's wage offer was consistent with the internal settlement pattern, where five units had settled for the same increase and the County had offered the same increase to two other units which remained unsettled over other issues. The County argued that Pinecrest's financial situation does not support

adopting the Union's final offer because its funding sources (medical assistance) are not keeping up with expenses and the amount of the tax levy contributed to Pinecrest has grown 445% from 2000 through 2008, while during the same time period the tax levy increased only 28%. In addition, the County's overall levy is limited to 2%. Arbitrator Yaeger determined that there is no apparent correlation between the wage settlements dating back to 2000 and the change in medical assistance received from year to year, and there is no record evidence establishing that Pinecrest's experience differs from its external comparables or that the financial stresses that it has and is experiencing differ from its external comparables. He concluded that a "record would need to be made establishing what was occurring among the external comparables regarding reimbursement rates and financial stresses that differentiated Pinecrest to make a persuasive case that the interests and welfare of the public support adoption of its final offer."

He also concluded that the internal and external comparables supported adoption of the Union's final offer on holidays, and, although he agreed that cost to the County is obviously a consideration, he rejected the County's argument that a quid pro quo was required for the additional paid day. The Union's offer was selected.

41. Washington County (Social Workers), Dec. No. 32425-A (Shaw, 12/5/08). The sole issue was the wage increase provided at the top step of the wage schedule. The parties agreed on 3% wage increases in both 2008 and 2009, with the exception of the increase applied to the top step of the wage schedule, where the Union's final offer included a 2%/2% split in January and July of both years. The Union's rationale for proposing an increase in excess of the internal settlement pattern, as well as the external comparables, was based on a comparison of the wages of the County's Senior Social Workers with those of the County's non-represented Psychiatric Social Workers, as well as with the external comparables. Arbitrator Shaw concluded that, while there was some external comparable support for closing the gap between the wages of the Senior Social Worker and Psychiatric Social Worker, it did not justify breaking a well-established internal settlement pattern. He selected the County's offer.

42. Oneida County (Courthouse), Dec. No. 32365-A (Brotslaw, 12/13/08). The primary issue in dispute for the 2007-08 contract was the County's proposal to eliminate the existing health insurance benefits for employees who retire after 2008 (which pays for single coverage for employees with at least 20 years of service) and replace it with an HRA financed by the County. After 2008, employees who retire would be paid contributions in diminishing amounts, to a Health Reimbursement Account, with the first contribution of $5,000 for those who retire in 2009 and payments diminishing by $1,000 each year until 2013, when payments would end. The County also proposed to increase the health insurance deductibles for existing employees and establish an HRA to fully fund the County's share of the deductibles. The Union's final offer included the addition of a call-time provision for employees called to work outside of their normally scheduled hours.

None of the internal comparables had agreed to elimination of the retiree health insurance benefits, while none of the external comparables provided retiree health insurance benefits. Arbitrator Brotslaw concluded that the proposed HRA was neither a quid pro quo

nor an adequate substitute for traditional insurance benefits, and the uniqueness of the retiree health insurance benefit among the external comparables was not a precondition for its elimination via interest arbitration since it was voluntarily negotiated by the parties.

Arbitrator Brotslaw acknowledged the County's concern over the rapid escalation in health insurance costs and the projected liability calculated in an actuarial valuation in accordance with GASB 45. But he noted that GASB does not require advance funding and the County had offered no evidence that it would not continue to fund the benefit on a pay-as-you-go basis, as it had done in the past. In addition, the Union argued that only a handful of courthouse employees had taken advantage of the benefit, and the County's actuary seemed to agree that he had overestimated the utilization rates by County employees. The Arbitrator concluded that, given the low rate of utilization and insufficient evidence that retiree health insurance benefits are currently responsible for the increase in overall health insurance costs, and since the parties are about to begin negotiations for the successor agreement, "the bargaining table represents the appropriate forum in which modifications of retiree health insurance benefits can and should be addressed, with the objective in mind of reducing prospective costs." The Union's final offer was selected.

