STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of	:	
AFSCME LOCAL 736	:	
	:	
To Initiate Arbitration Between	:	Case 214
Said Petitioner and	:	No. 58450
	:	INT/ARB 8915
CHIPPEWA COUNTY	:	Decision No. 29984-A
(HIGHWAY DEPARTMENT)	:	

APPEARANCES:

AFSCME Local 736, by Mr. Steve Day, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO.

Weld, Riley, Prenn & Ricci, S.C., by Richard J. Ricci, Esq., on behalf of Chippewa County (Highway Department).

ARBITRATION AWARD

AFSCME Local 736 (Union) is the exclusive collective bargaining representative "for all County Highway employees, except confidential, supervisory, managerial, and clerical support employees." The parties were unable to agree upon the terms to be included in the successor to their January 1, 1997 – December, 31,1999, collective bargaining agreement. The Union filed a petition requesting the Wisconsin Employment Commission (Commission) to initiate compulsory final and binding arbitration pursuant to sec. 111.70 (4)(cm)6 Wis. Stats. of the Municipal Employment Relations Act on January 18, 2000. The Commission assigned its representatives to investigate the matter. On May 18, 2000, the investigator determined that the parties were deadlocked in their negotiations. Final offers were submitted prior to

September 18, 2000, when the investigator notified the Commission that the impasse continued. The Commission appointed the undersigned to act as the arbitrator by order dated October 24, 2000.

After due notice was given to the public, the arbitration hearing was conducted at the Chippewa County Courthouse on January 23, 2001. Both parties presented oral and documentary evidence into the hearing record, which was closed at the conclusion of the January 23, 2001, hearing. The parties exchanged post-hearing briefs on February 22, 2001. The Union filed its reply brief on March 16, 2001, and it was received by the undersigned on March 21, 2001. The County elected not to file a reply brief, however, on March 23, 2001, the undersigned received the County's motion to strike a section of the Union's reply brief.

ISSUE IN DISPUTE

During the course of their negotiations, the parties entered into a stipulation for some agreed upon changes in their previous bargaining agreement. They were unable to agree upon three issues which are discussed below. Those issues are the County's proposed changes which would extend new employees' probationary period from six months to one year, and to require that all employees wear uniforms provided by the Employer. The parties also disagreed about the size of the wage increases employees should receive during the 2000 and 2001 contract years.

THE UNION'S POSITION

WAGE OFFER – The Union noted that both parties proposed "general wage increases effective 1/1/00 and 1/1/01" of 3%. It said that only the differences in the parties' offers for catch up increases are in dispute. It said the County offered five cents an hour after the

general wage increases on January 1 of each year, while the Union's proposal was designed to "lift each of the three standard Highway Benchmark positions in Chippewa County to a wage level which closely equals the average of the corresponding positions in the external comparable counties." In addition to the 3% general increase on January 1 of each year, the Union's offer would increase wages on July 1 of each year as follows: Range 1 by $0.18; Range 2 by $0.22; and Range 3 by $0.20.

The Union noted that, after some employees' positions were reclassified by agreement earlier in these proceedings, both parties have compared Chippewa County's wages for Patrolmen – Range 1, Heavy Equipment Operator – Range 2, and Mechanics – Range 3 with those wage classifications in comparable counties.

The Union also noted that the parties agree that six contiguous counties, Barron, Clark, Dunn, Eau Claire, Rusk and Taylor and the City of Chippewa Falls constitute the appropriate external comparable pool. This pool has been relied upon by the parties, and it has been recognized in previous arbitration awards involving these parties and other County units.

The Union reviewed exhibits that compare Chippewa County's wage levels in 1999 and under the parties' proposed offers for 2000 and 2001 with comparable wages in comparable municipalities. Patrolmen in Chippewa County (Range 1) earned $13.63 an hour in 1999, $0.37 an hour less than the average wage in six comparable counties and $1.45 an hour less than Patrolmen in the City of Chippewa Falls. Chippewa County's Range 1 wage ranked fifth out of seven county comparables. If the Union's "catch up" for $0.18 on July 1 of each year is selected, Range 1 wages would be $14.83 an hour, $0.05 below the average comparable

wage. The Union's offer would place Chippewa County's Range 1 wage rate at three of the seven county comparables.

Chippewa County's Heavy Equipment Operators (Range 2) averaged $13.88 an hour, $0.45 below the county comparable average of $14.33, and ranked fifth out of seven in 1999. That $13.88 was $1.99 an hour less than Heavy Equipment Operators received in the City of Chippewa Falls. The Union's offer for $0.22 an hour adjustments on July 1 of each year would result in an hourly rate of $15.18 in 2001. Compared to the county comparable average of $15.23, the Union's offer would improve Chippewa's ranking by one place to fourth out of seven.

