EDWARD B. KRINSKY, ARBITRATOR

In the matter of the Interest Arbitration	:	
Between	:	
	:	
La Crosse County Highway Employees,	:	
Local 227, AFSCME, AFL-CIO	:	Case 186
	:	No. 59631
and	:	INT/ARB - 9169
	:	
La Crosse County	:	
	:	

Appearances:

Mr. Daniel R. Pfeifer Staff Representative AFSCME Council 40, for the Union

Mr. Robert B. Taunt Personnel Director, for the County

By its Order of December 12, 2001, the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as the arbitrator "to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act," to resolve the impasse between the above-captioned parties "...by selecting either the total final offer of the [Union] or the total final offer of the [County].

A hearing was held at La Crosse, Wisconsin on April 3, 2002 . No transcript of the proceeding was made. The parties had the opportunity to present evidence, testimony and arguments. The record was completed on August 5, 2002 with receipt by the arbitrator of the parties' reply briefs.

At the hearing the parties agreed on the terms of an Agreement for 2001 and 2002, except for the following:

The first issue is the effective date of the proposed wage increases for 2001 and 2002, an issue which is a minor matter in the view of both parties and which will not be considered further below. The County's effective dates are January 8 and July 9, 2001, and January 7 and July 8, 2002. The Union's effective dates are January 1 and July 1 in each of the two years.

The second, and most important issue is that the County proposes the following in its final offer to which the Union has not agreed:

In the Second Year of the Contract:
Effective with February 2002 coverage, the Health

> plans will require a $ 100 per person deductible with $ 300.00 family maximum. Effective February 2002, the Health plans will require a 90/10 co-insurance in network and 70/30 co-insurance out of network. Maximum out of pocket expense, in network will be $ 350.00 for Single coverage and $1,050.00 for Family coverage and out of network will be $ 850.00 for Single coverage and $ 2550.00 for Family coverage.
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> Section 9.06 - Sick Leave Payout (Effective Jan 1, 2002)
> a. Increase payout from 25% to 35%
> b. Increase maximum number of days of accumulation from 120 to 140 (employees will start accumulating days from 1/1/02)
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> Letter of Understanding to read: - "For the year 2002, effective Jan. 1, 2002, La Crosse County will pay an amount equal to $100 for each single and $300 for each family coverage of bargaining unit employees enrolled in the Health Insurance plan, based on single/family enrollment status as of Jan. 1, 2002 intended to be deposited into the Medical Reimbursement portion of the Section 125 Plan. Said amounts will be available to enrolled employees to offset the cost of insurance increases, or other allowable expenses in 2002. Amounts not spent prior to 12/31/02 will be forfeited according to plan rules. Per Internal Revenue Code (IRC), said employees may, at their option, cash out the amount paid. The implementation of this proposal shall be in accordance w ith IRC rules governing Section 125 plans as interpreted by the Plan Administrator."

At the hearing the parties agreed that the insurance changes can only take effect prospectively. Thus if the arbitrator selects the County's final offer, the changes would take effect in the month following the Award.

In its brief, the Union explains the impact of the County's proposal:

> The current PPO's have no deductible and no co-pays for in-network services. The out-of-network services for the current PPO's contain a $ 100 single and $ 300 family deductible and an 80/20 co-pay. The County is seeking to change this by implementing a $ 100/$300 deductible and a 90/10

> co-pay for the in-network services and 70/30 co-pay for out-of-network services. The maximum out-of-pocket for the in-network would be $350 per year for single and $1050 per year for family. The maximum out-of-pocket for the out-of-network would be $850 for single and $2550 for family. The vast majority of the employees of La Crosse County participate in the PPO's, therefore, the main issue herein is that employee[sic] who have the single plan would be liable for deductibles and co-insurance of up to $ 300 per year (or .17 per hour) for which they currently do not have the responsibility. The employees with the family plan would be liable for up to $ 1050 per year (or .50 per hour) for which they are currently not responsible...The County is proposing to pay the employee deductibles for only the first year of the insurance change. This would reduce the employees' single plan liability to $ 200 for only the year of 2002 and the employees' family plan liability to $ 750 for only the year of 2002..."

