BEFORE THE ARBITRATOR

In the Matter of the Petition of MARATHON COUNTY COURTHOUSE PROFESSIONAL EMPLOYEES, LOCAL 2492-D, AFSCME, AFL-CIO To Initiate Arbitration Between Said Petitioner and MARATHON COUNTY	Case 254 No. 56095 INT/ARB-8415 Decision No. 29519-A

Appearances:

Mr. Philip Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 7111 Wall Street, Schofield, Wisconsin 54476, on behalf of the Union.

Ruder, Ware & Michler, Attorneys at Law, by Mr. Dean R. Dietrich, 500 Third Street, Suite 700, Wausau, Wisconsin 54402, on behalf of the County.

ARBITRATION AWARD

Marathon County Courthouse Professional Employees, Local 2492-D, AFSCME, AFL-CIO, hereinafter referred to as the Union, and Marathon County, hereinafter referred to as the County or Employer, met on several occasions in collective bargaining in an effort to reach an accord on the terms of a new collective bargaining agreement to succeed an agreement, which by its terms was to expire on December 31, 1997. Said agreement covered certain professional employees of Marathon County, excluding supervisory, managerial and confidential employees, and all other County employees. Failing to reach such an accord, the Union, on February 6, 1998, filed a petition with the Wisconsin Employment

Relations Commission (WERC) requesting the latter agency to initiate arbitration, pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act, and following an investigation conducted in the matter, the WERC, after receiving the final offers from the parties on December 15, 1998, issued an Order wherein it determined that the parties were at an impasse in their bargaining, and wherein the WERC certified that the conditions for the initiation of arbitration had been met, and further, wherein the WERC ordered that the parties proceed to final and binding arbitration to resolve the impasse existing between them. In said regard the WERC submitted a panel of seven arbitrators from which the parties were directed to select a single arbitrator. After being advised by the parties of their selection, the WERC, on March 3, 1999, issued an Order appointing the undersigned as the Arbitrator to resolve the impasse between the parties, and to issue a final and binding award, by selecting either of the total final offers proffered by the parties to the WERC during the course of its investigation.

Pursuant to arrangements previously agreed upon, the undersigned conducted a hearing in the matter on May 18, 1999, at Wausau, Wisconsin, during the course of which the parties were afforded the opportunity to present evidence and argument. The hearing was not transcribed. Initial and reply briefs were filed and exchanged, and received by August 14, 1999. The record was closed as of the latter date.

THE FINAL OFFERS AND STIPULATIONS OF THE PARTIES:

The Union and County final offers and stipulations are attached and identified as attachment "A," "B," and "C," respectively.

BACKGROUND:

Hearing in the instant case was held on May 18, 1999. Representatives for each side reviewed and explained their exhibits to the Arbitrator.

Additionally, Union representative Philip Salamone testified as to other settlements within the County and a second witness, Shawn Esser, an employee and President of the local Union, testified that employees in the instant unit, at Union meetings, indicated that they preferred additional money rather than the benefit offered by the Employer.

There are approximately 560 represented employees in the employ of Marathon County in ten bargaining units. There are also non-Union units of employees in units designated as management personnel, library professionals and Sheriff's Department supervisors. Four of the unionized units and three of the non-unionized employees voluntarily settled.

POSITIONS OF THE PARTIES:

Union's Position

Health Insurance Bargaining History

In summarizing the parties' history, the Union notes that the 1980's and 1990's have seen a number of cost containing changes in Marathon County's health insurance plan. While nearly all modifications were ultimately voluntary, there have also been a number of aggressively contested arbitral disputes (in other units). In the majority of instances, however, savings by the Employer were eventually accomplished, and done so largely at the expense of Marathon County employees and their families.

Local Economic Conditions - Greater Weight Criterion 7g

The Union notes that in 1996, the Wisconsin Legislature revised the Municipal Employment Relations Act (MERA) by modifying the criterion and providing arbitrators with legislative mandated direction on weighing.

Under the new system, arbitrators were required to accord "greatest weight" to any state laws limiting the right of a local government to raise wages. 1/ In addition, the Legislature directed arbitrators to give "greater weight" to "local economic conditions."

It is the Union's position that since the Union offer in the instant proceeding is slightly more costly, this modification of the statute should have considerable impact upon both the health

1/ The Union does not believe that this criterion applies to the instant case. No such applicable mandate exists.

insurance and wage disputes.

In support of its position, the Union relies on, inter alia, escalating property values in Marathon County, personal increase growth, low unemployment and the general health of the economy in Marathon County as stated by Roger Luce, as follows:

> A strong manufacturing base has everything to do with driving the rest of the sectors. We now have a strong service economy based on manufacturing and a growing commercial and retail business based on people holding jobs that supply disposable income.

The Union argues that considering the limited economic impact of the difference in the parties' final offers in the instant proceeding, there can be little, if any question that Marathon County can well afford the economic costs associated with the Union's final offer and that statutory criterion 7g is highly supportive of its position.

Health Insurance Dispute

The Union considers the health insurance question to represent the major dispute in this proceeding. In fact, had it not been for the insurance issue, there is little doubt but that there would have been a voluntary settlement. The Union argues that the County offer seeks to have the Arbitrator institute an abandonment of the 16-year status quo of fully funding premiums. In return, the County seeks to institute the completely new benefit known as the Post Employment Health Plan (PEHP) with a

twelve dollar per (2 week) pay period contribution. It is the Union's position that said "benefit" in exchange for the Employer's proposed 5% pick-up of premiums by employees is really a loss for employees. The Union reasons that while those paying simple premiums of $12.66 per month benefit from the approximate $24 per month PEHP contribution by the Employer. Family Plan members would be losing because their premiums of $29 for 24 months would exceed the $64 per month contribution of the Employer.