Mechanics (Range 3), before the agreed upon reclassification, earned $13.88 in 1999. This was $0.51 less than the comparable county average, $14.39, and ranked sixth out of seven. It was $2.17 less than the City of Chippewa Falls' Mechanics wage. The agreed upon reclassification resulted in a $0.06 an hour increase in base wages in 2000, this and the Union's offer for $0.20 adjustments on July 1 of each year would result in 2001 Range 3 hourly wage of $15.20 in Chippewa County. That "catch up" would result in a ranking of fourth out of seven, and $0.14 an hour less than the comparable counties' average Mechanic's wage.

The Union argued that the County's offer for an additional $0.05 an hour increase on January 1 of each contract year contains "barely any catch up" at any of the wage ranges. Under the County's offer, Range 1 wages would remain $0.32 below average and rank fifth out of seven. Range 2 employees would earn $0.40 less than average and rank fifth out of seven. In both instances, the employees would "pick up only one nickel over a two year

period." Range 3 employees would "pick up six cents", but would remain $0.45 behind the average and rank fifth out of seven county comparables. The Union noted, "that the County unit lags far behind in the comparable benchmark position wage levels" with their City counterparts.

The Union cited sec. 111.70(4)(7g) Wis. Stats., which requires arbitrators to "give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the other factors" for arbitral decision making. The Union cited evidence that Chippewa County's per capita income, which was $1,696 above the average county comparable in 1995, had increased by 7.28% through 1998 compared to the 7.22% average comparable increase. In 1998, Chippewa County's per capita income, $22,670, was $2,613 greater than the six county average of $20,057. It pointed to data, which it argued, "shows that Chippewa County has a low unemployment rate." The Union cited other data which showed that per capita property tax values in Chippewa County are 8.5% higher than average in comparable counties. Its tax levy rate was 3.74% in 1999 and was the 62nd lowest in the State, and compares to an average 6.5% levy rate among comparable counties. The Union argued that the 14.04% increase in Chippewa County's property tax value, the 9th highest in the State, from 1999 to 2000 is of particular significance. It argued that county expenditures of $550 per person, which ranks 51st in the State and is far lower than any comparable, is remarkable. It said that a 3.5% increase in sales tax collections demonstrates economic growth in the County. It noted testimony that the County "has money to fund major capital improvements" to its infrastructure, including $10.8 million for a new jail and $6.6 million for highway shop

facilities. "The above shows that Chippewa County is in an extremely robust economic condition; well able to afford wage proposals of the Union's final offer."

The Union argued that "the extravagant wage increases bestowed on management personnel by the County Board" illustrates the County's monetary surplus. The Union noted that the County had based those management wage increases upon "a wage/position study [that] was performed by DMG-Maximus", Inc., of Madison, Wisconsin, in August, 1999. That study found that the County's Management wages were low in comparison to Management wages in 19 counties which DMG deemed to be appropriate. The Union noted that based upon that study, the County granted 68 Management wage increases totaling $328,213 on January 1, 2000. It said that the increases granted to nine Highway Department Managers ranged between 8.7% and 18.3%, and averaged 10.7%. The average increase received by each of 68 managers on January 1, 2000, was 9.3%.

The Union asked the undersigned to compare its wage offer with those Management wage increases. It said that it had followed the same comparable average methodology that was used in the DMG study, and requested wage adjustments calculated to increase these employees' wages close to the average wage level "of the appropriate comparable counties." The Union argued that since the DMG study relied upon a total of 19 counties, it is appropriate that those same counties be considered as a secondary set of comparables for the purpose of showing that the "Union lags even further behind in wage levels than with the six contiguous primary counties."

In addition, the Union said that is has proposed to spread wage adjustments over two years in order to reduce the cost to the County. The Union's proposed adjustment for the 67

employees catch up increases would cost $27,539 each year. The catch up would average 1.4% the first year and 1.3% the second year. The Union concluded this argument by citing Arbitration Weisberger's Lincoln County decision. In that decision, the arbitrator concluded that, the "greater weight" criteria would require an arbitrator to consider favorable economic conditions "even though the arbitrator believes that the greater weight factor alone does not mandate the selection of the Union's final offer."

