ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	)	
Between	)	
WASHINGTON COUNTY	)	Case 116
	)	No. 55805
And	)	INT/ARB-8125
WASHINGTON COUNTY CORRECTIONS AND COMMUNICATIONS OFFICERS ASSOCIATION, LOCAL #704, LABOR ASSOCIATION OF WISCONSIN, INC.	)	[Dec. No. 29408]

Impartial Arbitrator

William W. Petrie
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Hearing Held

West Bend, Wisconsin
December 1, 1998

Appearances

For the Employer

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For the Association

LABOR ASSOCIATION OF WISCONSIN, INC.
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BACKGROUND OF THE CASE

This is a statutory interest arbitration between the Washington County Sheriff's Department and the Washington County Corrections and Communications Officers Association, Local 704 of the Labor Association of Wisconsin, with the matter in dispute the terms of a two year renewal labor agreement running from January 1, 1998 through December 31, 1999.

After their failure to reach a complete agreement during their preliminary negotiations, the Association on November 27, 1997 filed a petition with the Wisconsin Employment Relations Commission requesting the initiation of final and binding arbitration, pursuant to Section 111.70 of

the Municipal Employment Relations Act. After the completion of a preliminary investigation by a member of its staff, the Commission on July 8, 1998, issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitration.

The Commission on July 27, 1998, appointed the undersigned to hear and decide the dispute, after which a hearing took place in West Bend, Wisconsin, on December 1, 1998. Both parties received full opportunities at the hearing to present evidence and argument in support of their respective positions, each thereafter closed with the submission of a post-hearing brief and a reply brief, and the record was then closed by the undersigned effective February 4, 1999.

THE FINAL OFFERS OF THE PARTIES

The certified final offers of the parties, hereby incorporated by reference into this decision and award, are described below.

(1) The *final offer of the Employer*, dated June 18, 1998, provides for the terms of the prior agreement to remain in full force and effect, except as modified by the tentative agreements of the parties and as follows:

(a) Modification of Section 10.02 to provide the following changes in monthly health insurance premium caps: effective 1/1/98, single coverage at $156.00 and family coverage at $390.00; effective 1/1/99, single coverage at $162.00 and family coverage at $410.00.

(b) Across the board wage increases of 3% on January 1, 1998 and 3% on January 1, 1999.

(2) The *final offer of the Association*, dated June 24, 1998, provides for the terms of the prior agreement to remain in full force and effect, except as modified by the tentative agreements of the parties and as follows:

(a) Modification of Section 6.01 to provide for consecutive 5-2, 5-3 work cycles, unless mutually agreed otherwise by the County and the Association Board of Directors, and for normal work days of eight and one-half hours, including a one-half hour paid lunch period.

(b) Modification of Section 10.02 to provide for all full-time employees to be included in the regular county program of hospital and sickness insurance now in force or as modified and improved in the future, for participating employees to pay 10% of the monthly premium costs of single or family insurance plans (calculated on the renewal medical deposit rates of $202.99 for the single plan and $485.14 for the family plan in 1998), with the employee shares paid via payroll deduction.

(c) Modification of Sections 24.01 and 24.02(b) by deleting the following phrases "...but only if a MIA hearing before the arbitrator has been scheduled on or before the expiration date of this agreement", thus expanding the obligation of the Employer to continue to deduct and to remit to the Association dues and fair share amounts, following an expiration of the agreement.

(d) Across the board wage increases of 3% on January 1, 1998 and 3% on January 1, 1999.

(e) Modification of the parties' prior *Memorandum of Agreement* requiring residency within the County within various time frames, to require such residency within six calendar months of completing their probationary periods.

(f) Modification of Section 28.01 as follows: *first*, to reflect a contract duration of January 1, 1998 through December 31, 1999; *second*, to require either party seeking to reopen negotiations on a successor agreement to provide notice on or before September 1st of the last year of the agreement, with the parties to then agree on a date to exchange proposals and to commence bargaining; and, *third*, to require the agreement to remain in full force and effect during contract renewal negotiations, not to exceed a maximum contract duration of three years.

THE ARBITRAL CRITERIA

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

> "7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislature to an administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.
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> 7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.
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> 7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:
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> a. The lawful authority of the municipal employer.
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> b. Stipulations of the parties.
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> c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
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> d. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
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> e. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
>
> f. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of

employment of other employees in private employment in the same community and in comparable communities.

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

h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration hearing.

j. Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

POSITION OF THE EMPLOYER

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

(1) That the Association has taken the parties to binding arbitration seeking five unreasonable changes in the Agreement, which substantially change the status quo: *first*, it demanded that it be allowed to break ranks with all of the other internal bargaining units, and to scrap the proven and long-standing health insurance "cap" amount arrangement for determining employee premium contributions; *second*, it seeks to rewrite the duration clause of the Agreement, replacing it with a provision that is both unnecessary and flawed; *third*, it attempts to eliminate a long-standing provision allowing the County to exercise its legal right to cease deducting Association dues and fair share payments during a contract hiatus; *fourth*, it wants to alter the residency requirement, substantially increasing the time new employees may take to establish residency; and, *fifth*, it wants to add restrictive new language governing hours of work.

(a) In proposing the above changes, the Association has failed to meet the normal requirements governing changes in the status quo ante, and it apparently seeks change for the sake of change.

(b) The Employer proposes as follows: retaining the existing caps system for health insurance benefits, and raising the caps by set dollar amounts already agreed upon or shared by more than 87% of the other County employees; retaining the existing language on duration, dues deduction and fair share payments, and residency; and resisting proposed new language on hours where none is needed.

(c) The County is not using the arbitration process to *ramrod through* language changes, rather than obtaining them in the give and take of bargaining.

(d) The canons of arbitration, the great weight of evidence, and principles recognized in the Arbitrator's prior decisions, support the position of the County in these proceedings.

(2) The first and *primary* item in dispute involves *health insurance premium "caps."*

(a) The County is self-insured, it contracts with an outside third party administrator, and bargaining unit members are responsible for part of their premium costs.

(i) It proposes continuation of the current contract method of determining the level of contribution; a "cap" amount is negotiated and the County pays the full amount up to such cap, and any premium in excess of such cap is equally shared between the County and the employees.

