

IN THE MATTER OF THE INTEREST ARBITRATION
PROCEEDINGS BETWEEN

MARATHON COUNTY,

Employer,

and

ARBITRATOR'S AWARD
A/P M-01-159

LOCALS 326, 1287, 2492, 2492-A, 2492-B, 2492-C,
2492-D, 2492-E, AFSCME, AFL-CIO,

[Dec. No. 3023v]

Union.

Arbitrator: Jay E. Grenig

Appearances:

For the Employer: Dean R. Dietrich, Esq.
Bryan Kleinmaier, Esq.
Ruder, Ware & Michler

For the Union: Phil Salamone, Staff Representative
Wisconsin Council 40, AFSCME

I. BACKGROUND

This is a matter of final and binding interest arbitration for the purpose of resolving a bargaining impasse between Marathon County ("County" or "Employer") and AFSCME Locals 326, 1287, 2492, 2492-A, 2492-B, 2492-C, 2492-D, and 2492-E ("Union"). The County is a municipal employer.

The Union is the exclusive collective bargaining representative of certain County employees. Local 326 represents Highway Department employees. Local 2492 represents Social Services Department administrative employees. Local 2492-A represents Social Services Department professional employees. Local 2492-B represents Health Department professional employees. Local 2492-C represents Marathon County Library paraprofessionals. Local 2492-D represents Professional Employees—Courthouse and

Affiliated Departments. Local 2492-E represents office and technical employees. Local 1287 represents Park Department employees.

The County and the Union signed an agreement on December 13, 2000, to use a voluntary impasse procedure to resolve a dispute between the parties regarding the replacement of the Good Friday holiday in the respective labor agreements. The agreement provides:

It is hereby agreed by and between Marathon County and the respective Marathon County AFSCME Local Unions (Office and Technical Employees, Professional Employees-Courthouse and Affiliated Departments, Social Services Department Administrative Employees, Social Services Department Professional Employees, Health Department Professional Employees, Park Department Employees, Highway Department, Marathon County Library Paraprofessional Employees) that the following shall constitute the agreement between the parties regarding the voluntary impasse resolution procedure to be used between the parties for resolution of a dispute regarding the replacement of Good Friday Holiday in the respective Labor Agreements between Marathon County and the Local Unions:

- 1 That the County and the Local Unions agree to proceed to interest arbitration under Section 111.70(4)(cm), Wis. Stats. for the purpose of resolving a dispute as to the removal of Good Friday day or Good Friday afternoon as a listed holiday in the Labor Agreement between the parties under the following conditions:
 - a. That the parties agree to use a single arbitrator to hear all disputes between the County and the various Unions and that the Arbitrator will issue either one opinion or eight different opinions within the framework of one written opinion depending upon the nature of the Final Offer of the respective parties.
 - b. That the Local Unions may not include a continuation of the Good Friday holiday as a part of the Final Offer of the Local Union and that the Final Offer of the Local Union must be based upon a concept of time off in whatever form or fashion the Local Unions wish to identify within their Final Offer.
 - c. That the criteria contained in Section 111.70(4)(cm) shall be applicable to this dispute and this dispute shall be processed in accordance with the same procedures used for

processing of disputes to interest arbitration under that State Statute.

- d. That Dennis McGilligan will serve as investigator for each of the impasses between Marathon County and the respective Local Unions and shall complete the exchange of Final Offers in accordance with established Commission procedures for exchange of Final Offers in interest arbitration proceedings.
2. That the parties agree that this voluntary impasse resolution procedure shall be used solely for the purpose of resolving the dispute between Marathon County and the respective Local Unions regarding the designation of Good Friday as a holiday in the Labor Agreements and shall not form the basis for any other dispute resolution process or resolution of any other issues arising between Marathon County and respective Local Unions.

Final offers were exchanged by the parties and submitted to an investigator for the Wisconsin Employment Relations Commission on December 15. On February 5, 2001, the WERC certified that the investigation was closed and submitted a list of arbitrators to the parties. The parties selected the undersigned to resolve their dispute.

A hearing was conducted on May 23, 2001. Upon receipt of the parties' reply briefs, the hearing was declared closed on October 9, 2001.

