EDWARD B. KRINSKY, ARBITRATOR

In the matter of the Petition of Local 617, AFSCME, AFL-CIO	: :	
		Case 79 No. 57220
To Initiate Arbitration Between Said Petitioner	:	INT/ARB-8668
and	:	Decision No. 29737-A
	:	
Taylor County	:	

Appearances: Prentice & Phillips by Mr. Andrew T. Phillips, for the County. Mr. Phil Salamone Staff Representative Wisconsin Council 40, AFSCME, for the Union.

By its Order of October 28, 1999 the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as the arbitrator Òto issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act,Ó to resolve the impasse between the above-captioned parties Ò...by selecting either the total final offer of the [Union] or the total final offer of the [County].Ó

A hearing was held at Medford, Wisconsin on January 18, 2000. No transcript of the proceeding was made. The parties had the opportunity to present evidence, testimony and arguments. The record was completed on March 20, 2000 with the exchange by the arbitrator of the partiesÕ reply briefs.

There is one issue in dispute: wages. Each partyÕs final offer is for a three year contract with annual across the board wage increases, effective January 1, 1999, January 1, 2000 and January 1, 2001. The UnionÕs final offer is an annual wage increase of 3.25%. The CountyÕs final offer is an annual wage increase of 2.5%

Prior to the start of the arbitration hearing, the parties engaged in further efforts to resolve their differences. In its brief, the County cited those efforts and the offers made to resolve the dispute. The Union objects to any consideration of those efforts and offers. It is the arbitratorÕs opinion that attempts at informal settlement should not be given any consideration or weight in the arbitration process. Informal settlement efforts should be encouraged at any time for the purpose of enabling parties to reach voluntary agreement. Consideration by the arbitrator of unsuccessful efforts, and judgments about which party was more responsible for the failure to resolve the dispute, would have the undesirable effect of discouraging parties from attempting to resolve their differences.

In reaching his decision, the arbitrator is required to give weight to the statutory criteria. Factor 7 is the Òfactor given greatest weight,Ó and refers to Ò...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.Ó Neither party cited the greatest weight factor or argued that its final offer should be favored based upon this factor. In the absence of such arguments or evidence, the arbitrator has not considered this factor.

Factor 7g is the Òfactor given greater weight,Ó and applies to Òeconomic conditions in the jurisdiction of the municipal employer.Ó It states that this factor shall be given greater weight Òthan to any of the factors specified in subd. 7r.Ó

The Union argues:

> Taylor CountyÕs economy is quite healthy. It has a dynamic, stable, and highly diversified private sector. While most employment is within its healthy manufacturing and goods producing industries, the county also maintains significant service, financial, retail, agricultural and tourism sectors, which are currently thriving...

The Union cites the CountyÕs relatively stable population growth of 9% from 1960-1998 and the fact that in 1997 its labor participation rate of 74.8% exceeded the rates of both the state (74.7%) and nation (67.1%). It also cites a declining rate of unemployment in the County. The Union argues: ÒThere can be little, if any, question that Taylor County can well afford the modest added costs associated with adoption of the Union final offer.Ó

The County argues that its unemployment rate of 3.96% for 1999 was above the State average of 3.1% It argues that the County has relatively low per capita personal income and population growth, and a relatively high tax rate. In comparison to other comparable counties, the County views its position as Òvery precariousÓ. It argues that with respect to the Ògreater weightÓ criterion, Ò...the CountyÕs offer is clearly more reasonable.Ó

The County argues further that its population growth between 1990 and 1998 was 3.1% compared to the statewide increase of 7.0% during that period. (The CountyÕs population growth ranked tied for 4th among the comparable counties [The comparable counties are identified below].) The CountyÕs unemployment rate has been declining since 1992, but in 1997 it was 5.3% compared to a statewide figure of 3.7% In 1997, the annual average wage in the County was 80.5% of the statewide average. The CountyÕs 1998 levy rate of 8.32 was higher than any of the comparable counties except Clark (8.59) and the CountyÕs per capita property value was below the others except for Rusk and Clark.

