BEFORE THE ARBITRATOR

IRVING BROTSLAW

In the Matter of Interest Arbitration between Pierce County (Courthouse) and American Federation of State, County and Municipal Employees, Local 556	Case 130, No. 60636 INT/ARB-9471 Decision No. 30527-A

APPEARANCES

FOR PIERCE COUNTY — Stephen L. Weld
Weld, Riley, Prenn & Ricci
Eau Claire, Wisconsin

FOR THE UNION — Steve Hartmann
Staff Representative
District Council 40,
AFSCME, AFL-CIO
Menomonie, Wisconsin

I. BACKGROUND

Pierce County and Local 556, American Federation of State, County, AFL-CIO are parties to a January 1, 1999 to December 31, 2001 collective bargaining agreement covering 55 Courthouse employees, The parties met and met and exchanged their initial proposals, and bargained over matters to be included in a successor collective bargaining agreement.

Although the parties were able to agree on a number of contract changes, several issues remained unresolved, and attempts to reach an agreement were unsuccessful. On December 13, 2001, the parties filed a petition requesting the Wisconsin Employment Relations Commission to initiate interest arbitration pursuit to Section 111.70(4)(cm)7, Wis Stat. Following an investigation of the dispute, Stephen G. Bohrer, a member of the WERC staff concluded that a bargaining impasse existed, and issued an order dated January 3, 2003 initiating interest arbitration.

The undersigned was notified of his selection as an arbitrator in the above-referenced case by a letter from the Commission dated January 30, 2003. A hearing on this matter was held at the Pierce County Courthouse, 414 Main Street, Ellsworth, Wisconsin on May 20, 2003. The hearing began at 10:00 a.m.

Representing the Union	Steve Hartmann Staff Representative District Council 40, AFSCME Menomonie, Wisconsin
Representing the County	Stephen L. Weld Weld, Riley, Prenn & Ricci Eau Claire, Wisconsin

At the hearing, the parties presented testimony and exhibits in support of their respective positions. There were a total of 40 Union exhibits, reference to which will be identified as "UN EX," followed by the number. The County submitted a total of 71 exhibits, reference to which will be identified as "ER EX," followed by the number. A transcript of the proceedings was not taken. The hearing ended at approximately 1:45 p.m., with an agreement that the parties would submit post-hearing and reply briefs.

Post-hearing briefs were submitted to the arbitrator on June 10, 2003 (by the Union), and on June 28, 2003 (by the County). In accordance with an agreement reached at the hearing, the arbitrator exchanged the briefs to the parties. Reference to the County's and the Union's briefs will hereinafter be identified as "ER Br" and "UN Br," respectively. The record was closed with the receipt of reply briefs from the County on August 18, and from the Union on September 2, 2003, and were exchanged by the arbitrator under cover of a letter dated September 4, 2003. Reference to the reply briefs of the Union and the County will be identified as "UN Rep Br," and "ER Rep Br," respectively.

II. ISSUES AND FINAL OFFERS

A comparison of the final offers of the parties to the instant interest arbitration case indicates that tentative agreement was reached on a number of modifications to be included in a new collective bargaining agreement covering the years 2002, 2003 and 2004. One of the aforementioned modifications is an agreement that the County's contributions to the health insurance plan covering members of the Courthouse bargaining unit, currently 95%, would be revised as follows:

Effective date	County contribution
January 1, 2002	94%
January 1, 2003	93%
January 1, 2004	92%

On the matter of wage increases, the offers of the parties differ, as noted below:

Effective date	County offer	Union offer
January 1, 2002	3.5%	3.0%
July 1, 2002		1.0%
January 1, 2003	3.5%	3.0%
July 1, 2004		1.0
January 1, 2004	3.5%	3.5%

In support of its "split," higher wage offer, the Union argues that the County's offer does not include enough of a quid pro quo in exchange for its agreement to increase employee contributions to the cost of health insurance.

