

BEFORE THE ARBITRATOR

ROSE MARIE BARON

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In the Matter of the Petition of

Marathon County Social Services  
Professional Employees Union  
Local 2492-A, AFSCME, AFL-CIO

and

Marathon County

Case No. 249  
No. 55908  
INT/ARB-8356-A  
Decision No. 29517-A

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APPEARANCES

Phil Salamone, Staff Representative, AFSCME Council 40, appearing on behalf of  
Marathon County Social Services Professional Employees Union, Local 2492-A, AFSCME,  
AFL-CIO.

Dean R. Dietrich, Esq., Ruder, Ware & Michler, S.C., appearing on behalf of  
Marathon County.

I. BACKGROUND

The County is a municipal employer (hereinafter referred to as the "County" or the "Employer"). The Marathon County Human Services Professionals, Local 2492-A, AFSCME, AFL-CIO (the "Union") is the exclusive bargaining representative of certain County employees, i.e., a unit consisting of all regular full-time and regular part-time employees in the Social Service Department. The County and the Union have been parties to a collective bargaining agreement which expired on December 31, 1997. The parties exchanged their initial proposals, however no accord was reached and the Union filed a petition on December 19, 1997 requesting the Wisconsin Employment Relations Commission to initiate binding arbitration. Following an investigation and declaration of impasse, the Commission, on December 22, 1998, issued an order of arbitration. The undersigned was selected by the parties from a panel

submitted by the Commission and received the order of appointment dated March 3, 1999..

Hearing in this matter was held on June 11, 1999 at the Marathon County Courthouse in Wausau, Wisconsin. No transcript of the proceedings was made. At the hearing the parties had the opportunity to present documentary evidence and the sworn testimony of witness.

Briefs and reply briefs were submitted by the parties according to an agreed-upon schedule. The record was closed on September 2, 1999.

## II. ISSUES AND FINAL OFFERS

Health Insurance: The County proposes a 5% employee premium contribution for both single and family plans effective 12/1/99; the Union wishes to continue the present employer payment of 100%.

Post Employment Health Plan: The County proposes implementation of a new employee benefit (PEHP) in which the County will contribute \$12 per pay period for the purpose of establishing individual employee accounts for payment of medical expenses after severance of employment. Further, the County will pay the annual administrative fee associated with this plan. The Union's final offer is silent on this issue.

Wages: The County offers 3% annual adjustment effective 1/1/98 (this has been implemented). Effective 1/1/99, the County proposes 3%; the Union seeks an across the board increase of 3.5%.

In addition to the wage offer, the County proposes mandatory direct deposit of wages; the Union wishes to maintain the status quo, i.e., voluntary direct deposit.

Holidays: The Employer seeks to eliminate a half-day holiday on New Years Eve and substitute a half personal day. The Union seeks to maintain the status quo.

Dental Insurance: The Employer seeks to delete identification of "Blue Cross/Blue Shield Dentacare" and to substitute "Capitated/HMO Dental Benefit." The Union has no proposal on

this item.

Labor-Management Committee on Employee Benefits: The County proposes the formation of an advisory committee to discuss employee benefits. The Committee shall include one representative of the Union (with the Union assuming the cost of educating its representative in labor-management cooperation and insurance industry trends). The Union's final offer is silent on this issue.

Other County offers include changes in eyeglasses payment, direct deposit of paychecks, etc.

### III. STATUTORY CRITERIA

The parties have not established a procedure for resolving an impasse over terms of a collective bargaining agreement and have agreed to binding interest arbitration pursuant to Section 111.70, Wis. Stats. In determining which final offer to accept, the arbitrator is to consider the factors enumerated in 95-96 Wis. Stats., Employment Relations, Sec. 111.70:

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 or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

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.

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.

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison 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.
- e. Comparison of the 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 comparable communities.
- f. Comparison of the 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 employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, 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 proceedings.
- 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.

#### IV. POSITION OF THE PARTIES

The following statement of the parties' positions does not purport to be a complete representation of the arguments set forth in their extensive briefs and reply briefs which were carefully considered by the arbitrator. What follows is a summary of these materials and exhibits introduced at hearing and the arbitrator's analysis in light of the statutory factors noted above.

##### A. Comparables

The parties have agreed on eight counties for purposes of external comparability.

They are:

Chippewa	Outagamie
Eau Claire	Portage
Fond du Lac	Winnebago
La Crosse	Wood

The County has also relied on internal comparables, i.e., those bargaining units which have settled or reached tentative agreement, all non-union employees, and the Highway Department by virtue of an arbitration award:

Health Department (AFSCME)  
Library Paraprofessionals (AFSCME)  
Airport (Teamsters)  
Highway (AFSCME)<sup>1</sup>

Sheriffs Department Deputies (WPPA)  
Sheriffs Department Supervisors (SORD)  
All non-union employees (Library  
professionals; Management personnel)

The Union does not recognize certain units as comparables because it asserts they do not have statutory ability to engage in interest arbitration, i.e., Managerial-Ordinance, Library Professionals, and Sheriffs Department Supervisors.

