

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Arbitration of the
Dispute Between the

**Door County Emergency Services Employees
Local 1658, AFSCME, AFL-CIO**
and

WERC Case 121
No. 58483
INT/ARB 8931
Decision No. 30080-A

Door County

Appearances:

Mr. Neil Rainford, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 14002 County Road C, Valders, WI 54245 for the Union. Mr. James T Jetzke, Human Services Director and Grant P. Thomas, Corporation Counsel, Door County, 421 Nebraska St., P.O. Box 670, Sturgeon Bay, WI 54234-0670 for the Employer.

Sworn Testimony was received from:

Mr. Richard Burress, Director, Door County Emergency Medical Services

Background

On September 30, 1999, representatives of Door County (hereinafter referred to as the "County" or the "Employer") and Door County Emergency Services Employees Local 1658, Wisconsin Council 40, AFSCME, AFL-CIO (hereinafter referred to as the "Union" or the "Employees") exchanged proposals on economic issues to be included in a successor agreement (for the years 2000-02) to their agreement which expired December 25, 1999. The Union represents all full time and regular part-time emergency services employees of the County, excluding managerial, professional, and confidential, employees (approximately 11 members). The Parties met on two other occasion and failed to reach an agreement. On January 24, 2000 the Union filed a petition with the Wisconsin Employment Relations Commission for final and binding interest arbitration pursuant to Section 111.70(4)(cm)6 Wis. Stats. Investigator Sharon Gallagher, a member of the Commission's staff, conducted mediation sessions on April 17, 2000 and January 4, 2001. A dispute arose over the duty to bargain over certain subjects which was resolved by the parties. Investigator Gallagher then advised the Commission that an impasse existed. The parties submitted final offers to the Commission by February 20, 2001. On March 7, 2001 the Commission certified the parties' final offers and directed them to select an impartial arbitrator. The Undersigned, Richard Tyson, was selected and appointed March 21, 2001. He conducted a hearing on the matter on May 17, 2001 at the Door County Courthouse in Sturgeon Bay, Wisconsin. No transcript of the hearing was taken. Both parties had an opportunity to

present exhibits and testimony and to outline their arguments in this dispute. They agreed to a schedule for submitting certain additional exhibits, and exchanging briefs and reply briefs.

The Issue(s)

Although many issues were resolved in the bargaining process, two issues remain in contention: wages, and a new prescription drug card proposed by the Employer. The Union proposes to increase wages by 3 1/2% each year and add ½ personal day and ½ hour to the minimum call in time. The County proposes to increase all wages by 3% in 2000 and 2001 and 3 1/2% in 2002 with the ½ personal day and ½ hour to the minimum call in time conditioned on acceptance of the drug card. At the hearing the drug card was considered the major item in this dispute. It involves the County's proposal to add a new drug card in 2002 with co-pays of \$5 generic and \$10 per brand named prescription until the deductible is met (\$150 single, \$300 family). The current medical deductible is \$200/425 for all medical expenses including drugs. The Employer contends that it is seeking to implement this latter provision for all groups and has provided Local 1658 employees with an adequate *quid pro quo* of an extra ½ % wages, ½ personal days, and an additional ½ hour minimum call-in as compensation for the increased insurance payments.

Cost Costing of the proposals by the Employer is as follows¹:

Salary and Benefits Costs Under the County Offer

	<u>1999</u>	<u>2000</u>	<u>%change</u>	<u>2001</u>	<u>%change</u>	<u>2002</u>	<u>%change</u>
Wages \$	390394	\$402106	3.0%	\$414169	3.0%	\$428665	3.5%
Benefits	172662	174920	1.3	176606	1.0	186911*	5.8
Total Comp.	563056	577026	2.5	590775	2.4	615576	4.2
\$ change		13970		13749		24801	

Salary and Benefits Costs Under the Union Offer

	<u>1999</u>	<u>2000</u>	<u>%change</u>	<u>2001</u>	<u>%change</u>	<u>2002</u>	<u>%change</u>
Wages \$	390394	\$404058	3.5%	\$ 418200	3.5%	\$432837	3.5%
Benefits	172662	178367	3.3	180520	1.2	187902*	4.1
Total Comp.	563056	582425	3.4	598720	2.8	620739	3.7
\$ change		19369		16295		22019	

Difference		\$ 5399		\$ 7945		\$ 5163	
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¹ER EX 11 It should be noted that the Employer included the same health insurance cost (\$730/324 per mo.) for both offers in 2002 though it should be lower for the County's offer since the employees are paying the additional deductible.

The Statutory Criteria

The parties have directed their evidence and arguments to the statutory criteria of Sec. 111.70 (7) Wis. Stats. which directs the Arbitrator to consider and give weight to certain factors when making his decision. Those factors are:

7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body, or agency which places limitations on 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.
7. g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors under subd. 7r.
7. r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give weight to the following factors:
 - a. The lawful authority of the employer.
 - b. Stipulations of the parties.
 - c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any settlement.
 - d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services.
 - e. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding 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 wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees generally in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost-of-living.
- h. The overall compensation presently received by the 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.