Also, it is argued, that for both single and family enrollees, the premium contribution sought by the County is expressed as a percentage, while the PEHP plan contribution is represented in dollar terms. Unless the history of health cost increases makes an unprecedented turn-around, the total of the PEHP plan offset will be rapidly dwarfed by escalating health insurance costs.

More importantly, the Union argues, as Union President Shawn Esser testified, there is almost no interest in the PEHP plan within the membership of his bargaining unit. Thus, the County is seeking to force upon employees a largely sub-standard, dollar-capped benefit for which workers have little or no interest, in exchange for a reduced benefit, which employees have fought and sacrificed in recent years to attain and maintain.

Internal Comparability

The Union believes that the Employer's contention that there is a consistent internal 1998-1999 pattern of settlement in Marathon County should be rejected by the Arbitrator.

According to the Union, Marathon County now maintains ten legitimate bargaining units. It is the Union's position, and cites a previous decision of Arbitrator James Stern 2/ in support of its position that in a County with so many bargaining units, the relative size of the units is a crucially important component in determining a settlement pattern. A unit representing a handful of employees, the Union argues, should not carry nearly as much weight as a large unit.

The Union argues that it is important to note that of a total of 569 represented Marathon County employees, only 141 (less than 25%) are within bargaining units which are settled for the 1998-1999 contract year. Thus, by a three to one margin, groups representing the vast majority of employees (428) currently oppose the County's final offer.

And, it is argued, the settlements which were secured by the County do not comport to a consistent pattern. Of the four groups who have settled, only two representing a tiny aggregate of 68 employees (or approximately 12% of the total represented work force) have adopted the PEHP plan as a component of their settlement.

2/ Marathon County (Parks), Decision No. 27033-C (7/3/92, Stern).

According to the Union, there can be little dispute that AFSCME is, by far, the major bargaining representative in Marathon County government's employees. Over 500, or nearly 90%, of the total represented work force have AFSCME as their bargaining agent. It is significant to note that no AFSCME bargaining unit has accepted the PEHP plan as a quid pro quo for the health insurance contribution. Therefore, not a single of the eight bargaining units from the organization which represents the vast majority of the eligible work force has voluntarily agreed to an offer consistent with that advanced by the County in the instant dispute.

Lastly, the Union argues that a close look at the four internal settlements relied on by the Employer reveals that they are not all the same and further supports the Union's claim that there is no internal pattern of settlement in Marathon County as alleged by the County herein.

External Comparability

There is no dispute as to the appropriate external comparability pool. It was established in the immediately preceding 1990 interest arbitration with Arbitrator Stern. They include the counties of Chippewa, Eau Claire, Fond du Lac, Outagamie, Portage, Winnebago, Wood and LaCrosse.

In the realm of health insurance, the Union believes premiums, deductibles and co-pays to be the three basic components

to compare health insurance cost sharing. It is the Union's position that since co-pays are often difficult to identify for externals without thorough analysis of plan documents, the best workable measure to evaluate this component would be to combine it with deductibles to establish composite "total out-of-pocket" data.

Marathon County employees currently enjoy 100% Employer premium contributions. However, the Union claims about half of its comparables also offer employees at least one fully paid health insurance plan.

The Union contends that while it can be argued that the comparables are somewhat mixed, this is not the case with up-front deductibles.

It is clear, the Union argues, that (despite Marathon County's relative wealth) its employees suffer up-front health insurance deductibles which are generally far in excess (double, and sometimes triple) that of the less prosperous group.

The Post Employment Health Plan (PEHP) - External

The Union does not consider the PEHP to constitute a quid pro quo.

The Union notes that only two smaller than average Marathon County bargaining units have accepted it, and there is little, if any, interest in the plan among the membership of the instant Union.

The Union questions why the Employer is attempting to extract from employees a benefit they value in exchange for an item they clearly do not want. Citing Edward B. Krinsky in Oconto County, Decision No. 29085-A, 1/7/98, the Union argues that the Union should not be forced to accept a new benefit it does not want. Such benefits should be negotiated.

Further, it is argued that there is very little external support for PEHP.

"Compelling Need" and "Quid Pro Quo" Considerations

The Union claims that while Marathon County's health insurance rates currently appear somewhat high compared to its neighboring counties, they are not inordinately high. In addition, the costs are certainly affordable by this relatively prosperous Employer. It also should be recognized that according to health insurance data submitted by both sides, the Marathon County plan has had a history of extremely wide swings in rates.

It is the Union's position that the Employer has neither shown a "compelling need" for its proposal or a "quid pro quo" for the change proposed. It is argued that a proposal like the Employer's should be negotiated and not attained in arbitration.

Wage Dispute

The Union considers the wage question secondary in the instant dispute. It argues that it would not have proceeded to arbitration had the health insurance dispute not been pursued by

the Employer.

However, it is argued, the wage offer of the Union is nevertheless consistent with the statutory criterion.

This is especially true in light of 7g. It is argued that Marathon County has an extremely affluent and diversified local economy whose future appears bright. The County can well afford the relatively minor additional costs associated with the Union offer.