The County's Health and Dental Plan is self-funded. The County explains its justification for its proposal, in part, as follows:

> ...In 1998 the money set aside to fund the Health & Dental program jumped to $ 932,022 from $ k352,498 the year before. Since 1998 the contingency amount has exceeded $ 750,000 per year. Then, in the most dramatic jump ever, the funding requirement almost doubled in one year from $ 796,711 to $1,577,125 in year 2001...Despite annual planning through the actuarial calculation of the Plan Administrators for the premium necessary to fund the Health plan, claims exceeded premiums collected starting in year 1997 to present. The County contributed additional funds to pay claims. The total supplemental funding by the County for the period 9/97 through 9/00 was $ 1,371,000 to keep the plan solvent enough to pay claims.
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> ...Despite premium increases that raised revenues by almost one million dollars in 2001 ($907,682 higher operating revenues than 2000), plan expenses still exceeded revenues by $ 269,997. The "retained deficit"...rose to $ 804,296 by year end due to plan cost overruns...

> [Moreover]...the Finance Director testified to how dangerously close to the Levy Limit Caps the La Crosse County Budget has become, due in part to the dramatic rise in health insurance cost. He indicated that the County Auditors had advised the County to work with the health insurance in order to reduce the supplemental funding necessary and the deficit existing in the plan...

The parties do not agree about comparable counties. They agree that the following counties should be viewed as comparable: Dodge, Eau Claire, Fond du Lac, Manitowoc, Marathon, Monroe, Sheboygan, Walworth, Washington, and Wood. In addition, the County views as comparable Jackson, Trempealeau and Vernon which are contiguous with LaCrosse. In the Union's view they should not be included in the list of comparables.

In a decision dated August 29, 2000 between these parties (INT/ARB-8627 Decision No. 29742-A) Arbitrator Michelstetter concluded that the comparables should be the first group of counties listed above; that is, those counties which the Union views as comparable in the current proceeding. Michelstetter considered the County's arguments urging him to include Jackson, Trempealeau and Vernon Counties, but he did not include them. Michelstetter stated:

> "The Employer has proposed to include the other surrounding counties besides Monroe. However, it did not provide any wage or other comparative data useful for the substantive issues herein [note: In the present case, the Employer did provide such data]. Jackson, Trempealeau and Vernon, all have populations less than 27,000 and per capita incomes at least $ 5,000 less than La Crosse. The counties are only comparable on the basis that they share some of the same local economic characteristics as La Crosse. They are not otherwise directly comparable. The parties have previously used Monroe as the closest comparable of all the contiguous counties. I have continued to do so for the purpose of consistency and to provide some balance."

The arbitrator agrees with Michelstetter's conclusions and reasoning. Moreover, nothing has changed significantly in the intervening two years to alter that conclusion. In the arbitrator's opinion, once comparables have been established, they should continue to be used, unless there are important reasons to change them. This enhances the stability of the bargaining relationship since the parties

have a known standard from year to year against which to judge both parties' proposals. It should be noted, too, that the decision by the arbitrator to use the Michelstetter comparables does not place the County at a disadvantage since, as it stated in its brief, these comparables have "been used by the County in examining wages and benefits for all its employees, Union and Non-union for at least the last 16 years."

In making his decision about which final offer should be selected, the arbitrator is required to weigh the criteria set forth in the statute. Certain of the factors are not at issue in this case, and the parties did not discuss them in their submission of data or in their arguments. Therefore, these factors will not be considered further: 7r. 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 any proposed settlement;" f. comparison of wages, hours and conditions of employment with employes in private employment in the same community and in comparable communities; h. "the overall compensation presently received by the municipal employes..." The remaining factors will be considered in turn.

Factor 7. is the "factor given greatest weight" which requires that "...the arbitrator...consider and ...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..." There are no such limitations which directly affect the expenditures and revenues of the County which must be given the greatest weight in this case. This factor does not favor either party's final offer.

Factor 7g. is the "factor given greater weight" which requires that "...the arbitrator...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."

With respect to the greater weight factor, the Union argues that the County "is not statistically or demographically any worst [sic] off economically, than any of the comparable Counties...[these factors] are not as important herein because wages are not in dispute." The County argues, however that the disputed issue is significant because of its budgetary consequences. County Finance Director Ingvalson testified that there has not been an adequate reserve in the Health Insurance Fund for several years, and that funds needed for the Health Insurance Fund have had a "major effect' on the 2001 and 2002 County budgets, and there is also an effect on other programs because of the levy caps within which the County must stay.

The arbitrator is not persuaded that factor 7g favors one final offer more than the other. The issue before the arbitrator involves the impact on both parties of the

rising cost of health insurance, but those costs are not of such a magnitude that they jeopardize the County's operations. Implementation of the Union's final offer would cause the County to make difficult economic choices in addition to those which it has already had to make in its budgetary deliberations, but the arbitrator is not persuaded that the County's economic position is so difficult as to require him to support the County's final offer based on the greater weight factor.