The Union argued that "taken as a whole" internal settlements support its offer. It said that the 3% wage increase received by Human Services Personnel in 2000 and 2001 should be given little weight because that tentative agreement is proceeding to arbitration over "other issues." Nurses have not settled. The Union said that the County's 3% settlements with Law Enforcement and Support Staff units both included "catch up" wage increases. It said that the Jailer/Dispatchers received $0.23 extra in 1999 and a pay equity increase amounting to $0.74 or 4.6% in 2001. It said that the additional top step added to the Support Staff contract amounts to an additional 1% catch up.

The Union cited an opinion expressed by Arbitrator Zeidler, "…there are times when an increases in wages…brings a condition of equity with comparable workers for employees, and this is in the general interest of the public." It argued that maintaining a consistent and qualified work force, reducing turnover and pay equity are in the public interest and support the Union's offer.

OTHER ISSUES – The Union opposed the provision that would require all employees to wear uniforms provided by the Employer. It cited testimony that some employees found the

uniforms ill fitting, uncomfortable or inadequate for the job or the elements. Only one of the comparables requires its employees to wear uniforms.

The Union argued that the County failed to show that there is either internal or external support for its proposal to extend the new employees' probationary period from six months to one year.

The Union argued that the County's costing exhibits are confusing. It said that the $287 cost allocated to reclassifications, in the parties' tentative agreements, should not be included "in any type of costing." It said that it appears that the County is relying on increased "health insurance premiums to substantiate large package costing." The Union argued that total package costing is misleading, "benchmark wage level comparisons are more appropriate." The Union argued that evidence of percentage wage increases in comparable municipalities are not important where the issue is the need for a catch up wage increase. It said that wage level comparisons are more appropriate.

The Union said that evidence did not support the County's position that "huge management wage increases were necessary to attract qualified applicants from outside the contiguous counties." It argued that those increases, over $328,000, refute the County's argument that state imposed levy limits prevent the County from meeting the Union's request.

The Union said that, since these employees are in a catch up situation the "cost of living criteria should not carry much weight." It cited Arbitrator Vernon's comments in a previous decision to support its contention.

THE COUNTY'S POSITION

WAGE OFFER – The County, after noting that the agreed upon reclassifications have little effect on the cost of the final package, placed the additional cost of the Union's wage offer at $44,163. The County argued that sec. 111.70(4)(7) and sec. 111.70(4)(7g) Wis. Stats., the greatest weight and greater weight factors favor its offer in this proceeding. It cited the local economic conditions which the undersigned must consider. It said that sec. 66.77(2) Wis. Stats. has limited the County's revenues since 1993. "When county mill rates were frozen in 1993, Chippewa's tax rate ranked lowest when compared to the six contiguous counties." Its 1999 ranking was second lowest among the seven comparables in this proceeding. As a result of the statutory mill rate freeze, Chippewa County's ability to raise tax revenue is limited to growth in its property valuation unless increased mill rate levies are approved by referendum. "[W]hich explains at least in part why Chippewa County as the second most populous county of the seven considered herein has maintained the third lowest tax levy during the four (sic) period 1996 to 1999."

The County said that its four year increase in equalized value, 31.95%, ranks midway among comparables. It said that since its population growth was only 1.08% from 1990 to 1999, "the same number of taxpayers are bearing the brunt of increased taxes." It said the County has remained "frugal in its spending and by applying $1 million of sales tax revenues to provide property tax relief." As a result it had the second lowest tax levy increase, 21.95%, among comparables from 1996 to 1999. The County said that it has faced fiscal challenges because of the need for capital improvements, jail expansion and the replacement of highway buildings at the cost of $20 million. The County said that as a result of those costs, state

mandated increases in library funding, lost state shared revenue, other expenses and inflation "it was forced to adopt a one-year levy increase of 17.9% in 2000." That was the highest tax levy increase in twelve counties in west-central Wisconsin, which includes five of the six comparables. The County argued that these impacts upon the local taxpayers require the undersigned to find that the greatest weight factor and the greater weight factor favor the County's offer.

The County said that there is no support for using the Union's proposed secondary comparables. It said that the parties agreed that six adjacent counties are primary comparables. This pool had been established in prior arbitration proceedings and has been relied upon since 1992. It argued that the only reason the Union wanted to go beyond the accepted pool of comparables is because the DMG study in those 19 counties resulted in the granting of "rather significant wage increases for a number of nonrepresented employees." The County cited a series of prior arbitration awards that held: "Once a pool of external comparables has been established, the presumption of comparability will continue until facts are presented to support changing the composition of the pool" and "available evidence [did] not appear to justify the use of comparables as widely dispersed and diverse...as those advanced by the union." The County cited Arbitrator Petrie's Waupaca County decision, "where the union relied on an external wage study to justify its proposed wage offer." Petrie noted that "statutory comparison criteria normally includes a limited group" of agreed upon external comparables. Petrie said that the Union could not "elect to rely on the wage study to the exclusion of the normal wage determination process." The County noted that in this instance the Union did not propose to change external comparables, but, "there is simply no

valid reason to add a pool of secondary comparables simply because a wage study conducted primarily for management and department head level employees warranted significant wage increases."