The Employer's unionized employees are currently represented in ten bargaining units, eight of which are represented by AFSCME Council 40. All collective bargaining contracts have historically provided employees with paid time off for Good Friday. Most groups have enjoyed four hours off with pay. However, employees in the Highway Department and the Parks Department received eight hours. The two Courthouse Unions include departments with continuous operations where significant numbers of employees are regularly scheduled to work holidays. In lieu of time off, these employees receive compensation at a premium rate of pay.

The latter part of 2000, the Employer was advised that continued inclusion of a Good Friday holiday in its labor agreements exposed it to the possibility of legal action. After reviewing the legal precedents, the Employer decided that it was necessary to terminate the Good Friday holiday. See, e.g., *Freedom From Religion Foundation, Inc. v. Thompson*, 920 F.Supp.2d 969 (W.D.Wis. 1996).

At the Employer's request, Union representatives met with it to discuss a possible mid-term replacement for the Good Friday holiday. As noted above, the parties were unable to reach agreement and have agreed on procedures for voluntary impasse resolution.

The Employer is proposing to substitute four hours of personal holiday for the four-hour Good Friday holiday previously provided Local 2492, Local 2492-A, Local 2492-B, and Local 2492-D. The Union is proposing to substitute an eight-hour holiday on the day after Thanksgiving for the four-hour Good Friday holiday previously provided employees represented by these locals.

The Employer is proposing to substitute four hours of personal holiday for the four-hour Good Friday holiday previously provided Local 2492-C employees. The Union is proposing to substitute eight hours of personal holiday for the four-hour Good Friday holiday.

For Local 2492-E, the Employer is proposing to substitute four hours of personal holiday for all employees except Communication Officers, Corrections Officers, and Juvenile Detention Officers. The Union is proposing to substitute an eight-hour holiday on the day after Thanksgiving for the four-hour Good Friday holiday.

For Communication Officers, Correction Officers, and Juvenile Detention Officers, the Employer is proposing to substitute a four-hour holiday on the afternoon of Martin Luther King Day for the four-hour Good Friday holiday. The Union is proposing to substitute an eight-hour holiday on the day after Thanksgiving for the four-hour Good Friday holiday.

For Local 326, the Employer is proposing to substitute eight hours of Personal Holiday for the eight-hour Good Friday Holiday previously provided. The Union is proposing to substitute an eight-hour holiday on the Day after Thanksgiving for the eight-hour Good Friday holiday previously provided.

The Employer is proposing to substitute eight hours of personal holiday for the eight-hour Good Friday holiday. The Union is proposing to substitute an eight-hour holiday on the day after Thanksgiving for the Good Friday holiday.

II. FINAL OFFERS

A. EMPLOYER

FINAL OFFER OF MARATHON COUNTY TO MARATHON COUNTY HIGHWAY EMPLOYEES UNION LOCAL 326

1. Revise Article 12 - Holidays by deleting reference to Good Friday as an identified holiday and modifying the contract language to provide for an additional eight (8) hour personal holiday by amending the second paragraph of Paragraph 1 to read as follows:

Four (4) individual paid holidays shall be granted, to be scheduled by mutual agreement between the employee and the employee's supervisor. New employees hired between January 1 and April 30 receive four (4) personal holidays, employees hired between May 1 and August 31 receive three (3) personal holidays and employees hired after September 1 receive two (2) personal holidays.

FINAL OFFER OF MARATHON COUNTY
TO MARATHON COUNTY PARK DEPARTMENT EMPLOYEES
UNION LOCAL 1287

1. Revise Article 19-Holidays by deleting reference to Good Friday as an identified holiday and modifying the contract language to provide for an additional eight (8) hour personal holiday by amending the second paragraph of Paragraph A to read as follows:

Employees shall receive three (3) additional floating holidays per calendar year. Upon successful completion of the probationary period, employees shall be allowed three (3) floating holidays to be scheduled by mutual agreement.

