**STATE OF WISCONSIN**

**Before the Arbitrator**

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**In the Matter of Arbitration**

**Between**

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| **SAUK COUNTY (Health Care Center)** | **Case No. 136** |
| | **No. 56194** |
| **And** | **INT/ARB-8443** |
| | **Dec. No. 29584-A** |

**LOCAL 3148, AFSCME, AFL-CIO**

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**APPEARANCES:**

**On behalf of the Employer:** James Gerlach, Attorney - LaRowe, Gerlach & Roy, S.C.

**On behalf of the Union:** David White, Staff Representative - Wisconsin Council 40, AFSCME

## I. BACKGROUND

On February 20, 1998, the Employer filed a petition with the Wisconsin Employment Relations Commission wherein it alleged that an impasse existed between it and Local 3148, AFSCME, AFL-CIO in their collective bargaining, for an agreement to succeed their labor contract that expired December 31, 1997. As part of their petition, the Employer requested that the Commission initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On May 18, 1998, a member of the Commission's staff, conducted an investigation which reflected that the parties were deadlocked in

their negotiations, and, by March 30, 1999, the parties submitted to said Investigator their final offers. Subsequently, the Investigator notified the parties that the investigation was closed; and advised the Commission that the parties remain at impasse. On April 6, 1999, the Commission certified that an impasse existed and ordered the parties to select an Arbitrator from a list it provided. The undersigned was selected and his appointment was ordered by the Commission on May 24, 1999.

A hearing was scheduled and held on August 18, 1999. A transcript of the hearing was made. Post-hearing Briefs and Reply Briefs were filed. The last Brief was received by the Arbitrator on December 8, 1999.

## II FINAL OFFER (SUMMARY)

The parties have differences in their final offers in four areas: (1) Wages; (2) Health Insurance; (3) Holidays, and (4) Vacations. Both the final offers cover the two-year period from January 1, 1998 to December 31, 1999.

The most significant of these issues are the changes proposed by the Employer in eligibility for health insurance for part-time employees and the amount of the Employer's contribution for full-time employees. Currently, the Contract provides that "part-time employees who regularly worked eighty (80) or more hours per month, but at least 600 hours per year" receive health insurance on the same basis as full-time employees. Eighty hours per month is roughly half-time. Thus, the status quo is, generally speaking, that half-time employees get full-time health insurance. The status quo Employer contribution is 93%. The Union proposed to maintain the status quo on health insurance.

The Employer's final offer provides that effective January 1, 1998, the Employer contribution for full-time employees will be reduced to 90% and that at the same time a IRS Section 125 plan will be implemented. [1] Regarding

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1 While the Employer's Final Offer indicates the new proration schedule would be effective January 1, 1999, the Employer recognizes in its Brief that practical considerations would make it difficult to recoup premium contributions made by the Employer on behalf of part-time employees during the pendency of this matter. Making

reference to testimony at the hearing it is stated in the Brief that the County was not going to force any part-time employees to pay back monies and that the program would be implemented on a prospective basis only.

part-time employees, the Employer proposed the following proration schedule for employees hired after January 1, 1999:

**HEALTH INSURANCE CATEGORIES**

| CATEGORY | HOURS NORMALLY WORKED IN A PAYPERIOD | PERCENTAGE OF PREMIUM PAID BY EMPLOYER ON BASE PLAN* |
|---|---|---|
| CATEGORY 1 | 70 OR MORE HOURS | 90% |
| CATEGORY 2 | AT LEAST 60 HOURS BUT LESS THAN 70 HOURS | 67.5% |
| CATEGORY 3 | AT LEAST 38.75 HOURS BUT LESS THAN 60 HOURS | 45% |
| CATEGORY 4 | LESS THAN 38.75 HOURS | NOT ELIGIBLE TO PARTICIPATE IN EMPLOYER PROVIDED HEALTH PLAN |

*BASE PLAN-The Health Insurance Plan that is the least expensive of any dual choice offered.

Regarding wages the offers are straight-forward. The Union proposes existing rates be raised by thirty (.30) cents per hour in 1998 and 1999. The Employer also proposed a thirty (.30) cent per hour increase for 1998. For 1999, they propose rates be increased by 3%. They also proposed to add a "15 cent per hour step increase at the 60-month anniversary after applying 3% increase."

The other area of dispute relates to Holidays and Vacations. Both parties propose to change the contract so that an employee earns three weeks of vacation at seven instead of eight years of service. However, the Union also seeks to increase the number of vacation days earned at 22 years of service to 25 days from 23 days. Regarding the holidays the Employer proposes a change in the manner in which holiday "comp-time" is handled. Currently, if an employee works a holiday and receives compensatory time off, they have up to 12 months to schedule and take the time off. The Employer proposes to reduce the usage window from 12 months to 30 days.