(ii) The current procedure is one of long duration, is identical with that currently in effect in all other internal bargaining units, has been in the contract between the Association and the County since their voluntary settlement in 1986, and has been in effect for all other County employees since at least 1986.[1]

(b) The County proposes to raise its contribution toward the "cap" amount to a higher level, commensurate with that agreed to by other internal bargaining units and in effect for its non-represented employees.[2]

(i) The Association does not take issue with the monetary amount of the County and Employee payments toward health insurance premiums, but merely seeks to replace the cap with a straight percentage premium cost sharing method.

(ii) The Association has presented no evidence that the use of the cap method has been or will be burdensome, impractical or undesirable in any way, and its own cost analysis constitutes a concession that the County proposed levels of premium contribution are appropriate.[3]

(c) Internal comparables strongly support the proposal of the County to retain the "cap" account method.

(i) The "cap" method of determining premium contribution levels has been agreed upon in six of County's seven bargaining units, and is in effect for its non-represented employees.[4]

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[1] Citing the contents of Employer Exhibits 4 and 5.

[2] Citing the contents of Employer Exhibits 6, 7, 8, 9 and 10, and Association Exhibit 702.

[3] Citing the contents of Association Exhibits 704-705, and 1201-1202.

[4] Citing the contents of Employer Exhibit 11, the December 11, 1998 *decision of Arbitrator Herman Torosian* in Washington County (Department of Social Services), Case 115 No. 55804 INT/ARB-9324, Decision No. 29363-A, and the February 19, 1999 *decision of Arbitrator Milo Flaten* in Washington County (Sheriff's Department), Case 117, No. 44858 MIA-2147, Decision No. 29379; the latter decision was submitted to the Arbitrator after the parties had submitted their briefs and reply briefs, but was appropriately accepted into the record in accordance with Section 111.70(4)(cm)(7)(i) of the Wisconsin Statutes.

(ii) Since 1986, over 12 years ago, all County employees have accepted the "cap" method to determine premium contribution levels in health insurance.[5]

(d) Policy considerations favor retaining the use of "caps."

(i) Were the Association to prevail in these proceedings, it would be the first and only bargaining unit to break ranks on this important issue; for the "cap" amount method to have the full intended benefit, however, the method should be consistent across all County employee units, to motivate responsible usage and to discourage unnecessary or excessive usage.

(ii) The "cap" method guarantees that the matter will be looked at during every contract renewal negotiations, and the County believes this procedure is beneficial to both parties.

(iii) The Association has offered no clear reasons why the current language should be so radically changed, and where the system has worked so long, so widely and so well, it should be retained.

(e) Arbitration authority supports maintaining internal consistency for benefits as well as for wages.

(i) The great weight of arbitral authority emphasizes the importance and the weight of internal comparisons in circumstances similar to the case at hand.[6]

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[5] Citing the contents of Employer Exhibits 4, 5, 6 7, 8, 9 and 10.

[6] Citing the following arbitral decisions: *Arbitrator Yaffe* in City of New Berlin, Dec. No. 29061 (1997); *Arbitrator Kerkman* in Douglas County Health Department Employees, Dec. No. 25966-A (1989); *Arbitrator Grenig* in Professional Staff of the Marinette County Department of Social Services, Dec. No. 22574-A (1985); *Arbitrator Fleischli* in City of Waukesha (Fire Department), Dec. No. 21299 (1984); *Arbitrator Haferbecker* in Jackson County (Sheriff's Department), Dec. No. 21878 (1985); *Arbitrator Malamud* in Marinette County (Sheriff's Department), Dec. No. 22910 (1986); *Arbitrator Vernon* in City of Madison (Firefighters), Dec. No. 21345 (1984); *Arbitrator Vernon* in Village of Germantown (Police Dept), Dec. No. 27803-A (1994); *Arbitrator Rice* in Village of Grafton, Dec. No. 18424, p. 8 (1995); *Arbitrator Gundermann* in City of Oshkosh, Dec. No. 26933-A (1993); *Arbitrator Petrie* in Kewaskum School District, Dec. No. 27092A (1992); *Arbitrator Petrie* in Rusk County (Highway Dept), Dec. No. 29258A (1998); and *Arbitrator Krinsky* in Salem Joint School District No. 7, Dec. No. 27479A at p. 12 (1993).

(ii) Arbitration is simply not the place to obtain major changes in benefits, particularly where no evidence was presented by the Association of any prior attempt to obtain such changes.[7]

(ii) The Association has failed to offer the requisite quid pro quo for its proposed changes in the status quo.[8]

(f) The recent interest arbitration awards involving the County's Social Services Department and Deputy Sheriffs bargaining units, support the County's final offer in this proceeding.[9]

(i) The two issues before Arbitrator Torosian were the Association proposed duration and reopener clause, and its proposed elimination of the "cap" method of determining health insurance premium contribution levels.

(ii) The Arbitrator identified the change in health care premium contributions as the dominant issue and particularly emphasized the following considerations: the lack of a compelling need for change; the Employer's regular adjustment of caps in the past; the lack of persuasiveness in the Association's employer inflexibility arguments; that external comparisons were insufficient to establish a compelling need; that internal comparisons must be given appropriate weight, particularly in connection with benefits; and that no quid pro quo had been offered by the Association.[10]

(g) The County's final offer to maintain the status quo on the computation of employee health insurance premium contribution should be selected.

(i) The facts belie Association arguments that the County has been unreasonable or inflexible on insurance matters.

(ii) The immediate costs of the Association proposed percentage premium sharing are higher than the Employer proposed retention of the "Caps" method.

(iii) The Association has simply failed to show any compelling need, financial or otherwise, to change the "caps" system.

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[7] Citing the decision of *Arbitrator Krinsky* in Salem Joint School District No. 7, Dec. No. 27479A at p. 12 (1993).

[8] Citing the following arbitral decisions: *Arbitrator Krinsky* in Salem Joint School District No. 7, Dec. No. 27479A at p.29 (1993); *Arbitrator Flaten* in Wauwatosa Professional Firefighters Assn, Local 1923, Dec. No. 27869A at p. 8 (1994); and *Arbitrator Petrie* in Village of Germantown, Dec. No. 28860A (1997).

[9] Citing the recent decisions of *Arbitrators Torosian and Flaten, supra.*

[10] Citing the decision of *Arbitrator Torosian*, *supra*, at pages 26-27, 30, 31 and 32.