FINAL OFFER OF MARATHON COUNTY TO MARATHON
COUNTY OFFICE AND TECHNICAL EMPLOYEES
UNION LOCAL 2492-E

1. Revise Article 12 - Holidays by deleting reference to Good Friday afternoon as a designated holiday in Paragraph A, modifying the contract language to provide for an additional one-half day personal holiday for all employees except Communication Officers, Corrections Officers and Juvenile Detention Officers and provide for the afternoon of Martin Luther King Day as a designated holiday for Communication Officers, Corrections Officers and Juvenile Detention Officers by modifying the language to read as follows:

Revise Paragraph A - Paid Holidays by adding the following language:

Martin Luther King Day afternoon (for Communication Officers, Correction Officers and Juvenile Detention Officers only)

Revise the first sentence of Paragraph D - Personal Days to read as follows:

In addition to the above holidays, full-time employees other than Correction Officers, Communication Officers, and Juvenile Detention Officers shall receive three and one-half (3 1/2) personal holidays per calendar year.

FINAL OFFER OF MARATHON COUNTY TO MARATHON
COUNTY PROFESSIONAL EMPLOYEES-COURTHOUSE AND
AFFILIATED DEPARTMENTS SOCIAL SERVICES DEPARTMENT
ADMINISTRATIVE EMPLOYEES SOCIAL SERVICES DEPARTMENT
PROFESSIONAL EMPLOYEES HEALTH DEPARTMENT
PROFESSIONAL EMPLOYEES AND MARATHON COUNTY
LIBRARY PARAPROFESSIONAL EMPLOYEES

Revise Article - Holidays to delete reference to Good Friday afternoon as a designated holiday and modify the contract language to provide for an additional one-half day personal holiday by modifying the language to read as follows:

Amend the sentence of Paragraph - Personal Days to read as follows:

In addition to the above holidays, each full-time employee shall receive three and one-half (3 1/2) personal holidays per calendar year.

See attached language.

B. UNION

All units with the Exception of the Library-Revise respective holiday language to substitute the Day after Thanksgiving in lieu of the "Good Friday" holiday.

Library Para-Professional Union-Replace "Good Friday" holiday with an additional eight (8) hours personal holiday

III. STATUTORY CRITERIA

111.70(4)(cm)

...

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.

7g. '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 specified in subd. 7r.

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or 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 any proposed settlement.
- d. Comparison 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. 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 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 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 municipal employees, including direct wage compensation, vacation, holidays and ex-

cused 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.

IV. POSITIONS OF THE PARTIES

A. THE COUNTY

According to the Employer, the Union's final offers would result in six of the locals receiving an increased total number of holiday hours and in others maintaining the total number of hours previously provided while its offers would maintain the total number of holiday hours—exchanging holiday hours for personal holiday hours.

The Employer submits that its offer must be selected because it is not permitted to increase taxes to offset the increased expenses caused by the Union's proposed increase in the total number of holiday hours for six of the eight local unions. It says that Section 59.605(2), Wis.Stats., freezes the tax rate at 1992 levels. According to the Employer, the increased cost of the Union's proposal for increasing the number of holiday hours for six of the local unions is \$26,113.69.

It is the Employer's position that the Union's final offers do not contain a quid pro quo in exchange for the additional fringe benefits requested for six of the locals. In addition, the Employer says that the record contains no evidence establishing a need to change the status quo.

The Employer asserts that the interests of the County will be adversely affected if the employees of the Highway and Park Departments are awarded the day after Thanksgiving as a holiday. According to the Employer, the Union's final offers will adversely impact the community by crippling the County's ability to remove snow and ice from highways and walkways on the Friday after Thanksgiving.

The Employer notes that the County Highway Commissioner testified that traffic, particularly on U.S. Highways 51 and 29, is a concern for the Highway Department on the Friday after Thanksgiving. He stated that if the weather is nice with no winter storms, employees are allowed to call in the morning of the Friday after Thanksgiving and request a day of vacation. However, if the weather is inclement, the Department has the available staff to keep the highways clear of snow and ice.

The Employer claims that the requisite staff will not be available if the Unions' final offer for the Highway Department is adopted. It explains that if the Union's offer were accepted, the only way to get the staff in on the Friday after Thanksgiving would be to call each employee by telephone and hope enough are at home to respond to bad weather. Observing that the Union's offer would result in a four-day weekend, the Employer contemplates that many of the 67 employees in the Highway Department will take advantage of the long weekend and go out of town, making it impossible for those employees to respond to the bad weather conditions.

Pointing out that Park Department employees also have snow removal responsibilities during the winter months, including removal of snow from the Fourth Street Park adjacent to the pedestrian mall in downtown Wausau. The Employer claims that a four-day weekend will impair the Park Department's ability to call in employees for snow removal on the Friday after Thanksgiving.