## B. The Union

### 1. Statutory Criteria

The Union refers to the legislative changes to the Municipal Employment Relations Act in 1996 which provide that arbitrators accord “greatest weight” to any state laws limiting the right of a local government to raise wages. The Union does not believe that this criterion applies in the instant case. However, the legislature also provided that arbitrators give “greater weight” to “local economic conditions” and the Union argues that this standard is the correct one to apply. It asserts that Marathon County is thriving and cites numerous State, County, City publications which confirm the Union position that Marathon County is high in the list of healthy economies in the state. Arbitral precedent is cited for the proposition that the “greater weight” factor should be applied to data submitted showing that local conditions in a county are sufficiently favorable to support the Union’s final offer (citation omitted). In the instant case, the Union argues that there is limited economic impact based on the difference of the parties’ final offers and Marathon County can well afford the economic costs associated with its final offer.

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<sup>1</sup>County’s offer selected by Arbitrator Zeidler, Dec. No. 29514-A, 8/13/99.

## 2. Health Insurance

The Union considers the health insurance issue as the major dispute in this proceeding. The County seeks to abandon the 16-year status quo of fully funding premiums in exchange for an employee contribution of 5% of premiums with a new benefit of an employer funded Post Employment Health Plan (PEHP) with a contribution of \$12 a pay period amounting to \$24 per month or \$288 per year. The Union is concerned also that the County's proposed premium contribution is expressed as a percentage and the PEHP plan is in dollars. With rapidly increasing health care costs, the total dollar amount contributed by the Employer to the PEHP plan will be offset by greater employee percentage contributions to insurance. Most important, the Union asserts, is that the County is trying to force a sub-standard plan on employees in this bargaining unit who are not interested in it.

It is the Union's position that any attempt by the County to allege internal consistency in settlements is ill taken. There are ten "legitimate" bargaining units. Non-represented employees, library, and Sheriff's Department Supervisors, can only meet and confer on disputes but cannot proceed to interest arbitrations. Size of units which have settled should also be taken into account since small units should not carry as much weight as large units. At the time of the hearing in this matter, only four internal units had reached settlement : Health Professionals (AFSCME) with 24 members agreed to the County's 3% wage increase for 1998 and 1999, a 5% premium payment and wage adjustment; Library (AFSCME), 49 members, 3% wage increase for both years, 5% premium payment, plus one holiday at 5 years; Deputy Sheriffs (WPPA), 47 members 3% for both years, 5% premium contribution, PEHP plan, plus adjustment plus 192 hours sick leave; Airport (IBT), 21 members, 3% wage increase in both years, a 5% premium contribution, and the PEHP plan. Only two units (68 employees) have adopted the PEHP plan. No AFSCME unit has accepted the PEHP plan as a *quid pro quo* for the health

insurance contribution. The Union points to the fact that the units which have settled are small groups and do not represent the majority of employee beliefs. It further argues that the Library unit is a new union, less experienced in negotiating, and did not desire the PEHP plan, but accepted an additional holiday after five years of service in exchange for the 5% contribution. Arbitral precedent is cited which supports the Union position that wage enhancements in some of these units reveal that there is only a “pseudo-pattern” of internal settlements.

Regarding health insurance the Union posits three basic components which are necessary to compare with the external comparables, i.e., premiums, deductibles, and co-pays. Because of technical problems, the Union has combined deductibles and co-pays into one category, out-of-pocket costs.

Of the eight external comparables for Single plan, Chippewa County, Eau Claire, La Crosse (Monitor plan), and Outagamie (Self-fund, Network HMO, and Network Pos) contribute 100% of the premium. The Employer contributes 95% in Portage, Fond du Lac, La Crosse (Standard, Fran. Skimp, Gunderson plans), Wood, and Winnebago. In Outagamie the contribution is 98.8% for United HMO and 94.2% for United POS.

In terms of out-of-pocket costs, the Union asserts that the comparables all offer at least one insurance option where total exposure is less than that of Marathon County (Brief, pp.19-20). Health insurance deductibles for Marathon County employees is far in excess of the generally less prosperous external group.

### 3. The Post-Employment Health Plan (PEHP)

It is the Union’s argument that the Employer is attempting to take away a benefit which the employees value and force upon them something they do not want, i.e., the PEHP plan. The Employer has failed to show external support for this plan; the bargaining units in the State of Wisconsin which have accepting it are primarily in law enforcement. These employees



can retire at younger age and might be more likely to be interested in such a plan which is geared to retirement than other employees. The groups listed in Employer Exhibit 64 include many who are non-represented and may have not had any choice but to accept the plan.

The Union contends that the County's immediate savings in health insurance do not warrant going to arbitration. While the rates currently appear somewhat high compared to its comparables, they are not inordinately high. There has been a history of wide swings in rates (Union Ex. 29). The Union asserts that this prosperous employer can afford the costs of health insurance.

Finally, the Union argues that the County cannot meet the standards of a *quid pro quo* analysis since it has not shown a compelling need for a change in the status quo. New benefit systems such as the PEHP should be voluntary, not by one party gaining an advantage through arbitration.

#### 4. Wages

The Union considers the wage issue secondary in this dispute and would not have proceeded to arbitration had the health insurance dispute not been pursued by the Employer. The Employer has already benefitted from a reduction in contribution to the Wisconsin Retirement system for the period of this contract of 0.8%. It is argued that the internal comparables similar to health insurance, i.e., six larger bargaining units seek 3.5% increase while the four settlements accepted 3%.

It is contended that the external comparables for Social Workers supports the Union's position. Union Exhibits 44, 45, and 46 illustrate the fact that at the benchmark average Marathon County's Social Workers receive lower hourly rates than the comparables in all three classifications. The Union points to the low wage rate as a reason for the recent recruitment and retention staffing problems. The Union argues that its final wage offer of a mere half of a

percent on wages for 1999 should be favored.