The County reviewed three settlements reached with other bargaining units for 2000 and 2001. The Law Enforcement unit is settled for only 2000, the last year of the prior contract, at 3% plus equity adjustments for Jailer/Dispatchers. The professional unit's tentative agreement is for 3% wage increases both years, "going to arbitration over other issues." The largest unit, a 140 member Support Staff, settled for 3% each year, there are "equity adjustments" each year for senior employees and a $0.54 adjustment for personal case workers during the second year. The Nursing unit is not settled. Management, unrepresented, will also receive 3% in 2001. The County said that it couldn't claim a "typical internal settlement pattern." No other unit demanded more than a 3% "increase unit wide, as is the case with the Highway unit." The County said that the equity adjustments were negotiated to include employee concessions in order to achieve maximum wage rates for all employees. As a result, it now takes 48 months for the Support Staff to reach maximum, the Highway unit reaches maximum in 18 months. It argued that the additional step of 1% negotiated by Support Staff "was at least in part a quid pro quo" for an extended probationary period which the Highway unit has refused to accept.

The County cited arbitral authority that internal settlement patterns should be recognized, and arbitrators "should attempt to achieve a resolution such as the parties would likely have arrived had they been able to reach voluntary settlement." It observed that the primary reason these parties have not settled "is because rather sizeable wage increases were

received by many nonrepresented employees, including nine management-level Highway employees, on January 1, 2000, when the County implemented an updated pay plan." It argued that those increases should have no significance in this dispute, and cited arbitral authority for that position. The Employer said that it adopted the Management pay plan because it was having difficulty filling Management-level positions. It said the study that the plan was based upon included 19 counties statewide because Management-level employees are recruited statewide. The County said that the approximate $400,000 price tag to provide catch up pay for nonrepresented employees was warranted to recruit and maintain high quality Management. It said that the County has had no difficulty in hiring or maintaining employees in this bargaining unit. There is no basis for comparing Management pay increases in order to justify wage increases above the level of internal settlements for the Highway bargaining unit.

"The burden is on the Union to demonstrate compelling reasons why it should be treated differently than the internal settlement pattern." The County cited authority for its position, and asserted that the Union failed to meet its burden. It argued that there is no basis for the Union's argument that a catch up wage adjustment is warranted. The County cited decisions by Arbitrators Imes and Bellman that: "the need for catch-up exists when there is a substantial difference between levels of compensation received by employees performing similar services," and "even where the rate of compensation is clearly relatively low, it is not necessarily appropriate to catch up immediately through arbitration." Bellman added that arbitrators should respect collective bargaining as a model "and that process would probably provide for incremental catch-up where the gap is over 20%."

The County said that the relationship to the wages received by the members of their unit to similar wages paid by external comparables has been set over the course of many years of past negotiations. It said that wages paid to Mechanics, Heavy Equipment Operators, and Patrolmen in 1992 serve as benchmarks for comparison. Adoption of the respective offers would rank the employees' 2001 wage rankings in comparison with 1992 rankings as follows: Patrolmen (Range 1) 1992 rank 4, County offer 6, Union offer 4; Heavy Equipment Operators (Range 2) 1992 rank 6, County offer 6, Union offer 5; Mechanics (Range 3) 1992 rank 6, County offer 6, Union offer 5. The County said that it "has not been a wage leader, but it also has not been so comparatively low to warrant catch up – and certainly not to the extent required under the Union offer." The County said that its offer to provide annual $0.05 an hour increases in addition to 3% across the board recognizes the Union's goal to come closer to the average of comparables. "The County's offer of 3% plus $0.05 clearly exceeds the pattern of settlements for the external comparables." It reviewed data that shows that the Employer's offer would provide wages that are closer to the comparable average "each year, with the exception of mechanics in 2001." It said that a wage adjustment that Clark County granted its lead mechanic accounts for that exception.