43. Wisconsin Indianhead Technical College (Office/Technical/Clerical), Dec. No. 32460-A (Grenig, 12/26/08). The sole issue was the College's proposal to revise the early retirement benefits for new hires only (those hired on or after July 1, 2008) by eliminating the existing trade-off of one month of single health insurance coverage for each day of unused sick leave, for up to a maximum of 10 years, and implementing a cash pool, whereby accrued sick leave hours at the time of retirement would be converted to a dollar amount and could be used to purchase health insurance. In addition to the cash pool, employees would be eligible to participate in a 403(b) match program, beginning in the third year of employment, whereby the Employer would match up to 1.5% of their annual salary, to be contributed to the 403(b) plan. Existing employees would have the option of electing the cash pool/403(b) match program in lieu of the existing benefit. The OTC unit was the only employee group to not have voluntarily agreed to the change in retirement benefits – it had been implemented for the nonrepresented employees and voluntarily accepted by both the faculty and custodial units (the custodians settled without the inclusion of the 403(b) plan). The Employer argued that the parties had agreed upon the retirement benefit at a time when they did not contemplate the meteoric escalation in the cost of health insurance, which has exceeded all reasonable expectation, and Arbitrator Grenig agreed that the situation represents a significant mutual problem and an attempt to remedy the situation does not require a quid pro quo. He reasoned that the Employer's final offer provides a reasonable approach to the escalating and uncontrollable costs of providing retiree health care benefits, and the settlements with the other two bargaining units provided a compelling reason for selecting the Employer's final offer.

*44. Milwaukee County (Firefighters at Airport), Dec. No. 32399-A (Roberts, 12/29/08). Issues included wages, the Union's proposed elimination of steps in the wage schedule, the effective date of reduced health insurance contributions, and the Union's proposal to add a PEHP plan. The County proposed 1% wage increases effective on 11/4/07, 4/6/08, 6/29/08, and 10/5/08. The Union proposed a 2%/2% split increase in 2007 and the same

1% increases on 4/6/08, 6/29/08, and 10/5/08, in addition to a $250 base lift on 1/1/08 and elimination of pay steps 5 and 6 to be effective 12/31/08. On the across-the-board wage increase, Arbitrator Roberts concluded that the Union's offer was more reasonable, based primarily on external comparability. However, he found that the Union's proposal to reduce the steps in the wage schedule from ten to eight was a substantial change which should contain a quid pro quo.

The Union's PEHP plan proposal would have required a County contribution of $21 per pay period for all employees, without any length-of-service requirement, with the contribution increasing by the same percentage as that which wages are increased. None of the external comparables had a PEHP plan, and the only internal unit which had a PEHP plan was the Deputy Sheriffs unit, but an employee must have at least six years of service to participate and the contributions were far less generous, with no automatic wage-based increase in contributions. Arbitrator Roberts noted that such a new economic benefit requires the well-accepted three-criteria test, and the Union had offered no quid pro quo. Arbitrator Roberts concluded that, given the timing of this arbitration proceeding, administrative efficiencies support the County's 1/1/09 proposed date implementation for the health insurance contributions (as opposed to the Union's 1/1/08 proposed date).

Arbitrator Roberts concluded that the Union sought far too many additional costly economic improvements, without giving up anything in return and he noted, in particular, that over the past several months we have moved into a severe recession, which must be considered and further weighs against the Union's offer. He, thus, found the County's offer more reasonable.

45. Village of Ellsworth (Police), Dec. 32360-A (Torosian, 1/23/09). The two issues remaining in dispute for the 2007-09 term included health insurance and wages. The Village proposed increasing the employee health insurance contribution from the existing 3% to 4% in 2008 and to 5% in 2009. It also proposed changing the health insurance plan to a $2000/$4000 high deductible plan in 2009 and contributing $1,750 for single and $3,500 for family to a Health Savings Account. The Union, on the other hand, proposed employee health insurance contributions of $20 toward single coverage and $50 toward family coverage in both 2008 and 2009 and that the Village fund the Health Savings Account at 100% of the deductible. The effect of the Union offer would be to eliminate the existing $620/$920 (single/family) maximum exposure due to deductibles and prescription copays to zero, whereas the effect under the Village offer would be to reduce the maximum exposure from $620/$920 to $250/$500.