## III. ARGUMENTS OF THE PARTIES (SUMMARY)

### A. The Employer

The Employer, recognizing that the "Greatest Weight" factor is inapplicable in this case, addresses first the "Greater Weight" factor. It is their position that the economic conditions in Sauk County favor adoption of the County's offer. The local economy is very healthy and its offer is more consistent with this condition because the County offer offers greater growth in wage rates at approximately 8% over two years compared to 6.5% growth under the Union's proposal. Similarly, the County's final offer outpaces the CPI by 2% over those two years, while the Union's offer attains only a sluggish 0.5% edge.

The Union's proposal to retain the current health insurance language is also inconsistent with the 1995 recommendations of an independent consulting group that the Center is spending $1.4 million too much on health insurance premiums for its employees and further states that this is directly related to the present health insurance premium system. Similarly, the Total Cost Per Patient Day (PPD) for Sauk County in 1994 was $125.94, while the industry average was $73.16 – a difference of $52.78. Without changes in the insurance provisions, the long-term financial viability of the facility is threatened. With such high cost it is difficult to afford to keep the Center fully staffed.

Turning to the other factors that are to be addressed by the Arbitrator, the Employer contends that the internal comparables compel inclusion of the County's offer. They cite a number of arbitration cases concerning the important and often controlling role played by internal patterns and settlements. In this regard they note that facing the same health insurance in Sauk County's Highway Department, another arbitrator recently ruled that the County's proration proposal was superior to the Union's. See *Sauk County (Highway Department),* WERC No. 134, No. 55916, INT/ARB-8364 (August 10, 1999). The net result internally is that all four of the other unionized groups in the County have the proration schedule or something less liberal. The Health Care Unit is the only unionized or non-unionized group that would have full insurance contribution for part-time employees. Uniformity favors the Employer's offer, particularly since (1) the wage raise proposed by the County is similar to that proposed for the other internal units, and (2) the changes, including the decrease in premium

contribution from 93% to 90% is offset by the proposal to offer a Section 125 plan.

The principal of uniformity and internal contribution also works against the Union with respect to its vacation proposal. No other unit earns 25 days vacation at the 22nd year. The County's offer to give three weeks at seven years is an improvement consistent with the internal comparables. Regarding the 30-day restriction on comp time, the Employer acknowledges that this is the only unit that would have it but they consider this a minor issue.

The County also argues that the external comparables also compel adoption of its final offer. Prior arbitration decisions have pegged Columbia County as the primary comparable. The Union treats it like the only comparable. The County takes the position that Columbia County's comparability has decreased in recent years such that it can no longer be considered the primary, let alone the only, comparable to Sauk County. Even so its offer compares quite favorably because (1) Sauk County's wages are **higher** than Columbia County's and (2) the benefits offered by the County, including the proposed changes, are uniformly better than those offered by Columbia County. Moreover, Columbia County offers only *pro rata* premium contributions to employees working between 20 and 30 hours per week. Those employees working less than 20 hours per week do not receive any insurance premium contribution from Columbia County.

The County also looks to private sector employers for support of its offer. It is their conclusion that despite the wide variety of competitors, the total package offered by the County is very competitive with, and in most cases, preeminent over the packages offered by competing facilities.

Last the County addresses the issue of a "quid pro quo". It is their position that the County does not need to offer a quid pro quo as part of its Final Offer, but if one is required, the vacation eligibility increase qualifies. They don't believe a quid pro quo is necessary because the need for a change is so great and the internal pattern is so strong.

### B. <u>The Union</u>

The Union also analyzes the offers criteria by criteria. Concerning the "Greatest Weight" factor, they contend "local economic conditions" must be placed in a context to be meaningful. The most relevant context in their opinion is to look at the economic conditions of comparable employers. As to what employers should be considered, the Union notes that there has been a long

tradition--by the parties and arbitrators alike--of using only Columbia County as the external comparable for Sauk County cases.

Placed in the proper context, the Union takes the position that the evidence clearly demonstrates that the "local economic conditions" factor favors the Union offer. They look at comparisons between Sauk and Columbia Counties in terms of various employment statistics and revenue data, concluding that the local economy is robust and supports the Union's wage proposal as well as the retention of the status quo insurance language.

With regard to the status quo, they cite several arbitration cases that hold that the proponent of such a change faces a heavy burden. The County's proposal would result in a reduced employer contribution for the health insurance plan effective January 1, 1998, and would provide for even further reduced employer insurance contributions for part-time employees hired on or after January 1, 1999. A need for a change must be demonstrated and a quid pro quo must be demonstrated. No need has been demonstrated in their opinion for the change in insurance contribution on the basis of cost. For 1999, for insurance the Employer's family plan cost is limited to $441.39 per month and the Employer's cost for the single plan is $161.92. Thus over the two year period, the Employer's family premium cost increase would be 8.8%. The single premium cost increase would be 7.8%. This is much less than other employers. For insurance, Columbia County has faced increases of 17%-18%. On a total premium basis, Columbia is paying $153.11 per month more than Sauk County would pay under the status quo, and $85.87 more per month than Sauk on the single plan. Columbia also pays 90% of the single or family dental and vision insurance plans. Sauk County pays nothing.