(iv) Arbitral authority clearly supports the County's final offer regarding health insurance: it has the merits of long standing, wide use and acceptance; the "caps" negotiated with the various bargaining units have not been unduly burdensome or expensive for employees; the current system has worked well for the County by providing absolute clarity and administrative efficiency; and the Association has offered no substantial or compelling arguments relative to why it should be the first to break ranks on this issue.

(v) The County's offer is both logical and fair, and it should be awarded in these proceedings.

(3) The second item in dispute involves contract language governing *contract duration/reopening*.

(a) The Association offers no tangible argument in favor of its unwarranted proposal; in the absence of a clear reason or other justification for change, the status quo should prevail and the current language should be retained.

(b) The principal bases for retention of the current language include the following: its operation is clear and logical and has stood the test of time; it recognizes that the Association is normally the one which seeks and proposes changes in the status quo; the essence of the current language is widespread, it has a long history in the bargaining unit, among the internal comparables and in the external comparison group; it is fair and in no way prejudices the ability of the Association to present proposals or to respond to County proposals; its flexibility is apparent from the fact that neither the 10% health insurance contribution level, the dues deduction/fair share proposal, nor the duration proposal were contained in the Association's initial bargaining proposal.

(c) The Association proposed changes are also vague in certain respects, could telescope negotiations into an unduly short period, and could make it more difficult to conclude negotiations prior to the end of the contract term.

(d) Most bargaining units, both within and without the County, begin the contract renewal bargaining process sooner than would be the case under the Association's proposal.

(e) The agreement would be worse rather than better with the adoption of the Association's badly thought out proposal.

(f) The present language has been part of the parties' agreement since at least 1972, it has worked, and there is no reason to change it.[11]

(g) Internal comparables support maintaining the status quo, in that five of seven agreements provide that initial proposals emanate from the bargaining unit, and none contain language extending the contract term, such as that proposed by the Association. All of the internal comparables specify a date certain when proposals are to be made and responded to, five of the seven comparables provide for the bargaining unit to provide the initial proposal, and none provide for an

[11] Citing the contents of Employer Exhibit 18.

exchange of initial proposals as late as possible under the Association proposed language.[12]

(h) External comparables support maintaining the current language, in that all of the comparables have language resembling the existing contract language, and all differ markedly from that proposed by the Association.

(i) Four of the six comparables provide for an initial proposal from the bargaining unit, only a minority have automatic continuation language remotely resembling that proposed by the Association, and they normally provide for specific reopening dates.[13]

(ii) In short, the Association's proposal is unsupported and unjustified by external comparisons.

(i) There are no other grounds for changing the status quo language.

(i) The Association has failed to articulate any valid reason for changing the long standing language, which is prevalent among internal and external comparables.

(ii) There is no serious issue regarding the temporary expiration of the agreement, in that none of the internal comparables has a continuation provision.

[12] Citing the contents of Association Exhibit 601, and Employer Exhibits 18 and 19.

[13] Citing the contents of Employer Exhibit 20.

(iii) The duration/reopener issue was addressed in the recent arbitral decision in the Social Service Professional Employees Unit, and was not found to be determinative.[14]

(iv) The Association has provided neither a persuasive reason nor an appropriate quid pro quo for its proposed change in the status quo, the proposed change is unwarranted and meritless, it is supported by neither internal nor external comparables, and the Arbitrator should not allow it to gain through the arbitral process what it could not have obtained through voluntary negotiations.

(4) The third item in dispute involves the Association proposed change governing *dues deduction and fair share*, the purpose of which is to force the County to relinquish its legal right to cease collecting dues and fair share payments from bargaining unit employees during the hiatus following expiration of a collective agreement.

(a) The Association proposal is another attempt to change a long standing status quo without offering any type of quid pro quo.

(b) The County's discontinuation of dues/fair share has not harmed the Union in that it has simply collected its own dues from members, and has done so with no apparent interruption of Association activities or members' dental benefits.

(c) The Association's proposal would not eliminate the County's right to cease collecting union dues after the expiration of a three year agreement, the longest provided for under Wisconsin Law.[15]

(d) The Association cannot claim that the County's position is either illegal or unusual, in that it is well settled in Wisconsin that municipal employers are not required to continue making dues deductions during a contract hiatus.[16]

(e) Mere inconvenience to the Association in having to collect its own dues and fair share payments is clearly not a satisfactory reason for eliminating a long standing contract provision, particularly in the absence of an appropriate quid pro quo for the proposed change.

(5) The fourth item in dispute involves the *employee residency requirement*.

(a) The Association demands a major change in longstanding contractual requirement regarding residency, which raises questions as to why it wishes to do so, and why it imagines that it is entitled to such a change?

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[14] Citing the *decision of Arbitrator Torosian, supra*, at page 25.

[15] Citing Section 111.70(3)(a)(4) of the *Wisconsin Statutes*.

[16] Citing AFSCME, Locals 360 and 3148 v. Wisconsin Employment Relations Commission, 850 N.W. 2d 392, 148 Wis.2d 393(Wis.App.1988).

(b) No evidence was advanced at the hearing as to why the current provision must or should be rewritten; there was no testimony as to any employee now or ever adversely impacted by the existing language, which suggests that the Association seeks change for its own sake.

(c) The Association cannot justify its proposal, has done nothing to demonstrate a need for change, has offered no quid pro quo for the change, and its proposal is dead on arrival.[17]

(6) The sixth item in dispute involves *hours of work*, and it is another Association proposal in search of a problem.

(a) Testimony at the hearing was unanimous that the current language of Section 6.1 has never been the source of controversy or dispute between the parties.

(b) The underlying practice regarding the current work schedule has been in existence for many years, at least since 1972, without challenge or complaint by the Association.[18]

(c) In the absence of a clear and present problem, the Association should offer some quid pro quo in exchange for its proposed change in the agreement, but has offered none.[19]

(d) While this issue may not have the grave implications of the Association's attempt to change the existing insurance "cap" system, it remains crucial to uphold the principle that change comes through bargaining and compromise, not coercion. The Union has failed to make a case that a problem exists, has offered no inducement for the County to make a change, and its proposal should be rejected.