An extensive reply brief was filed by the Union, taking issue with the Employer's position on numerous issues. These have been carefully considered by the arbitrator, however, for the sake of brevity in this award, only the summary and conclusions will be excerpted.

1. Statutory criterion (7g) provides that interest arbitrators accord "greater weight" to local economic conditions; Marathon County is enjoying extraordinarily positive local economic conditions. The County's "greatest weight" argument does not apply here as there has been no appropriate evidence provided to support this consideration.

2. There is an internally consistent pattern of rejection of the employer offer and in support of the status quo by the bargaining units. The settlements which do exist are for a minority of bargaining units and a minority of the total represented work force. In addition, each of the settlements has unique characteristics which set them apart from other bargaining units.

3. While the external picture for premiums is somewhat mixed, half of the less prosperous comparability pool continue to offer at least one fully funded employer health insurance plan. In terms of total health insurance cost sharing, Marathon County employees already share to a considerable greater extent than most of the employees in its comparables.

4. The parties' bargaining history fully supports the Union in this proceeding. Employees have had 100% employer contribution since 1984; despite prevailing in a 1992 arbitration dispute, the Union voluntarily accepted the deductibles and agreed to further health insurance cost shifts.

5. Wages are important but secondary. Marathon County Social Service Professionals are substantially behind their comparables and even the additional 0.5% increase will not permit them to catch up.

6. The recent Highway Department award (Dec. No. 56065, Zeidler) should not

negatively impact on the Union's position in this proceeding since there were important differences in the final offers. Wages were a major issue; unlike the Social Workers, Highway employees were found to be wage leaders among their comparables.

The Union concludes that the evidence and argument supports selection of its offer by the arbitrator.

#### C. The County

##### 1. Greatest Weight Criterion

The County relies on this criterion and the tax levy limits legislation to argue that the county's ability to raise taxes to pay for increased wages and fringe benefits cannot exceed the 1992 level. It argues that its wish to control costs by having employees participate in the high cost of insurance premiums is a fiscally conservative way to address the problem. Further, the County will place \$12 per pay period for each employee into a trust account to fund future medical expenses after the employee leaves County employment. The Union's final offer proposing a 3.5% wage increase is overreaching, since the County cannot raise the tax levy to fund this increase. Data provided show that spending by counties has risen in the last four years by twice the rate of inflation.

The County argues that the Union's final offer asks for too much of a wage increase while the County is proposing a reasonable insurance cost-sharing proposal and payment of the PEHP plan. The County asks the arbitrator to consider the fiscal constraints imposed upon Marathon County and find that the "greatest weight factor" supports the County's final offer.

##### 2. Greater Weight criterion

Arbitrators are to give greater weight to economic conditions in the jurisdiction of the municipal employer when selecting between the parties' final offers. In this instance, the Employer agrees with the Union that Marathon County is experiencing healthy economic

conditions. The County cites arbitral precedent holding that good economic conditions means that a more costly offer may be accepted, that it will not be automatically excluded as it would under bad economic conditions, and therefore, an analysis may then continue.

It is the County's position that since the citizens, including the bargaining unit members, are experiencing a healthy economy, which includes higher wages and low inflation, they can afford to contribute toward their health insurance premium. A healthier economy does not mean that the County receives anymore state aid or property taxes. However, the low interest rates and higher wages in the labor market allows for higher personal income, thereby justifying the ability of employees to contribute toward their health insurance premiums. If employees in comparable counties (Chippewa, Fond du Lac, La Crosse, Outagamie, Portage, Winnebago, and Wood) can afford to make a contribution where financial condition may not be as good, Marathon County employees should be treated similarly.

### 3. Internal Settlements

Internal settlements and consistency of benefits are proper factors and are to be considered and given substantial weight when selecting between final offers. In the area of fringe benefits, including health insurance, numerous arbitrators are cited (citations omitted) who have held that consistency in the level of benefits among employee groups is a widely accepted tenet of labor relations. Here the County has attempted to maintain internal consistency in fringe benefits for all of its employees as it has years. Five out of ten bargaining units voluntarily agreed to a 5% health insurance premium contribution, as have all County nonrepresented employees. Further, Arbitrator Zeidler recently selected the County final offer in an interest arbitration. The Health Department Professionals and the Library paraprofessionals proposed items they had been seeking as a *quid pro quo*, e.g., a wage adjustment, an extra holiday, and agreed to the 5% contribution. Although the Union advised against the settlement,

these units went forward despite the Union's opinion. It is the County's argument that the AFSCME units which are "holdouts" are attempting to "whipsaw" the County (referring to arbitral opinions); this is against good public policy and the Union should not be rewarded for such action. With the exception of the two units noted above, and some variances with the Deputies due to the uniqueness of their duties, all basic fringe benefits are consistent for Marathon County employees: maximum sick leave, paid holidays, five weeks vacation, jury duty and other similar benefits. The County asserts that health insurance benefits affect all employees the same way regardless of their job duties and should be implemented consistently by the employer.

The County asserts that it has also maintained an extensive historic comparable wage settlement pattern. The general wage increases for all unions in Marathon County as been nearly identical since 1983 with only minor variances. As is the case with health insurance contribution, four unions have voluntarily settled for a 3% wage increase in 1999 (Health Pro., Library, Deputy Sheriffs, and Airport) and the Highway Department will receive the same based on Arbitrator Zeidler's award selecting the County's offer. Non-unionized employees will also receive the 3% increase. The County has also provided a copy of a tentative agreement for the Sheriff's Department Supervisors indicating its acceptance of a similar offer.

