

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between  
**COLUMBIA COUNTY (SHERIFF'S DEPARTMENT)**

and

**COLUMBIA COUNTY SHERIFF'S DEPARTMENT EMPLOYEES'  
UNION, LOCAL 2698-C, AFSCME, AFL-CIO**

Case 295  
No. 68886  
MA-14388

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**Appearances:**

**Neil Rainford**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin, appeared on behalf of the Union.

**Joseph Ruf, III**, Columbia County Corporation Counsel/Human Resources Director, 120 West Conant Street, P.O. Box 63, Portage, Wisconsin, appeared on behalf of the Employer.

**SUPPLEMENTAL ARBITRATION AWARD**

The Undersigned issued an interim award in the above matter on April 15, 2010. The Union requested the issuance of a final remedy. The undersigned held a hearing in Portage, Wisconsin, on October 25, 2010. Each party filed post hearing briefs, the last of which was received. December 8, 2010. The parties agreed to a summary award without rationale.

**ISSUES**

The issue presented is:

What is the appropriate remedy?

**RELEVANT AGREEMENT PROVISIONS**

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## ARTICLE 15 – SICK LEAVE

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Section 6: Retirement Payout: Employees who retire as an annuitant of the State Retirement Fund shall be paid ninety percent (90%) of the accumulated sick leave at their regular hourly rate.

The parties agree to explore and to implement a mutually agreed plan, consistent with the rules of the Internal Revenue Service, in which payouts provided herein may be available to employees on tax-free basis to be used to pay for qualified medical expenses; in the event no such vehicle can be found or no agreement is reached, the parties agree that such payouts will be made to the employees in cash.

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## ARTICLE 17 – GROUP HEALTH AND LIFE INSURANCE PLAN

Section 5. Retired Employees: Employees may remain in the group insurance after retirement until age 65 by submitting the full premium payment to the insurance company.

Notwithstanding the above, an employee who retires from the County at age sixty (60) with a minimum of twenty (20) years of continuous service with the County shall be allowed to continue under the group hospital and surgical plan up to the minimum age at which Medicare begins, but at least until 65. The County agrees to pay an amount towards health insurance for qualified retirees, pursuant to the schedule below:

Four Thousand Dollars (\$4000.00) per year for 2007;

Four Thousand Five Hundred Dollars (\$4500.00) per year for 2008 and 2009;

A maximum of Five Thousand Dollars (\$5000.00) per year beginning in 2010 and continuing at that annual amount.

Employees classified as Jailers who retire from the County at age fifty-seven (57) with at least twenty (20) continuous years of service with the County at the time of retirement shall be entitled to this benefit for a maximum of five (5) years. The retired employee shall pay the difference between the County's contribution, above, and the full premium cost of the single or family health plan.

The parties agree to explore and to implement a mutually agreed plan, consistent with the rules of the Internal Revenue Service, in which payouts provided herein may be available to employees on tax-free basis to be used to pay for qualified medical expenses; in the event no such vehicle can be found or no agreement is reached, the parties agree that such payouts will be made to the employees in cash.

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**Section 7. IRC §125 Program:** The County will implement a IRC §125 Program in which employees shall be permitted to pay for uncovered medical, dental, vision, disability, and child care benefits with pre-tax earnings. Employees shall not be permitted to overdraw their accounts. Employees choosing to participate in a long-term disability plan through the §125 program shall pay the full cost of such coverage. It is understood that the administration costs (if any) of the §125 program shall be paid by the County.

...”

#### **SUPPLEMENTAL FACTS**

The award was received by the Employer shortly after April 15, 2010. The Employer’s Human Resources Committee met with its attorney to discuss the award at its first scheduled, 2010, May 5, 2010. It voted to focus on “the formulation of objectives and exploration of providers who provide VEBA/PEHP benefits.” The Union was not provided with advanced notice of the meeting other than the committee’s public notices. The Employer’s attorney mailed correspondence dated May 14, 2010, with a copy to the Union notifying both of the foregoing action by the Human Resources Committee. The Union objected to the Committee’s approach by return correspondence dated May 24, 2010, on the basis that it:

The May 14<sup>th</sup> correspondence indicates that at the may 5<sup>th</sup> meeting, instead of identifying the information the Employer sought to further consider this matter, as the Arbitrator ordered, the Employer’s committee chair has, “suggested the formulation of objectives and exploration of providers who provide VEBA/PEHP benefits,” and ‘review will be placed on a future agenda.’” The Employer has shown no respect or even much regard for the Arbitrator’s order. The Employer has not identified the information it seeks about the PRG plan as ordered, instead it has communicated some vague reference to formulating objectives and to looking at other providers of this benefit to review, not at its next meeting, but on a future agenda.