Arguments of the Parties

The Union

Both parties acknowledge that there are no state laws or directives limiting the Employer's ability to pay the Union's offer (the "greatest weight" factor). The local economic conditions (the "greater weight" factor) are substantially better in Door County than in most of the surrounding, comparable counties. The Union maintains that these counties are Kewaunee, Marinette, Oconto, Manitowoc, and Brown (and secondarily, Shawano and Waupaca) as determined by Arbitrator Zeidler.² The Employer's attempt to also use Oneida and Calumet counties should be rejected since the comparables have been set, and there is no evidence of any

²Door County (Highway Department), Dec. No. 26946-A, February 6, 1992.

significant change in relative economic circumstances. It may be a little challenging to compare EMT wages with these comparables since Door County has the only “stand alone” EMT unit; however, firefighters in these counties have EMT training and “perform essentially the same functions as in Door County” as do the police to some extent.³ While wage and benefit levels are perhaps not to be directly compared, the rates of increases in compensation are the most reasonable comparison.

Door County’s economic indicators show it to be in perhaps the strongest economic position among area counties. Its levy rate is one of the lowest in the state, and the lowest of the comparables. Its per capita valuation is second highest in the state, at \$141,703, nearly triple that of the Oconto County, the second highest of the comparables. Its per capita income in 1998 was second to Brown County, and has risen from 20th in the state in 1995 to 15th in 1998 while the other counties in the comparable group have remained about the same. Sales tax receipts from the ½ % add-on have risen 8.6% per year since 1995. Since the local economy is thriving, the “greater weight” factor would clearly support acceptance of the Union’s offer. The Union notes Arbitrator Weisberger’s Lincoln County (Highway Department) decision in which she states that the statute unambiguously requires giving greater weight consideration to local economic conditions whether the Employer is doing well or poorly.⁴

Other factors also favor the Union’s offer. The CPI has risen around 3 ½ - 4 % depending on whether one uses the CPI-U, -W, national or regional data. The internal settlements so far also favor its offer. While nominally they provide for 3% increases, they all have significant wage adjustments for one or more positions resulting in increases more than 3 ½ %.⁵ Only one has a drug card provision (the Sheriff’s Department) and in that case, employees received a dental plan as compensation. The value of that plan is twice the cost of the drug card, according the

³Union Brief, p. 8

⁴INT/ARB 8299, September 2, 1998.

⁵Union Brief, pp. 14-20.

Employer's data.

The pattern of external settlements also supports the Union's offer. Sturgeon Bay police received 3.25% and 3.4% in 2000 and 2001(excluding steps/longevity); firefighters received even more. Green Bay firefighters generally received 3% in 2000, and then adjustments raising wages from 3% to over 10% in 2001. Other counties' settlements such as Oconto and Marinette generally favor the Union's offer. While the Employer submits data for Kewaunee professionals of 3% increases per year from 2000-03, it pertains to only one position; adjustments to numerous other positions provide average increases from 4% to 6.66%. While the Employer in the instant case has provided adjustments to other unit employees in addition to the 3% general wage increase, none is offered to the EMTs. Any "catch up" argument would apply to the EMTs as well.

The Employer's offer including the drug card is a substantial change in the status quo for which the Employer has not demonstrated a compelling need nor offered an adequate quid pro quo. Currently employees pay 100% of their medical and drug costs up to the deductible of \$200(S)/\$425(F). The proposal "is actually a new form of insurance deductible" requiring co-payment of \$5(generic) /\$10 (brand) up to \$150(S)/ \$300(F) per year in addition to these amounts for medical costs.⁶ The Union contends that the Employer's offer changes the health insurance benefits so as to alter the status quo. The Union argues that arbitrators will not choose to adopt a final offer which includes a change in the status quo absent exceptional circumstances, such as when a unit is a lone "hold-out." They should seek to arrive at results which the parties would have arrived at were they able to do so. The County in this case bears the burden of proof that such policy changes are needed, and that it has provided an adequate quid pro quo. It has not done so. Health insurance costs have risen for all five counties yet the Employer has not shown evidence that any of these have had to bargain drug card plans to control costs. The Employer has not provided evidence, particularly conclusive evidence, that its proposal will reduce health care or prescription drug costs– it will only shift costs to the employees.⁷ Only one of the Door

⁶Union Brief, p. 27.

⁷Union Reply Brief, p. 2.

County bargaining units has the plan, having been offered a legitimate quid pro quo for its acceptance. The only other internal employee group to have the drug card is the unrepresented employees and, following arbitral practice, should not be considered comparable.⁸ All other employees have rejected the proposal.

⁸Union Reply Brief, p. 3.