In summary and conclusion that the Association has simply failed to do its job in contract negotiations and in arbitration: it failed to recognize or apply the time honored principle of bargaining requiring the offer of a quid pro quo in exchange for desired changes in contract language; it stubbornly insisted on binding arbitration to procure what it had never seriously attempted to obtain through give and take bargaining; it failed to demonstrate the existence of problems with the prior contract language and it neglected to indicate how such problems (if they existed) would be solved through its proposed new language. The position of the County is supported by bargaining history, past practice, internal comparables, and established arbitral principles. Wisconsin interest arbitrators operate as extensions of the contract negotiations process, they seek to put the parties into the same position they would have reached at the bargaining table but for their inability to reach full agreement, and the Association would not have been able to obtain through voluntary collective bargaining what it seeks in this interest arbitration proceeding.

In its *reply brief* the Employer emphasized or reemphasized the following principal considerations.

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[17] Citing the decision of *Arbitrator Petrie* in Public Health Department of the City of Madison, Dec No. 28272A (1996).

[18] Citing the contents of Employer Exhibit 21.

[19] Citing the decision of the undersigned in Village of Germantown, *supra*, at page 25, and in City of Madison, *supra*.

(1) That the Association's *work week proposal* ignores the fact that not all employees currently work 5-2, 5-3 work schedules, that the County must have appropriate staffing to handle the processing of Huber prisoners, it could have collateral effects which must be bargained over, and it should be supported by a *quid pro quo*.

(2) That the Association proposed *change in group insurance premium sharing* fails to make even a rudimentary prima facie case of supporting its proposed change in the negotiated status quo, in that it has failed to establish the requisite problem, has failed to demonstrate that its proposal improved any such problem, and has failed to offer a quid pro quo for its proposed change.

(3) That the Association proposed change in *dues deduction and fair share* also fail to meet the prerequisites to support a change in the status quo ante. That the County has the right to withhold dues and fair shares following the expiration of the contract, and any cases awaiting arbitration will eventually be arbitrated.

(4) That the Association proposed change in residency requirements is flawed by the fact that no member of the bargaining unit is or ever was adversely affected by the existing language, it has never adversely affected the County's recruitment efforts, and any change in the current language should be the product of negotiations between the parties.

POSITION OF THE ASSOCIATION

In support of the position that its final offer is the more appropriate of the two before the Arbitrator, the Association emphasized the following principal arguments and considerations.

(1) The Arbitrator is being asked to rule on five issues in these proceedings: *first*, proposed changes in Article VI, governing *hours worked*; *second*, proposed changes in Article II, governing *group health insurance*; *third*, proposed changes in Article XXIV, governing *dues deduction and fair share*; *fourth*, proposed changes in the *memorandum of agreement* appended to the agreement; and, *fifth*, proposed changes in Article XXVIII, governing the *duration of agreement*.[20]

(2) The proceedings are governed by Section 111.70(4)(cm)(7) of the *Wisconsin Statutes*, which identifies the various arbitral criteria governing the final offer selection process.

(3) The County failed to offer evidence of any directive issued by a state legislative or administrative officer, body or agency, which would preclude the Arbitrator from accepting the Association's final offer; accordingly, the *factor given greatest weight* criterion should not be accorded determinative weight in these proceedings.

(4) The County offered no evidence of economic conditions in the jurisdiction of Washington County, which would require the *factor given greater weight* criterion to be accorded determinative weight in these proceedings.

(5) The County has not argued that it lacks the *lawful authority to accept and abide by the terms of the Association's final offer*.

(6) During the course of their preliminary negotiations the parties agreed to minor language changes to be included in the renewal agreement, with only the increases in Uniform Allowances affecting the County's operating costs.[21] Accordingly, that *the stipulations of the parties* should not be assigned determinative weight in these proceedings.

[20] Citing the fact that the parties arrived at a number of tentative agreements which are to be incorporated into the renewal agreement, and the fact that each of the final offers proposed 3% general wages increases effective January 1, 1998 and January 1, 1999.

[21] Citing the contents of Association Exhibit 300, and the agreed upon increases in uniform allowance from $320 per year in 1997, to $330 per year in 1998, and to $340 per year in 1999.

(7) The County has not challenged its ability to meet the costs of the Association's final offer, without negatively impacting upon the *interests and welfare of the public*.[22] Accordingly, that the *ability to pay criterion* should not be accorded determinative weight in these proceedings.[23]

(8) The final offer of the Association is more reasonable than that of the County relative to Article VI, governing *Hours of Work*.

(a) The proposal is merely an attempt to codify the existing practice in the collective bargaining agreement, but the current language is vague and would allow the County to change an Officer's work cycle without regard to the needs of the employees.

(b) If the Association's offer is accepted, employees will be guaranteed a set work cycle and work day, thus allowing time to more easily address personal issues such as child care, off time and recreation.

(c) The County is the only employer in the surrounding area which does not provide its employees with a set work schedule.[24]

(9) The final offer of the Association is more reasonable than that of the County relative to Article X, governing *Group Health Insurance*.

(a) A review of Association Exhibits 700-728 indicates that the County's current formula for employee contributions is not supported by the primary external comparables.

(b) Among the external comparables only Sheboygan County does not require an employee contribution expressed in terms of a percentage of premium, instead requiring employees to pay a flat rate of $10.00 per employee for the family plan and $5.00 per employee for the single plan. These contributions are just a fraction of the monthly contributions of $47.57 and $23.50 sought by Washington County in these proceedings.

(c) The four other primary external comparables require the following levels of employee premium contributions: Dodge County has 5% contributions; Fond du Lac County has 5% single and 6.5% family contributions; Ozaukee County has 10% contributions; and Waukesha County has 10% contributions on its traditional plan and 5% contributions on its HMO plan.

(d) While both Dodge and Sheboygan Counties are self insured, neither uses the *cap method* utilized in Washington County.

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[22] Citing the decision of *Arbitrator Arlon Christenson* in Marinette County Sheriff's Department, Dec. No. 11090-A (1972), wherein he indicated in part as follows: "The lack of ability to pay is an objectively provable fact. If it is alleged as a basis for an Arbitrator's decision the party alleging it, whether or not it has the burden of proof on the issue, has the burden of coming forward with some evidence to support the allegation."

[23] Citing the contents of Association Exhibit 1202, documenting a two year difference in costs to the County of $3,087.36 between the two final offers.

[24] Citing the contents of Association Exhibit 602.