Under factors d. and e., here considered together, the arbitrator is to give weight to "d. comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with... [those] of other employes performing similar services.... [and] "e...."other employes generally in public employment in the same community and in comparable communities."

In this connection the County has presented arguments about the fairness of its wage offer in and of itself, and relative to comparison with wage rates in the comparable counties. Given the fairness of its wage offer, it argues, it should not have to incur greater health insurance costs in addition. The arbitrator has not presented the wage comparisons, because the parties do not disagree at all about wages in this dispute. Certainly it is appropriate to consider the size of the economic packages offered by the parties, including wages, but there is no need here for any wage analysis.

It is undisputed that most of the comparables counties have health insurance arrangements which require employees who use medical benefits to pay deductibles and copayments. The Union acknowledges these comparisons but argues that "this must be weighed against premium contributions." It argues that "...since the contribution to health insurance by La Crosse County is less than the comparables, it would be inappropriate to lower the level of benefits." La Crosse County pays 90% of the premium. The Union calculates the average contribution of the comparables to be 94.4% (single) and 94.5% (family).

The external comparables clearly favor the County's final offer with respect to deductibles and copayments. All of the comparables have deductibles, although in one case the deductibles only apply to out of network services. Moreover, in five of the nine comparables, the deductibles are higher than those proposed by the County. The parties differ in their analysis of the comparables with respect to copayments, and specifically whether all, or just some, have them. What is undisputed, however, is that most of the comparables have copayments.

The County argues that there is a pattern within La Crosse County of acceptance of its health insurance proposal by the other bargaining units. The Union disagrees. The Union argues, "this is a case of the 'tail wagging the dog.' " It argues that four of the groups cited "...are non-union and have no bargaining power." The others, Deputies, Telecommunicators and Jailers "...are relatively small groups of employees." The Union argues that the vast majority of union

represented employees of the County are not covered by deductibles and co-pays. There are some 218 non-union employees, and 91 employees in unionized units which have accepted t he County's proposal. Four bargaining units have not, representing almost 600 employees.

The County argues that when making changes in its Health plans its "plan design has always been uniform for all employees, with a few exceptions during Union bargained phase in." It notes that in the present case it has instituted the co-payments and deductibles for all employees, union and non-union alike, and it is only the four AFSCME units which have not yet accepted the change. The County urges the arbitrator to adopt uniformity in these arrangements.
The arbitrator agrees with the County that uniformity of insurance benefits is desirable. However, there is not yet a pattern among the internal units in favor of the County's proposal. There may be a pattern forming which will result ultimately in uniformity along the lines which the County proposes. However, a sizable majority of employees in the internal bargaining units now have no deductibles or copayments, and thus the internal comparisons favor the Union's final offer. The bargaining unit has about 60 employees in it, and even if the County final offer were adopted here, there would still be a majority of County employees who were not required to pay deductibles and copayments. The County emphasizes that it is the AFSCME units which have not agreed to the change and "...the Union's position would mean that AFSCME could block any insurance changes by not agreeing to change the groups they represent." The fact remains that the internal pattern does not favor the County's position, and the Union should not be compelled to accept the changes, unless the other factors combine to outweigh these considerations.

Under factor g. the arbitrator is to give weight to the cost of living. The most relevant period for considering final offers for 2001 and 2002 is the period immediately proceeding those years. Consumer Price Index figures for "All Urban Consumers" presented by the County, show that the annual increase from 2000 to 2001 was approximately 2.8%. In the current proceeding, the parties have agreed on wage increases in excess of that figure (3.0% in January; 2.0% in July, which is an annualized percentage of 4.0%). Consideration of wages alone does not favor either party's offer. If the total costs of the packages are considered, the increase is 8.35% for 2001 under both offers. For 2002 the cost increase is 7.15% under the Union's final offer, as calculated by the County, and is 4.83% under the County's final offer. The cost difference is attributed to the higher PPO premiums which the County must pay in 2002 if there are no deductibles and copayments. Thus, both final offers exceed the cost of living increase. The County's final offer is the lower of the two, and is thus closer to the cost of living increase than is the Union's. The arbitrator recognizes that the cost impact will be greatly reduced because of the fact that the new insurance arrangements will not be put into effect until the month after receipt of this Award. Nevertheless, the County's total package will be closer to the change in cost of living than will the Union's total package.