The Employer asserts that the extra ½ day personal holiday and ½ hour additional call-in time would each cost about \$270 per employee.⁹ These are allegedly sufficient to compensate for the estimated drug costs of \$203.69. However, the former is really valued at \$130, and the latter is “nothing more than payment for services rendered by employees who are already overstretched by extremely demanding schedules.”¹⁰ The call-in adjustment was in the Union’s proposal to provide more adequate compensation for the “very serious and all-too-frequent interruption of their non-work lives, which are harried and fragmented by long hours and frequent overtime.”¹¹ The ½ hour provision is simply a way of addressing a current problem. Moreover, the number of instances for the County to pay will be reduced due to another contract adjustment which will result in the monetary value being significantly reduced. That provision (Article 7) will mean that an employee filling in for another for less than one day will no longer receive call-in pay when going out on call. The drug card cost of about \$204 per employee is also a flawed number. The trend has been an increasing number of prescriptions per year (from 207 to 336 from 1997-2001, or 17% per year). At the current rate, the card will cost employees \$285.11 in the first year alone, and will be at the maximum the second year.

The County’s offer of the “extra” .5% wage in 2002 to compensate for the drug card cost is also “meaningless” since other, internal, units effectively got more than the 3 ½% offered as did other employees in Sturgeon Bay in the neighboring counties.

In sum, Door County’s economic condition is unsurpassed; clearly it can afford wage increases comparable to other units. Other wage settlements, both internal and external exceed that offered

⁹The Union Reply Brief, (p. 6) notes the Employer’s calculation of \$279.54 cost for the personal day, \$286.65 for the minimum call-in provision, and \$340.29 for the costs of the additional .5% increase in 2002.

¹⁰Union Brief, p. 32.

¹¹Union Brief, p. 32.

Door County's EMTs. The Employer's drug card proposal makes a significant change to the parties' agreement causing the loss of a benefit; a demonstrated need and a quid pro quo would normally be required for voluntary agreement, and would therefore be required by an arbitrator. The County has neither shown the need nor has it provided a sufficient quid pro quo -- particularly since its wage offer to unit employees' is less than the comparables.

The Employer

The Employer contends that the internal comparisons of other units' settlements with its offer to the EMTs shows it to be the most favorable. The primary issue is its health insurance proposal, as well as the wage increase. In such cases, internal comparisons are to be given more weight, as arbitrators have noted.¹² There has historically been internal consistency in voluntary settlements among the county's five units. To have different terms for this unit would lead to whipsawing, holding out, and/or otherwise impede the bargaining process.

The County has had a policy of consistency of wages and benefits among units. Other units received a 3% wage increase, as did non-represented unit employees. The EMTs should also receive 3% unless there is some "unacceptable disparity" between those employees and appropriate external comparables.¹³ In addition to the 3% across the board increases, some units had equity adjustments to catch up with external comparables. This was the result of the bargaining practice based on particular facts. Such equity adjustments were targeted to catch up "sharply underpaid" employees or positions.¹⁴ These adjustments are distinct from across-the-board increases, and should not be lumped together so as to unjustly benefit those who do not have a demonstrated inequity.¹⁵ To do so would chill negotiations where there are equity problems since employers would be penalized for providing equitable adjustments. Cases cited by the Union arguing for the inclusion of equity adjustments in wage increase comparisons referred to broad, not targeted adjustments, and do not pertain to this case. In this case, the Union is breaking out of the pattern by its offer of 3 ½ % plus the additional ½ personal day and call in

¹² Arbitrators Flaten in City of Madison, 106 LA 1059 (1996), Dichter, in City of Waterville, 107 LA 1194 (1996), and Rice in Manitowoc School District, 100 LA 844 (1992).

¹³ Employer Brief, p. 5.

¹⁴ Employer Reply Brief, p. 1.

¹⁵ Employer Reply Brief, p. 2.

time. The union must demonstrate that departure from the pattern is warranted.

The drug card has been bargained with the Deputy Sheriff's unit and is implemented for non-represented employees. The county's other three bargaining units' contracts will expire at the end of 2001; the employer will include the same drug card proposal in these negotiations. The Deputies received a quid pro quo of a dental plan, cafeteria benefits plan, and increased compensatory time through the bargaining practice. The county has offered the EMTs an additional ½ % compensation for 2002 as well as the personal and call-in time increases, which more than compensates for their estimated drug card costs.

The County also notes that its EMT unit is unique in that it is the last county owned and operated emergency services unit; it cannot be directly compared to others such as hospital-owned, private non-profit, or firefighter/paramedic units. The Union only gave evidence of one firefighter/paramedic unit for comparison. External comparisons show a pattern of 3% wage increases for the counties in the area. The Union uses Sturgeon Bay Police and Fire units and the Green Bay Fire/paramedic unit which are inappropriate comparisons since jobs may differ, and in the latter case, the Employer is also quite different in terms of population, economic base, and other factors which make it reasonable for wages to be higher. The Union has offered no proof that these are similar employees. Moreover, the FLSA distinguishes police and fire employees from emergency services employees. Nevertheless, under either parties' offers, rankings of Door County EMTs *viz* the Union's comparables will remain the same.

