

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration Between) Case 77
FOREST COUNTY COURTHOUSE) No. 58796
EMPLOYEES ASSOCIATION, WPPA/LEER) INT/ARB-9013
and) Decision No. 30039-A
FOREST COUNTY) OPINION and AWARD
* * * * *

Appearances: For the Association, Atty. Gordon E. McQuillen,
Madison.
For the Employer, Atty. Dean R. Dietrich, Wausau.

On April 19, 2000, the Forest County Courthouse Employees Association, WPPA/LEER (referred to as the Association) filed a petition with the Wisconsin Employment Relations Commission (WERC) pursuant to Section 111.70(4)(cm) of Wisconsin's Municipal Employment Relations Act (MERA) to initiate arbitration. The Association and Forest County (referred to as the Employer or County) had begun negotiations for a successor to their 1998-99 collective bargaining agreement but failed to reach agreement on the issues in dispute. On January 25, 2001, following an investigation by a WERC staff member, the WERC determined that an impasse existed and that arbitration should be initiated. On February 19, 2001, the undersigned, after having been selected by the parties, was appointed by the WERC as arbitrator to resolve the impasse. By agreement of the parties, she held an arbitration hearing on April 13, 2001 in Crandon, Wisconsin, at which time the parties were provided with a full and fair opportunity to present evidence and make arguments. Both parties filed and exchanged post-hearing briefs and reply briefs. Upon receipt of the final reply brief on October 3, 2001, the undersigned closed the record in this proceeding.

ISSUES AT IMPASSE

The parties were unable to resolve the following issues:

1. Wages for 2000 and 2001:

The Association's final offer includes a 2% increase on 1/1/00, a 2% increase on 7/1/00; a 2% increase on 1/1/01; and a 2% increase on 7/1/01. The County's final offer includes a 2% increase on 1/1/00, a 1% increase on 7/1/00; and a 2% increase on 1/1/01.

2. Employee Health Insurance Premium Contribution:

The County's final offer proposes to increase employee health insurance premium contributions beginning in 2000 from a maximum of 5% of the cost of the Single and Single Plus One health insurance plan to 7.5% of the Single and Single Plus One plan. The Association's final offer does not propose any change in employee contribution.

3. Change to a Preferred Professional Organization (PPO):

The County's final offer proposes a Preferred Professional Organization (PPO) plan administered by the Wisconsin Counties Association (Group Health Trust) to replace the existing standard plan administered by the Wisconsin Counties Association (Group Health Trust) as soon as it can be implemented. The Association's final offer contains no changes to the existing standard plan health insurance benefits.

STATUTORY CRITERIA

In reaching a decision, the undersigned is required by Section 111.70(4)(cm)(7)-(7r) of MERA to consider and weigh the evidence and arguments presented by the parties as follows:

7. "Factors given greatest weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and give the greatest weight to any state law or directive lawfully issued by a state legislature or administrative officer, body, or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. "Factor given greater weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration shall consider and give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. "Other factors considered." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or the arbitration panel shall also give weight to the following factors:

- a. The lawful authority of the municipal employer.

- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of the proposed settlement.
- d. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
- e. Comparisons of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
- f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost of living.
- h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties in the public service or in private employment.

POSITIONS OF THE PARTIES

The Association

For the Association, the factor required by statute to be given "greatest weight" has no relevance in this proceeding because, unlike bargaining units consisting of teachers and other school professional employees, this bargaining unit is not governed by statutory provisions relating to the fiscal constraints which are part of a "qualified economic offer" (QEO). As to the other specified statutory factors which must be considered in a public sector interest arbitration case in Wisconsin, the Association believes that only one is determinative, that related to external comparables (public employees performing similar duties in comparable counties),

although the Association also points to the cost of living statutory factor as supportive of its offer.