Per capita personal income in 1997 was $ 16,881 compared to the statewide figure of $ 24,048. Among the comparables, Taylor County ranked 4th of six in per capita personal income, but was $ 2231 below the median figure for the comparables.

Neither party introduced unemployment figures for 1998, the most recent year prior to the effective date of the Agreement in the current proceeding. The Union introduced monthly estimated figures for the first eleven months of 1999. Taylor CountyÕs unemployment rate for that period of 4.0% was 2nd lowest among the comparables and was below the comparables median of 4.8%

These economic data suggest that conditions in Taylor County are not as good as those experienced in several of the comparable counties. The arbitrator is persuaded that the economic conditions in the County are not as healthy as the Union suggests, and consideration of this factor does not support the UnionÕs final offer more than the CountyÕs. At the same time, the arbitrator is not persuaded by the evidence and arguments that local economic conditions are so bad in Taylor County itself, or in relation to comparable counties, as to warrant a determination that the greater weight factor should be applied in support of the CountyÕs final offer.

The other factors which the arbitrator must give weight to are those listed under 7r. Several of them are not in dispute and/or were not part of the partiesÕ presentations of evidence and arguments, and will not be considered further: (a) lawful authority of the Employer; (b) stipulations of the parties; (c) interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement; (f) comparison of wages, hours and conditions of employment with Òother employes in private employment in the same community and in comparable communities;Ó (i) changes in circumstances during the pendency of the arbitration proceedings. The remaining factors are considered below.

Factors (d) and (e) involve comparisons of wages, hours and conditions of employment with Òother employes performing similar services,Ó [d] and Òother employes generally in public employment in the same community and in comparable communities.Ó [e].

The parties differ about which jurisdictions should be used for the purpose of making external comparisons. The Union advocates that the following counties be used: Chippewa, Clark, Langlade, Lincoln, Marathon, Price and Rusk. The Union also makes comparisons with the City of Medford. The CountyÕs list of comparable counties agrees with the UnionÕs if Langlade and Marathon are eliminated. The County also does not view the City of Medford as a comparable. Thus, the agreed upon comparable counties are: Chippewa, Clark, Lincoln, Price and Rusk, and the arbitrator will use those. Should Langlade and Marathon Counties and the City of Medford be included also?

The Union does not indicate why it views the City of Medford as a comparable, although the arbitrator notes that Medford is the county seat of Taylor County. The County argues that Medford was not cited by either party in the bargaining which led to this arbitration. The arbitrator views conditions in Medford as being relevant to a discussion of Òpublic employment in the same communityÓ under factor (e), but he does not view Medford as one of the comparables which the parties should focus on in their negotiations.

The Union argues that Marathon County should be included because it is a contiguous county. It notes also that 13% of Taylor County commuters to other counties go there, and numerous Marathon County commuters work in Taylor County. The County objects to inclusion of Marathon County based upon its much larger size and more prosperous economic conditions, notwithstanding that it is contiguous to Taylor County. The County cites prior interest arbitrations involving Marathon County bargaining units where arbitrators used larger, prosperous counties for comparisons, not the smaller counties, including Taylor, which are contiguous to Marathon County. The arbitrator is persuaded more by the CountyÕs arguments than by the UnionÕs with respect to Marathon County and he will not use it as a comparable.

Langlade County is not a contiguous county. The Union argues that in a 1989 arbitration between Taylor County and its courthouse employees, Langlade County was one of only two counties which the County urged for use as a comparable. The County argues that in the bargaining which led to the current proceeding, Langlade County was not mentioned nor used as a comparable by either party. The County notes also that the Union did not include other non-contiguous counties as comparables, and argues that there would be as much reason to include them, in terms of size and proximity, as Langlade County. In the 1989 Award, Arbitrator Nielsen noted that the County cited provisions of a contract in Langlade County, Nielsen did not make any statements indicating that he placed any particular significance on Langlade County in making his determination, and he did not state that Langlade County should be viewed as a comparable in evaluating final offers in Taylor County. The arbitrator is not persuaded that the Nielsen Award is a sufficient basis for a determination now that Langlade County should be viewed as a comparable, and there is no other basis argued by the Union for its inclusion.