The County argued that the Union's wage offer is not logical because it would increase the lowest pay range by $0.18 and the highest increase by $0.22 an hour to the middle pay range. It said the Union's proposal would raise those wage ranges to $0.05 of the average maximums in comparable districts, while leaving Mechanics $0.14 below the maximum average. The County said that the wage reclassifications it agreed to are "less meaningful" because of the structure of the Union's offer. "If the Union offer were accepted, it would

likely be demanding another wage adjustment for Range 3 during the next round of bargaining because it would be 'out of sync' with both internal and external comparables."

OTHER ISSUES – The County said that its offer to extend the probationary period and require employees to wear uniforms was "a reasonable response to existing problems." It argued that it was necessary to extend the probationary period from six months to one year because of the difficulty in evaluating Highway employees who perform different types of work during the summer construction season and the winter maintenance season. It cited testimony that employees are classified on the basis of work they do during the four-five month long summer construction period. It said some employees hired on the basis of summer qualifications "were not very successful in performing winter maintenance activities," and probably would not have been retained if a longer probationary period permitted greater evaluation. It argued that there is even less opportunity to evaluate the qualifications of persons who are brought in as seasonal employees "who may be hired in a job classification in which they have performed little if any similar work during the 'season' in which they were hired." The Employer noted that the Support Staff unit agreed to extend its probationary period to one year in its new contract, and the Law Enforcement unit already has a one year probationary period. It differentiated the six month probation for the professional unit "because they essentially perform the same type of work all year long."

The County noted that it proposed to require all employees to wear uniforms which it would provide – five uniform changes a week. It explained that all nine shop employees are already required to wear uniforms. Other employees have the choice of accepting a $100 annual clothing allowance or wearing the uniforms provided by the employer. Thirty-two

other employees are currently wearing uniforms on a voluntary basis. The County said that its primary reason for wanting to require employees to wear uniforms is the employees' safety. It argued that orange stripes on the uniforms provides a high level of visibility to protect employees against accidents from heavy construction equipment and vehicular traffic. It cited a career ending injury sustained by a Highway Department employee who was struck by a passing motorist, and injuries and deaths of employees in Portage and Waukesha Counties as examples of injuries which might have been avoided if reflective clothing had been worn.

The Employer notes Union testimony that some employees opposed wearing uniforms because of improper fit, burn holes because of fabric, pants too cold in winter, shape of the pockets and allergies to soaps used in laundering the uniforms. It said that these concerns, which have not been previously mentioned, could be addressed. "Obviously, corrections cannot be made if a problem is not made known." The Employer said that its reasons for wanting to require employees to wear uniforms are justified for the safety of the employees and to avoid liability for the Employer's failure to take appropriate action. It noted that one comparable county, Clark, implemented mandatory uniforms effective in the year 2001.

The County anticipated that the Union would oppose mandatory uniforms because it had just obtained employer provided uniforms as an option in the parties' last contract. It said the Union might argue that there is no quid pro quo for changing the uniform provision. It cited arbitral authority that where the employer demonstrates the need to improve employee safety, quid pro quo is not necessary. It also argued that the additional $0.05 an hour "in each year of the contract, which exceeds both the internal and external patterns of 3% wage settlements," represents a sufficient quid pro quo for changes in both probationary periods and

uniforms. "The interests and welfare of the public are better served by adoption of the County offer." The County said that it hadn't argued that it is unable to pay the Union's request, it is not willing to do so. It anticipated that the Union would argue that the County can find an additional $44,000 to pay the higher offer, particularly in light of the large increase granted to nonrepresented employees. "Surely by making budget cuts elsewhere, if necessary, that may be true, but is it right or fair?" The Employer argued and cited arbitral authority that there is no need for arbitrators to balance the need for higher salaries with the willingness of taxpayers to fund higher wages. It argued that there is no evidence that the County is having trouble hiring or retaining Highway Department employees. It argues that the County's offer is more generous than the majority of external comparables. And said that the Union had "given little in negotiations." The Employer argued that the public interest will be better served "by not rewarding the Union for holding out for more substantial gains" than those received by other units.

The County noted that both offers exceed cost of living increases indexed for the nonmetropolitan north central region. It stated that the County's offer "more closely approximates the increase in the CPI.

UNION'S REPLY – The Union responded to the County's arguments in the following manner. The greater cost of the Union's offer, $44,163, pales in comparison to the $248,191 excess cost of the 68 Management salary increases that were granted on January 1, 2000. The Union argued that by admitting that "the County was forced to adopt a one-year levy increase of 17.9% just to cover anticipated wage and fringe benefit increases" the Employer renders its "greater weight and greatest weight" arguments meaningless.