The Union inappropriately includes Brown County in its comparisons. While Arbitrator Zeidler used Brown, Oconto, Marinette, and Manitowoc counties (and gave some weight to Shawano and Waupaca) in his 1992 decision, Arbitrator Michelstetter excluded Brown and used Kewaunee, Oconto, Marinette, and to some degree, Manitowoc counties four years earlier.¹⁶ Arbitrator Zeidler took no notice of and gave no real credence to Arbitrator Michelstetter's decision. In it he (Michelstetter) specifically concluded that Brown County was substantially larger and more urban than Door County. Nothing had taken place which would have warranted a change in the list of comparables which Arbitrator Michelstetter's award established. The parties have not, in the intervening period, used Brown County as reference in bargaining. It is substantially different from Door County in population, urbanization, economic base, valuation,

¹⁶Door County (Highway), Dec. No. 216946-A (1992), and Door County (Highway), Dec. No. 25426-A (1988).

per capita income, county budget and workforce, and is not economically interdependent with Door County. The disparity between Brown County and the other comparables “is even more striking.”¹⁷ The evidence shows that it is not to be included, rather, Oconto, Marinette, Kewaunee, and Manitowoc counties, and secondarily, Landglade, Shawano and Waupaca are appropriate. The pattern of settlements is clearly 3%. No evidence has been shown that Door County EMTs are behind which require a greater increase. The Union’s claim that somehow since Door County’s levy is low, it should pay more is wrong since Door County uses the sales tax add on to replace some of the property taxes.

The Employer has shown that there is a significant problem with health care and prescription drug costs. It would be irresponsible for the Employer to not reign these in. The drug card reasonably addresses the problem while at the same time providing employees with adequate compensation for the estimated \$204 costs. The half day will cost the Employer \$280 per employee. The increased call-in runs about \$287 while the extra ½ % pay will be \$340, for a total compensation of over \$906 per employee for their costs of the card. These are a clear gain for unit members. Such gains go beyond that provided other internal units, and “strongly favor” the Employer’s position¹⁸. If the Union were to prevail, other unit members will resent the additional ½ % and other gains which EMS employees received, hampering bargaining which is underway. Additionally, the Union has not met its burden for changing the call-in provision and additional personal day.

The final offers of both parties is consistent with the cost of living factor. The other remaining statutory factor of “overall compensation” is similarly consistent. Gross earnings plus benefits are extremely competitive according to the evidence. While the union may claim a disparity, the rate of retention of bargaining unit employees has been in the range of 100%! The Employer’s offer is more consistent with the interests and welfare of the public, having no adverse effects on services and less adverse effects on taxpayers. Finally, there have been no material changes pending the arbitration proceedings.

In sum, the Union’s wage offer should be rejected since it goes beyond the prevailing internal and external pattern. Moreover, the Union seeks an increase in benefits which is unwarranted. The Employer’s offer, on the other hand, is consistent with the pattern and with the interests and

¹⁷Employer Reply Brief, pp. 5-6

¹⁸Employer Reply Brief, pp. 2-3.

welfare of the public to keep costs reasonable.

Discussion and Opinion

The Statute requires the Arbitrator to consider the aforementioned criteria in making an award. The criteria cited by the Parties as pertinent to this decision are the "greater" weight factor of economic conditions as well as internal and external (e. and d.) comparisons, interests and welfare of the public (c), cost of living (g), and other factors--status quo change (j), and overall compensation (h.). Each of these will be considered below as the outstanding issues of this dispute have been considered by the Arbitrator. These issues include whether the drug card status quo change is warranted, whether the Employer's offer includes an adequate quid pro quo if necessary, whether the extra leave and call-in time and "extra ½ %" wage offer of the Employer is beyond the prevailing pattern, and what constitutes the external comparables which in part establish that pattern. First, the Arbitrator is compelled to address the "greatest" and "greater" weight factors. He then will comment on the question of the status quo, as outlined above, and related matters. The external comparability factors are then addressed. What constitutes the comparables is at issue, and its resolution is followed by a discussion of comparable pay comparisons and other factors and of other issues.

The parties are agreed that the "greatest weight" factor to be considered by the Arbitrator which is listed on page 3 above is not applicable to this case. The Employer contends that the "greater weight" factor of economic conditions is "not particularly material." The Union convincingly gave evidence of the strength-- both absolutely and relative to the set of comparables-- of the Door County economy. Its per capita income growth is the highest, and the second highest in the group. Its valuation per capita is substantially higher than any other county. Its levy rate is consequently very low. The Employer contends that this is caused by the County's decision to transfer some of the burden to (the ½ % add-on) sales taxation. Door County's sales tax revenues have grown an enviable 8.6% per year during the past 5 years, a calculated portion presumably coming from non-residents. The Undersigned must agree with Arbitrator Weisberger's literal reading of the statute that the "greater weight factor" applies symmetrically, when Employer's face adverse economic conditions and when they are more favorable. He also agrees, however, that this factor alone "does not mandate selection" of one party's offer.¹⁹