In fact, the Union argues, in terms of total compensation, it is noteworthy that the County's 1999 contribution to the Wisconsin Retirement System's was reduced from 12.4% to 11.6%. This actually represents slightly more than the 1999 wage dispute itself. And this was on top of a 1998 WRS reduction of .3%. Within this contract alone, it is argued, the Employer realized a .8% reduction in its WRS responsibility.

The internal situation, the Union contends, is mixed with the same pattern of dispute settlement as in the health insurance dispute. Six generally larger units seek the 3.5%, while the other four have accepted the 3%.

It is also the Union's position that the external settlement date is mixed and incomplete. Many of the comparable employers either have no comparable positions or maintain non-represented ones.

Summary and Conclusions

For all of the foregoing reasons, the Union believes that its final offer is far more consistent with the statutory criterion and its subsequent applications. The final offer of the Union should be selected.

Employer's Position

It is the Employer's position that the Arbitrator, pursuant to Section 111.70(4)(cm)7, Stats., must give greatest weight to the state law that limits the County's ability to increase taxes.

The Employer argues that under this statue, the ability of counties to raise taxes to pay for increased wages, fringe benefits, and other costs, is severely limited since the tax rate is frozen at 1992 levels.

The Employer reasons that the levy limits were meant to force municipalities to control costs, however, the Union's final offer does the opposite. The Union, it is argued, has overreached when proposing a 3.5% wage increase in 1999 since the County cannot raise the tax levy to fund this larger increase. The tax levy limit law forces governments to be more fiscally responsible and to operate under tighter constraints and the Union's final offer will undermine any effort by the County to control costs.

The Union's final offer, it is argued, asks for too much of a wage increase while the County is proposing a common and sensible health insurance cost-sharing proposal that benefits both the County and the Courthouse professional employees as they are able

to pay for future health care costs through PEHP. The Arbitrator must consider the fiscal constraints imposed upon Marathon County and find that the "greatest weight factor" criterion supports selection of the County's final offer.

The Employer notes that Section 111.70(4)(cm)7g, Stats., states that an arbitrator is to give "greater weight to economic conditions in the jurisdiction of the municipal employer" when selecting between the parties' final offers.

Although neither party provided statistical information about the external comparables to compare data such as median and taxable income, property values, etc., the Employer concedes that Marathon County is inarguably experiencing health economic conditions. The citizens in the County enjoy a stable labor market with wages and income comfortably above the State average. Therefore, the Employer reasons, the argument can be made that since citizens, including Courthouse professional employees, are experiencing a healthy economy, which includes higher wages and low inflation, they can also afford to contribute toward their health insurance premiums.

On the other hand, the Employer argues that a healthier economy does not mean the County receives any more State aid or more property taxes. The County is still required to maintain a 1992 tax rate yet fund rising expenditures in the County. However, it is argued, the low interest rates and higher wages the labor market is experiencing allows for higher personal income,

therefore justifying the ability of employees to contribute toward their health premiums.

Internal Comparables

Citing numerous arbitration decisions, the Employer argues that arbitrators have long recognized the importance of internal settlement patterns and maintaining consistency in the fringe benefits provided internal bargaining units. Consideration of internal settlements and consistency are proper factors for consideration under criteria "d" and "j" of Section 111.70(4)(cm)7r, Stats., and are to be given substantial weight when selecting between final offers.

Here, the County claims it has attempted to establish internal consistency in fringe benefits for all of its employees as it has maintained for years. Four out of the ten bargaining units have voluntarily agreed to a 5% employee health insurance premium contribution along with all of the County non-represented employees.

The Health Department professionals and the library para-professionals were the first units to settle. These two groups proposed items they had been seeking in the past as a quid pro quo which the County found to be reasonable and greed to. The Health Department professionals had been seeking higher wage adjustments for the Preventive Health classifications and the library para-professionals sought an additional holiday to benefit those

employees who do not earn vacation. The County argues that the Teamsters and WPPA/LEER groups voluntarily settled with the County for the exact same settlement as is included in the County's final offer. Two AFSCME units, discussed above, settled voluntarily and now the Employer argues it seems that the remainder of the AFSCME units are attempting to"whipsaw" the County which, as previous arbitrators have held, is against good public policy.

The Unions, the Employer reasons, should not be rewarded for being obstructionists to a voluntary settlement as achieved with the other unions. The County's history of maintaining the same level of fringe benefits should not be altered absent any compelling reason. In this regard, the Employer claims that the basic fringe benefits such as sick leave, holidays, vacation and retirement are extremely consistent among all of the Marathon County employees with the exception of the additional holiday granted to the library paraprofessionals as a quid pro quo for the insurance premium contribution and some variances with the deputies due to the uniqueness of their duties.

With respect to health insurance benefits, the Employer argues that said benefits affect all employees the same way regardless of their job duties and should be implemented consistently by an employer.

In addition to maintaining consistent fringe benefits to its employees, the County contends that it has maintained an extensive historic comparable settlement pattern with its employees. The

Employer claims that the general wage increase for all unions in Marathon County has been nearly identical since 1983 with only minor variances (most likely due to equity adjustments). Again, as is the case with the health insurance contribution, four unions have voluntarily settled for a 3.0% wage increase in 1999 as the County provides in its final offer. This, it is argued, clearly shows the reasonableness of the County's final offer.