(e) The insurance premiums paid by Washington County are the second lowest among the comparable counties, which its employees make the highest premium contribution among the comparables.[25]

(f) The current employee contribution system in Washington County has been erratic and unpredictable over the past twelve years, where the family plan percentages paid by employees have ranged from a low of 8.2% in 1990, to a high of 15.5% in 1995.[26]

(g) The Association's final offer in this area is more stable and more in line with comparables than that of the County; indeed, at a 10% contribution level, the employees would make a larger 1998 premium contribution than under the County's convoluted system.

(h) Selection of the Association's final offer should not require a significant quid pro quo, in that it is not seeking a substantial change through the costly and time consuming interest arbitration process, but rather seeking a uniform system of paying the employee share of health insurance premiums which is more in line with the comparables.

(i) Under the Employer proposed system, a third party administrator, who is not a party to the collective bargaining agreement, has more input into employee contributions than the employees and their representatives.

(j) Two other unions, the Professional Employees and the Sheriff's Department, have taken exception to the County's rigid policy and its bargaining inflexibility in this area.

(k) The intended effect of the Association's offer in this area is to provide consistency and stability in payment, in contrast to the present system now in existence wherein the County unilaterally establishes the rates without any input from the Association membership. Sadly, the County's take it or leave it attitude has forced the Association to seek change through an arbitral award.

(10) The final offer of the Association is more reasonable than that of the County relative to Article XXIV, governing *Dues Deduction and Fair Share*.

(a) The Association proposed change is necessitated by the County's decision to cease collecting dues and dental premiums on behalf of the membership, when the parties had been unable to reach agreement prior to the expiration of the 1996-1997 agreement.

(b) The position of the County is obviously an overt attempt to coerce the membership into accepting terms that it would not otherwise agree to: its proposal results in no cost savings and it cannot have a positive effect on employee morale and performance; it failed to offer any evidence as to why the prior language was needed or how it benefitted the County or

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[25] Citing the contents of Employer Exhibit 14.

[26] Citing the contents of Association Exhibits 704 and 705.

its taxpayers; its heavy handed tactics are counter-productive, are the epitome of bullying tactics, and are in direct conflict with the underlying bases of the arbitration statute which was designed to achieve peaceful settlement of disputes without job actions, strikes, or severe disadvantage to either party.

(c) Further evidence of the Employer's willingness to abuse the system and bully its employees, can be found in its refusal to proceed to grievance arbitration, when the parties have failed to reach a renewal agreement.[27] The grievance and arbitration processes provide for amicable resolution to alleged contract violations, such disputes will ultimately be heard after a renewal agreement has been reached, and no appropriate basis exists for employer's position on this impasse item.

(d) The current contract language unreasonably requires the parties to reach agreement in as little as four months, which does not fully allow for good faith bargaining, and the Association's final offer would restore a sense of fairness to the bargaining process.

(e) In summary and conclusion, that the position of the County on this impasse item is no more than an attempt to harass and intimidate the Association's membership in the hopes of gaining agreement to inadequate settlements.

(11) The final offer of the Association is more reasonable than that of the County relative to Article XXVIII, governing the *Duration of Agreement*.

(a) The position of the Association in this area is directly tied to that relating to dues deduction and fair share, and it became necessary only after the County notified it that it would no longer arbitrate grievances or collect fair share monies from members after the expiration of the current agreement.

(b) The Association's proposal would do two things and would benefit both parties: first, rather than having the Association mail its proposals to the County and having replies one month later, it would require the mutual exchange of proposals on or about September 1st of the last year of an agreement, thus allowing an additional month of face-to-face meetings; and, second, it would allow the current terms and conditions of employment to continue past the expiration of the agreement as long as the term does not exceed three years.

[27] Citing the contents of Employer Exhibit 7.

(c) Both the Highway and the Parks Departments exchange proposals on face-to-face bases, rather than through the mails.[28]

(d) As with all other Association requests, this proposal will generate no financial hardship for the County; to the contrary, it will only place the Association's membership on a more even footing with the County when it comes time to engage in contract renewal negotiations.

(12) The final offer of the Association is more reasonable than that of the County relative to the *Memorandum of Understanding governing residency.*

(a) It has no cost implications, and it would merely modify the memorandum to make it consistent with the County's residency policy governing non-represented County employees.[29]

(b) The current policy requires employees to be residents within ninety days of their date of hire, despite the fact that they are required to serve a probationary period of one year, during which time they are "at will" employees. Employees are thus put to the potential expense of buying and selling homes and the expense of moving, prior to completing their probationary periods.

[28] Citing the contents of Association Exhibits 1006 and 1008.

[29] Citing the contents of Association Exhibits 901 and 903.

(c) The Company's refusal to modify the current residency requirement is inconsistent with both internal and external comparables: apart from the Sheriff's Department, a large majority of the County's employees have no residency requirement at all, and certain non-represented employees have the same residency requirement herein proposed by the Association; four of the five primary external comparables have no residency requirements, and the fifth imposes a residency requirement six months after an employee completes probation.[30]

(13) The *cost-of-living criterion* should not be assigned determinative weight in these proceedings, since the wage proposals of both parties are identical.

(14) The *overall compensation criterion* should not be assigned determinative weight in these proceedings, since the overall benefit levels in the bargaining unit including *vacations, holidays, sick leave, longevity and WRS* are average at best, when compared to the surrounding communities.[31]

In summary and conclusion that the final offer of the Association is more reasonable than that of the County and should be selected by the Arbitrator on the following bases: it is within the lawful authority of the County; the stipulations of the parties impose little or no financial strain on the County's coffers or its tax payers; the interests and welfare of the public are considered and met by the Association's final offer; the County has the financial ability to meet the cost of the Association's final offer; the Association's final offer is fair and offers a mutually acceptable solution to both sides concerned in these proceedings; the overall compensation presently received by the Association membership is below average when compared to that received by internal and external comparables; both offers are slightly above the cost-of-living index; and nothing in the Association's final offer significantly alters the status quo ante.

In its *reply brief* the Association emphasized or reemphasized the following principal considerations.

(1) That the County's claim that insurance "caps" had been negotiated by the parties in the past was inaccurate, urging that they had been unilaterally determined by the Employer and its third party administrator.

(2) That the County's argument that "caps" were favored by various policy considerations, was neither supported by evidence in the record, nor otherwise made sense.

(3) That the County relies solely on internal comparables in support its position on "caps", thus ignoring the external comparables which clearly support the position of the Association.