¹⁹Lincoln County (Highway Department), Int/Arb 8299 (Sept. 1999)

In consideration of “other factors”, on the face of it, it would appear that the Union's offer for wages is somewhat above the external pattern and the internal settlements while the Employer's offer contains a proposal for a status quo change which is not supported by external or (with one exception) internal settlements. The Employer's proposal for the changes it seeks in health care is not unreasonable, is consistent with what the Undersigned considers reasonable efforts at cost containment, and offers an opportunity to improve at least the financial health of the Employer, and arguably, provides some compensation to the employees. At the same time, the Union's wage offer includes a percentage increase which is not unreasonable and may be close to the “pattern” if wage adjustments provided in other units are included with the general wage increase.

Such other factors: Status quo

The Arbitrator recognizes that the County proposes a significant change in the provision of health insurance for a number of bargaining unit members who use a fair amount of prescription medications. Several members of course may not be very much affected. In addition to the current (\$200/425) deductible, employees would face co-pays of \$5/10 for drugs up to \$150/300 per year. An average employee having about 30 prescriptions may pay \$225 more (by the Employer's assumption that half are generic), unless he or she is single, in which case his/her maximum exposure is \$150.

Arbitral authority and practice would indicate that the County must present a compelling case for its proposal, that its proposal is needed as a remedy or has intrinsic merit, and that it generally would need to offer an adequate quid pro quo, unless its offer has clear support such as among the comparables.²⁰ This indicates that the employer's case for relief be reviewed, that the comparables' struggles with health care and insurances and (hopefully successful) efforts to control these be examined, and that the proposal has merit and/or at least support among the comparables. Up front, the Undersigned appreciates the substantial increases in health care costs occurring across the state and nation, particularly for indemnity or fee-for-service type plans, and recently, for escalating drug care costs paid for with somewhat blank checks. He is of the opinion that plans which encourage the consumer (employee) to ask whether a particular

²⁰see for example, Vernon in Elkhart Lake and Bloomer School District (Dec. No. 43193-A and 24342-A), Nielson in Manitowoc Public Schools, (Dec. No. 26263-A) and Petrie, in New Richmond School District, as well as those cited above by the Union.

prescription is the most efficacious per dollar spent (considering if there are alternatives), and to ask whether there are generic equivalents are the plans which are to be preferred as a matter of public policy (the public interest). Proposals for “reform” which simply transfers costs to employees without compensation cannot be preferred unless there is sufficient compensation and support among the comparables.

What evidence has the Employer offered to compel adoption of its drug card proposal? The data it used to estimate the per employee cost of the drug card indicates a 21% per year growth in the number of prescriptions from 1997-98 to 2000-01 (from 207 per year to 336) while the cost increased 48% per year. The Arbitrator notes that the number rose dramatically in the first 2 years and fell quite a bit in the past year (though the cost still rose 5% last year). This is a small sample (3 years) from which to infer a long term trend, since one person who developed a chronic illness requiring expensive drugs could easily have accounted for much of the increase. The Employer provided data on total health care costs from which the Undersigned derived Table 1. The record does not reveal whether this data shows an exceptional level or growth in health care costs compared to other employers.

Table 1: Ten year cost of health insurance – Door County

Year	premium (family)	% change	deductible (family)
1992	\$3900		\$300
1993	4752	21.8%	425
1994	4752	0	425
1995	5040	6.1	425
1996	6000	19	425
1997	6600	10	425
1998	7380	11.8	425
1999	7800	5.7	425
2000	8184	4.9	425

2001	8340	2	425
2002	8760	5.	425 (U) / \$725(Co)
ave % _	12.4%*	7.7%	

* derived from EX 16

The Employer also provided an article from Nation magazine discussing the increases in drug costs and the contribution of patents and anti-competitive drug company practices towards these increases. One may read into the article that there is hope for a tempering of the price increases as patents on many popular drugs will soon expire, and as the FTC (hopefully) gets serious about reigning in the illegal and/or shady practices of the several drug companies. One may also read into the article that there should be encouragement of the use of generic equivalents. The Employer also provided an article from the Monthly Labor Review comparing the costs of fringe benefits for full- and part-time employees. In its Brief and Reply Brief, the Employer didn't refer to either article as to their usefulness in supporting its drug card proposal. In fact, the Employer hardly discussed the drug card proposal at all except that the Sheriff's unit bought into it, non-represented employees have it, and the Employer would endeavor to extend it to other units in the bargaining rounds currently underway. No evidence was presented that the drug card has been shown to be efficacious in health care cost control (vs. cost shifting) though the Undersigned presumes it would be to the extent that it encouraged the use of generic equivalents. No evidence was presented that the County's prescription drug costs have risen more than anywhere else, or that the employees pay less than other employees for their health care. Only 3 full labor agreements from external comparables were provided (by the Union). These show that the Green Bay Firefighters/EMTs only pay 5% of the health and dental premium with a \$100pp./\$300 max. deductible. The Sturgeon Bay Police and Firefighters units have no premium co-pay. Of the County bargaining units, only the Sheriff's unit has the drug card which was traded for a dental plan. The other units have rejected the drug card. The Employer's final offer to the Courthouse Employees did not include the drug card proposal. In sum, the Employer has not demonstrated a compelling need for the drug card proposal or clear support among the comparables.