Having considered the parties arguments, the arbitrator has decided to use the following counties for the purposes of external comparability: Chippewa, Clark, Lincoln, Price and Rusk,

It should be noted that in the wage data discussed below, the arbitrator has included Price County, even though the highway bargaining unit there is currently in the arbitration process. The partiesÕ final offers are known, however, and it is clear that wages will increase each year in 1999 and 2000 by either 3.0% offered by the County, or 3.25% offered by the Union.

For 1999, the across the board percentage increases for highway employees are as follows: Chippewa (3.0%); Clark (3.0%); Lincoln (3.25%); Price (3 or 3.25%) Rusk (3.0% + .05 cents); It is clear that the 3.25% increase offered by the Union is closer to the across the board increases given by the comparables, though a quarter percent higher than the median increase of 3.0%, than is the 2.5% increase offered by the County, which is a half percent lower than the median increase given by the comparables.

For 2000, the increase in Chippewa County has not yet been determined. The other increases are: Clark (3.0%); Lincoln (3.0%); Price (3.0 or 3.25%); Rusk (3.0% + .05 cents). It is clear that the 3.25% increase offered by the Union is closer to the across the board increases given by the comparables, though a quarter percent higher, than is the 2.5% increase offered by the County, which is a half percent lower than the increases given by the comparables.

For 2001, the only comparables with settlements are Lincoln (3.0%) and Rusk (3.0% + .05 cents). These figures, though limited, also favor the UnionÕs final offer more than the CountyÕs.

The UnionÕs presentation of wage rates makes comparisons using benchmark positions of Mechanic, Heavy Equipment Operator and Patrolman. For Mechanic in 1998 Taylor CountyÕs maximum rate of $13.48 was ranked tied for 4th among the six comparable counties, and was 32¢ below the median wage rate of the comparables.

For Mechanic in 1999, Taylor CountyÕs maximum rate of $13.92 [U] or $13.82 [Co] is ranked 4th [U] or 5th [Co] among the six comparable counties, and is 33¢ [U] or 43¢ [Co] below the median wage rate of the comparables. Thus, under the UnionÕs offer, the employees retain the same relationship to the comparables that they had in 1998, while under the CountyÕs offer, the ranking is reduced and the employees fall still further below the median wage rate.

For Heavy Equipment Operator in 1998, Taylor CountyÕs maximum rate of $ 13.01 was ranked 6th among the six comparable counties, and was 62¢ below the median wage rate of the comparables.

For Heavy Equipment Operator in 1999, Taylor CountyÕs maximum rate of $13.43 [U] or $13.34 [Co] is ranked 6th among the six comparable counties, and is 72 or 76¢ [U] or 81 or 85¢[Co] below the median wage rate of the comparables, depending upon which final offer in Price County is selected. Under both offers Taylor County retains last place ranking in relationship to the comparables, and its wage rate falls further below the median of the comparables. Under the UnionÕs offer, the wage rate is closer to the median than is the case under the CountyÕs offer.

For Patrolman in 1998, Taylor CountyÕs maximum rate of $ 13.17 was ranked 6th among the six comparable counties, and was 8¢ below the median wage rate of the comparables.

For Patrolman in 1999, Taylor CountyÕs maximum rate of $ 13.60 [U] or $ 13.50 [Co] is ranked 6th among the six comparable counties, and is 8¢ [U] or 18¢ [Co] below the median wage rate of the comparables. Under both offers Taylor County retains last place ranking in relationship to the comparables. The UnionÕs offer maintains the relationship to the median while under the CountyÕs offer the wage rate falls further below the median.

In its analysis of wages, the County does not use benchmarks. It asserts that benchmarks distort comparisons because the same titles used in different counties do not necessarily encompass the same duties. The County used job descriptions from each of the comparable counties to construct three classes of employees. It placed highway employees in these classes according to duties, without regard to titles. In the CountyÕs view the result is a comparison of Òapples with apples.Ó

The arbitrator has used the CountyÕs analysis to make comparisons in the same manner as was done using the UnionÕs benchmarks. In so doing, the arbitrator is neither endorsing nor criticizing the CountyÕs analysis, but it should be noted that there is no evidence that the County even discussed its classification scheme with the Union prior to this arbitration. There is also no evidence that any of the comparable counties have agreed with, or utilized a similar classification scheme.