(4) That the Association's proposal on contract duration is not "flawed" as argued by the County, but rather would allow either party to reopen negotiations, it would facilitate the completion of the negotiations process, and Arbitrator Torosian agreed with the Association in this area.

(5) That the Association has established the need to change the duration article in the agreement, which is a direct result of the

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[30] Citing the contents of Association Exhibit 902.

[31] Citing the contents of Association Exhibits 800-807.

County's decision to discontinue deductions of fair share monies and its failure to arbitrate pending grievances following the expiration of the agreement.

(a) The County's real objection to this proposal is the fact that it will be losing a weapon to be used against the Association in future negotiations, and it has presented no valid reason for ceasing the collecting of dues and fair shares.

(b) The basis for the Association's proposal is promotion of good faith bargaining, and nothing more.

(6) That the Association's proposal on residency is reasonable, it is supported by internal comparisons, and it was offered only to support the twenty-four new hires to be added to the bargaining unit. Stated simply, it is the **right** and **fair** thing to do.

(7) That the Association's proposal on hours of work costs nothing, merely codifies the existing practice, and should not require a quid pro quo.

FINDINGS AND CONCLUSIONS

It is first noted that these proceedings are somewhat unusual in that the parties' principally disagree on so-called *language items*, rather than on the more common *wages and benefits* where cost based evaluations and application of the *external comparison*, the *greater weight*, the *interests and welfare of the public*, the *cost of living*, and/or the *overall compensation criteria* are likely to receive primary weight in the final offer selection process.[32] Accordingly, the application of the various statutory criteria must be tailored to the nature and the specifics of the underlying impasse items.

As emphasized by the undersigned in many prior decisions, Wisconsin interest arbitrators operate as extensions of the contract negotiations process and their normal goal is to attempt to put the parties into the same position they would have occupied but for their inability to reach full agreement at the bargaining table. In attempting to achieve this goal, the neutrals will normally closely examine the parties' *past practice* and their *negotiations history* in applying the various applicable statutory criteria, both of which factors fall within the scope of Section 111.70(4)(cm)(7r)(j) of the Wisconsin Statutes. The case at hand very well illustrates the role of parties' *negotiations history* in determining the arbitral weight to be placed on *past practice*, particularly when either or both are seeking to *modify the status quo ante*!

In these proceedings the Association is seeking language changes in the in the following areas of the Agreement: Section 10.02, determining the *nature and the amount of employee contributions to health insurance costs*; Section 6.01, governing the *work cycles/hours of work of bargaining unit employees*; Sections 24.01 and 24.02(b), governing *Employer deduction and remittance to the Union of Association dues/fair share amounts, following the expiration of the Agreement*; the Memorandum of Agreement between the parties, governing *residency requirements for members of the bargaining unit*; and Section 28.01, governing reopening and extending the *application of the*

[32] The wage increase components of the two final offers are identical, and while they disagree relative to how employee health insurance premium contributions are to be determined, a so-called fringe benefit, the projected costs of the two proposals are virtually identical. While there are obviously potential cost implications to, for example, restricting the Employer's right to determine the weekly work cycles, such costs cannot normally be determined in advance, and they do not readily lend themselves to comparisons.

Agreement during periodic contract renewal negotiations.[33] Stated simply, the Association is seeking arbitral approval of various changes in the referenced areas of the Agreement, in many areas emphasizing so-called fairness and equity in support of the proposed changes, and the Employer is seeking continuation of the status quo ante in the various areas, unless and until they are modified by the parties across the bargaining table.

The undersigned first notes that there are certain differences between the interest arbitration of private sector and public sector disputes, and the Association is *theoretically correct* in urging greater arbitral flexibility toward public sector union requests for change in certain long standing practices, which principle is well described in the following excerpt from the authoritative treatise by Arbitrator Howard S. Block.

> "One of the most compelling reasons which makes it necessary for neutrals in public sector interest disputes to strike out on their own is the dearth of public bargaining history. The main citadels of union in private industry have a continuity of bargaining history going back at least to the 1930s. Public sector collective bargaining, on the other hand, is still a fledgling growth. In many instances its existence is the result of an unspectacular transition of unaffiliated career organizations responding to competition from AFL-CIO affiliates. As we know, a principal guideline for resolving interest disputes is prevailing industry practice - a guideline expressed with exceptional clarity by one arbitrator as follows:
>
> > 'The role of interest arbitration in such a situation must be clearly understood. Arbitration in essence is a quasi-judicial, not a legislative process. This implies the essentiality of objectivity - the reliance on a set of tested and established guides.
> >
> > 'In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of the extraordinary pressures which led to the exhaustion or rejection of their traditional remedies.
> >
> > 'The arbitrator attempts to accomplish this objective by first understanding the nature and character of past agreements reached in a comparable area of the industry and in the firm. He must then carry forward the spirit and framework of past accommodation into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to *either party* that which they could not have secured at the bargaining table.'

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[33] The *wage increase components* of the two final offers are identical, and while the parties disagree relative to how *employee health insurance premium contributions* are to be determined, a so-called *fringe benefit*, the projected costs of the two proposals are virtually identical.

> Viewed in the light of the foregoing principles, the public sector neutral, I submit, does not wander in an uncharted field even though he must at times adopt an approach diametrically opposed to that used in the private sector. More often than in the private sector, he must be innovative; he must plow new ground. He cannot function as a lifeless mirror reflecting pre-collective negotiations practices which management may yearn to perpetuate but which are the target of multitudes of public employees in revolt."[34]

Arbitrator Block's conclusions relative to the need for public sector interest arbitration flexibility are soundly based and they were often followed when advanced in 1972, a time when interest neutrals were frequently faced with the attempts of public sector unions to change long standing past practices which had been unilaterally established by employers prior to the onset of collective bargaining. The underlying rationale for such arbitral flexibility disappears, however, when the proposed areas of innovation/change have either evolved through or been approved by the parties during their prior contract negotiations. Stated simply, the parties' *negotiations history* determines the weight which should attach to their *past practices*, when interest arbitrators are faced with proposed innovation/change in such practices.