Under factor i. the arbitrator is to give weight to "changes in any of the foregoing circumstances during the pendency of the arbitration proceedings." During the bargaining, and as of the date of the arbitration hearing, there was serious consideration being given by the Governor and Legislature to reducing shared revenues to local government which, had it occurred, would have profoundly affected the County's financial position. Such action was not taken, however. While such reductions may occur in the future, they do not affect the present bargain, and thus are not a consideration in the arbitrator's deliberations.

Under factor j. the arbitrator is to give weight to "such other factors...which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining...arbitration or otherwise between the parties, in the public service..."

The Union argues that the County is proposing to reduce benefits in this proceeding, and without offering a *quid pro quo*. The County did in fact offer a *quid pro quo* (sick leave accumulation and payout increases) but it was considered inadequate by the Union. With respect to the settlements which the County achieved with the non-AFSCME units, the Union argues, the County has not submitted information about the terms of agreement, so it is not known what incentives, if any, were offered to those groups to get their agreement on deductibles and copayments.

The County argues that no offer of a *quid pro quo* was necessary, because the Union never had anything charged against its cost package in the preceding bargain when deductibles and copayments were eliminated. The County initiated the move away from the deductibles and copayments which were (and still ar e) in its Standard Plan. The County encouraged employees to enroll in the PPOs, since the County would achieve premium savings thereby. One of the incentives for employees to make the change, and which the County emphasized at the time, was that there would not be deductibles and copayments under the PPOs.

Given this history, the County argues, it should not now have to pay anything to reinstate the deductibles and copayments. Even though it wasn't required to offer a *quid pro quo*, it did so. In addition to offering sick leave payout and accumulation as a *quid pro quo*, the County argues, its wage offer for the second year of the Agreement was presented as a *quid pro quo* . The Union argues that in bargaining the County made no mention of offering its wage increase as a *quid pro quo*. Union witness Marx, who was present in the bargaining and mediation testified that the County never mentioned wages as a *quid pro quo*.

The County notes that the final offers were exchanged through a mediator, so the County does not know what, if anything, the mediator told the Union about a *quid pro quo*. It appears to be the case, however, that the County did not state directly to the Union during bargaining, "this wage increase is offered to you as a

quid pro quo for your agreement to our proposal of deductibles and copayments," or any words to that effect. Rather, the parties simply agreed to wage increases, differing only about the implementation dates. The Union recognizes that the Company's final offer included items which could be viewed as a *quid pro quo* for the health insurance changes, namely payment by it of the employee's deductible for the first year of the Agreement, and increases in sick leave accumulation and payout. The Union argues, "Although it is a nice gesture, it only lasts one year, whereas, the employee liability for the deductible would last for every year after 2002, unless the parties negotiate a difference [sic] deductible (it is not likely that such a change would be a reduction in the deductible)." With respect to the sick leave accumulation and payout proposals, "...obviously, this bargaining unit did not want the benefits...as a *quid pro quo* for the change in health insurance or the unit would have voluntarily agreed to the County's offer. The *quid pro quo* offered by the County is being forced upon this bargaining unit..."

Given the evidence presented about what took place in bargaining, the arbitrator does not view the County's wage offer as a *quid pro quo*. That being so, was it necessary for the County to offer an additional *quid pro quo* to the Union in order to gain acceptance of the proposal of deductibles and copayments? The arbitrator has concluded that it was not. As discussed above, deductibles and copayments were part of the County's health insurance arrangements in the prior Agreement prior to the switch to PPOs, and the bargaining unit did not have to give up anything in bargaining to achieve their elimination, which was done at the initiative of the County as a means of saving premium costs. (The parties did not address, what, if anything, employees sacrificed in benefits or matters of choice of services, when they switched from the Standard Plan to PPOs; in those respects, bargaining unit employees may have had to give up something).

Deductibles and copayments are commonplace in the comparable counties. These are not unusual benefits which the County is seeking for which it should need to offer a special incentive in order to achieve them. Rather, the County is making a reasonable e ffort to control escalating health costs, and is doing so in a manner similar to what has been agreed to by employers and unions in comparable counties. Moreover, by implementing the deductibles in the second year, the County has cushioned the effect on the employees. As a practical matter also, because of the duration of the bargaining and arbitration proceeding, and the fact that the deductibles and copayments will not be implemented until the month following receipt of this Award, there will be only a minimal impact on employees during the life of this Agreement.

The statute requires that the arbitrator select one of the parties' final offers in its entirety. Having reviewed the facts and arguments presented in this case, the arbitrator has concluded that the County's final offer should be selected.

The arbitrator hereby makes the following AWARD:

The County's final offer is selected.

Dated this ____day of September, 2002 at Madison, Wisconsin.

_____
Edward B. Krinsky
Arbitrator