The Association's main statutory argument is that its final offer is supported by a comparison of the wages, hours, and conditions of employment of members of this bargaining unit with similar categories of public employees in comparable communities. Unlike many other interest arbitration cases where the parties dispute which comparables are applicable, both parties in this case agree that the contiguous counties (Florence, Langlade, Marinette, Oconto, Oneida, and Vilas) are the proper comparables. Looking at these comparables, the Association notes that during the past decade the growth rate of Forest County was greater than the average growth rate of the comparables (14.22% v. 13.02%) and finds no basis for any County argument regarding an inability to pay. In fact, the Association finds there is no evidence in the record to support the County's conclusion that taxpayers are unwilling to fund the Association's offer.

More specifically, when across-the-board wage increases among the comparables for the year 2000 are considered, the Association argues that the County's annualized offer of 2.5% - and even the Association's annualized offer of 3% - falls below the average wage increase of 3.21% among the comparables. For the year 2001, even in the absence of extensive comparability wage data, the Association contends that the only available information about wage increases for 2001 in both Oconto County and Vilas County support the Association's annualized 3% offer rather than the County's offer of only 2%. Since bargaining unit employees significantly trail their colleagues in the comparables, the Association concludes that the County's wage proposal only magnifies the dismal wage picture for most bargaining unit members. Even when fringe benefits such as holidays and vacation benefits are considered, members of this bargaining unit continue to fare poorly in comparison with the comparables, and receive the lowest pay of all the comparables, according to the Association.

In addition to contesting the County's wage offer, the Association contends that the County's offer requiring bargaining unit members to pay an increased percentage of the cost for health insurance and reducing covered insurance benefits is without justification. The Association calculates that the County's final offer package actually results in a net reduction in income to bargaining unit members for the year 2001 and a net increase of only .1% for the year 2000. The Association further emphasizes that since the County's health insurance proposal represents two significant changes from the status quo, a greater employee contribution to insurance premiums and a reduction in benefits through the introduction of co-pays, the County is obliged to offer a quid pro quo and it has completely failed to

do so. Accordingly, there is strong justification for rejecting the County's package, according to the Association.

Another statutory factor which the Association contends supports the reasonableness of its final offer is the CPI. Since the expiration of the parties' prior collective bargaining agreement, there has been a 3.8% increase in the CPI. Therefore, this factor supports the Association's wage proposal since it is closer to the CPI than the County's proposal.

The Association rejects the County's private sector data as useless because information regarding these comparisons is so fragmentary that meaningful comparisons are not possible. It further rejects the County's argument that internal comparables support the County's health insurance offer since only one County bargaining unit has agreed to the County's health insurance proposal increasing employee contributions and that unit represents a small percentage of the County's employees. The Association also rejects the County's argument that external comparables support the Employer's health insurance proposal since the Association considers its own status quo position to be closer to required employee contributions in the comparable counties. Finally, the Association disputes many of the County's summary hardship arguments because they are based upon slim or non-existent data and fail to address the Association's comprehensive external comparability data.

For all these reasons, the Association concludes that its final offer should be selected because it is more equitable, requires only a very small increase in per capita cost per year (calculated as \$3.17 per resident), does not impose any new employee health care costs (such as the Employer's proposal for additional mandatory contributions for health insurance premiums and new prescription and emergency room co-pays), and is more consistent with internal and external comparables.

The Employer

The County believes that its final offer is more reasonable and appropriate when all the mandated statutory criteria are considered. It emphasizes that its total package increases which take into account roll-ups and the significant rise in the cost of health insurance in 2000 and 2001 are generous under the circumstances - 7.35% in 2000 and 5.08% in 2001 - while its calculations of the Association's total package increases, 8.76% in 2000 and an additional 9.62% in 2001 make the Association's final offer excessive.

In support of its position, the County points to the specific language in Wisconsin's interest arbitration legislation which requires the arbitrator to give "greatest weight" to any

state law or directive which places limits on expenditures that may be made or collected by the municipal employer. In the County's view, Wis. Stat. 59.605 (Tax Levy Rate Limit) is exactly the type of state law which must be given "greatest weight" because that legislation severely limits a county's ability to increase its operating levy. The County believes that a large increase in its operating levy would be needed to fund the Association's final offer.