The Union did not ask for any further meeting with the Employer and, instead, asked in correspondence dated May 24, 2010, for an order from the Arbitrator requiring the Employer to immediately accept and implement the Precision Retirement Group (PRG) plan.

On June 3, the Arbitrator sent an e-mail to the parties stating:

The Union has requested that I proceed further. I will conduct further hearing, unless the parties agree to another procedure. Please advise.

The Employer's Human Resources Committee discussed the subject at its next regularly scheduled meeting, June 2. Neil Rainford, Union Staff representative was present for part of that meeting. Ruff summarized the meeting as follows in a letter dated June 7, 2010 to the arbitrator with a copy to Rainford:

On June 2, 2010, the Human Resources Committee of the Columbia County Board of Supervisors held a lengthy meeting, much of which was devoted to hearing several presentations from VEBA/PEHP benefit plan providers. During the more than five (5) hour long meeting, the HR Committee heard presentations from: 1) Kevin Clougherty, Mortenson, Matzelle, Meldrum (M3); 2) Gary and Levi Cutler, Retirement Plan Advisors; and 3) Bruce E. Nelson, Precision Retirement Group. Based on the duration of the June 2, 2010, meeting, the volume and complexity of information presented at that meeting, and the fact that several interested persons, including AFSCME Staff Representative Neil Rainford left well before the meeting ended, the HR Committee determined that the best course of action would be to defer making any decision on this issue until the HR Committee's July 7, 2010, meeting.

Therefore, unless I receive contrary directions from you, I will write again to inform you of the results of the July 7, 2010, HR Committee meeting. Thank you for your continued attention to this case.

On June 4, Rainford wrote to Ruff, Personnel Committee members and the Arbitrator:

I would like to discuss this to see if a voluntary resolution is possible short of an additional hearing. I am available next Wednesday afternoon at 3p by phone. Please let me know if that will work for you.

On Wednesday, June 9, Rainford sent an e-mail to both the Arbitrator and Ruff stating as follows:

In light of of (sic) the County's June 7, 2010 correspondence(attached), it is not clear to me whether the County is willing to meet to further discuss matter in an attempt to reach a voluntary resolution this afternoon at 3pm. I remain willing to meet this afternoon via a conference call at 3pm at 608 212 2296.

In the event the County is unwilling to meet to discuss a speedy voluntary resolution to this matter, then I am writing to restate my request that the arbitrator order the employer to implement the Precision Retirement Group plan as detailed in my attached correspondence that was sent on May 24, 2010.

I understand that the Arbitrator has requested another hearing in this matter. I would like to respectfully suggest that an additional hearing is not necessary because the facts in this matter regarding the conduct of the parties since the Arbitrator's interim award was issued are not in dispute, these facts are contained in the correspondence between the parties that the Arbitrator has already received. If necessary, the parties could stipulate to the correspondence to be considered and provide letter briefs in support of their respective positions. I make this suggestion respectfully and in light of our members concern that this matter has dragged on for years, that the County continues to ignore the timeline set forth in the Arbitrator's decision, and because members have already been denied the benefit of this plan due to these delays and more are likely to be denied if the plan is not implemented in a timely manner.

On June 9, 2010, the Arbitrator held a pre-hearing telephonic conference with Rainford and Ruff in this matter and summarized it as follows:

This will confirm our conference call of today. Neil was present at (608) 742-9612 and Joe at (608) 742-9612. I understand that the Personnel Committee has met on this subject and will do so again July 7. I have delayed action in the interest of giving the Committee a very reasonable opportunity to consider this issue. However, after that meeting it is my intention to bring this case to closure. I will conduct a conference call on July 8 at 10:00 a.m. at the same numbers unless advised to call another number. The purpose will be to determine if there are any issues, what they are and whether it is necessary to have further hearing or argument. If hearing is necessary, it will be held July 21 at 3:00 p.m.

The Employer did not answer the request for a meeting and none was held.

On July 7, the Employer's Human Resources Committee held its next regularly scheduled meeting and discussed this matter. On July 8, 2010, the Arbitrator held another conference call with Ruff and Rainford at which the Arbitrator summarized as follows:

This will confirm our conference call of today. Neil was present at (608) 836-4040, ext 208 and Joe at (608) 742-9612. The Personnel Committee has met on this subject July 7. It has concluded that it objects to Precision because it believes there will be a tax issue with respect to it, but it is "willing to consider" the former provider offered by the Union many years ago. Joe will provide Neil with the legal reasoning behind that decision by Friday. Neil will meet

with his people to see how they will proceed. We will have another conference call on July 16 at 10:00 a.m. I will leave the hearing as scheduled.