The Union argued that the use of secondary comparables is justified because the County relied upon data from those comparables to justify the Management increases. It said that there is no evidence to show that Management personnel are not hired locally, and the higher increases were given to "non-union secretaries, aides, and even foresters." It said that the higher "ill timed, ill conceived" management increases have had a chilling effect upon the negotiations between these parties. When the Union asked for increases to bring its wages up to the average of contiguous counties "we were offered the standard 3% plus a nickel and told to take it or leave it. That is an insult."

The Union argued that in light of the additional step increases granted to the Support Staff on July 1, during each year of its contact, and equity increases granted to Jail/Dispatchers in 1999-2000, the equivalent of 4.6%, "it is the County's offer...that departs from the internal pattern." The Union argued that there is no evidence that the additional step awarded to the Support Staff was a quid pro quo for a longer probationary period.

The Union responded to the argument that below average wages are not sufficient justification for a catch up increase by citing earlier arbitration awards in which the arbitrators found catch up should be considered to enable employees to move "closer to a rank in the middle," and where the average is ascertained, it is appropriate to consider relative rankings. The Union responded to the assertion that the Employer's offer would not result in these employees losing ground. It said that the Employer's offer extended over a period of years would result in either the further erosion of Patrolmen wages over a ten-year period or the possibility of catching up to the average over a period of eight years depending on

assumptions. "That is not 'catching up' that is 'crawling up'. Yet Management personnel 'raced up' to exactly the comparable average in just one day."

The Union argued that there is no reason to extend the probationary period from six months to one year, "these jobs are not that complicated." It argued that many of the positions have the same kind of responsibilities year round. It noted that only two comparables have a one year probationary period, while others have only three month periods. It criticized the County's argument that a one-year probationary period for Law Enforcement Officers supports extending probation in the Highway Department.

The Union said that the Employer had introduced "new evidence" regarding its uniform proposal in its brief. It argued that, "the Union therefore has the right to submit new evidence...in order to rebut...false and misleading allegations." It offered photocopies of photographs to support is contention that fluorescent vests "that highway workers must wear on highways are much more visible than the proposed mandated shirts." It further argued that new evidence would show that a worker who was injured on the job was wearing a reflective vest. The Union asserted that in the event that the Employer disputed its proposed factual new evidence, the Union is willing to reopen the hearing in order to perfect the record.

COUNTY'S MOTION TO STRIKE – The County said that the Union, by submitting photocopies of uniforms with its reply brief, was attempting to introduce new evidence to the arbitrator. "The County is not willing to reopen the record in this matter and is certainly not admitting that anything improper was done by the County in the present record." The County "request[ed] that the part of the Union's reply brief relating to uniforms be stricken as an attempt by the Union to enter new evidence in the record."

DISCUSSION

MOTION TO STRIKE AND MANDATORY UNIFORMS – Since the pending procedural motion relates to the mandatory uniform issue, those matters will be discussed first. The hearing record was closed on January 23, 2001. That record includes a visual demonstration of a Highway worker modeling a uniform which is the subject to disagreement. The record also includes testimony about the reflective vests that Highway workers are required to wear under some circumstances when they are on the job. While no demonstration of the latter is included in the record, there is sufficient descriptive testimony to permit the undersigned to take arbitral notice of the physical characteristics of the orange vests with reflective yellow stripes worn by Highway, Street, and Utility Department workers in Wisconsin and elsewhere. There was also testimony that Highway Department employees from this and other counties being injured while on the job was a reason for this Employer to require its employees to wear uniforms with reflective stripes. The foregoing constitutes sufficient evidence to permit the argument that the Union has objected to. The photocopies of employees taken from 25 and 50 feet are not received because they were submitted after the record was closed. The Employer's motion to strike portions of the Union's brief is denied.

The record indicates that prior to January 1, 1997, only those nine employees who worked in "the shop" were provided with uniforms. They were required to wear uniforms while all other employees received a $100 annual uniform allowance. The Union obtained the option for other employees to have uniforms provided during a bargaining for the 1997-1999 contract. Currently, 41 of 67 employees are wearing uniforms. The County's offer would require all employees to wear uniforms purportedly to improve employee safety. The party

that requests a change in a contract provision through arbitration has the burden of establishing a reasonable need for the requested change and that the change could not be obtained through bargaining. There is evidence that some employees do not want to wear uniforms because: the trousers are cold in the winter and burn easily; and the uniforms do not fit properly and some employees are allergic to the soap or detergent used in laundering the uniforms. The Employer suggested that those objections could have been addressed had the Union raised the objection during bargaining. However, there is no evidence that the Employer ever attempted to bargain its proposed change in the uniform provision. In fact, it appears that the need for the Employer's proposed change was not discussed prior to the submission of the final offers.