With respect to the Union's offer, the Employer argues that its offer of 3.5% is excessive and destroys the 15+ year history of a consistent wage settlement pattern in the County. The County final offer of a 3.0% wage increase in 1999 is the same as what the four units that have settled received and what the non-union employees received. The Employer points out that to further emphasize the County's continuance of internal consistency, all of its final offers in the pending arbitrations propose the exact same 3.0% wage increase and health insurance proposal.

The Employer notes that the Union has also established a consistency, but at a higher cost. The Union has proposed a 3.5% increase in 1999 in all of its final offers. The Union, it is argued, is merely trying to achieve an unjustified larger increase through arbitration than it could have achieved voluntarily.

The Employer stresses the importance of internal consistency and cites several arbitration decisions in support thereof. The Union's final offer, it is claimed, does not maintain the internal settlement pattern that has developed for 1999. It is argued that

if the Union's final offer is selected, the four units, who voluntarily settled for the same exact increases as in the County's final offer, will surely have hard feelings and will be eager to pursue large adjustments during the next round of bargaining or will try to achieve a large increase through arbitration. Should the Union's final offer be selected, not only would this Union receive a half of a percent greater wage increase, but they would not be contributing toward their health insurance premium as the others are who have settled. This, it is argued, would destroy the longstanding County effort to treat all employees the same and provide a consistent wage and benefit package for all.

Further, it is argued that the Union cannot justify its reason for the extra one-half percent in its offer. The County urges the Arbitrator not to disturb a mutually-established wage history of uniformity. Absent any compelling reason for rejecting the history of consistency, the Arbitrator should select the County's final offer.

Further, in support of its position, the Employer contends that settlement of the four Marathon County units, including a 5% employee premium contribution and a 3% wage increase in 1999 shows that the County's final offer is reasonable and should be selected by the Arbitrator.

It is argued that arbitrators have recognized that their function is to place the parties in the position they would have

ended up had a voluntary agreement been reached.

Since the history of wage settlements and health insurance benefits provided to employees in Marathon County has been significantly consistent, it is probable, according to the Employer, that the parties in this case would have reached a voluntary agreement very similar to that of the deputies, the Airport, the Health Department and the library employees.

Generally, it is argued, when a few units within an employer settle, it shows the reasonableness of the exchange between the parties.

It makes sense to adopt the County's final offer which is very reasonable and will maintain consistency in the history of health insurance benefits and wage settlements. To break this pattern would cause havoc in future negotiations in the County and would punish those units who feel they have agreed to a fair and reasonable settlement.

The County has Justification of an Employee Contribution and the Quid Pro Quo

The County recognizes that its premium contribution proposal will result in a change in the status quo and that a quid pro quo may be required for that change.

Here, the County argues that it has demonstrated, by clear and convincing evidence, a need for the employees to take part in and contribute toward a portion of their health insurance premium. Marathon County has shown that it has nearly the highest monthly

premium and the highest monthly dollar contribution of the external comparables. Even though there has been periods of relief where the premiums would decrease for a year or two, the premiums inevitably bounce back to an even higher rate. According to the employees, the 25% family premium increase and 27% single premium increase the County experienced in 1998 and the additional 11.4% (family) and 12.5% (single) increase in 1999 show no signs of leveling off. The Employer reasons that when reviewing alternatives to addressing the County's expenditures on health insurance, it makes sense to look at the option of employee premium contributions that is widely accepted in the surrounding counties.

With respect to a quid pro quo, it is the Employer's belief that it has offered a "win-win" quid pro quo in the PEHP plan.

PEHP was developed and is administered through the Public Employees Benefit Services Corporation also known as "PEBSCO." The purpose of PEHP is to provide funds to employees to help pay health insurance premiums at retirement. However, any "qualified" medical expense (e.g., deductibles, eye glasses, prescriptions) will be covered under PEHP and the funds may be used to pay these expenses. The money placed into the PEHP account is available immediately after leaving employment with Marathon County or upon the death of the employee. An example of utilization of these funds may be when an employee leaves the County for other employment and is not eligible for insurance for a certain length

of time. The funds in their PEHP account may be used to continue their health insurance benefits through the County until the account is depleted. Should the employee die, the entire PEHP account would automatically transfer to the decedent's dependents to either pay health insurance premiums or any "qualified" medical expense. In the event the employee has no dependents, the money in the employees account will be divided equally amongst the Union members in this (Courthouse professionals) Union. The County does not receive this money.

Each employee has his or her own personal PEHP account. The employee may choose (from a select group of mutual funds) which mutual fund to invest his or her money into. The employee has control of his or her account and has the option to change funds from the select group at any time. Since this money is governed by IRS regulations, all money placed into the account and withdrawn from this account is 100% tax free.

The County proposes to contribute $12 per day period into each employees' personal account tax free. The same amount will be contributed equally for each employee regardless of full-time or part-time status. Additionally, the money is placed into the account tax free and is received by the employee tax free. The employees are actually getting more for their money in that they are not paying any taxes on it. The County will also be paying any administrative fees associated with this plan. It is equally important to note that PEHP does not replace the existing sick

leave payout benefit the employees currently receive.

External Comparables

As noted, Section 111.70(4)(cm)7r e, Stats., states that in selecting between the parties' final offers, the Arbitrator is to give consideration to a comparison of the wages, hours and conditions of employment of the employees in this dispute with other employees in comparable communities. The Employer claims that a review of this criteria supports adoption of the County's final offer.