At the hearing, and in their its post-hearing and reply briefs, the Union proposed a new set of external comparables to replace those established in previous arbitration cases decided in 1995 and 1997 involving Pierce County, *but not the Courthouse unit*. The external comparables were identified as Barron, Polk, Burnett, Rusk, Chippewa, St. Croix, Dunn and Washburn counties. The Union proposes to establish Polk, Dunn and St. Croix as the primary set of comparables, with Barron, Burnett, Chippewa, Washburn counties and the Pierce County municipality of River Falls designated as a secondary set of comparables.

The County rejects the Union's proposal to modify the set of comparables, relying primarily upon Arbitrator Rose Marie Baron's decision in a case involving Social Service Non-Professionals and Pierce County in which she held that Barron, Buffalo, Burnett, Chippewa, Dunn, Pepin, Polk, Rusk, St. Croix and Washburn counties were the appropriate comparables (Case No. 110, No. 52836 INT/ARB-7683, Decision No. 29057-A). The County argues that the comparables established by Arbitrator Baron should not be modified, and that the counties cited above, with the exception of Pepin, constitute the appropriate external comparables. It excludes Pepin because its courthouse employees are not represented. (ER Br @19).

III. STATUTORY CRITERIA

The parties have agreed to interest arbitration pursuant to Section 111.70(4)(cm)7, Wis Stat to resolve the bargaining impasse described above. The criteria to be utilized by the Arbitrator in rendering an award are set forth in the Statute, as follows:

> 7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitral panel shall 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 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. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.
>
> 7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:
>
> a. The lawful authority of the municipal employer.
>
> b. Stipulation 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 generally in public employment in the same community and in comparable communities.

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 compensation presently received by municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstance 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. POSITION OF THE UNION

The need for a new set of comparables

As noted above, the Union proposes a new set of comparables, to replace those established by Arbitrator Baron in a previous case involving Pierce County (but not the Courthouse employees), to reflect the changes in the demographic and economic characteristics of Pierce County, vis-a-vis the comparability set established in earlier cases (UN Br @1-5). Support for the Union's position includes the following arguments:

1. Pierce County's economic position has improved appreciably in recent years, with respect to variables normally used as a basis for comparison, which include population, property values, per capita income, median household and family income. (UN Br @4-5, UN Rep Br @5-6).

2. Other arbitrators (e.g., Kerkman, Village of Menomonee Falls, Dec. No.26581-A, 2/26/91) have ruled that comparability sets, used for one unit do not automatically apply to units that have not previously been before an interest arbitrator, and that comparables, once established, can be revised to reflect changing economic circumstances. In that decision, Arbitrator Kerkman noted that once comparables have been established between negotiating parties, they should not be disturbed without good and sufficient reason. (UN Br @2)

3. The Union argues that the fundamental reason for its proposals to change the comparability set is the rapidly changing economic and demographic nature of the County, e.g., that

> "Pierce County ranked 14th statewide n both household and family income in 1989 and dramatically improved to 7th in both categories in 1999." (UN Br @5)

4. The Union also argues that "these changes are accelerated by by the rapid growth to the east of metropolitan Minneapolis/St. Paul." (UN Br @4) As evidence of its relationship to the metropolitan Minneapolis/St. Paul area, the Union points to the fact that Pierce County is now included in the Minneapolis/St. Paul Metropolitan Statistical Area, which is defined by the Office of Management and Budget as a standard for Federal agencies in the preparation and publication of statistics relating to metropolitan areas. (UN Br @4, UN Ex 19). It notes that this inclusion occurred sometime between 1997 and 2003, and that this fact has never been before an arbitrator for consideration. (UN Br @4)

5. It further supports the argument referred to above by reference to commuting patterns of Pierce County residents. According to the Union, there are a total of 20,161 working residents in Pierce County:

> Of those, 8,466 (42%) work in the County. An almost identical number 8,256 (41% work in the metro core counties, Anoka, Carver, Dakota, Henipen, Ramsey, Scott and Washington." A similar examination of St. Croix County reveals 33,643 worker (sic) of which 16,759 (50%) work in the County, while 14,533 work in the core metro counties. In Polk County, there are 19,814 workers with 12,522 (63%) working in the County and 3,880 (20%) in the core counties." (UN Br @4, UN Ex 21).