The Employer contends that its final offers are consistent with internal settlements and maintain consistent fringe benefits within the internal bargaining units. The Employer declares that its final offers are consistent with the resolution of the Good Friday bargaining issue with other internal bargaining units. The Deputy Sheriff's Association previously received an eight-hour holiday on Good Friday. The parties agreed to replace the Good Friday holiday with an eight-hour holiday on Martin Luther King Day. The Employer says that its final offer to the Communication Officers, Corrections Officers and Juvenile Detention Officers in the Office and Technical Employees Union proposes to replace the four holiday hours on Good Friday afternoon with four holiday hours on the afternoon of Martin Luther King Day. In its settlement with the Central Wisconsin Airport Union, the Employer agreed to replace the eight-hour Good Friday holiday with eight hours of personal holiday.

The Employer stresses that its final offers for all eight locals maintain the status quo by substituting the same number of personal holiday hours for the holiday hours provided on Good Friday, with the exception of the Communication Officers, Corrections Officers, and Juvenile Detention Officers in Local 2492-E. The Employer explains that, because these officers are required to work on holidays, its final offer substitutes a four-hour holiday on Martin Luther King Day for the four-hour holiday on Good Friday. The Employer recognizes that some units may receive different holidays (for example the Deputy Sheriffs receive Easter as a holiday), members of all bargaining units receive 10 holidays per year.

It is the Employer's position that its final offer will maintain consistent fringe benefits with all of the internal bargaining units. The Employer argues that the Union's final offer would create inconsistency with respect to the number of holidays provided to each local union. Moreover, the Employer asserts that its final offer ensures that the Union does not receive a holiday—the day after Thanksgiving—that the Deputy Sheriff's Association and Central Wisconsin Airport Union do not receive.

According to the Employer, the external comparables with public employers prove that its final offers for all eight of the local unions maintain the appropriate number of holidays per year. With respect to external comparables with private employers, the Employer says that employees of private businesses in the region do not receive the day after Thanksgiving as a holiday.

The Employer points out that an employee testified that in the last two years all of her requests for personal days have been granted. She was unable to identify any instances in which a fellow employee's request for a personal day was denied. Another employee stated that it is more difficult to secure a personal day on a Friday. A third employee was unable to identify any specific instances where her request or a fellow employee's request for a personal day was denied. The Employer notes that employees are informed on their paycheck stub or direct deposit stub of the number of personal holiday hours and vacation hours remaining that year.

For these reasons, the Employer asks that its final offers be selected.

B. THE UNION

The Union argues that there “can be little question that the modest additional cost of one half of an additional holiday can easily be afforded by Marathon County government whose local economy has been historically diversified and prosperous.” According to the Union, giving “greater weight” to the “local economic conditions” fully supports selection “of the Union’s slightly more costly offer in its totality.”

It is the Union’s position that, because holidays are intended to be a benefit for employees, it logically follows that their fair-minded and legitimate interests in its replacement should supercede those of the employer. It says that terming holidays to be “floating” or personal is somewhat of a misnomer in that such expressions are inconsistent with the definition of “holiday” as commemorating an “event.”

The Union points out that in some cases advance blanket prohibitions for extended periods have been unilaterally promulgated by certain supervisors. For example the Highway Department has stated that employees will not be allowed to use any of their personal days during the month of December. Compounding the problem, according to the Union, is that if employees fail to use personal or floating holiday time they lose it—without compensation.

Although it would have liked to include all the bargaining units in the day after Thanksgiving exchange for Good Friday, the Union concedes there might have been a problem at the Library. While the Library has extremely high traffic the day after Thanksgiving, the Union observes that the courthouse and social services agency experience extremely low traffic the day after Thanksgiving.

The Union believes that the replacement of the Good Friday holiday should provide a discrete holiday that extends a weekend. The Union notes that deer hunting is a popular endeavor in Wisconsin and customarily begins on Thanksgiving weekend. According to the Union, employees seeking that weekend off need to secure supervisory permission to take either a personal/floating holiday or vacation. The Union says its offer more appropriately addresses employee concerns.