There is no dispute over the appropriate comparables. The Employer contends that all but Eau Claire County of the eight (8) comparables require an employee contribution. LaCrosse County employees pay 10% of their premium and an employee in Outagamie County could pay up to $112.03 per month depending on the plan chosen. The County's final offer provides for a 5% premium contribution which, it is argued, is right in line with its similar sized neighboring counties (Portage and Wood) which require their employees to pay 5% of the premium.

Equally important, the Employer argues, is the fact that Marathon County has nearly the highest health insurance premium and the highest dollar contribution of all the comparables and is bearing this cost and the increases each year on its own. Based on Employer Exhibit 46, the Employer argues that Marathon County: (1) has a monthly premium over $44.94 per employee per month more

than the average of the comparables; (2) under the County final offer, Marathon 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; (3) although the County's premium contribution level is nearly the highest of all comparables, under the County's final offer, the monthly employee contribution would be less than the average employee contribution of the comparables who contribute toward their monthly premium.

The County currently pays, in full, the single and family health insurance premiums for the Courthouse professional employees. Any increase in premium is absorbed solely by the County. The Employer argues that Marathon County has experienced a 36.8% increase in the last two (2) years. (Employer Exhibit 37) In 1997, the County and its labor unions created a Labor-Management Committee to discuss the benefits and drawbacks of implementing a PPO Plan within the County. It was agreed by the parties that it was in the employees' and the County's best interests to do so and such a plan was established. Although the PPO Plan did curb premium costs in 1997, since then, according to the Employer, premiums have skyrocketed leaving the County with the sole responsibility to absorb the large increases. The employees and the County have been pleased with the PPO Plan; however, premiums continue to rise. The County argues that it has nearly exhausted all means of bearing the burden of health

insurance premiums. It is agreed that since nearly all of the comparables require their employees to pay a portion of the premium, it is reasonable for marathon County employees to do so also.

Further, the Employer argues that the Union's 3.5% wage offer in 1999 is not supported by the comparable pool.

The County's final offer provides for a 3.0% wage increase for 1999 and the Union's final offer includes a wage increase of 3.5% in 1999. 3/ Citing Employer Exhibit 44, the Employer contends that it shows that the Union cannot justify its wage increase offer of 3.5%. Chippewa, Eau Claire, Fond du Lac, LaCrosse and Outagamie Counties have all settled or received a 3% in 1999. Winnebago County received a 2.75% increase in 1999. The Employer claims only Portage County received more than the Union is offering when they received a 3% general increase plus an additional 1% adjustment. Wood County remains unsettled for 1999.

It is agreed that the external settlement pattern obviously does not reflect a 3.5% increase. Six of the external comparables have voluntarily settled for a 3.0% or less in 1999 as the County has offered the Union. Thus, it is argued, the external settlements further support the County's final offer.

Other Criteria

3/ As previously mentioned, the parties have agreed to a 3% wage increase for 1998 which has been paid to the employees.

It is the Employer's position that comparisons with other communities within Marathon County, including the City of Wausau, and the school districts reveals that the Employer's offer is more comparable to those units of government than the Union's. In support of same, the Employer cites Employer Exhibits 64 - 66.

The same, it is argued, is true with comparison to the private sector. (Employer Exhibit 68)

Cost of Living

It is the Employer's position that based on the declining CPI, the County believes that its wage offer of 3% in both years, its total package increase of 4.17% in 1998 and 3.37% in 1999, and its escalating health insurance premium costs more closely match this criteria and supports selection of its final offer.

Interest and Welfare of the Public

The County submits that its final offer 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 claims that it does not contend that it has an inability to pay for the Union's offer. The more appropriate analysis is whether it is reasonable for the County to continue paying 100% of the health insurance premiums along with providing a 3.5% wage increase the Union proposes.

The Employer contends that allowing certain employees to maintain fringe benefits above those provided to other employees

who have recognized the burden the County assumes each year as premiums increase is not in the best interests and welfare of the public. Further, rewarding the employees in this unit a larger wage increase because they were not willing to addressed premium sharing certainly will not be conducive to employee morale. It is agreed that providing all of the employees with a similar settlement will enhance the relationships between the employees.

Conclusion

In support of its final offer, the County submits:

1. The statutory criteria provides that the Arbitrator must look at the "greatest weight" factor and first give consideration to any State law which places limitations on expenditures that may be made or collected by a municipal employer. The County is required to maintain its 1992 tax rate while solely absorbing rising health insurance premiums. In addition, the Union's higher wage offer does nothing to keep costs down.

2. Selection of the County's final offer would maintain consistency in the established history of fringe benefits and wage settlements provided to its employees. Adoption of the Union's final offer would create unreasonable inequities amongst County employees since a portion of the employees would be contributing toward their health insurance premium while others do not. Equally, disturbing is the fact that these employees would receive a larger wage increase while not paying a premium contribution.

3. The external comparables including the established comparable pool, the local communities, local school districts, and large employers in the Wausau area clearly support the County's final offer. The large majority of public sector employers require a premium contribution. The fact that the Union bargaining committee had reached a tentative agreement including a 5% employee premium contribution further shows the reasonableness of the County's position.

4. The County has provided a tax free dollar-for-dollar quid pro quo that addresses high premium concerns the County is currently facing. The quid pro quo also addresses funding of health insurance costs in the future when the employee is living on a fixed income.

5. The County's final offer is fair and equitable and undoubtedly exceeds the CPI. The Union's wage offer asks for a larger wage increase not supported by internal or external settlements.