The Union argues that on the basis of the most relevant statistical indices and the commuting patterns referred to above, the most comparable counties are Polk, St. Croix and Dunn, since they share the most similarities to Pierce, and should be considered the primary comparables. "The secondary set, to the extent one is necessary would be those counties to the immediate north and east of the primaries: Chippewa, Barron, Washburn and Burnett. Additionally, the Pierce County municipality of River Falls should be included in a secondary pool as representative of the local labor market." (UN Br @5).

The internal pattern/quid pro quo

The other issues notwithstanding, including its proposal to revise the comparability set as described above, and the applicability of other (legislated) criteria such as the cost-of-living, the Union argues that the central issue in this case is the a consistent internal pattern and the need for an appropriate quid pro quo in exchange for its agreement to increase employee contributions to the health insurance plan:

> "while the Union strongly believes an adjustment of the comparability set is overdue, the merits of this case are directly tied to issues of internal comparability. Specifically, the question of what is the internal pattern and thus the appropriate quid pro quo." (UN Br @5)

The Union points out that the wage settlement with each of the (settled) Pierce County units was driven by the employers (sic) desire to increase the percentage of premium contribution by employees.

> "In the previous contracts for all the bargaining units the premium contribution was 95% employer and 5% employee. As a result of the current bargain all bargaining units including this unit have agreed to alter the premium contribution split to 94% employee 6% employee in 2002; 93% employer 7% employee in 2003 and 92% employer 8% employee in 2004." (UN Br @7)

The crux of the Union argument, by its own admission, is that the other, settled units gained improved incentive and longevity pay, *plus* the 3.5% increase in each year of the contract, and accordingly, that the enhancement of the longevity benefit and the addition of a new benefit, incentive pay, represents the appropriate quid pro quo for the Union's agreement to increase employee contributions to the cost of health insurance benefits:

> "The Union's position is that the other groups gained substantial amounts of money due to the increase in longevity and the addition of incentive pay that must be considered as part of the internal pattern/quid pro quo." (UN Br @7)

The Union offers statistical evidence to support its wage proposal over that of the County's, pointing to the additional dollars that will accrue to employees in the settled units, over the wages that Courthouse employees will receive if the County's offer is implemented. First, the average hourly wage of the Courthouse employees will increase to $15.93 under the County's proposal, and to $16.09 under the Union's proposal, by the end of the contract term in 2004, a difference of $0.16 an hour. It has further calculated that the 115 employees in the settled units will receive annual increases amounting to $305.08 in 2002, 2003 and 2004, for a total of $915.24 above what they would have received under the old formula in longevity and incentive payments to employees for remaining in the same position). (UN Br @8-9, reference to ER Ex 18). By contrast, under the Union's proposal, Courthouse employees would receive a total of $486.30 in addition to the County's offer. (UN Br @9).

The Union challenges the County's assertion that its proposal would "breach" the consistent pattern of wage settlements within the County's bargaining units, claiming that it disregards the fact that the other units obtained a considerable increase in take-home wages through the improvement in longevity. (UN Rep Br @4). The Union stipulates that the unsettled units have had the higher level of longevity and incentive pay as long as anyone can remember, and that it does not begrudge any of the settled units their success at receiving these benefits. But,

> "The unsettled units believe that when new and/or improved economic benefits are handed out at the same time at the same time insurance concessions are made it is at best disingenuous to pretend, as does the County that these changes due (sic) not represent part of a settlement pattern/quid pro quo. Indeed the County Administrator called the longevity and incentive pay improvements the 'deal sealers." (UNBr @7).