With respect to internal comparability, the Union declares that arbitrators deciding interest arbitration disputes have generally maintained internal comparisons are more significant when comparing benefits. The Union does not dispute the fact that uniformity in fringe benefit packages and language may be a desirable goal. However it say that this goal has not always been achieved in the County. It notes that the number of personal or floating holidays vary widely between none and 6.5 holidays. The Union points out that certain non-union employees and department heads receive more holidays, noting that all departures from “the alleged ‘10 holiday pattern’ were achieved either through voluntary agreement or unilateral employer implementation.

The Union believes that the goal of internal consistency is best provided by its offer because it will likely correct the fact that the Good Friday holiday is provided differently in the various bargaining units of the County—some units with one-half day and others with full days off. The Union claims that the Employer’s offer only continues the complex and inconsistent provisions.

With respect to external comparability, the Union asserts that six of the eight counties deemed comparable to the County professional units enjoy the day after Thanksgiving as a holiday. Among the nonprofessional comparables, the Employer is the only county that does not provide the day after Thanksgiving as a holiday. Recognizing that the number of total holidays provided is more mixed for external comparables, the Union claims that neither of the offers would result in the Employer becoming the lone holiday leader among either of the groups.

The Union says that adding another half-day personal holiday would seem to cause most County employees to exceed considerably all but two of the professional comparables. Incorporating the Employer’s offer, according to the Union, would result in nearly all County nonprofessional AFSCME units exceeding all but one of the units in its entire comparability group.

Because certain employees in the Courthouse Professional unit work a continuous operation and must work through all discrete holidays, the Union argues that the Employer’s offer would cause a loss of two hours pay or compensatory time off for employees in the non-secure shelter home.

The Union claims there is no evidence to suggest that selection of the Union’s final offers would result in the Employer’s exceeding any limits on its ability to increase revenues.

Acknowledging that it has not offered quid pro quo for added holiday time in the six units advancing such a proposal, the Union contends that it could be argued that the Employer has also failed to offer a quid pro quo for its proposal substituting floating time off for discrete time off.

With respect to the Employer claim that the Union's final offers for the Highway Department and the Parks Department will cripple the Employer's ability to remove snow and ice from highways and walkways on the Friday after Thanksgiving, the Union points out that in seven of the last ten years there was no snowfall at all on the day after Thanksgiving. It also argues that in the surrounding counties of Langlade, Lincoln, Portage, and Waupaca highway workers get the Friday after Thanksgiving as a full holiday.

The Union concludes that its offer should be preferred in its entirety, asserting that holidays are a benefit to employees and their interests should appropriately prevail in selection of individual celebrations. It declares that discrete holidays should only be replaced by discrete holidays because personal holidays require permission for usage.

V. FINDINGS OF FACT

A. The Lawful Authority of the Employer

There is no contention that the County lacks the lawful authority to implement either offer.

B. Stipulations of the Parties

While the parties were in agreement on many of the facts, there were no stipulations with respect to the issues in dispute.

C. The Interests and Welfare of the Public and the Financial Ability of the Unit of Government to Meet these Costs

This criterion requires an arbitrator to consider both the employer's ability to pay either of the offers and the interests and welfare of the public. The interests and welfare of the public include both the financial burden on the taxpayers and the provision of appropriate municipal services. There is no contention that the County lacks the financial ability to pay either offer.

The public has an interest in keeping the County in a competitive position to recruit new employees, to attract competent experienced employees, and to retain valuable employees now serving the County. Presumably the public is interested in having employees who by objective standards and by their own evaluation are treated fairly. What constitutes fair treatment is reflected in the other statutory criteria.

Furthermore, the public has interest in reasonable assurance that necessary public services will be provided by County employees. In Wisconsin, this obviously includes snow removal.

D. Comparison of Wages, Hours and Conditions of Employment

1. Introduction

The purpose in comparing wages, hours, and other conditions of employment in comparable employers is to obtain guidance in determining the pattern of settlements among the comparables as well as the wage rates paid by these comparable employers for similar work by persons with similar education and experience.