In applying the above described principles to the case at hand, the Employer has cited and relied upon the parties' relatively long negotiations history in support of arbitral selection of its final offer. As emphasized by the Employer and as reflected in its many cited interest arbitration decisions, it is clear that *changes in the* ***negotiated*** *status quo ante* are not normally approved by Wisconsin interest arbitrators in the absence of a showing by the proponent of change, that *a legitimate problem exists which requires attention*, that *the proposed change reasonably addresses such problem*, and that *an appropriate quid pro quo has been advanced in support of the proposed change*. Despite the Union urged *fairness and equity based arguments* and its contention that *little or no immediate cost consequences flow from the proposed changes*, such considerations do not negate the need to meet the objective standards for modifying the negotiated status quo ante. As emphasized by *Arbitrator Flagler* in the above cited case, arbitral subjective approval or disapproval of what has taken place in the past is not necessary, but reliance upon objective standards is required in attempting to duplicate the settlement that the parties could have reached at the bargaining table.

On the basis of the above, the Arbitrator finds the following described considerations to be determinative within each of the various impasse areas.

The Dispute Relating to Employee Health Insurance Contributions

[34] Block, Howard S., Criteria in Public Sector Interest Disputes, Reprint No. 230, Institute of Industrial Relations, UCLA, 1972, pages 164-165. Cited therein is the *decision of Arbitrator John J. Flagler*, in Des Moines Transit Co., 38 LA 666, 671 (1962).

In this connection, it is first noted that the Employer properly submitted copies of two other interest arbitration decisions and awards involving the County: the December 11, 1998 decision and award of *Arbitrator Herman Torosian* involving the County Department of Social Services bargaining unit; and the February 19, 1999 decision and award of *Arbitrator Milo G. Flaten* involving County Sheriff's Department bargaining unit.[35]

Arbitrator Torosian was faced with two impasse items, the same Union proposed changes in employee health insurance contributions as proposed herein, and substantially similar Union proposed changes in Duration/Reopener and Dues Deduction, and he was apparently presented with similar evidence and arguments to those presented to the undersigned in these proceedings. In selecting the final offer of the County, he indicated, in part, as follows, relative to *the health insurance contributions impasse item*:

> "The Arbitrator in the instant case, like so many before him, is firmly convinced that in cases where one party is seeking to make significant changes in existing language or benefits (status quo), the interests of the parties and the public is best served by imposing on the moving party the burden of establishing (1) a compelling need for the change, (2) that its proposal reasonably addresses the need for the change, and (3) that a sufficient quid pro quo has been offered. In each case the sufficiency and weight to be given to each element must be balanced.
>
> * * * * *
>
> ...it is clear that under the current 'cap' system where the Employer increases the caps yearly, there is no compelling reason shown that a change from the current system to a percentage split of 90%/10% is needed. The Arbitrator understands the Association's desire for a set percentage split and the certainty it provides as to how future premium increases and total premiums will be split. The Arbitrator would be more inclined to go along with the Association's proposal if the Employer did not regularly adjust the cap amount to reflect increases. But here the Employer has been willing to fairly look at the impact of premium increases and make adjustments accordingly. The Employer has increased the caps every year the insurance premium has increased since 1988.
>
> ...It may be true, as argued by the Association, that the Employer has not been very flexible at the bargaining table once the insurance premium issue has been settled with other larger units, but in the final analysis the Employer has been flexible in raising caps to help offset premium increases.
>
> The Association, however, argues that its position is supported by external comparables. This is true in that 4 of the 5 comparables have a set percentage method of premium sharing, but, under the facts of this case as discussed, external comparables alone are not enough to establish compelling need. In interest arbitration cases, especially those involving benefit issues, internal comparables must also be considered. Here the internal comparables favor the Employer...
>
> Moreover, no significant quid pro quo is offered by the Association for its proposed change. As stated earlier, the criteria (elements) required for changing the status quo must be balanced in each case based on the peculiar facts of each case. Thus, as the need for the proposed change decreases, the need for a quid pro quo increases and vice versa. Here, as discussed above, a strong compelling need has not been established and little quid pro quo has been offered...

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[35] See Section 111.70(4)(cm)(7)(i) of the Wisconsin Statutes.

> Under the facts of this case where the internal comparables favor the Employer, no compelling need has been shown other than external comparables, and no significant quid pro quo has been offered, the Employer's final offer must be viewed as the more reasonable."[36]

Arbitrator Flaten was faced with two impasse items: the same Union proposed changes in employee health insurance contributions as proposed herein, and wage rates. In selecting the final offer of the County, the Arbitrator indicated, in part, as follows, relative to the health insurance contributions impasse item.

[36] See the *decision of Arbitrator Torosian, supra*, at pages 26, 30, 31 and 32.

"The Employer has maintained the same administrative method of calculating premium cost-sharing for 13 years with the Union, with other bargaining units, and with non-represented employees. It is questionable to this arbitrator's eye whether there is a compelling need for the percentage method proposed by the Union as opposed to the established 'cap' system. It is also clear that arbitrators will require a party seeking a change to justify it only by strong evidence establishing its reasonableness and soundness. This the Union has not done.[37]

Without unnecessary elaboration the undersigned will merely note that he fully agrees with the decisions and awards of Arbitrators Torosian and Flaten, and has preliminarily concluded that the internal comparisons and the failure of the Association to establish the requisite bases for modification of the negotiated status quo ante clearly favor the position of the Employer on this impasse item.

The Dispute Relating to Hours of Work/Work Cycles

Section 6.01 of the prior agreement merely provided, in part, for a standard workweek of 40 hours per week, "...under a uniform work schedule and weekly shift rotation which the sheriff may determine most practical", and the Union proposes to require work cycles of "...five (5) consecutive work days followed by two (2) consecutive off days, followed by five (5) consecutive work days followed by three (3) consecutive off days, then repeating the cycle, unless mutually agreed otherwise between the County and the Association Board of Directors."

(1) *Officer David Weske*, the President of Local Union #704, testified that the Association's proposal relating to hours per week and work cycles, was consistent with current practice during the past year, with a single exception to which no objection had been raised, and that the Association merely wanted shifts and work cycles to be specified in the agreement. He emphasized that with the new jail coming on line in the future, there was some concern in the bargaining unit about possible changes; he conceded that the new jail is anticipated to go on line in the year 2000, after the expiration of the current collective agreement, but emphasized the need to hire and train officers prior to the expiration of the current agreement.

(2) *Sheriff John Theusch* testified that some movement to a standard 5-2 work week with Saturday and Sunday off is necessary due to the fact that 80% of the County's prisoners are serving Huber sentences which requires them to be checked in and out in significant numbers during the course of the normal workweek, emphasizing that sufficient Monday through Friday manpower is needed to adequately control the jail against contraband items.