As a result, the County's final offer should be selected by the Arbitrator to be included in the successor collective bargaining agreement.

Union's Reply Brief

The Union takes issue with certain claims made by the Employer and re-states its position in those areas. Namely, the Union argues there is no evidence whatsoever regarding the

statutory limitations of its ability to raise sufficient taxes or its current operating levy rates; that criteria 7g supports a contention that employees, due to a health economy, can very well afford to contribute to their health insurance premiums; that while there is a history of maintaining consistent fringe benefits and wages, internally, there is no internal pattern established in Marathon County; that the Employer's external comparisons in health insurance premium costs is selective and fails to recognize that two counties (Chippewa and Outagamie) offer plans that are 100% employer funded and that employees in this unit have higher deductibles than some of their comparables; that the Union's 3.5% wage increase as compared to the appropriate comparables, is only pennies apart over a two-year premium and that the insurance issue remains the determinative issue; and that the Employer's claim of an adequate quid pro quo or a "win-win" situation is not accurate and is a benefit that the Employer is trying to force upon its employees.

Based on its initial brief and reply briefs the Union argues that its final offer is the most reasonable one and should be adopted by the Arbitrator.

Employer's Reply Brief

The Employer reiterates its major position and specifically discusses the benefits of its insurance plan and costs; that employees may utilize the Tax-Free Section 125 Plan to pay the 5%

contribution; that the Union cannot justify its 3.5% wage offer in 1999; that while the Employer was not necessarily required to offer a quid pro quo, it did so and it is a good additional benefit for employees and that in this regard the Union's claim of no employee interest is questionable; and that Marathon County employees enjoy an exceptional total compensation package.

Based on its initial brief and reply brief, the Employer urges the Arbitrator to select the County's final offer as the most reasonable of the two offers.

DISCUSSION:

Evidentiary Ruling

An evidentiary issue arose during the hearing which was not resolved. The Arbitrator deferred ruling in favor of allowing the parties to brief their positions and addressing the issue in his award.

The issue is whether a tentative agreement reached by the parties in negotiations, but rejected by one of the parties, should be allowed as evidence in an interest arbitration proceeding. For reasons stated previously by many other arbitrators, I think not. Simply put, parties should be encouraged, not discouraged, to voluntarily settle their differences in negotiations (and mediation) without fear of subsequent consequences. To allow the introduction of rejected tentative agreements during negotiations would have the opposite

effect and hinder the free exchange of ideas and positions in bargaining. As stated by Arbitrator Jos. B. Kerkman " . . . to do so, . . . is likely to make parties reluctant to enter into such an agreement if it were later to be used adversely against them, and therefore, would result in a chilling effect on the bargaining process."

For reasons stated above, the parties' rejected tentative agreement reached in this case will not be considered.

Merits

Section 111.70(4)(cm)7 of the Wisconsin Statutes directs the Arbitrator to give weight to the following criteria:

> 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 legislative or administrative officer, body or agency which places limitations on expenditure 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 tin (sic) 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:

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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employed, (sic) including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization 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.

In applying the above criteria, the Arbitrator must determine which offer is more reasonable based on the evidence presented. The final offer of the parties places two issues in dispute: the 1999 wage increase and whether employees should begin contributing 5% of the health insurance premiums.

The Employer in its final offer proposes a 3% increase in wages in both 1998 and 1999. Additionally, its proposes that employees pick up 5% of the health insurance premium cost of the single and family plans. In exchange, a PEHP is offered with an Employer biweekly contribution to each employee in the amount of $12.00. The monies in the plan are tax-free dollars. On a monthly basis it amounts to $26.00. 4/

The Union's final offer is limited to the wage increases in 1998 and 1999. It proposes increases of 3% and 3.5%, respectively.

STATUTORY CRITERIA:

Greatest Weight

Pursuant to Section 111.70(4)(cm)7, arbitrators shall give greatest weight to ". . . limitations on expenditures that may be made or revenues that may be collected by a municipal employer."

However, in this case, there is no evidence that this factor favors either offer. An examination of Employer Exhibits 84 - 86 indicates the tax levy, equalized value and the tax rate of the County and that spending has risen sharply in recent years. It does not, however, establish that the Union's proposal, if otherwise reasonable, cannot be met because of limitations on expenditures or revenues. 5/ The Arbitrator does find that the

4/ $12 biweekly equals $312 yearly which equals $26 per month.

5/ It should be noted that the Employer, itself, is not claiming

parties' offers are so far apart as to make this factor determinative.

Greater Weight

It is undisputed that the economy of Marathon County, as measured by various indicia, is very healthy.

In addressing this factor in a previous case, which is appropriate here also, the undersigned stated:

> The Arbitrator recognizes the importance of the 7g criteria and the 'greater weight' it is given. However, notwithstanding same, it should be noted that a conclusion that the Employer's economic condition is strong does not automatically mean that the higher of the two offers must be selected or, conversely, a weak economy automatically dictates a selection of the Union's final offer." 6/

After considering all of the data presented by the parties, 7/ it is clear to the Arbitrator that both final offers are supported by the economic conditions of Marathon County. Therefore, other criteria must be considered to determine which of the two final offers is most reasonable.

Internal Comparables

The Employer strongly relies on this criterion contending

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an inability to pay the Union's offer.

6/ Iowa County (Courthouse and Social Services), Decision No. 29393-A (2/99).