The County's argument that employee safety would be improved by the wearing of uniforms, if established, would be compelling. The anecdotal evidence in this record does not convince the undersigned that the gray uniforms with some orange reflective stripes, which are proposed by the Employer, would improve employee safety. That is particularly true since there is no evidence of what standard, if any, was followed in selecting the uniforms adopted by Chippewa County, and there is evidence that work rules require construction employees to wear reflective orange vests during construction season. The fact that only one comparable county has a mandatory uniform requirement, and there is no description of those uniforms in the record, suggests that the Employer's proposed uniform mandate is not necessary.

WAGE OFFERS – The Union argument that the parties have agreed upon 3% across the board increases and only the size of the "catch up" wage increase is at issue is inaccurate. If that was the issue, the undersigned would simply find that the record does not support the need for a catch up wage increase. The reason for that observation would be the arbitral

criteria that where the parties have negotiated wage levels over a period of time, the burden is upon the Union to show circumstances that warrant a catch up. Unions have customarily argued a deterioration of their comparative wage rankings under the current wage offer to justify the need for a catch up wage increase. The Union has not presented evidence that either circumstance exists in this case. Arbitrators have also found the need for catch up exists where there is a substantial difference between the wages received by the employees in arbitration and average wage levels received by comparable employees. The facts that wages in Chippewa County would continue in the neighborhood of 4% below the comparable averages under the Employer's offer does not approach the "substantial difference" test.

The issue is which of the two wage offers, taken as a whole, is the more reasonable. The County posited the "greatest weight" and "greater weight" factors, and the Union argued the "greater weight" factor as the most significant criteria for comparing the two offers in this proceeding. There is no evidence that the County's limited ability to raise additional tax revenues (greatest weight factor) affects it ability to pay the Union's higher wage offer. Evidence of the substantial wage and salary increases granted by the County to 68 elected officials and Management personnel in 2000 makes it clear that statutory limitations placed on Chippewa County's expenditures should not determine the outcome in this dispute.

Under the greater weight factor, the undersigned is required to give greater weight to economic conditions in Chippewa County than to other arbitral criteria. External comparables, previously established, are Barron, Clark, Dunn, Eau Claire, Rusk, and Taylor Counties and the City of Chippewa Falls. Evidence presented by both parties indicates that Chippewa County's economic condition is strong. Its population in 1999, 55, 217, was second only to

Eau Claire's population of 91,760, and was greater than the 42,344 comparable average. Its assessment rate at 00374 was the second lowest among comparables, and well below the comparable average of 00611. The 21.95% increase in Chippewa County's tax levy between 1995 and 1999 ranked sixth lowest among seven comparables; the 31.95% increase in its equalized value during this period ranked fourth among the seven comparables. The County cited newspaper articles to explain the dilemma it has faced because of increased sales tax revenue applied to reducing property tax levies has reduced the County's state shared tax revenue. "The budget year 2000 will be the seventh year of the rate freeze. We've squeezed over budget (increases) so they just contain salaries and fringes, we're at the point that either services have to be cut or the property tax has to go up." Other articles outlined increases in property tax levies in Chippewa Valley counties and statewide in county budgets for 2001. That data shows that for 2001, Chippewa County reduced total spending from 2000 by $1.7 million or 2.7%. At the same time, it increased its tax rate by 4.3% resulting in a tax levy increase of 17.9%. Though equivalent information was not presented for comparable counties, it is clear that statewide county officials have had to confront budgetary pressures under the constraints of revenue caps, levy limits and declining state shared revenues. The fact that Chippewa County was able to adopt a 2001 one year levy increase of 17.9%, "the highest tax levy increase in the 12 counties located in west central Wisconsin," in order to cover anticipated wage and fringe benefit increases, a state mandated increase in library funding, a $76,115 loss in shared revenue and a 3% inflationary increase in operating budgets while reducing total spending by 2.7% and increasing tax rates by 4.3% shows that the County had a strong financial condition. The fact that the County was able to grant 68 Management

employees average wage adjustments of 9.3%, at a total cost of $328,213, on January 1, 2000, underscores that conclusion.