By reference to settlements with Dunn, St. Croix, Buffalo, Burnett and Polk counties in 2002 and 2003 which are similar to, or higher than its own proposal, the Union attempts to refute the County's claim that its wage offer exceeds the majority of external wage settlements. (UN Rep Br @7). But it agrees that "the information in the record fails to lend strong support for either party's offer, except for the River Falls settlement which strongly favors the Union offer and is the most comparable." (UN Rep Br @9)

It also concurs with the observation that changes in the cost-of-living are not highly relevant to the outcome of this case, but that to the extent that they are to be considered, "the more appropriate index for Pierce County would be the Minneapolis-St. Paul CPI reading, given that Pierce County is now in the Minneapolis-St. Paul MSA." (UN Rep Br @9)

In summary, however, the Union argues that the essence of its case, set forth in both its post-hearing and reply briefs, is whether the increase in longevity/incentive pay agreed to by the settled units, in addition to the 3.5 percent yearly increases proposed by the County, requires a quid pro quo in exchange for higher employee contributions to the health insurance plan, which

should result in the arbitrator selecting the Union's offer as the more reasonable of the two.

V. POSITION OF THE COUNTY

According to the County, the question to be answered is how much quid pro quo (emphasis theirs), if any, is required to compensate for the Union's agreement to increase employee contributions towards health insurance from 5% to 6% in 2002, to 7% in 2003, and to 8% in 2004.

> "The four settled Pierce County bargaining units agreed to the increased premium contributions. However, the Courthouse unit (as well as the AFSCME-represented Highway unit) claims that the quid pro quo for the increased health insurance premium contributions for the four settled units included an agreement to match the Courthouse and Highway units' longevity provisions and incentive pay (a $50, $100, or $200 stipend for remaining in the same position). It contends that Pierce County's final offer to the settled units were, therefore, far greater than Pierce County's final offer in the case before the Arbitrator. As a result, the Union demands a wage increase in excess of the internal settlement pattern.
>
> The County believes that, based on a comparison with both internal and external settlement patterns, its wage offer includes a significant quid pro quo for the relatively small increase in employee contributions towards health insurance premiums." (ER Br @5)

The County further argues that its offer must prevail, "given arbitral recognition of the significantly reduced, if not eliminated, need for a quid pro quo when health insurance cost is the issue and when there is a strong internal settlement pattern. (ER Br @5) The County cites and quotes decisions by Arbitrators Weisberger, Rice and Petrie, Friess and Stern, which effectively conclude that the need for a quid pro quo is lowered or eliminated when the issue is an increase in health insurance costs, or a related issue. (ER Br @6-7). Thus, according to the County,

there is no need for a quid pro quo in this case. (ER Br @8)

The internal settlement pattern

The County claims that its final offer maintains the long-established pattern of internal settlements respected by arbitral authority, and that "where there exists a settlement pattern among internal comparables, that pattern should be respected." (ER Br @8). It points out that Pierce County has had a pattern of consistent internal wage settlements since at least 1987, and that

> "Employer Exhibit 16 reveals that, aside from adjustments for specific positions, the wage increases and changes related to health insurance (the most costly of fringe benefits) have been consistent for all units." (ER Br @9

The County points out that it was forced to go to arbitration with two of its bargaining units represented by the Teamsters, who rejected an increase in employee contributions to the health insurance plan, which was incorporated into 1994-1995 collective bargaining agreements with four of its six bargaining units. According to the County, Arbitrators Weisberger and Friess, in separate decisions, upheld the County's offer. (ER Br @9) Referring to the fact that four of six of its represented bargaining units in the instant case agreed to its proposed wage increases, the County argues that the burden shifts to the Union to demonstrate why it should receive a wage increase in excess of the internal pattern:

> "Arbitrators have abided by the internal settlement pattern unless it can be shown that adherence to that pattern would cause unreasonable or unacceptable wage relationships relative to the external comparables." (ER Br @10)

The County argues that its wage rates continue to be competitive, and that they exceed the maximum wage rates for all positions for the external comparables, with the exception of the Union's three chosen external comparables - St. Croix, Dunn and Polk Counties (ER Br @11), and that comparability is not the basis for the Union's wage proposal:

> "Faced with a consistent settlement pattern and nonsupport for a catch-up argument, the Union's sole contention is its assertion that the other voluntarily settled units received a larger quid pro quo for the agreed-upon health insurance premium increases. The Union contends that the extra 'quid pro quo' was, in addition to the 3.5% wage increase, the improvements in longevity and incentive pay." (ER Br @13)

The longevity bonus

The County acknowledges that it did agree, in this round of bargaining, to increase the longevity bonus for all employee groups, but points to the fact that the Courthouse employees and the Highway employees (the other hold-out unit) have long enjoyed the same longevity provision, described earlier, which the County extended to employees in the settled units. It further contends that

> "its agreement to equalize longevity payments was only one of a number of changes intended to equalize benefits for all bargaining units. The annual incentive pay long enjoyed by the Courthouse (as well as Highway and the Human Services Nonprofessional) unit of $50 after 10 years, $100 after 15 years, or $200 after 20 years for remaining in the same position was also part of the settlements with three of the other four settled units." (ER Br @14)

The County also cites several decisions in which interest arbitrators refused to accept a union's argument that a quid pro quo was inadequate when it agreed to higher employee contributions to the health insurance plan because of other contract changes received by other internal units, who voluntarily settled. In a case involving this issue (Marinette County Sheriff's Dept., Dec. No.3076-B, 6/02), Arbitrator Malamud concluded that the Employer had shown a need for the (health insurance) change because all employees already made the 5% contribution to single premiums and that 'there is a need to establish consistency in the administration of this important benefit." (ER Br @16)

The interests and welfare of the public

The County contends that the interest and welfare of the public do not support the higher wage demand of the Union, and that while it does not espouse an inability-to-pay argument here, it does assert an *unwillingness* (emphasis theirs) to pay the Union's higher wage demand, because "because to do so would, for the first time in well over 16 years, breach the consistent pattern of wage

settlements negotiated with the County's bargaining units." (ER Br @17).

Citing its Exhibit 14, it points out that turnover among employees in the Courthouse has been minimal, which demonstrates that its wage rates are competitive with the external comparables. Correspondingly,

> "The County's decision to equalize benefits cannot require it, in turn, to provide equivalent increases to the previously advantaged group of employees. If it did, the attempt to equalize benefits would simply result in maintenance of ratched-up, but unequal benefits."(ER Br @17)

The external comparables

The County argues that its proposed external comparables, which consists of 9 of the 10 western Wisconsin counties found to have been most comparable by Arbitrator Baron in her 1997 decision involving Pierce County Human Services Non-Professional employees, provides a more appropriate and consistent basis for evaluating the parties' final offer. As noted earlier, the County omits Pepin County because its courthouse employees are not represented. It further contends that the Union's proposed set of comparables, e.g., a primary pool of Dunn, Polk and St. Croix Counties, and a group of previously used comparables which would be given only secondary consideration, is not supported by the evidence. (ER Br @19) It argues that the Union has the burden of demonstrating a need to change the comparability pool, citing decisions by

Arbitrators Briggs and Kessler in which they conclude that previously established comparable groupings are warranted only where a "dramatic change" in demographics or economics has occurred. (ER Br @20) It also cites Arbitrator Tyson's decision in Richland County Professionals (Dec. No. 28848-A, 6/9/97), and Arbitrator Baron's 1997 decision cited above, in which they concluded that comparables previously established in interest arbitration cases involving different units of the same employer are equally valid in determining the comparability pool for another unit of the same employer. (ER Br @19-21)

The County argues that no significant changes have occurred since Arbitrator Baron's 1997 decision, with respect to Pierce County's position relative to indices such as per capita income, property values, population, etc. In particular, it argues that the inclusion of Minneapolis-St. Paul counties as a comparable is no more relevant now than it was when it was rejected by Arbitrator Baron in 1997, even though Pierce County was subsequently included in a federal locality pay area for the purpose of determining compensation for federal employees. (ER Br @23)

The County's wage offer

The County believes that an examination of the external comparables, by reference to ER Ex 35, support wage increases of 3% in both 2002 and 2003. It argues that its wage offer exceeds the majority of external wage settlements, even though there is no consistent pattern of across-the-board wage increases. (ER Br @24)