The Village proposed wage increases of 2.75% in both 2007 and 2008 and 3% in 2009; the Union proposed wage increases of 3% in all three years. Arbitrator Torosian concluded that the problem with the Union's offer was not so much the difference in cost between the offers, as it was with the philosophical difference in that not wanting to share the cost of deductibles and capping its exposure to premium increases is clearly counter to the trend in the state and nationally. He asserted that the final offers must be considered as a whole, a total package. Further, the Union's offer capping employees' contributions, encumbering the Employer with future increases, is simply out of step with what's occurring

in the field and, with the rate of increases, in insurance premiums, shared responsibility is now well-established and commonly accepted by unions. He also noted that when it comes to benefits, internal comparables are important. He selected the Employer's final offer.

46. Racine County (Courthouse) & (Human Services), Dec. Nos. 32423-A, 32422-A (Bellman, 1/23/09). Issues included wage increases for the 2007-08 contract and the County's proposal to increase retiree health insurance contributions for employees hired on or after 1/1/08. The County proposed a 2% wage increase on 1/1/07, 4/1/08 and 10/1/08; the Union proposed a 3% increase each year. Arbitrator Bellman addressed the retiree health insurance issue first because of the recent arbitration award by Arbitrator Roberts for the Public Works unit, where Arbitrator Roberts selected the Union's final offer on the same issues. Arbitrator Bellman found the Roberts award to present a strong internal comparable, and he agreed with Roberts that the parties' history of addressing healthcare benefits in negotiations was a significant basis for not resolving this issue by arbitration. He did not find that the County's wage offer outweighed the Union on the health insurance issue and, although he acknowledged that there was stress on the County's finances, the evidence did not indicate that those stresses were especially acute or that the general economic conditions in the County required selection of the County's offer. The Union's offer was selected.

47. Outagamie County (Highway), Dec. No. 32530-A (McAlpin, 2/11/09). The sole issue in negotiations for the 2008-10 contract term was the Union's proposal to eliminate from the sick leave language the sentence which reads: "The department head may also request a doctor's certificate, for any sick leave used, before approving such leave with pay after 4 instances of sick leave, without a doctor's certificate, are taken in a calendar year." The Union's proposal stemmed from the health plan changes, to become effective after receipt of the arbitration award, which included implementation of deductibles ($250 single, $500 family) and a $15 office visit copay. The Union argued that those were substantial changes representing additional out-of-pocket expenses, and it relied on external comparability to support the change. However, Arbitrator McAlpin did not find that the external comparables had similar problems in attendance and, more importantly, the County had already provided a quid pro quo of 12¢/hour for the health plan change. In addition, the health plan changes had not yet been implemented because of the unit's desire to contest this particular item, thereby increasing the County's costs until the change could become effective. Arbitrator McAlpin selected the Employer's final offer.

*48. Washington County (Sheriff's Dept.), Dec. No. 32426-A (Honeyman, 2/18/09). The primary issue was the Association's proposal to add a 25¢ shift differential. A minor issue was the uniform allowance. Of particular note was Arbitrator Honeyman's acknowledgment of the late-2008 upheaval in the economy. He concluded that a new benefit costing $520 per year per person for most of the bargaining unit was not what most people would describe as insubstantial, but more compelling was the relative consistency of the internal settlement pattern. The majority of County employees had settled for the same 3% wage increases and the same health insurance provisions as the deputies, with no new benefit improvements to match the Association's proposed shift differential. Arbitrator Honeyman

concluded that while the shift differential was not justified, the extraordinary economic changes since the hearing added emphasis to the result - although the result would have been the same even if economic conditions had been stable. The County's final offer was selected.

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