7/ Employer exhibits 90 - 91, and Union Exhibits 6 - 24.

that there is an internal pattern of settlement within Marathon County, and that the Employer's final offer is consistent with same. The Union disputes that such a pattern exists as claimed.

The Employer has settled with four represented units and three non-represented units. 8/ However, in the opinion of the Arbitrator, the number of employees covered by the settlements (even counting non-represented employees) as compared to the total number of County employees does not support a conclusion that a pattern exists. Among the represented employees, approximately 77% have not voluntarily settled. This figure is not significantly lower when non-represented employees are considered. In short, to conclude that a pattern exists that must be adhered to, the Arbitrator would be allowing the "tail to wag the dog."

External Comparables

The parties agree the appropriate comparables consist of the following counties: Chippewa, Eau Claire, Portage, Fond du Lac, LaCrosse, Outagamie, Wood and Winnebago.

A. Health Insurance

In support of its position to initiate a 5% employee contribution to health insurance premiums, the Employer also relies on external comparables. Since the Employer is seeking to change the status quo, it has the burden of establishing (1) a

8/ This includes one unit, Sheriff supervisors, that settled after the close of this case.

compelling need for the change, (2) that its proposal reasonably addresses the need for the change, and (3) that a sufficient quid pro quo, if needed, has been offered. 9/

The external comparables with respect to percentage premium contributions by employees and the dollar amount of premiums and the amount paid by employers and employees is as follows:

County	Single %	Family %	Single Out Pocket	Max. Out Pocket
CHIPPEWA	100	100	250	500
EAU CLAIRE*	100	100	0	0
PORTAGE	95	95	300	400
FON DU LAC* (sic)	95	93.5	350	500
LACROSSE				
STANDARD	90	90	500	1300
MONITOR	100	87.6	500	1200
FRAN. SKEMP	90	90	0	0
GUNDERSON	90	90	0	0
OUTAGAMIE				
SELF-FUND PPO	100	100	500	1200
NETWORK HMO	100	100	0	0
NETWORK POS	100	100	1200	2400
UNITED HMO	98.8	99.6	0	0
UNITED POS	94.2	95	1200	2400
WOOD	95	95	200	500
WINNEBAGO	95	95	300	400
MARATHON COUNTY	95	95	500	1200
MARATHON UNION	100	100	500	1200

*Out of Pocket Maximum for in network (PPO)

Monthly Monthly Monthly

9/ Washington County (Department of Social Services), Arbitrator Herman Torosian, Decision No. 29363-A (12/98).

Comparable County	Family Premium		Employer Contribution	Employee Contribution	
Chippewa	$594.00	Trad.	$552.42	$41.85	
	$552.00	PPO	$552.00	$0	
Eau Claire	$549.33	P.O.S	$549.33	$0	
	$592.34	HMO	$492.34	$0	
Fond du Lac	$521.38		$487.49	$33.89	
La Crosse	$631.89		$568.70	$63.20	
Outagamie	$478.58		$451.23	$27.35	
Portage	$528.37		$501.95	$26.42	
Winnebago	$494.88		$494.54	$8.02	
Comparable County	Monthly Family Premium		Monthly Employer Contribution	Monthly Employee Contribution	
Wood	$555.00		$527.25	$27.75	
AVERAGE:	$539.77		$517.73	$28.56	(All 8 comps)
				$32.64	(7 comps w/ contr.)
Marathon County:	$584.71		$555.47	$29.23	
Union:	$584.71		$584.71	$0	

The external comparables do not offer clear-cut support in favor of either party's position. It is a mixed bag. It establishes that three counties have plans with the employer picking up 100%, and that five counties have employees picking up 5 - 10% of the premium cost. With respect to deductibles, Marathon County with a 200/600 deductible is the highest. On the other hand, Marathon County has the highest dollar amount of employer contributions at $584.71 per month. Even under its own proposal the Employer would remain the second highest. Employee

contributions would be slightly higher than the average.

Based on the above, and the fact that health insurance premiums have increased approximately 36% over the last two years (1998 and 1999), the Arbitrator concludes that the Employer has shown a need for its proposal and that its proposal of a 5% employee contribution reasonably addresses the need. The issue of an appropriate quid pro quo is addressed later.

B. Wages

Settlements in comparable counties for 1999 are as follows:

Comparable	1999 Settlement
Chippewa County	3.0%
Eau Claire County	3.0%
Fond du Lac County	3.0%
La Crosse County	3.0%
Outagamie County	3.0%
Portage County	3.0% plus 1% equity adjustment
Winnebago County	2.75%
Wood County	N/S

Clearly, the 1999 external pattern of settlements is 3%. Of the 7 settlements, 5 were at 3%, one lower at 2.75%, and one at 3% with a 1% equity adjustment. No claim of equity adjustment is made in this case.

Interest and Welfare of the Public

The interest and welfare of the public factor alone does not conclusively favor either offer. In the opinion of the Arbitrator, said interest is best served by whichever offer balances out best when the Employer's quid pro quo is balanced against the Union's proposal for an additional 1/2% in 1999.

Cost of Living

The non-metropolitan urban areas CPI North Central States/ Class Size D for urban wage earners and clerical workers increased by an average of about 2% in 1997, 2.63% in 1998, and 2.1% for the first 2 months of 1999. 10/ The natural CPI for the same wage earners increased just over 2% in 1997, 1.34% in 1998 and 1.67% during the first two months of 1999. 11/

The Employer's final offer in both years more closely reflects the increases on the CPI than does the Union's final offer.