The comparables

The Union maintains that the appropriate comparable counties are Kewaunee, Marinette, Oconto, Manitowoc, and Brown (and secondarily, Shawano and Waupaca) as determined by Arbitrator Zeidler. The Employer asserts that external comparables are not easily determined, but

would exclude Brown County and include Oneida, Calumet, Shawano and Waupaca counties as appropriate.²¹ The Union provided data on many of the counties as seen below. Kewaunee, Marinette, Oconto, Manitowoc are mutually agreeable.

The Undersigned would continue to use those counties used by Arbitrator Zeidler for a number of reasons. Continuity in reference to set of other employers is said to lend greater predictability and stability to the bargaining relationship between an employer and the employees' representative. This set may need to be changed if substantial economic and demographic differences develop

Table 2: Characteristics of Proposed Comparables

County	popula- tion	value(m.)	Co. tax	levy rate	value/cap	1998 Income/ capita ('95-98 %_)
Brown	220,773	18.582	53.7m	5.07	47.9k	28,114 (17.6)
<i>Kewaunee</i>	20,028	.820	5.8	7.02	41.0	21,080 (17.8)
<i>Manitowoc</i>	84,727	3.327	19.5	5.86	39.3	24,276 (17.9)
<i>Marinette</i>	42,925	1.898	10.4	5.45	44.2	20,611 (15.3)
<i>Oconto</i>	33,570	1.784	9.4	5.27	53.1	18,488 (15.4)
Shawano	39,066	1.659	9.5	5.71	42.5	19,906 (18.4)
Waupaca	50,125	2.119	11.7	5.52	42.3	23,473 (17.3)
ave	70,176	3.170	17.1	5.70	44.3	22,278 (17.2)

²¹ EX 21-22. Demographic data are not provided by the County, though selected wage levels and increases were submitted.

<i>Door</i>	26,589	3.768	13.0	3.44	141.7	25,326 (20.9)
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between employers. No particularly substantial changes is evident except that Door County's per capita income has moved closer to Brown County's over the past 3 years (EX 14B) as seen above. Brown County's geographic proximity and similarity to Door County as well as labor market commutation make it a reasonable choice for making comparisons of wage and benefit changes, if not levels. Workforce Profile data provided by the Employer shows that in Door and Brown County median "selected occupational wage data" are similar for many commonly reported occupations (cashiers, machine setters, clerks, home health aides, janitors, RNs, and sales), though a couple (machinists, and tool and die makers) are 5-10% higher in Brown County. Its industrial mix is different and its population is over eight times as large. On the other hand, the other four comparables have more similar, though larger populations, but only one-third the valuation per capita and about 20% lower per capita income. Clearly Door is relatively small, though its tax and valuation put it in the range of the agreed on comparables. Its levy rate and valuation per capita seems to put it in a class by itself. Its per capita income makes it more similar to Brown County than three of the comparables. Oneida, Langlade, and Calumet counties are not included because of their considerable distance from Door County, lack of data on comparability, and exclusion from prior arbitration pools.

The Employer contends that the Union's wage offer is above the pattern of settlements, both internal and external, and should be rejected. The Union concedes that these settlements appear to be uniformly 3% increases per year, but further analysis shows that there are significant hidden increases in the range of or exceeding its offer of 3 ½ % per year. The Arbitrator has tried to determine the pattern of settlements in Door County and in comparable counties including "hidden" increases or "equity adjustments". Without knowing the number or proportion of employees in affected classifications where there were adjustments, or without having the costing of the settlements (and not being able to spot all changes), it is impossible to determine the actual increases in wages for the units.

Table 3: Door County settlements

	1999	2000	2001	2002
Courthouse	3%	3%+ ¹	3	
Deputies	3+ ²	3	3	

Highway	3	3 ⁵	3	
Social Services	3	3+ ³	3+ ³	
Emergency Services	3	3 (Co)	3 (Co)	3 ½
		/ 3 ½ (U)	/ 3 ½ (U)	
Firefighters (Sturgeon Bay)		3.3 ⁴	3.4	3.25 or CPI
Police (Sturgeon Bay)		3.25	3.4	3.25 or CPI

¹ in arbitration. The 3% is agreed to, along with 9 (of about 40) class adjustments; the union's offer seeks 3 additional classification adjustments and one reclassification

² three of 9 positions (including the presumably more numerous Road Deputies) received 1999 increases of 5.1 - 10.1%. One received additional increases of 5% in 2000 and 2001.