The arbitrator has not reviewed the CountyÕs placement of employees into classes to see whether he agrees with their placement. He has not done so because even if one were able to rely on the accuracy of job descriptions in the various counties as reflecting what the employees actually do, the placement of sets of duties into particular classes is a subjective process requiring extensive and thorough analysis. Such an exercise would be extremely time-consuming and the arbitrator does not feel justified in taking that time and billing the parties for it in this proceeding.

Using the CountyÕs analysis, the arbitrator has used the maximum rate paid to each class. It should be noted that for several of the counties, there is a range of maximum rates according to the CountyÕs calculations.

For 1998 in Class I, if the higher of the maximum rates is used, the County ranks 5th or 6th (The County does not provide data for Rusk County in 1998, which affects the ranking). The wage rate is 31¢ below the comparables median. If the lower of the maximum rates the ranking and median cannot be determined because of the absence of the Rusk County data. For 1999, if the higher of the maximum rates is used, the CountyÕs final offer ranks 6th of six comparables , and the UnionÕs final offer ranks 5th. The CountyÕs offer is 42¢ below the median, and the UnionÕs offer is 32¢ below the median. Thus, the UnionÕs final offer maintains the relationship with the comparables median, while the CountyÕs final offer results in a wage rate further below the median. If the lower of the maximum rates is used, the CountyÕs final offer ranks 6th and the UnionÕs ranks 4th. The CountyÕs offer is 23¢ below the median, and the UnionÕs offer is 13¢ below the median. Both final offers result in improvement in relationship to the median, though remaining below the median. The CountyÕs final offer better maintains the relationship with the 1998 median than does the UnionÕs final offer.

For 1998 in Class II, if the higher of the maximum rates is used, the County ranks 5th or 6th. The wage rate is 57¢ below the comparables median. If the lower of the maximum rates is used, the County ranks 4th and is 17¢ below the median. For 1999 if the higher

of the maximum rates is used, the County ranks 6th under both partiesÕ final offers. The CountyÕs offer is 38¢ below the median, and the UnionÕs offer is 28¢ below the median. Both final offers result in improvement in relationship the median, though remaining below the median. The CountyÕs final offer better maintains the relationship with the 1998 median than does the UnionÕs final offer. If the lower of the maximum rates is used, the County ranks 4th under both final offers. The CountyÕs offer is either 24 or 27¢ below the median, and the UnionÕs offer is either 14 or 17¢ below the median, depending upon which final offer in Price County is selected. The UnionÕs final offer better maintains the relationship with the 1998 median than does the CountyÕs final offer.

For 1998 in Class III if the higher maximum rate is used the County ranks 5th or 6th. The wage rate is 24¢ below the median. If the lower of the maximum rates is used, the County ranks 4th or 5th . The wage rate is 22¢ below the median. For 1999 if the higher maximum rate is used, the County ranks 5th of six comparables under both partiesÕ final offers. The CountyÕs offer is 34¢ below the median, and the UnionÕs offer is 25¢ below the median. The UnionÕs final offer better maintains the relationship with the median than does the CountyÕs. If the lower maximum rate is used, the County ranks 4th under both final offers. The CountyÕs offer is 29¢ below the median, and the UnionÕs offer is 20¢ below the median. The UnionÕs final offer better maintains the relationship with the median than does the CountyÕs.

There is less data available for 2000 than for 1999, because the wage increase for Chippewa County is not known. There is still less data for 2001 because the wage increases for Chippewa and Clark Counties are not known.

In order to do further meaningful analysis, the arbitrator will look at 1999 and 2000 for only the four counties in which the wage rates are known, or can be estimated based on their known final offers: Clark, Lincoln, Price and Rusk.