Regarding the internal comparables, the Union does not believe that the evidence supports the Employer's assertion of "internal consistency". The Courthouse Unit for the term of this agreement will be at a 93% contribution level. Some of the units have no part-time employees and none of them have as many as the Health Care Unit.

It is also argued by the Union that the Employer's offer does not a provide a bona fide quid pro quo for the reduction in health insurance contributions to 90%. The Section 125 program in reality based on their calculation doesn't offset the increased employee share. Moreover, given the timing of the decision in this matter, employees won't be able to sign up for a Section 125 plan.

The Union notes that the Employer argues that the vacation improvement is a quid pro quo. It is not, submits the Union. When other units bargained the

insurance changes, they got substantial wage increases. Additionally, the .15 cents per hour after five years of service is not a quid pro quo because: (1) it is noted that the vast majority of the employees that will be affected by the County's proposal are junior employees and (2) the County's proposal to target senior employees with a larger increase than other bargaining unit employees flies in the face of the long-standing practice of providing a uniform increase to all bargaining unit employees.

## IV OPINION AND DISCUSSION

The single most critical issue in this case is the health insurance issue. Indeed it is controlling. First, the parties recognize the "Greatest Weight" criteria is not applicable in this case. Second, it should be stated in evaluating this issue the Arbitrator does not believe that the "Greater Weight" criteria is particularly relevant in this case. This is in part due to the fact the Employer's offer has a greater cost impact than the Union's offer. Thus, the Employer can't make the argument that given the local economy it can't afford the Union offer. Similarly, because the Union's offer is less than the Employer total package, it is difficult to say the health of local economy supports the Union offer more than the Employer's. The issue of affordability as reflected in local economic conditions simply isn't contested in this case.

There is no question that the issue of need and the issue of a quid pro quo are important and relevant questions. They fall within the umbrella of criteria "j" which states:

> "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."

While the Union is right that the issue of need and a quid pro quo are relevant, criteria "j"is only one criteria. The evidence and considerations under this criteria must be weighed within the overall statutory framework and reconciled with other factors.

Criteria "j" (as it relates to the issues of need and quid pro quo) does favor the Union. However, the external comparables which fall under criteria "d" and the internal comparables (which best fit under criteria "e") strongly favor the

Employer. The Employer contribution in Columbia County for full-time employees is 90% and there is a proration of health insurance for part-time employees. The threshold for a full-time contribution is 30 hours per week or approximately 60 hours per a two-week pay period. This is similar to the 70 hour per pay period cutoff under the Employer offer. In Columbia County, employees who work between 20 and 30 hours per week or approximately 40 to 60 hours per pay period get a prorated contribution. Employees working less than 20 hours are not provided any employer contribution.

Concerning the internal comparables all the other units are at the 90% employer contribution level. As for the part-time eligibility issue, by the time this Award is issued, all the other bargaining units will have the same or more restrictive language.

The internal comparables deserves significant weight. It favors the Employer's offer too that the internal pattern on health insurance is not inconsistent with the external comparables. The fact that the Employer's proposal is universally supported in the internal and external comparables, establishes a need in its own right. The extent a quid pro quo is necessary it diminishes in proportion to the extent the proposed language is found in comparable contracts (internally and externally). For example, and hypothetically, if the Union was seeking an extra holiday such as Columbus Day and all the internal comparables provided this as a holiday and all the external comparables, the Arbitrator would not require the Union to establish on an independent basis that employees <u>needed</u> more time off. The existence of this benefit speaks for itself. Moreover, the Arbitrator wouldn't require a dramatic payment or quid pro quo for such a universally supported benefit. The shoe is now on the other foot and comparables are a two-edged sword. When a benefit or contract language is rare or unusual the price in bargaining is usually high. As a proposed benefit or language becomes more common the price goes down.

The Employer's offer does contain some elements that tend to satisfy the need – to the extent one is required – for a quid pro quo. These elements include: (1) the very fact the Employer's offer has a greater economic value than the Union offer, (2) the Section 125 plan, (3) the fact the wage increase under the Employer offer are greater than some internal units.

It is important to stress that the Employer's health insurance proposal involved more than redefining eligibility for part-time employees. It also involves bringing the employee contribution for full-time employees in this bargaining unit in line with the contribution made by employees in other units.

There is no doubt that the Health Care employees are being asked to make a sacrifice. However, there are strong internal equity considerations. The Union simply doesn't have a good answer for the question – "If all the other full-time unionized employees are paying 10% toward their health care insurance, shouldn't the burden be shouldered equally?"

The Arbitrator recognizes that the problem of health insurance for part-time employees is a more meaningful issue to the Health Care Unit than others in the County because others have fewer or in some cases no part-time employees. This is not insignificant. However, the impact of the Employer's proposal on part-time proration is tempered by the fact that at the time the offer was made it was to be applied prospectively to employees hired after January 1, 1999.

After all the evidence is considered and weighed, the Employer's offer is overall deemed to be more consistent with all the statutory criteria.

## AWARD

The parties 1998-1999 contract will include in addition to the stipulations of the parties, the final offer of the Employer.

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Gil Vernon, Arbitrator

This 4th day of February, 2000.