In addition, the County notes that Forest County does not have a dynamic tax base to pay for the Association's package since the County contains a large proportion (nearly 80%) of non-taxable real property and does not have any urbanized areas. Therefore, if the Association's offer is to be funded from Forest County's small and not rapidly growing tax base, the County would have to curtail other important County services.

The County next points to the statutory factor requiring an arbitrator to give "greater weight" to local economic conditions. In the case of Forest County, the Employer notes that a) the County's small population has actually decreased during at least one recent year (from 1998 to 1999), b) the County has a large percentage of citizens over 65 with limited incomes, and c) there is little manufacturing industry in the County in addition to a decline in other County industries. These factors have resulted in a particularly low per capita personal income, a high unemployment rate (5.2% in 2000), few medical services, many people living below the poverty level (13.4% in 1997), and a comparatively low percentage of residents with high school (64.1%) and college degrees (7.6%). Thus the Employer concludes that, in comparison with its neighbors, Forest County's economic conditions are very bleak. These economic circumstances not only need to be considered, according to the Employer. They must be given "greater weight."

In addition to enumerating depressed economic conditions relating to the County's ability to pay for significant wage increases, the County believes that it is urgent at this time to reevaluate the parties' existing health care plan due to rapidly escalating health insurance costs which have incurred in recent years, particularly in 2000 and 2001. Because the Wisconsin Counties Association Group Health Trust has experienced significant losses from health care claims it has paid for County employees and because of numerous general warnings about sharp increases in health insurance costs, it is obvious to the Employer that County health insurance premiums will necessarily continue to escalate sharply.

The County's final offer contains two separate methods to cut its health insurance costs. One proposal requires a larger employee health insurance premium contribution. The County

believes that such an increase is reasonable and consistent with the increased employee contribution already agreed to by another County bargaining unit as well as with proposals it hopes to negotiate with other County bargaining units. Since maintaining internal consistency for fringe benefits is an important County goal, the County believes that equity and reasonableness strongly support its health insurance proposal and notes that the Association's final offer fails to address at all the serious health insurance cost crises the County now faces. Moreover, in addition to internal fringe benefit consistency, the County points to external comparables as additional support for its health insurance proposal increasing cost-sharing .

The County's offer also proposes implementation of a Preferred Professional Organization (PPO) plan since such a change would significantly reduce County premiums upon implementation while at the same time providing many new important benefits for covered employees. As for the PPO plan's new co-pays, the Employer believes that they should be considered minimal in light of the augmented benefits provided under the PPO plan.

In conclusion, the County contends that its total package including a moderate wage increase is more reasonable particularly in light of the impact of excessive health insurance increases. Comparability data from private employers located in the County, other public employers located in the County and in adjoining counties, especially Florence and Vilas Counties, offer further support for the Employer's package - as does consideration of the CPI and the "interests and welfare of the public" statutory factors. Accordingly, the County believes that its total package of wages and fringe benefits provides bargaining unit employees with comparable wages and working conditions while it is more fiscally responsible than the Association's total package which totally ignores the two most important statutory factors and utterly fails to acknowledge the detrimental impact of rapidly escalating health insurance costs upon Forest County.

DISCUSSION

The undersigned is obliged to review the issues in dispute in light of the statutory factors and then determine the outcome in this arbitration proceeding based upon an analysis of each party's total package.

Section 111.70(4)(cm)(7)-(7r) requires that an arbitrator must give the "greatest weight" to any state law (or directive) which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The

Association contends that this factor is not relevant in this proceeding while the County claims that Section 59.605 of the Wisconsin Statutes must be considered and be given "greatest weight" because it severely limits the County's ability to raise the taxes needed to raise money to pay for the Association's "expensive" final offer.