Using the maximum rate for Mechanic, in 1999 both final offers rank 4th of five comparables. Depending on the outcome of the Price County arbitration, the UnionÕs final offer is below the median by either 60 or 62¢. The CountyÕs final offer is below the median by either 70 or 72¢. In 2000 both final offers rank 4th of five comparables. Depending on the outcome of the Price County arbitration, the UnionÕs final offer is below the median by either 58 or 63¢. The CountyÕs final offer is below the median by either 78 or 83¢. Thus, for both years, Taylor County retains its ranking as 4th of five. Under both final offers for both years, the employeesÕ pay is far below the median. There is a narrowing of the gap under the UnionÕs final offer, and a widening of the gap under the CountyÕs final offer.

Using the CountyÕs analysis for Class I at the maximum rate, and using only the four comparable counties in which data is complete for 1999 and 2000, the CountyÕs final offer in 1999 ranks 5th of five comparables, whether the lower maximum rate or the higher maximum rate is used. If the higher figure is used, the CountyÕs final offer is 46

or 48¢ below the median, and the UnionÕs final offer is 36 or 38¢ below the median. If the lower figure is used, the CountyÕs offer is 22 or 27¢ below the median, and the UnionÕs final offer is 12 or 17¢ below the median and ranks 3rd .

In 2000 the CountyÕs final offer ranks 5th of five comparables, whether the lower figure or the higher figure of the rate range is used. If the higher figure is used, the CountyÕs final offer is 54 or 58¢ below the median. The UnionÕs final offer ranks 4th of five comparables and is 33 or 37¢ below the median. If the lower figure is used, the CountyÕs final offer is 36 or 40¢ below the median, and the UnionÕs final offer is 15 or 19¢ below the median and ranks 3rd . Whichever rate is used, the UnionÕs final offer maintains the relationship to the comparables 1999 median while the CountyÕs final offer falls further below the median.

For the sake of brevity, the arbitrator has not repeated this analysis for Heavy Equipment Operator and Patrolman, or for Classes II and III.

The County argues that the Union has not presented any data to show that there is a need for catch-up pay. The County notes that this is the first arbitration between the parties and that they have determined wage rates through voluntary collective bargaining for more than two decades. As the arbitrator reads the UnionÕs arguments, the Union is not requesting a catch-up adjustment. Rather, it is asking that the employees in the bargaining unit get wage increases in line with, or perhaps slightly higher those given by the comparables. It is the arbitratorÕs conclusion that whether the UnionÕs analysis or the CountyÕs analysis is used, the result is that the UnionÕs final offer better maintains the existing relationship with the comparables than does the CountyÕs final offer. The County for its part has not demonstrated why, in relationship to the comparables, a lower than average wage increase is justified.

With respect to internal comparables, there are four represented bargaining units (including the highway unit), and one represented supervisory unit which does not have bargaining rights. The settlements for 1999, 2000 and 2001 are as follows:

	1999	2000	2001
Courthouse Non-Professional [AFSCME]	15¢ 1-5 yrs 30¢ 10 yrs 50¢ 15 yrs	15¢ 1-5yrs 30¢ 10 yrs 50¢ 15 yrs	15¢ 1-5yrs 30¢ 10 yrs 50¢ 15 yrs
Courthouse Professionals [Teamsters]	1.5%	1.5%	1.5%
SheriffÕs Dept, Sgts [WPPA] canÕt bargain	1.5%	1.5%	1.5%
SheriffÕs Dept [Teamsters]	.56¢-1.78	3.0%	3.0%

The County argues that with the exception of the SheriffÕs unit, the other three units shown in the above table accepted a 1.5% increase for each of three years beginning in

1999. Arkens represented the County in negotiations. He testified by speakerphone that the non-professional Courthouse contract, which provides wage increases in varying amounts, cost an average of 1.5% per year for the employees in the unit. He testified that the exception to the pattern of 1.5% increases was given in the SheriffÕs Department where there was a dearth of applicants, and some employees had left the Department. According to Arkens, the first year adjustment (1999) was the State average increase, which was in excess of 7% and then there were 3% increases for 2000 and 2001. The sole justification for these increases was the need to attract applicants to the Department and retain current employees there.