Overall Compensation

This criteria addresses the overall compensation received by employees including wages and all fringe benefits. Little evidence was produced regarding the overall compensation of comparable counties. There is enough evidence, however, to suggest that the benefits received by the employees herein in the

10/ Employer Exhibit 87.

11/ Employer Exhibit 88.

area of health insurance, sick leave, holidays, vacation, WRS (100% Employer paid), longevity, jury duty, dental insurance, vision insurance, long-term disability insurance, and perfect attendance leave is sufficient compared to other counties.

Other Criteria

7r.a.No one contested the lawful authority of the Employer to meet either offer.

7r.b, e, f, i and j. These factors were addressed in varying degrees by the parties. Having reviewed the parties' positions and arguments thereto, the Arbitrator finds nothing favoring the selection of one offer over the other in the stipulation of the parties; comparisons with other employees in public or private employment in the same community; changes in circumstances; or other factors normally taken into consideration in determining wages, hours and conditions of employment.

Quid Pro Quo

Having concluded above that the Employer has shown a sufficient need for an insurance premium cost sharing proposal and has made a reasonable proposal to address same, i.e., a 5% pick-up by employees, the question remains whether the Employer's quid pro quo is sufficient.

The Employer is offering a PEHP to employees with the

Employer contributing the equivalent of $26 per month 12/ to the plan and the payment of administrative fees. Employees will be able to use the accumulated money in the plan to help pay health costs and insurance premiums once they leave the employ of Marathon County, either by retirement or otherwise. This is intended to offset the 5% premium contribution or the $12.67 per month for the single plan and $29.24 per month for the family plan. In the opinion of this Arbitrator, the quid pro quo for those on a single plan is sufficient. True, employees will have to begin picking up the $12.67 per month premium contribution in December, 1999, and cannot immediately use the PEHP benefit, but the fact that they will receive slightly more than twice the amount of the premium contribution in the PEHP makes the quid pro quo reasonable.

As for employees on the family plan, they will receive about the same amount of Employer contribution (when tax benefits are factored in) in the PEHP as their 5% premium payment. While the PEHP is certainly a beneficial program, the Arbitrator cannot reasonably conclude that it is a full quid pro quo 13/ for a 5% family premium pick-up. The $29.24 per month pick-up has an immediate impact (as of December, 1999) while the PEHP benefit is

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12/ $12 bi-weekly.

13/ The Arbitrator recognizes that quid pro quo in cases like this are not easily measurable and determinable. It is a rare case where, monetarily, the quid pro quo represents an exact exchange.

prospective. Career employees who will retire with Marathon County may have to wait a very long time before they realize the benefits of PEHP.

Comparison of the Two Total Packages

Notwithstanding the discussion and conclusions reached above, the question of which final offer is more reasonable remains. In this regard, in the final analysis, the Union's final offer of no change in status quo must be measured against the Employer's package including a change in status quo.

In comparing the two final offers, the Arbitrator notes, as discussed earlier, that the agreed-upon comparables clearly establish a pattern of 3% increases in both 1998 and 1999. Only one settlement, Portage County in 1999, exceeded 3% and that was due to an additional 1% equity adjustment. Of the remaining six settlements, five were at 3% and one below. Further, while the internal settlements in Marathon County do not establish an internal pattern, none of them, nevertheless, were above 3%. Lastly, there is no evidence, or claim made, that an increase of 3 1/2% is needed for the purpose of "catch-up."

Moreover, the Union acknowledges it would have no doubt settled if it were not for the health insurance issue. Given the established external pattern of a 3% increase in 1999 and internal voluntary settlements at 3%, it is reasonable to assume that such a voluntary settlement in this case would have been at 3%. In the

final analysis, the outcome of this case depends on whether the Employer's proposed change in the status quo requiring a 5% employee health insurance premium contribution and its quid pro quo for same, or the Union's proposed additional 1/2% increase in 1999, and no change in the status quo is deemed more reasonable.

Frankly, there are weaknesses in both final offers. The Arbitrator is placed in the awkward position of granting employees an extra 1/2% increase in 1999 or allowing a change in status quo without a full quid pro quo. Since there is no support, externally or internally, for a wage increase of more than 3% in 1999, the Arbitrator finds the Employer's proposal more reasonable. In essence, the Union is not just trying to keep the status quo regarding insurance, but is also asking for an additional 1/2% increase. 14/ Had the Union proposed the status quo within a 3% increase in 1999, the Arbitrator would have favored the Union's

proposal. In the final analysis, even though the Employer's final offer does not contain a full quid pro quo for the change it seeks in the status quo, it is more reasonable of the two final offers.

Conclusion

Having considered the statutory criteria, the evidence and

14/ The Union is seeking to set a 3 1/2% pattern for 1999, through this arbitration and the arbitration of five other County units. But there is no support for the extra 1/2%.

arguments presented by the parties, the Arbitrator, based on the above and foregoing, concludes that the offer of the County is more reasonable and, therefore, should be favored over the offer of the Union, and in that regard, the Arbitrator makes and issues the following

AWARD

The County's final offer is to be incorporated in the 1998-1999 two-year collective bargaining agreement between the parties, along with those provisions agreed upon during their negotiations, as well as those provisions in their expired agreement which they agree were to remain unchanged.

Dated at Madison, Wisconsin, this 12th day of October, 1999.

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Herman Torosian, Arbitrator