An examination of Wis. Stat. 59.605 discloses that its provisions set a limit on a county's operating levy based upon its 1992 levy - except that the county may increase that limit if its governing body follows the statutory procedure to initiate a special referendum and the referendum is passed by a majority of those voting. According to information provided by the Wisconsin Counties Association's website (and entered into the record of this proceeding as an Association exhibit), Forest County has used less than one-half of its "Allowable 2001 Operating Levy and Adjustments" and has the greatest percentage of unused allowable 2001 levy of any Wisconsin county. Forest County is unlike the majority of Wisconsin counties which are at or very close to their allowable 2001 levy. Under these circumstances - apart from any consideration of the availability of a special referendum override - the undersigned does not believe that the levy limit contained in Sec. 59.605 is entitled to the "greatest weight" in this proceeding.

The next statutory factor set forth in Section 111.70(4)(cm)(7g) requires that "greater weight" be given to "economic conditions" in the municipal employer's jurisdiction. The County argues that this factor is decidedly relevant in this proceeding. It argues that the County's unemployment rate, low personal income, high poverty levels, low property values, large amount of non-taxable property, and lack of sufficient job opportunities for adequately-paid stable employment provide strong evidence of poor economic conditions in Forest County. The Association disputes the accuracy and significance of the County's evidence and believes that economic conditions found in Forest County are generally similar to those found in the contiguous comparable counties.

Although the undersigned acknowledges evidence indicating that Forest County is faced with some special conditions which present economic challenges for the County (for example, Forest County is large in terms of land area although almost 80% is non-taxable real property), she finds that data generally indicate that economic conditions in Forest County are just slightly below average when compared with economic conditions found in the counties which are the agreed upon comparables. Accordingly, she finds that Forest County's economic conditions merit only some consideration - but not determinative consideration under the "greater weight" factor - because the County shares many common economic features with its contiguous neighboring counties.

In considering the additional statutory factors, the arbitrator needs to consider the costs of each party's final offer. She notes that the County has provided exhibits detailing its costing for each party's final offers. According to these exhibits, when wage increases, social security, retirement, and health insurance are considered, the County's annualized 2000 total package represents a 7.25% increase (with the 2000 "lift" calculated at 7.35%) and the 2001 total package represents a 5.08% increase. [It must be noted that these calculations reflect Employer savings due to its health insurance proposals and also reflect the decrease in required Employer retirement contributions for 2000 and 2001. The calculations include but do not highlight the additional employee health insurance premium contributions required under the County's offer; they do not note in any way the significant new out-of-pocket co-pays which covered employees are required to pay under the County's proposal.] In contrast to the increases represented by its own final offers, the County calculations conclude that the Association's total package increase for 2000 represents a 8.17% increase (with the 2000 "lift" calculated at 8.76%) and the 2001 total package represents a 9.05% increase (with the 2001 lift calculated at 9.62%).

The Association has provided very different costing calculations for the parties' final offers. Although there are several differences between the figures used in each of the party's calculations, there is one prominent disparity. For some unexplained reason, the Association's costing calculations fail to include the Employer's major health insurance costs - although the Association does include deductions for employee health insurance contributions and for its expert's estimate for health insurance benefit reductions (prescription drug and other co-pays). Due to this critical omission in the Association's cost calculations, only the County's costing calculations are useful when dealing with the statutory factors even though the County's calculations do not address the effect upon employees of the additional premiums which will be deducted from their pay for their health insurance coverage and the additional out-of-pocket co-pays which employees will be required to make for prescription drugs and other benefits as required by the County's PPO proposal.

In applying relevant statutory factors in this case, one cannot ignore the major direct effect upon the County's financial situation caused by the dramatic 2000 and 2001 increases for health insurance premiums. This marked rise is so great that it overshadows the impact of the parties' proposed wage increases, even when the related roll-ups for social security and retirement are taken into account.