The County argues that its final offer gives the Highway unit a greater percentage wage increase each year than any other internal group received except for the SheriffÕs unit, and there is no justification for the UnionÕs still higher offer. There is no problem of recruitment and retention in the Highway employeesÕ bargaining unit, the County asserts. The County argues that it has tried Òto create a pattern of internal parity.Ò It argues, ÒIf the Union received an even greater increase because it went to arbitration, and without a demonstrated need for catch-up, the CountyÕs future ability to bargain successfully with other units will be severely undermined.Ó

The Union argues that it is not legitimate to use for internal comparisons a unit which may not bargain and thus is subject to a unilaterally imposed settlement. Thus, it urges the arbitrator to ignore the increases given to the sergeants in the Sheriffs Department. It argues also that the SheriffÕs unit received at least 7% for 1999 as well as Òa generous increase for 2000Ó [and the] Courthouse unit Òreceived a number of different increases based on their length of service.Ó It argues further, ÒWhile professionals may only have received approximately 1.5% for each of the years, they enjoyed an increase in their vacation schedule which was not applied to other units or included in the CountyÕs final offer...Ó The Union concludes Òin the final analysis, we can thus state with certainty that there is nothing remotely approaching a pattern of settlement for these years 1999-2001,Ó and it argues that none of the internal settlements are consistent with the CountyÕs final offer.

The arbitrator has studied the non-professional Courthouse employeesÕ wage agreement. The Employer did not put any cost figures into evidence to support its assertion that the agreement represents a 1.5% increase, on average. The arbitrator has looked at grades 8 through 12, the grades which appear to include the most numerous job titles (The arbitrator does not know the distribution of employees in each grade). The arbitratorÕs calculations show the following increases:

From 1999 to 2000	1 year	5 years	10 years	15 years
Grade 8	1.4%	1.3%	2.5%	4.0%
Grade 9	1.3	1.3	2.4	3.4
Grade 10	1.3	1.2	2.3	3.7
Grade 11	1.3	1.2	2.2	3.6
Grade 12	1.2	1.1	2.1	3.4

From 2000 to 2001

Grade 8	1.4	1.3	2.4	3.8
Grade 9	1.4	1.2	2.3	3.7
Grade 10	1.3	1.2	2.3	3.6
Grade 11	1.3	1.2	2.2	3.4
Grade 12	1.2	1.1	2.1	3.3

Even assuming for argumentÕs sake that the Employer is correct that the wage increases averages 1.5%, clearly there are larger increases for the more senior employees who have been employed for 10 years or more. Those with 10 years service will receive annual wage increases in excess of 2%, while those with 15 years or more are receiving wage increases in excess of 3.3%.

The seniority list for the highway unit is in evidence. It is noteworthy that the median length of service in that unit is 21 years, and 17 of the 25 employees have seniority of greater than 15 years.

It is the arbitratorÕs opinion that the wage settlements for 1999-2001 in the units of represented employees with bargaining rights do not constitute a clear pattern which he feels compelled to follow. Having said that, if the SheriffÕs unit is excepted because of the recruiting and retention problems there which necessitated larger wage increases than those given to other employees, the remaining settlements are closer to the CountyÕs final offer than to the UnionÕs.

Factor (g) is Òthe average consumer prices for goods and services.Ó For purposes of making a judgment about the reasonableness of a bargain effective in 1999, the relevant cost of living figures are those for 1998. The County put into evidence the cost of living index for urban wage earners and clerical workers. It rose an average of 1.3% in 1998. The average increase in that index for 1997 was 2.3%

It is clear that both partiesÕ final offers exceed the cost of living increase, if wages alone are considered. If the cost increases in the total package are considered, the costs of both final offers increase to more than 4% each year, and thus exceed the change in the cost of living index even more. The CountyÕs final offer is closer to the cost of living change than is the UnionÕs.

Factor (h) is the Òoverall compensation presently receivedÓ by the employees. The County acknowledges that Òmost of the fringe benefits in the Highway Department are comparable to that in the external comparable pool. It argues, however, that:

> there is one glaring exception - health insurance. While health insurance contribution is not an issue to be resolved in this Interest Arbitration, the County provides its employees

> with an insurance plan with no co-payment provision. Only two counties, Chippewa and Lincoln, have no co-payment requirements. In addition, Taylor County is the only County offering Dental coverage with an 80% employer contribution...the County has experienced over a 16% increase in Health Insurance in the past year...