The fact that six Marathon County units have reached settlement including a 5% employee premium contribution and a 3% wage increase for 1999 shows that the County's final offer is reasonable and should be selected by the arbitrator. Arbitral precedent confirms that maintaining consistency is important if future bargaining relationships are to be maintained and negative effects on the morale of employees who have settled voluntarily are to be avoided.

The Union has proposed a 3.5% increase in 1999 in all its final offers in an attempt to achieve an unjustified larger increase through arbitration than it could have achieved voluntarily.

If the Union's final offer were to be selected, there would surely be hard feelings in the other units who will then wish to pursue larger adjustments during the next round of bargaining or try to achieve a large increase through arbitration. Further, should the Union prevail, in addition to the extra half percent wage increase, the employees in this bargaining unit would not be contributing toward their health insurance as the others who have settled. Absent any compelling reason for rejecting the history of consistency, the arbitrator should select the County final offer.

#### 4. External Comparables

The health insurance contributions required by employees in the comparable pool support adoption of the County's final offer. Employer Exhibits 46 and 47 show that seven of the eight comparables require an employee contribution: only one county, i.e., Eau Claire contributes 100% of both single and family plan premiums. Chippewa County pays the entire premium for the PPO plan; for the traditional plan, employees contribute 7%. Fond du Lac County employees contribute 6.5% for the family plan and 5% for single. Employee contributions in the other counties range from 5% to 10%. The County's final offer provides for a 5% employee contribution which is equal to that required by its similarly sized neighboring counties, Portage and Wood.

Of importance is the fact that Marathon County's monthly premium for family coverage of \$584.71 exceeds the average of the comparables, i.e., \$539.78, by \$44.93. Under the County final offer, the County will contribute \$37.74 per employee per month more than the average; under the Union final offer this amount would increase to \$66.98 per employee per month more than the average. Even with a 5% contribution by the employees, their rate would still be less than the average contribution of employees in the other counties.

The escalating costs of health insurance has been considered in interest arbitrations

with the finding of the reasonableness of cost-sharing by employees. An employee contribution in Marathon County is consistent with contributions required of employees in the comparable pool.

The County argues that the Union's 3.5% wage offer in 1999 is not supported by the comparable pool. Employer Ex. 35 illustrates that the county cannot justify its wage increase offer. Chippewa and Eau Claire have settled for 3%; La Crosse settled for 2% on 12/28/98 and 1% on 6/28/99. Fond du Lac settled for 3% for Steps 1-4 while Step 5 received 3.5%. Winnebago settled for 3.2% while Portage County received a 3% increase with a 1% equity adjustment for all employees. Wood County and Outagamie are not settled for 1999. The external settlement pattern does not reflect a 3.5% increase. Four of the comparables have voluntarily settled for 3% in 1999, thus supporting the County's final offer.

#### 5. The *Quid Pro quo*

Relying on arbitral precedent, the County recognizes that its proposed premium contribution proposal will result in the change in the status quo and that a *quid pro quo* may be required for that change. Where a change in health insurance is an issue, arbitrators have considered three factors: 1) The party proposing the change must demonstrate a need for the change, 2) if the need for change has been shown, that the party has provided a *quid pro quo*, and 3) that tests 1 and 2 be met through submission of clear and convincing evidence by the party proposing the change.

The County asserts that it has demonstrated, by clear and convincing evidence, a need for employees to contribute toward a portion of their health insurance premium. Marathon County has one of the highest monthly dollar contributions of the external comparables. The County experienced an increase in premiums in 1998 of 25% for family coverage and 27% for single. In 1999 the premium increase is 11.4% for family and 12.5% for single, with no signs of

leveling off. The option of employee contribution is widely accepted in the surrounding counties and will maintain the history of consistency of health insurance benefits provided to all County employees.

The County has provided an additional benefit for employees in exchange for their contribution to premiums, i.e., the Post Employment Health Plan or "PEHP." Money, in the amount of \$12 per pay period, will be contributed into an account for each employee which will be available after leaving employment for payment of qualified medical expenses. All money placed into the account and withdrawn is 100% tax free. The County will assume the administrative costs of the program. The advantage of this program to employees is that it will help pay for health care costs after retirement.

#### 6. Local Communities and School District Comparisons

Employer Exhibit 56 lists seven comparables (local cities, towns, and villages) and indicates that all but one, Rothschild, and the single plan in Weston, require employee contribution to health insurance. In Mosinee, the City pays up to a certain amount for single and family plans; if a different plan is chosen, the employee pays the difference.

Among local school districts and technical college, 6 comparables, all employees contribute to health insurance premiums with a range of 1.5% to 10% of premium. Clearly the pattern in other public employers in the greater Wausau area provide that their employees contribute to their health insurance premium.

7. Private sector employers in the Wausau area require employees to pay a portion of the premium. Employer Ex. 60 lists ten major employers all of whom require their employees to pay a minimum of 10% of the premium each month. The arbitrator is urged to consider these data which support Marathon County's offer.

#### 8. Other proposals in the County's final offer



The County has discussed the other proposals in its final offer and urges adoption by the arbitrator. These include the need to replace the one-half day holiday on December 31st with an extra one-half day personal time in order to provide appropriate staffing in the Social Services Department. The County also will increase eyeglass frame coverage from \$35 to \$50 every two years; this is an expanded benefit and to the Union's benefit. The four Marathon County units that have settled also received this coverage as well as the non-union staff.