On July 16, 2010, Ruff responded to the Arbitrator with a copy to Rainford as follows:

At our Thursday, July 8, 2010, telephone conference concerning this case, I agreed to provide you with a written explanation of the legal basis for Columbia County's continued rejection of the Precision Retirement Group plan. Unfortunately, my initial estimate that I could provide you with that written explanation by Friday, July 9, 2010, was overly optimistic. Notwithstanding the delay, I request that you consider the County's position as stated in this letter in advance of our next telephone conference in this case which is scheduled for this Friday, July 16, 2010, at 10:00 a.m.

As I indicated during prior telephone conferences, I provided copies of your April 15, 2010, Interim Arbitration Award in this case to members of the County Human Resources ("HR") Committee. The County HR Committee considered and discussed your April 15, 2010, Interim Arbitration Award in this case at several of its recent monthly meetings. At its most recent July 7, 2010, meeting, the County HR Committee decided to reject the Precision Retirement Group plan, but indicated that the Committee would be willing to discuss implementation of the Retirement Plan Advisors plan with AFSCME.

On the specific issue of the legal basis for the County's rejection of the Precision Retirement Group plan, the County believes that the flexibility of the Precision Retirement Group plan, in allowing retirees choices as to how the plan funds can be used post retirement, exposes the County and the retirees to potential future income tax liability under IRS imputed income rules. While Precision Retirement Group has suggested a hold harmless agreement between the County and Precision Retirement Group, that private contract between the parties will have little if any effect in the event of a future negative IRS ruling concerning the Precision Retirement Group plan. The County Comptroller recommends that, at a minimum, the County obtain a private letter ruling from the IRS prior to implementing the Precision Retirement Group plan. Even with a private letter ruling, the County Comptroller holds the professional opinion that the choice inherent in the Precision Retirement Group plan will always carry an unacceptable risk of a future unfavorable IRS ruling and resulting imputed income tax liability for the retirees and the County.

The County HR Committee also looked at recent experience that other counties have had with Precision Retirement Group. In particular, the HR Committee looked at Langlade, Chippewa and Shawano counties.

Langlade County has discontinued using the Precision Retirement Group plan because of potential IRS fines. Langlade County actively discussed the Precision Retirement Group plan with the IRS, and concluded that the choice inherent in the plan rendered the plan incompatible with current IRS rules. Langlade County avoided IRS fines and penalties because it voluntarily stopped using the Precision Retirement Group plan.

Chippewa County is currently using the Precision Retirement Group plan. However, Chippewa County also has concerns about potential IRS liability. As a result, Chippewa County has requested an IRS Private Letter Ruling concerning the Precision Retirement Group plan. Chippewa County has not yet received a response from the IRS as of the date of this letter.

Shawano County is still using the Precision Retirement Group plan, but will not add any additional union groups to the plan due to concerns about potential negative IRS treatment of the plan. Shawano is waiting for the results of Chippewa County's IRS Private Letter Ruling request. Shawano County will make its decision concerning its future use of the Precision Retirement Group plan based on the results of Chippewa County's IRS Private Letter Ruling.

As is detailed above, the County HR Committee's rejection of the Precision Retirement Group plan is based on internal and external concerns that the plan carries an unacceptably high risk of IRS liability including potential taxes, fines and penalties for both retirees and the County. The County HR Committee opposes the implementation of what the County finds to be an unacceptably risky Precision Retirement Group plan, when a comparable and IRS compliant product is available in the Retirement Plan Advisors plan that the County currently offers to the Sheriff's Sworn Union (WPPA). The County therefore respectfully requests that a final Award in this case direct the County and the Union to meet and discuss implementation of the Retirement Plan Advisors plan or another comparable and equally compliant post retirement insurance plan.

The minutes of the July 7 meeting contained no further information. No one on behalf of the Employer offered to meet and discuss any of the concerns the Employer had as a result of the meetings above.

Ruf and Rainford had their own phone conference on July 16, 2010, at which time they concluded that the matter should just proceed to hearing. The hearing was conducted October 25, 2010. The Employer did not meet with Rainford as to this matter except in the conferences specified above. The Union did not seek further discussions with the Employer.

**AWARD**

The Employer shall implement the disputed Precision Retirement Group Plan within ninety (90) days of the date of this award.

Dated at Madison, Wisconsin, this 26th day of January, 2011.

Stanley H. Michelstetter II /s/

Stanley H. Michelstetter II, Arbitrator