In its arguments, the Union did not address the overall compensation factor.

The County is the only one of the comparables to offer employer-paid dental insurance. With respect to health insurance, two of the five comparable counties, like Taylor County have no co-payment provision, while the others have co-payment rates ranging from 7-10%. Thus, if Taylor County is included, the comparables group is equally divided among those counties that require a co-payment and those that do not. There is no evidence presented to suggest that the co-payment arrangements and the dental insurance for the highway unit are different from the arrangements for the other internal units of the County.

The arbitrator is not persuaded that the overall compensation factor favors either partyÕs final offer more than the other.

Factor (j) pertains to Òsuch other factors...which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation...arbitration or otherwise between the parties...Ó One factor which the Union believes is important is that during the bargaining of the Agreement at issue here, it filed a prohibited practice charge with the Wisconsin Employment Relations Commission, and the WERC Examiner upheld the UnionÕs position. The County argues that this decision is on appeal, and in any event has no place or relevance in the interest arbitration.

The arbitrator does not view the prohibited practice as of any consequence in the current proceeding, regardless of the disposition of the appeal. The arbitrator holds this view for several reasons: 1) Regardless of the prohibited practice allegation and determination, the parties were free to formulate final offers for arbitration and provide justification for them; 2) Prior to the arbitration hearing, at the hearing, and thereafter up to the date of this arbitration decision, the parties had the opportunity to explore settlement of their differences so as to obviate the need for this arbitration decision. There was no evidence presented to the arbitrator which demonstrated that the pending prohibited practice proceeding interfered with the partiesÕ efforts to prepare for this arbitration or interfered with any attempt which the partiesÕ made to resolve their differences; 3) The arbitrator must make his decision based on an analysis of the statutory factors. There is no compelling argument made in this case that the evaluation of those factors has been affected by the prohibited practice proceeding. It should be noted, too, that the subject of the prohibited practice had no relation to the wage issue which is in dispute in this proceeding.

The Union states its Òfirm belief...that the employer offer represents a further attempt to chastise the Union for its (legally protected) refusal to accept terms proposed by the County in the mediation session.Ó No evidence was presented by the Union in support of that allegation. The County has made a reasonable final offer in the current proceeding, whether or not its offer is the one which is selected by the arbitrator. Given the 1.5% settlements which it made with some of its other bargaining units, the CountyÕs offer of 2.5% per year to this unit can hardly be viewed as retaliation.

The Union objects to the CountyÕs introduction of evidence about pre-hearing offers of settlement. The arbitrator has commented on that matter above, and has given no consideration to such evidence.

The County argues that the arbitrator should take into account tentative agreements reached by the parties. There was no overall tentative agreement reached by the parties. Apparently there were tentative agreements reached on some issues, but the Union informed the County subsequently that it did not consider those tentative agreements to be in effect. Thereafter, and for reasons of their own, neither party included these tentative agreements in their final offers. If the County felt that the matters which were the subject of the tentative agreements were reasonable and supportive of its position, it was free to incorporate those items into its final offer, but it did not do so. The arbitrator has no basis for weighing the UnionÕs final offer negatively based on its failure to include these tentative agreements in its final offer, any more than he has a basis for weighing the CountyÕs final offer negatively for its failure to include those tentative agreements in its final offer.

This is a close case, involving just one issue and two reasonable final offers. It could easily be decided in favor of either final offer. Under the statute, however, the arbitrator is required to select one or the other final offer in its entirety. Having reviewed the evidence and arguments, the arbitrator is persuaded that the evidence and arguments favor the UnionÕs final offer more than the CountyÕs final offer.

Based on the above facts and discussion, the arbitrator hereby makes the following AWARD:

The final offer of the Union is selected.

Dated this 26th day of April, 2000 at Madison, Wisconsin

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Edward B. Krinsky
Arbitrator