2. External Comparables

a. Introduction

Historically two comparability groups have been established for the parties. Non-professional units are basically tied to the contiguous counties of Clark, Langlade, Lincoln, Portage, Shawano, Taylor, and Waupaca. The exception is the Parks Department unit where Arbitrator Stern selected three cities (Marshfield, Stevens Point, and Wisconsin Rapids along with Portage and Wood Counties. Professional groups use Chippewa, Eau Claire, Fond du Lac, La Crosse, Outagamie, Portage, Winnebago, and Wood counties.

b. Analysis

An analysis of the external comparables shows that, of the professional comparables the number of holidays ranges from nine to 10.5, with only one (Winnebago) at 10.5. In Eau Claire, the number of discrete holidays is 6.5. Many of the professional workers receive the day after Thanksgiving as a holiday. The nonprofessional comparables receive from 9.5 to 10 paid holidays with 5.5 to 10 discrete holidays. Most, including highway workers receive the day after Thanksgiving.

3. Internal Comparables

a. Introduction

Historically, internal comparables have been given great weight with respect to basic fringe benefits. *Winnebago County*, Dec. No. 26494-A (Vernon 1991). Significant equity considerations arise when one unit seeks to be treated more favorably than others. Ordinarily, employers try to have uniformity of vacation benefits and other fringe benefits for all their bargaining units because it avoids attempts by bargaining units to whipsaw their employers into providing benefits that were given to other bargaining units for a very special reason. *Village of Grafton*, Dec. No. 51947 (Rice 1995).

b. Analysis

While some units receive different holidays, all represented employees receive ten days of holiday per year. Represented County employees do not presently receive a holiday the day after Thanksgiving.

The Deputy Sheriff's Association previously received an eight-hour holiday on Good Friday. The parties agreed to replace the Good Friday holiday with an eight-hour holiday on Martin Luther King Day. The Central Wisconsin Airport Union and the Employer agreed to replace the Good Friday holiday with a personal holiday.

No other bargaining units have had the Good Friday holiday replaced with more hours than were observed on Good Friday. In addition, no other bargaining units receive the Friday after Thanksgiving as a paid holiday.

E. Changes in the Cost of Living

This criterion is not relevant to the issues in this proceeding.

F. Overall Compensation Presently Received by the Employees

In addition to their salaries, employees represented by the Union receive a number of other benefits. While there are some differences in benefits received by employees in comparable municipalities, it appears that persons employed by the County generally receive benefits equivalent to those received by employees in the comparable municipalities.

G. Changes During the Pendency of the Arbitration Proceedings

No material changes during the pendency of the arbitration proceedings have been brought to the attention of the Arbitrator.

H. Other Factors

This criterion recognizes that collective bargaining is not isolated from those factors which comprise the economic environment in which bargaining takes place. See, e.g., *Madison Schools*, Dec. No. 19133 (Fleischli 1982). There is no evidence that the County has had to or will have to reduce or eliminate any services, that it will have to engage in long term borrowing, or that it will have to raise taxes if either offer is accepted.

Good economic conditions mean that the financial situation is such that a more costly offer may be accepted and that it will not be automatically excluded because the economy cannot afford it. *Northcentral Technical College (Clerical Support Staff)*, Dec. NO. 29303-B (Engmann 1998). See also *Iowa County (Courthouse and Social Services)*, Dec. No. 29393-A (Torosian 1999) (conclusion that employer's economic condition is

strong does not automatically mean that higher of two offers must be selected or, conversely, a weak economy automatically dictates a selection of the lower final offer).

VI. ANALYSIS

A. Introduction

While it is frequently stated that interest arbitration attempts to determine what the parties would have settled on had they reached a voluntary settlement (See, e.g., *D.C. Everest Area School Dist. (Paraprofessionals)*, Dec. No. 21941-B (Grenig 1985) and cases cited therein), it is manifest that the parties' are at an impasse because neither party found the other's final offer acceptable. The arbitrator must determine which of the parties' final offers is more reasonable, regardless of whether the parties would have agreed on that offer, by applying the statutory criteria. In this case, there is no question regarding the ability of the Employer to pay either offer. The most significant criterion here is a comparison of wages, hours and conditions of employment.

B. Discussion

Although the Employer may be limited with respect to increasing its tax levy, the evidence does not establish that the Union's proposal would require an increase in the tax levy. Furthermore, there is no evidence that any state law or administrative directive prohibits the Employer from expending funds to pay for either party's final offer.

While the Union's offer would result in increased costs to the Employer, the evidence does not show that economic conditions in the County restrict or limit the Employer's ability to implement either offer.