The County offer includes a provision in which the Union would participate in the Labor-Management Committee in order that each union and employee group have a voice to discuss employee benefit concerns.

The County has proposed to revise the current dental insurance benefit language to delete the reference to "Blue Cross/Blue Shield Dentacare Program" and substitute "Capitated/HMO Dental Benefit." The County has received negative feedback from employees regarding the current plan; the proposed language would permit the parties to change carriers in mid-contract if a better plan were found.

The County has proposed language changing direct deposit of wages into employee bank accounts from voluntary to mandatory. There will be a savings to the County of the cost of labor, of purchasing and running checks; employees will be saved a trip to the bank or to work to pick up checks.

Both parties' offers for 1998 exceed the cost of living. The CPI measures the increase of all goods and services including health insurance costs and other benefit costs. The total package cost for both parties' final offers is 4.06%, at least 2% more than the National U.S. City average. As of February 1999, the National U.S. City CPI is at 2.1%. Under the County's final offer, the total package increase for 1999 is 3.31%; the Union's final offer is 3.72% The County asserts that its final offer more closely matches this criterion and supports selection of its final

offer.

In its Reply Brief the County responded to several of the Union's depictions of the history of health insurance coverage, i.e., deductibles, implementation of a PPO, etc. Enhancements in coverage outweighed certain reductions, especially in light of a 100% paid Long Term Disability Insurance. While there was a savings to the County in 1997, this was negated by the additional cost of disability insurance.

Marathon County provides for 100% coverage in the PPO plan after the deductible for health care services is met (\$200 single, \$600 family). The out-of-pocket maximum of \$1,200 (estimated on a 90/10 basis) for Marathon County insureds would occur only rarely, i.e., if services costing \$12,000 were incurred at an out-of-service provider. Several services are paid at 100% and not subject to a deductible, e.g., well baby care, smoking cessation.

The County disputes the Union's allegation that employees are suffering financially; the average wage rate for a majority of employees in this unit is \$38,000 in 1999 under either final offer.

Because employees are utilizing their health insurance benefits, they should participate in the cost. The large increase in costs is attributable to the usage of the participants. The County is not trying to discourage use of the plan, but believes it is fair that employees should assume some of the costs as has been the pattern in the external comparables. While the County is asking employees to pay a portion of the premium, it is not changing any existing level of benefits. Arbitrators have held that there is a need for some change in the insurance area, but would prefer not to see diminished benefits, thus cost sharing is to be preferred over benefit reductions.

As further support of its position, the County notes that the benefits employees derive from the existing Section 125 plan, i.e., money deducted from paychecks before tax are placed

in account for medical expenses, may be extended to cover the 5% premium contribution for health insurance.

9. Arbitrator Frank Zeidler's decision

Arbitrator Zeidler's award in the Highway Department arbitration selected the County's final offer. He based his decision primarily on the fact that the external comparisons favored the County offer on employee contribution to health insurance. Also a factor was the relatively high contribution by the County toward health care insurance among the comparables. He also noted that the County offer will reasonably serve the interests and welfare of the public because of its general comparability with the primary comparables.

10. Other argument

The County argues that a *quid pro quo* is not required in all instances, for example, when bringing a unit up to the pattern prevailing among the comparables in health insurance contribution. Nonetheless, in this instance, the County has offered a new benefit in exchange for the premium contribution, that of the PEHP, to be funded by the County. While the Union alleges that there is no interest in the PEHP, no evidence was presented at hearing in this regard.

Marathon County employees enjoy an excellent basic compensation package (health insurance, sick leave, holidays, vacation, Wisconsin Retirement System, longevity, and jury duty). In addition, benefits not always granted in the comparables are dental insurance, vision, insurance, long term disability insurance, perfect attendance leave. The total package should be taken into consideration when selecting a final offer.

It is the County's position that the Union is not aware of the nuances of bargaining which took place with the four Marathon County units which were willing to discuss employee contribution to health insurance premiums. Each unit has different circumstances and situations

which led them to accept the County proposal.

The County concludes that its offer is more reasonable and is in the best interest and welfare of the public. The Union maintains that the County has the ability to pay for its final offer; the County does not argue inability to pay. Rather the analysis is whether it is reasonable for the County to continue paying 100% of the health insurance premiums along with providing a larger 3.5% wage increase that the Union proposes. Therefore, the arbitrator is asked to select the County's final offer as the more reasonable.

#### V. DISCUSSION AND FINDINGS

The arbitrator has carefully reviewed all the exhibits (Union Exhibits 1-60; County Exhibits 1-83; Joint Exhibits 1-18), her notes taken at hearing, the briefs and reply briefs, and Arbitrator Zeidler's award in the Highway Department arbitration dated August 13, 1999. The issues of health insurance and wages are clearly central to the resolution of the dispute; other issues in conflict will be resolved by the selection of one of the parties' final offers.

##### A. Greatest Weight or Greater Weight?

The County urges the arbitrator to apply Sec. 111.70(4)(cm)7 of the Wisconsin Statutes in determining which final offer to accept: this factor places greatest weight on any state law or directive which places limitations on expenditures or revenues collected by a municipal employer. The Union does not believe that this factor is applicable, but argues that the correct consideration is found in Sec. 111.70(4)(cm)7g which commands the arbitrator to give greater weight to the economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r. Sec. 111.70(4)(cm)7r permits the arbitrator to give weight to the traditional standards in effect prior to the 1996 revision of the Municipal Employment Relations Act.