When a strong pattern of internal settlements exists, that pattern is a significant criteria for arbitral decision making. In this case there is no such pattern. The evidence shows rather that the Employer has uniformly told its employees, since 1993, those constraints on its ability to raise revenue limit the County's ability to increase all employees' wages. There is no evidence in the record of prior settlements for either internal or external comparables. It appears that this approach resulted in reducing wage increases through voluntary settlements over the period 1993-1999, but resulted in the need for some wage adjustments from 1999-2001. The County recognized this in stating that its offer is "more closely aligned with voluntary settlements reached with other County bargaining units," and "the County obviously cannot proclaim the typical 'internal settlement pattern argument'." The County agreed to specific adjustments, beyond across the board increases, for Jailer/Dispatchers, Support Staff, and Management personnel while attempting to hold the line at 3% plus a nickel an hour for this unit. It should be noted that, while the undersigned has commented on the substantial Management adjustments above, there is no criticism of those increases intended. One assumes that those increases based upon the DMG study were justified. The only question is whether the Union's higher wage offer is also justified?

External comparisons are limited to those six counties and the City of Chippewa Falls that have been traditional comparables. Five of six county comparables and the City of Chippewa Falls settled for 3% plus a nickel an hour that the County has offered in this case. Taylor County settled for 3.25% in each 2000 and 2001. Barron and Eau Claire Counties

settled for 3% in 2001, Clark County's settlement for 2001 included $0.25 hourly adjustments for some senior employees in addition to a 3% weighted average increase. Neither Eau Claire County nor the City of Chippewa Falls are settled for 2001. The Union's higher wage offer would bring Patrolmen wages from $0.37 below average county comparables and $1.45 below Chippewa Falls Patrolmen to $0.05 less than settled county comparables in 2001. They would continue to lag $0.32 under the County's offer. Patrolmen wages will continue their present rank of five out of seven among county comparables, and considerably below the City of Chippewa Falls under either offer. Over the two year period, the $0.45 hourly shortfall Heavy Equipment Operators currently experience would be reduced to $0.27 under the Union's proposal and to minus $0.40 under the County's. Chippewa's rank at this wage level would improve from five out of seven to four out of seven among the counties, but it will continue to trail Chippewa Falls by more than a dollar an hour under either offer. The current $0.51 shortfall in Mechanics' wages would be reduced to either $0.14 or $0.45 and the rank among counties would improve from six to five out of seven under either offer. Once again, assuming 3% increases in Chippewa Falls, the disparity with the City will be substantial either $1.82 or $2.13 an hour by 2001.

The foregoing wage analysis demonstrates that, using traditional arbitral criteria, both offers have some merit. Compared to internal settlements, the Union's offer appears marginally more comparable. In terms of percentage lift, the County's offer is closer to the two year average external settlements. It is right on target for 2000, but may prove a little low after Dunn County and Chippewa Falls are settled. The County's lower offer is closer to inflation measured by the consumer price index. However, as noted by Arbitrator Petrie,

"[T]he relative stability in cost of living over the past several years has significantly reduced the weight placed upon this factor, at the bargaining table, and in connection with interest arbitration proceedings." Germantown School District Decision 28520.A, 1996.

Given the difficulty of choosing between the two wage offers, both parties' reliance upon the "greater weight" factor tips the scale in favor of the Union's offer. Though there is little in the record about these parties' previous bargaining practices, it is clear that the Employer has consistently argued that State's imposing levy limits at a time that Chippewa County had a low mill rate assessment made it undesirable for the County to raise revenue through increased property tax levies. The Employer asserted that argument vigorously in this proceeding, where its wage offer to this unit appears tailored to equal settlements (when equity adjustments are factored with other represented internal and external units). The Union argues that equity requires that the Employer address deficiencies in its wage scale because it has, in spite of revenue constraints, granted substantial salary/wage increases to 67 unrepresented Management employees. The Union has every right to bargain to improve its wage rank among comparable units without justifying the need for a "catch up" wage increase. It would not be reasonable to deny the Union some progress to achieve that goal under the circumstances that have been discussed above. The Union's wage offer appears to be the more reasonable.

PROBATIONARY PERIOD – The Employer's reasons for attempting to extend the probationary period from six months to one year are not supported by evidence in the record. Anecdotal testimony that it is difficult for the Employer to sufficiently evaluate employees who

perform "two different types of work – construction season work and winter maintenance" does not establish sufficient need to change the existing contract provision through arbitration.

For the reasons set forth above, the undersigned finds that the interests and welfare of the public will be best served if the Union's offer together with the stipulations of the parties are incorporated into the parties' 2000-2001 collective bargaining agreement. The County has the financial ability to pay the approximate $44,000 greater cost of the Union's offer over the two year contract period.

Dated this 26th day of April, 2001, at Monona, Wisconsin.

John C. Oestreicher, Arbitrator