Arbitrators generally hold that a party proposing a change in the status quo is required to offer justification for the change and to offer a *qui pro quo* to obtain the change. See, e.g., *Middleton-Cross Plains School Dist.*, Dec. No. 282489-A (Malamud 1996). Arbitrator Malamud has explained:

Where arbitrators are presented with proposals for a significant change to the status quo, they apply the following mode of analysis to determine if the proposed change should be adopted: (1) Has the party proposing the change demonstrated a need for the change? (2) If there has been a demonstration of need, has the party proposing the change provided a *quid pro quo* for the proposed change? (3) Arbitrators require clear and convincing evidence to establish that 1 and 2 have been met.

The need to terminate the Good Friday holiday was necessitated by a decision of the U.S. District Court for the Western District of Wisconsin. The parties implicitly recognize this in their Voluntary Impasse Procedures Agreement. Thus, the elimination of

the Good Friday holiday was the result of an external mandate rather than the desire of any of the parties.

While the Employer seeks to replace what was a specific or “discrete” holiday with a personal or floating holiday, the Union goes further and seeks to increase the number of hours of holiday time involved for six of the eight bargaining units. This is a significant change in employee benefits and the Union bears the burden of establishing the need for such an increase in the number of hours of holiday.

While the Union has articulated some thoughtful reasons for increasing the number of hours of holiday, it has not met its burden of establishing the need for such an increase. Furthermore, there is no evidence of a quid pro quo for the Union’s proposed increase in the number of holiday hours.

One of the most important aids in determining which offer is more reasonable is an analysis of the compensation paid similar employees by other, comparable employers. Arbitrators have also given great weight to settlements between an employer and its other employees. See, e.g., *Rock County (Deputy Sheriffs’ Ass’n)*, Dec. No. 20600-A (Grenig 1984). While arbitral authority establishes the principle that internal settlements are to be given “great weight,” such internal settlements are not conclusive. It is still necessary to examine the other criteria, including external comparables. The Employer’s final offer would maintain the County’s position with respect to number of holidays, discrete and floating, both as to the internal comparables and as to the external comparables. On the other hand, the Union’s offer would improve the County’s ranking and would place County employees represented by the Union at the top of the comparables.

The Union’s claim that a discrete holiday is necessary because of the difficulty in scheduling personal holidays is not persuasive. First, if a supervisor denies an employee vacation time or a personal holiday in violation of the collective bargaining agreement, the employee may seek redress through the grievance procedure. Second, employees who testified at the hearing did not disclose past problems in selecting personal holidays.

While there may be good arguments for increasing the number of holiday hours, this proceeding, limited as it is to the issue relating to elimination of the Good Friday Holiday (See Voluntary Impasse Agreement, ¶ 2.), it is not an appropriate proceeding for considering those arguments. These arguments should be presented during negotiations of the collective bargaining agreement, and, if necessary subsequent impasse proceedings, where the total compensation package is reviewed.

The Employer must protect the public by maintaining appropriate staffing levels in the Highway Department and Parks Department on the Friday after Thanksgiving. Although the Union points out that there was no snow seven out of the last ten Fridays after Thanksgiving, this also means that it snows on the Friday after Thanksgiving 30% of the time. Not only is there considerable highway traffic over the Thanksgiving weekend, it is also one of the biggest, if not the biggest shopping days of the year. Both the Highway

Department and the Parks Department need adequate staffing on that day in order to provide snow removal if needed.

The Union recognizes the problem of providing adequate staffing over the Thanksgiving weekend when it points out the importance of deer hunting in the region. From this, it appears that if employees in these two departments received a four-day weekend during Thanksgiving, the Employer would face serious problems in trying to obtain sufficient staffing when needed for the nearly one-third of the time that it snows over that weekend. While some of the external comparables give their highway departments the Friday after Thanksgiving as a holiday, the evidence does not show what the staffing levels of those comparables are and how the comparables contend with providing adequate protection for taxpayers. The record indicates, that, if weather conditions permit, the Employer has granted Highway Department and Parks Department employees the day off the day after Thanksgiving.

VII. AWARD

Having considered all the relevant evidence and the arguments of the parties, it is concluded that the County's final offers are the more reasonable than the Union's final offers. The parties are directed to incorporate into their collective bargaining agreements the County's final offers.

Executed at Delafield, Wisconsin, this twenty-ninth day of October, 2001.

Jay E. Grenig