Section 66.77(2), Wis. Stats., sets the tax levy limits at the operating levy rate in 1992. In

order to control costs in the face of rising health insurance premiums, the County must be fiscally responsible and operate under tighter constraints. The County has provided a table in Exhibit 76, 1998-99 Equalized Value/Tax Rates, in which Marathon County is shown to have a tax levy of \$30,856,382, equalized value of \$4,967,829,640 and tax rate of \$6.21. It is noted that the list of seven comparables in this exhibit are not the same as the comparables in the instant case, except for Portage and Wood Counties, and therefore does not permit any meaningful analysis. Other than its argument that spending by Wisconsin counties rose 24% between 1992 and 1996, no evidence has been presented which indicates that Marathon County could not meet the costs of the Union offer. Employer Exhibits 4 and 7 indicate that the 1999 cost of the Employer health insurance offer is \$206,889 while the Union's is \$207,679, making the Union's offer higher by \$790. The total costs of the Employer's offer is \$1,509,347; the Union's is \$1,515,350, resulting in a difference of \$6,003 if the Union's offer were accepted. While this amount might push the County closer to a danger point in its limit of expenditures, nothing in this record substantiates such a hypothesis.

The Union has argued that the greater weight factor clearly favors its offer since the County is among the most healthy economies in the state. Unemployment is down, manufacturing, service, agriculture, tourist, retail and financial sectors are healthy. County property values are growing and personal income exceeds Wisconsin's average (Union Exhibits 15, 16, 20, 22, 23).

Arbitrator Weisberger's 1998 *Lincoln County* award speaks to the greater weight factor:

Given the unambiguous and mandatory statutory language of that section, the undersigned believes that she must give "greater weight" to the data submitted in this proceeding which indicates that local economic conditions within Lincoln County are sufficiently favorable to support the Union's final offer (in addition to the County's final offer) even though she also believes that this statutory factor alone does not mandate selection of the Union's

final offer." (emphasis added).

Supporting the concept that having determined that local economic conditions are such that either offer could be funded, Arbitrator Engmann, in a 1998 case involving *Northcentral Technical College (Clerical Support Staff)*, found that while bad economic conditions would foreclose consideration of an expensive benefit, good economic conditions allow the analysis to continue.

The County has raised an interesting response to the Union's greater weight argument. Since the County is experiencing a healthy economy, the employees are also benefitting from the stable labor market with wages and incomes above the state average. Therefore, the County argues that its employees can afford to contribute toward their health insurance premiums. While it is true that the Social Workers in this bargaining unit are employed and receiving regular wages, one cannot presume that the economic data for a large group, i.e., the citizens of Marathon County, can be specifically applied to individuals and conclude that they can or cannot "afford" a certain expense without knowing more, for example, about an individual's debt level or other obligations. Nonetheless, if the Employer prevails in this interest arbitration, the bargaining unit employees will have no choice but to pay a share of their health insurance whether it will result in sacrifice in other parts of their lives.

The arbitrator accepts the mandate of giving greater weight to the economic conditions of the County in reaching a decision as to which of the two final offers is to be adopted. There is no evidence in this record that Marathon County cannot bear the additional costs if the Union's final offer is selected. The analysis must continue then with an inspection of the evidence regarding health insurance and wages vis-a-vis social workers in the agreed-upon counties comparison, other public sector employees in Marathon County, and private sector employees in Marathon County.

B. Contribution to Health Insurance Premiums\PEHP

1. Internal Comparables (Marathon County Employees)

The major issue in this arbitration is the Employer's desire to change the 16-year status quo of 100% employer contribution to employee health insurance premiums. Under its offer, employees will contribute 5% of the premium beginning on 12/1/99. The cost savings benefit to the County has been argued extensively as has the fact that several other Marathon County bargaining units have already accepted the 5% contribution in their settlements and the Highway Department interest arbitration resulted in the selection of the County's offer. The units which have settled health insurance contributions are:

Health Department Professional Union, Local 2492-B, AFSCME  
Library Paraprofessional Union, Local 2492-C, AFSCME  
Central Wisconsin Airport, Local 662, Teamsters  
Deputy Sheriffs Association, WPPA  
Sheriffs Supervisors Association, SORD (tentative agreement)  
Management Personnel Ordinance, Nonunion  
Library Non-Represented Employees, Nonunion

The arbitrator notes that of the seven units listed above, two are not represented by unions (Management Personnel Ordinance and Library Non-Represented Employees). Therefore, the fact that they have accepted the 5% premium contribution is of lesser import since these units do not have the ability to bargain with management and management unilaterally can impose wages, hours and conditions of employment upon these employees.

As noted earlier, the Highway Department will be assuming the 5% contribution based on the arbitration award issued by Frank Zeidler. There are six remaining AFSCME-represented bargaining units which have not settled: Parks Department, Social Service Paraprofessionals, Courthouse Professionals, Airport, Courthouse office, and the unit herein, the Social Service Professionals. Even if the Sheriffs Supervisors Association is viewed in the same light as the Teamsters, WPPA, and AFSCME, over the Union's objections, only five of

eleven internal comparables have voluntarily assumed the 5% premium payment. Arbitrator

Zeidler stated in the Highway Department award:

...The arbitrator, while recognizing the value of internal consistency as significant in determining selection of an offer, holds that employee contribution to health insurance is presently not the dominant pattern within Marathon County presently among its bargaining unit employees. (page 17)

The County has cited numerous arbitrators who have held that consistency in fringe benefits, e.g., health insurance, is important in order to maintain equity among bargaining units. This arbitrator agrees with this principle but finds that the evidence in this case does not permit the finding which the County has requested.