³ Three of 19 positions received adjustments ranging from 2.6% to 3.9% for 2000 and two of these received an additional .7 to .8% for 2001.

⁴ Lieutenants received 4.1% increases both years

⁵ In addition to a shift differential increase, one position, the Seasonal Pavement Marking Operator received a .9% adjustment.

The data clearly show the 3% nominal wage pattern for County employees' units. The Employer also provided separate evidence that the general wage increase has been the same for all units for the past 6 years, though variations occurred in the prior 4 years. Even when the wage increases were the same, agreements on benefits varied, and wage adjustments were made. Table 3 also shows adjustments in each unit. The Union contends that the value of these should be added to the 3% increase to determine the real increase. The Employer contends that adjustments are adjustments—based on specific circumstances of employee classifications being compensated less than the relevant reference group such as external comparables. These adjustments should not be charged against the general wage settlement since this would chill bargaining when such “equity” adjustments are necessary to attract or retain certain employees or when compared to other employers. The Undersigned agrees in the main with this position, but recognizes that employers strategically or out of necessity may hide wage increases as “equity adjustments”. But when are adjustments “equity adjustments” not to be considered in comparing settlements, and when are they part of the bargaining settlement package used for comparison? Arbitrator Vernon in Price County opined that meaningful evidence was needed to justify differential treatment.²² The County has argued that in the Price County case, the increases were “broad

²²Dec. No. 29725 (June, 2000)

based” and “significant hidden increases” unlike those in the instant case shown in the above table. These were small in number, and focused on “catch up.” The Undersigned would like to concur with Arbitrator Vernon, but believes that this standard may place an undue burden on employers in cases where other employers have made the adjustments. How, in this case, is Door County to show that the adjustments made in the Kewaunee professional unit settlement (in addition to the 3% increase) were truly for “equity” purposes? For the time being, the Undersigned will consider how “extensive” the adjustments are in evaluating the settlements.

The Door County Courthouse employees will have at least 9 of the 40 \pm classifications adjusted between 3% and 10% in addition to the 3% increase for 2000 (effective 12/26/99). If there were equal numbers in each class which was adjusted, those classes would have received 9.7% increases. The entire unit would have received an average increase of about 4.5%, if there were to be evenly distributed numbers of employees in all classes, or about 4% total package in 2000 and 3½% in 2001. This may be considered an extensive number of adjustments for which the County has not provided “meaningful evidence” of an equity need. A third of the Deputies’ unit received adjustments in 1999 of 5.1%- 10.1%, resulting in an average increase of 4% +. Unlike the Courthouse employees, the contract started in January; this agreement will start in December. Only 3 of the 19 Social Services classifications received adjustments between 2.6% and 3.9% in 2000 and about .8% in 2001. These may be considered targeted or less extensive, but may raise unit wages about 3 ½ % on average if employees are evenly distributed between classes. The Highway adjustment is clearly not extensive.

Sturgeon Bay Police and Firefighters received increases between the parties’ offers, though somewhat closer to the Union’s offer, particularly considering the extra .8% increase for Lieutenants in 2000. While the duties of these differ from Door County EMTs, there is some similarity of functions, allowing for comparisons of rates of increases (if not for levels) of wages. They also are “other public employees” in the community, and have a settlement for 2002. Conclusions as to the pattern of settlements in the community is difficult. Nominally, wage comparison with other county employees tends to favor the County’s offer. Giving consideration to the actual increases in units where “adjustments” have been extensive seems to indicate that wage increases have been somewhat between the parties’ offers. Comparisons with City police and fire employees (who may be more similar to EMTs than are courthouse or social service employees) indicate that the Union’s offer is slightly preferred.

Evidence of external comparables’ settlements to support the Union’s position is less persuasive.

A number of Kewaunee County professional employees received significant adjustments in 2000 and 2001. Wages in Kewaunee were considerably below the comparables which would argue in favor of the Employer's position that the general increase was 3%, plus adjustments added.

Comparables' Wage Settlements 2000-2002

County	2000 nominal	2000 w/ adjustments	2001 nominal	2001 w/ adjustments	2002 nominal	2002 w/ adjustments
Kewaunee ²³ professional	3%	7.5 (3-13)	3%	3.75 (3-6)	3%	3.6(3- 5%)
Kewaunee courthouse deputies highway	3% 3 3		3			
Marinette	2 / 2%					
Oconto courthouse Deputies highway Professions telecomm	3/2 ²⁴ 4 ²⁴ 3 3 6 1/3		3 3 3 3 3		3 3 3 3 3	
Manitowoc	3		3			
Brown Nurses	3	3.3- 3.4	3.2			

²³2000-01 adjustments range from the nominal 3% for 1 class (Human Services Professional I) to 13% for Dietician. HS III and II received 6 and 8 %. The Arbitrator averaged the increases for the 6 classes, but recognizes that these need to be weighted by the number in each class. The 2001-02 adjustments for 4 of 6 classes ranged from 3.5% (3 classes) to the 6% increase for HS III). The Union argued that the 2002 increase "surely exceeds 4%."