The Association argues that its detail classification-by-classification wage comparisons with those of the agreed-upon comparables clearly favor its wage offer. The Association correctly notes that its annualized offer of 3% wage offer for 2000 (2% on 1/1/00 and 2% on 7/1/00) does not match the average wage increase of 3.21% among the comparables while the County's wage offers (annualized at 2.5% for 2000 and 2% for 2001) is clearly below average. Even when fringe benefits such as sick leave, holidays, and vacations are factored in, the result does not change much because Forest County's benefits are in the middle of the comparables. Thus, if wages for 2000 and 2001 were the only issues in dispute and comparability the sole criterion, there is reason to select the Association's wage proposal. Is this result unchanged when the health insurance issue is added to the discussion?

The Association contends that since the County's offer changes significantly the health insurance status quo by proposing a PPO plan with different benefits and new co-pays and also by proposing an increased employee contribution for health insurance, the County is obliged to offer some quid pro quo for such reductions to existing benefits. The County's offer contains no such quid pro quo. The County argues that internal fringe benefits consistency is very important but it can only point to one of its several bargaining unit which has agreed to the County's increased employee health insurance proposal. Without additional bargaining units agreeing to its proposal, the County's argument for internal consistency is not viable and does not counter the Association's quid pro quo argument.

The strongest support for the County's proposed increase in employee contribution for premiums comes from its total package costing calculations discussed above. (The Employer's total package provides a 7.25% increase for 2000 and a 5.08% increase for 2001 in contrast to the Association's total package increase of over 8% for 2000 and over 9% in 2001.) In the view of the undersigned, despite the County's failure to provide the customary quid pro quo for changing the health insurance status quo, the County's proposed health insurance changes can be justified by that fact that it has been required to pay substantial increases for health insurance in 2000 and 2001. These increased health insurance costs for each of the two years covered by this contract have so increased total package costs that the County's final offer becomes the more reasonable one while the Association's final offer which is greater than 8% for 2000 and 9% for 2001 exceeds the reasonable range even when consideration is given to the increased financial burden imposed upon employees by the County's offer.

There is an additional aspect of this dispute that requires comment. It concerns the County's PPO plan, another part of the

County's package. The County's 2001 calculations for its total package assumes implementation of its PPO plan and, accordingly, is based upon somewhat reduced health insurance rates. The timing of this proceeding, however, makes implementation of the PPO plan before the end of 2001 unlikely. In addition, although the County believes its PPO plan is a needed and reasonable step to control escalating health insurance costs, the PPO plan (with its disparate impact upon employees depending upon whether they incur significant co-pays or receive previously uncovered benefits) represents an enormous departure from the existing standard plan. From an employee perspective, the proposed PPO plan represents a mixed package containing some increased benefits while imposing new burdens. Apparently a number of plan details were made available somewhat belatedly to the Association and bargaining unit members, thereby increasing confusion and resistance. If the change to the PPO plan were the only item in dispute, the arbitrator would choose to retain the status quo standard plan to permit the parties the opportunity to discuss and work out the many plan details. This option is not available in this proceeding, however, since she is required to select one party's final offer whole package. She urges the parties to take advantage of the fact that the contract being arbitrated in this proceeding will expire soon and successor contract negotiations may have already begun or will soon begin. The parties have a timely opportunity to consider the PPO plan at the negotiations table.

In light of the statutory factors and facts discussed above, the arbitrator believes she is obliged to select the County's final offer whole package. Although it provides only modest wage increases, imposes an additional employee health insurance contribution, and includes a change to a PPO plan, the County's total package represents a reasonable increase in County funds for members of this bargaining unit, particularly in light of the County's (and the region's) overall economic circumstances and the hefty health insurance increases required to be paid by the County in 2000 and 2001.

AWARD

Based upon the statutory criteria, the evidence and arguments presented by the parties, and the discussion set forth above, the arbitrator selects the final offer of the County and directs that the County's final offer be incorporated into the parties' collective bargaining agreement for 2000-2001.

October 28, 2001
Madison, Wisconsin

June Miller Weisberger
Arbitrator