Tied to the premium contribution is the County's offer of a *quid pro quo*, the Post Employment Health Plan (PEHP). Union Exhibit 60 summarizes the parties' final offers and indicates voluntary settlements including acceptance of the PEHP. Of the four units which settled voluntarily, only two will receive the PEHP, i.e., the Deputy Sheriffs and the Airport unit. In its tentative agreement, the Sheriff's Department Supervisors also will make the 5% contribution to premiums and will participate in the PEHP (County brief, addendum A). This unit will also be receiving a 3.2% increase beginning 1/1/2000. The Health Professionals and the Library unit will not be participating in the PEHP, but rather accepted a wage adjustment and one extra holiday respectively. Thus there are three organized units which agreed to the PEHP and one, the Highway Department, which will participate in it by virtue of an arbitration award which selected the County's final offer. The fact that three units out of eleven (Union Ex. 60 lists ten units; we have added the Sheriff Supervisors T.A.) agreed to the PEHP does not establish a pattern of settlement. Whether the offer of this plan is indeed a *quid pro quo* or merely a plan being foisted off on employees who have no interest in it, as the Union alleges, need not be reached since the evidence shows that the County's argument regarding internal consistency



fails

## 2. Public Sector Comparisons (Local Communities and School Districts)

The County has provided data for eight comparables within Marathon County: Town of Kronenwetter, City of Mosinee, Town of Rib Mountain, Village of Rothschild, City of Schofield, City of Wausau, and Village of Weston. Employer Ex. 56 indicates that only the Village of Rothschild requires no employee contribution for either single or family plan. In the Village of Weston, employees selecting the single plan make no contribution, however, family plan members pay 24.6%. For Mosinee, no data is provided for the amount of the premium; the City pays a fixed amount toward single and family plans. If a different plan is chosen, the employee pays the difference.

Of the 33 employees in the Marathon County Social Services Professional unit, 27 are covered under the family plan, and 6 under single (Employer Ex. 6). For purposes of this comparison, the focus shall be on family coverage.

Compared with Marathon County's final offer of a 5% employee contribution to health care insurance, the local communities data show the following employee contribution (dollar figures converted to percentages by the arbitrator):

Kronenwetter	10.00%
Mosinee	n/a
Rib Mountain	7.84%
Rothschild	0.00%
Schofield	4.53%
Wausau	5.00%
Weston	24.62%

Inspection of these figures reveal a median contribution of 7.84%, compared to the 5% in Marathon County's final offer, and the 0% status quo sought by the Union. Only one community, Rothschild, comports with the Union's offer; the others require some contribution and Marathon County's 5% is below the median. Based on these data, the County's offer is the

more reasonable.

The County also proposes a comparison of employee health insurance contribution with that of local school districts. These are: D.C. Everest, Marathon City, Mosinee, Wausau, Wittenberg-Birnamwood, and Northcentral Technical College. Employer Ex. 58 shows that each one of these six employers requires employee contribution ranging from a low in Mosinee of 1.48% for family plan to 10% in several of the units. In D.C. Everest Secretaries contribute 10% while Custodians contribute 5%. The median contribution is 10%, significantly exceeding the County offer of 5%. The arbitrator therefore concludes that the County's offer is the more acceptable.

### 3. Private Sector Comparisons

The County provides data in Employer Exhibit 60 showing ten major Wausau area employers in the private sector. All of these employers require employee contribution to health insurance. Two of the employers, Marathon Electric and SNE have both non-union and union employees; in both cases the plans differ with the premiums for the union plans higher. The County contends that the employees in the private sector contribute significantly more than the 5% the County is seeking.

The arbitrator will take note of this comparison despite the fact that the majority of private sector employer are not organized and the employees do not have any input into their level of benefits. Even where some employees are organized, the pattern of contributing to health insurance is in evidence: Marathon Electric, family plan, 9.5%; SNE, family plan 24.76%; Wausau Paper Mills, family, 13.1%.

Because these data show that the majority of private sector employers are not unionized, this arbitrator believes that lesser weight must be given this factor. Nonetheless, the County has shown that its final offer more closely approximates the pattern of health insurance

contribution than that of the Union.

#### 4. Other County Social Services Comparables

It has been this arbitrator's position that the most persuasive factor to be given weight among the "other factors" standard of 7r is that of the comparison between employees involved in the interest arbitration and employees performing similar services in other communities. Here, social service professionals in Marathon County have been compared with social service professionals in an agreed-upon pool of counties. These workers share similar education and their jobs call for similar levels of skill, effort, and responsibility. Thus a comparison between like job classifications yields a more reliable analysis than, for example, comparing social workers to deputy sheriffs or highway employees.

As noted earlier the parties have agreed to the external comparables, i.e., other county social service professional units pursuant to Sec. 111.70(4)(cm)7r.(d): Chippewa, Eau Claire, Fond du Lac, La Crosse, Outagamie, Portage, Winnebago and Wood. Employer Exhibit 46 sets forth the data regarding whether there is a premium contribution. With the exception of Eau Claire, all counties have a contribution requirement, although in some cases employees have an option, as in Chippewa, of making a 7% contribution for the traditional plan or selecting a non-traditional plan, i.e., a PPO plan which does not require any employee contribution. In two of the comparables, Outagamie and Winnebago, employees are responsible for costs above 105% of the lowest priced plan offered. Inspection of Union Exhibit 42 and Employer Ex. 46, while containing disparate figures, reveals a pattern of employee contributions, ranging from 5% to 10%. The County's final offer is, therefore, deemed to be the more appropriate.