(a) He confirmed that those currently on 5-2 workweeks are probationary employees, but on completion of their probationary periods, the job vacancies would be posted and filled in accordance with seniority preferences.

(b) He also indicated his uneasiness about the need to get the work assigned efficiently with a larger jail population in the expanded facility.

(3) Although the Union urged that use of 5-2, 5-3 work cycle rotations would have no immediate cost implications, it agreed with the testimony of the Sheriff that working conventional 5-2 work weeks

[37] See the *decision of Arbitrator Flaten, supra*, at pages 5-6.

with a contractually mandated 5-2, 5-3 work cycle rotation, could increase the necessity for overtime.

The Union is apparently quite correct that an apparent increase will take place in the assignment of bargaining unit employees to 5-2 working cycles, and even though the change is more likely to affect new hires than current employees, it is understandable that it wishes to address this *anticipated problem* during the current contract renewal negotiations. Even if it were *hypothetically concluded*, however, that the pending changes in working cycles constituted the requisite *significant problem,* and that the Union proposed language proposal *reasonably addressed the problem*, there is no evidence in the record that the Union had advanced an *appropriate quid pro quo* in support of its proposed change in the negotiated agreement. Despite the lack of evidence that there had been any past problems with the current language, and in spite of Union arguments that its proposal would merely codify current practice in the assignment of work cycles, the County would be losing significant work assignment flexibility if the proposal was adopted and its employment costs would be likely to increase as the bargaining unit grows in anticipation of the expanded jail going on line in the year 2,000. Accordingly, such a change would have to be supported by more than a nominal *quid pro quo*.

Finally it is noted that the Union urged that the proposal was supported by the *external comparables*, in that all of the comparables had more definite work cycles than those provided in the current agreement, but an examination of the comparables indicates rather wide variations in contract language.[38] Even if the Association proposal had been fully consistent with the primary external comparables, however, this would **not** have satisfied the normal prerequisites for arbitral selection of a proposed modification of the *negotiated status quo ante*.

On the above described bases, the undersigned has preliminarily concluded that the failure of the Association to establish the requisite bases for modification of the negotiated status quo ante clearly favor the position of the Employer on this impasse item.

[38] See the contents of Association Exhibits #602 and #611-#620.

The Disputes Relating to Reopening/Extending the Contract, Incidental to Periodic Contract Renewal Negotiations, and to the Deduction of Association Dues/Fair Share Amounts

In this area the Union principally cites perceived reasonableness considerations, the lack of any apparent additional costs to the Employer, and the fact that the County's Highway Department and the Parks Department bargaining units currently provide for more expeditious notification and face-to-face meetings in connection with periodic contract renewal negotiations.[39] The Employer submits that the Union proposal does not appropriately address the alleged problem in the area of contract duration, urges that its actions in refusing to continue to collect dues and fair share contributions during a contract hiatus are neither unusual nor illegal, and emphasizes the lack of any Association proffered *quid pro quo* in support of its proposed modification of the long standing *negotiated status quo*.

As was observed by Arbitrator Torosian, the Association has offered some good arguments in support of its proposals in this area. It has also, however, failed to establish the requisite bases for modification of the negotiated status quo ante, and even had it done so in this area, it would have been insufficient to outweigh the *insurance* and the *hours of work/work cycles* impasse items.

The Dispute Relating to Residency Requirements

In this area the Association again emphasizes reasonableness considerations, favoring the right of a hypothetical future employee to complete his or her probationary period prior to moving into the County, particularly when such action may be accompanied by buying and/or selling homes, and its position in this area is also supported by both external and internal comparables.[40]

As was noted in the foregoing section, the Association has offered persuasive argument in support of its proposed change in this area, but no current problems exist in that all bargaining unit employees presently reside in the County, it has failed to address the normal prerequisites to modification of the negotiated status quo ante, and even had it done so, this impasse item, even in conjunction with the immediately preceding one, would clearly have been insufficient to outweigh the *insurance* and the *hours of work/work cycles* impasse items.

Summary of Preliminary Conclusions

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

(1) In the case at hand, the parties disagree on so-called *language items*, rather than on the more common *cost based wage and benefit items*, and the application of the statutory arbitral criteria must be tailored to the nature and the specifics of the underlying impasse items.

(2) The primary goal of Wisconsin interest arbitrators is to attempt to put the parties into the same position they would have occupied but for their inability to reach full agreement at the bargaining table. In so doing, they will normally closely examine the parties' *past practice* and their *negotiations history* in applying the various statutory criteria, both of which factors fall well

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[39] Citing the contents of Association Exhibits 1006 and 1008.

[40] See the contents of Association Exhibits 901, 902 and 903.

within the scope of Section 111.70(4)(cm)(7r)(j) of the Wisconsin Statutes.

(a) The case at hand very well illustrates the significant role of parties' *negotiations history* in determining the arbitral weight to be placed upon *past practice*, when either or both are seeking to *modify the negotiated status quo ante*!

(b) Changes in the *negotiated status quo ante* are not normally approved by Wisconsin interest arbitrators in the absence of a showing by the proponent of change that *a legitimate problem exists* which requires attention, that *the proposed change reasonably addresses such problem*, and that *an appropriate quid pro quo has been advanced in support of such change*.

(c) Despite the Union urged *fairness and equity based arguments* and its contention that *little or no immediate cost consequences flow from its proposed changes*, such considerations do **not** negate the need to meet the *objective standards for modifying the negotiated status quo ante*.

(3) The internal comparison criterion and the failure of the Association to establish the requisite bases for modification of the negotiated status quo ante clearly favor the position of the Employer on the *health insurance contribution impasse item*.

(4) The failure of the Association to establish the requisite bases for modification of the negotiated status quo ante clearly favor the position of the Employer on the *hours of work/work cycle impasse item.*

(5) While the Association has offered some good arguments in support of its proposals relating to *contract duration/reopeners*, *dues and fair share deductions*, and *residency*, it has also failed to establish the requisite bases for modification of the negotiated status quo ante in these area; even had it done so, however, these items would have been insufficient to outweigh the *insurance* and the *hours of work/work cycles* impasse items.

Selection of Final Offer

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

AWARD

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

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

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

WILLIAM W. PETRIE
Impartial Arbitrator

April 6, 1999