²⁴Employer states this is a quid pro quo for insurance buy-in. The Union argued that the 3 classes averaged annual increases of 3.66%, 3.33%, and 4.11% and that reclassifications will further increase wages.

airport	3	5.1	3.2			
corrections	3					
courthouse	3		3.4(most			
electricians	3		2			
highway	3		3.2-3.3			
human svcs	3.4		3			
h.s. prof.	3		3			
Shawano	3		3 (most)			
Waupaca	3		3			
Green Bay Firefighters	3		3-10.2% ¹			

¹ Four classifications, new Privates, Captains, and Mechanics received 3%; 5 classes (experienced privates, engineers, and lieutenants) received 6.7% to 10.2%. EMS trained firefighters receive 3.25% of top firefighter pay as a premium, and in 2001 received a \$4 increase to \$14 per(24 hr.)day when serving on the squad or a \$.17 increase beyond the 8.3% increase for 2001.

Kewaunee courthouse, deputies and telecommunicators' adjustments above the 3% increase appear to be limited. The Oconto wage increases for 2000 exceed the pattern, and are part of the compensation for concessions on insurance. Examination of the external settlement pattern appears to mainly support the Employer's offer.

In addition to the Union's 3 ½ % wage offer each year, it includes an increase in the minimum call-in time to 2 ½ hours and ½ day additional personal time (to 2). These are also included in the Employer's offer containing the drug card proposal. The Employer estimates the cost of the former as \$287 per employee based on actual 2000 call-in time. The Union contends that the increase is needed compensation for excessive overtime, and that the cost estimate is methodologically wrong. There will be a significant drop in call-in pay because employees filling in for another in less than 1 day won't get paid call in when they go out on a call. The Undersigned would agree that the cost is probably less than \$287, but could only speculate on the mix of call-ins from home and from vacation coverage as well as the frequency while call-ins exceed 2 hours. The leave cost is estimated by the Employer as being \$280 per employee, while the Union contends that it is worth \$130; the Employer's costing is based on

overtime rates. The Arbitrator notes that other county units had some benefit increases. Some Highway Department employees received shift differential increases. Sheriff's Department employees received increased allowances, and compensatory time and Workers Compensation improvements while Social Services employees received improvements in stand-by pay. These, however, do not equate to the probable value of the improvements in the minimum call-in and ½ day leave. The Arbitrator would agree with the assertion that on this matter, the internal comparisons "favor the Employer's position."

Other factors and issues

The remaining factor brought to the Arbitrator's attention is the Cost-of-Living (g). The Employer contends that this factor favors neither party since each offer is consistent with it. The Union argues that it clearly favors the Union's offer since the year to year changes in the U.S., Midwest Urban, and Midwest Urban Size D indices were in the 3 ½ - 4% range for December, January, and February. Both submitted data for the US City Average of a 3.4% increase for 2000. The Arbitrator notes that while the *data of record* favors the Union's offer, subsequently the index has fallen with the current economic slump.

The parties' respective offers present a difficult choice. The Union's wage proposal is high in comparison to employees in other, comparable counties and is perhaps somewhat high in relation to increases for other Door County employees, though other Sturgeon Bay employees who may be somewhat more similar have settlements closer to that proposed by the Union. Were this to be the only matter in dispute, it would be cause for rejection of the Union's offer. However, the parties have indicated that the major item in the dispute is the drug card issue. The Arbitrator favors the Employer's proposal as a matter academic training if it were to induce cost-consciousness and encourage consumption of generic equivalents wherever possible. This is one of the few strategies currently available for possibly curtailing this most rapidly rising component of health care costs. The Employer has provided no evidence that the proposal will do anything other than shift costs to employees. Support for the proposal also cannot be found from examination of other counties' settlements or other settlements in the community except for the Sheriff's Department settlement. There the parties weighed the value of the dental plan and other improvements and determined these to be a fair trade for the drug card. The Employer's proposal for the drug card traded for the benefit improvements in excess of those received by other County units has appeal to this Arbitrator, but apparently not to the Union. As a significant change in the status quo the Employer shoulders the burden of its justification which in the opinion of the Undersigned it has not done. He believes that the County and its employee

organizations will implement the drug card when an appropriate determination of its merits and the costs to be paid by the employees is made-- a determination best done through the collective bargaining process. The arbitration process is by practice a conservative process. Finally, consideration of the "greater factor," the relative economic conditions, would seemingly favor acceptance of the Union's offer.

Award

Having carefully considered all of the evidence and argument of the Parties set forth above as well as the arbitral criteria provided under Section 111.70 Wisc. Stats., it is the decision of the Undersigned that:

The final offer of the Union is to be incorporated into the 1999-2001 Collective Bargaining Agreement with Door County.

Dated this 29th day of November, 2001.

Richard Tyson,
Arbitrator