To summarize the discussion above regarding employee health insurance contribution of 5%:

1. The internal comparables do not support the County's final offer.
2. Comparison with other public sector employees supports the County's final offer.
3. The private sector data minimally support the County's final offer, however, it is not compelling because the majority of the companies are not unionized, thus precluding a reliable comparison.
4. The external comparables support the County's final offer.

Based upon the discussion above, it is the arbitrator's finding, and it is so held, that the health insurance offer of the County more closely reflects the trend of requiring employee contribution and it is, therefore, adopted.

#### C. Wage offer

The County's final offer for wages in 1999 is 3%; that of the Union is 3.5%. In its brief, the Union states that its wage offer, while secondary in importance, is consistent with statutory criteria, particularly since Marathon County has an affluent and diversified local economy. It is argued that in a comparison of actual hourly wages Marathon County Social Workers lag significantly behind that of the external comparables.(Union Exhibits 44, 45, and 46). The Union contends that the wage problem has become so acute that the employer has been experiencing recruitment and retention problems.

The County denies that it is experiencing problems with recruitment or retention and points to its Exhibit 5 which shows that 73% of the Social Worker Professional staff are at the Social Worker III level and that a majority of this group has been employed since the early 1970s and 1980s. The County couches its comparative data in the form of percent increment for 1998 and 1999 (Employer Exhibit 45). Chippewa, Eau Claire, Fond du Lac (Step 5 received 3.5%), and La Crosse Counties settled for 3% for 1999, Winnebago settled for 3.2%, and Portage received a 3% increase with a 1% equity adjustment for all employees. Outagamie and

Wood Counties have not reached settlement. Of the six counties for whom data are available, four received 3%, one 3.2%, and one 3% with a 1% adjustment. The median of these figures is 3% which comports with the County's offer.

The arbitrator does not find sufficient evidence in the record to support the Union's allegation of recruitment and retention problems. Although Union President Robert Nicholson testified at hearing that he had direct knowledge of recruiting problems, he relied for this conclusion on one situation. He stated that two months earlier he was approached by the Deputy Director regarding an applicant for a Social Worker position. A request was made for the Union to make an exception to the salary schedule and permit the applicant (who apparently did not have a Master's Degree) to start at the beginning of the Social Worker III category instead of Social Worker II at the 30 month level. The Union denied this request and this applicant was not hired. Mr. Nicholson also stated that there were two vacancies. The unstated conclusion here is that if the pay rates were higher, as the Union wishes, there would have been no need for management to request an exception to the pay schedule. While this may be one reason why the applicant did not accept the position, it is not possible, based upon such limited information, to accept the Union's position as conclusive.

Comparison of percentage of wage increase for the Marathon County internal comparables reveals that all units which settled voluntarily will receive 3% in 1999: Health Professionals, Library, Deputy Sheriffs, and Airport ; the tentative agreement of the Sheriffs Supervisors was also 3%. The Highway unit will receive 3% based on Arbitrator Zeidler's award. These data support the County's final offer.

Additional support for the County's final offer on wages is found in Employer Exhibit 61, a BNA Bulletin to Management, dated 12/17/98 which reports the median deferred wage increase for 1999 in state and local government at 3%.

The County's argument about catch-up is that each position should be addressed individually and not by granting the whole unit a wage increase thereby breaking the consistent settlement history of Marathon County. The arbitrator understands the County's desire for consistency, but cautions that circumstances may well occur when it may be appropriate for the Union to break out of the consistency mold. However, this arbitration does not appear to be that case since there is insufficient evidence to support the Union's final offer of 3.5%. As noted earlier, a different picture in the external comparables, which carry significant weight, might well have yielded a different result in a decision on wages.

The County's final offer of a 3% increment for wages in 1999 is therefore adopted.

#### VI. CONCLUSION

Two decisions have been made in this case, first that the statutory "greater weight" factor is controlling, and second, under "other factors to be considered" that County's final offer including a 5% health insurance contribution and a 3% wage increase in 1999 is the more reasonable. It is necessary to address and harmonize these two findings.

First, the record clearly supports the Union's assertion that, because of its thriving economy, Marathon County could afford the costs of its final offer. However, having made that finding does not end the discussion. In this case the County does not wish to change its history of consistency in wage increments and fringe benefits and it further points to the important external comparables which support its offer. The County is not claiming an inability to pay; it contends that its final offer better serves the interests and welfare of the public. The fact that the County has sufficient funds in its coffers does not force it to funnel a greater proportion into employee wages and fringe benefits. The County may wish to spend its revenues elsewhere, e.g., crime prevention, infrastructure, upgrading technology, et al. It is the arbitrator's opinion that the County may properly make that determination. Had the County's offer been significantly

inferior to that of the external comparables, a different outcome might well have occurred. However, that was not the case herein. Based upon all the totality of the record, the arbitrator finds that offer of the County should be selected.

VII. AWARD

The final offer of the County shall be adopted and incorporated in the parties' Collective Bargaining Agreement for 1998-1999.

Dated this 3<sup>rd</sup> day of November, 1999 at Milwaukee, Wisconsin.

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Rose Marie Baron, Arbitrator