> "Given that the majority of external comparables implemented actual wage increases of 3% or less in 2002 and 2003, the County's wage offer of 3% is generous and can be considered to include a quid pro quo of an additional 0.5% in wage in excess of the comparable settlements." (ER Br @25)

The County anticipates the Union's argument that its proposed split wage increases of 3% and 1% in 2002 and 2003 "average" 3.5%, and are therefore essentially the same as the 3.,5% annual increases included in its proposal. It counters that there is a substantial difference between the cost of the two proposals, because of the "lift" triggered by the split increases, which will result in an increase in employees' take-home pay in subsequent years. It estimates that the total cost to the County, if the Union's offer is adopted, is only $328 in 2002, but increases to $9,829 in 2003, and to $19,557 in 2004 (and in subsequent years), due to the split increases in 2002 and 2003, an increase which it claims is unjustified by external wage comparisons. (ER Br @26, ER Ex 5)

> "The County's proposed 3.5% wage <u>rate</u> increase and <u>actual</u> increase (emphasis theirs) exceeds the 3% supported by the majority of external comparables for the 2002-2004 contract duration and therefore constitutes a 0.5% increase over and above that required by the external comparables." (ER Br @27)

Other factors cited by the County

The County offers three additional arguments in support of its proposal: that its proposed increase in employee contributions to health insurance is supported by the external comparables (ER Br @ 27-28); that other public sector comparisons, specifically, the Cities of River Falls and Prescott, favor the County's offer (ER Br @28-29); and that the cost-of-living criterion supports the County's final offer, because it "comfortably exceeds cost-of-living increases for both 2002 and 2003 and is more closely aligned with the CPI than is the Union's offer." (ER Br @29-30)

VI. DISCUSSION AND FINDINGS

As noted above, the primary issue in the instant interest arbitration case is the difference between the parties' respective wage offers for the years 2002, 2003 and 2004. The County proposes 3.5% increases in each year of a 3-year contract, and the Union proposes split increases of 3% and 1% in 2002 and 2003, and 3.5% in 2004. The County argues that its offer contains an extra 0.5% increase in each year of the contract, which represents (what it considers to be an unnecessary) quid pro quo in exchange for the Union's agreement to increase employee contributions to the premium cost of the group health insurance plan (currently at 5%), by 1% in each year of the new agreement, reducing the County's contribution from 95% (the current level) to 92% in 2004.

The County points out that four of the represented units in Pierce County have already agreed to these provisions, and that to accede to the Union's proposal would mean that an established internal pattern of negotiated settlements would be disrupted. The County argues that the apparently small difference between the respective wage offers is magnified by the 4% "lift" triggered by the 3%/1% split wage increases proposed by the Union. According to the County, the difference in total wage costs would be minimal in the first year of the contract, but would be substantial by the third year of the contract, and in subsequent years. (ER Br @26, Ex 5)

The County also argues that a "quid pro quo" is not necessary because of the special character of health insurance as an employee benefit, the internal pattern of wage increases negotiated by the settled units and by the external comparables, and by the fact that its wage proposal easily exceeds the increase in the cost-of-living criteria to be considered by interest arbitrators. (ER Br @29-30)

While it disavows the *need* for a quid pro quo under these circumstances, the County, on several occasions, characterizes the "extra" 0.5% wage increase in each in each year of the agreement as a quid pro quo for the Union's agreement to increase employee contributions to the cost of health insurance (e.g, ER Br @8, 25, 27). The County does not frame its position in terms of an *inability* to pay, but rather an *unwillingness* to pay, arguing that its wages are competitive with those paid by the majority of the external comparables, and that agreeing to pay the Union's wage demand "would, for the first time in well over 16 years, breach the consistent pattern of wage settlements negotiated with the County's bargaining units." (ER Br @17)

By contrast the Union argues that its higher wage proposal represents a quid pro quo for the agreement to increase employee contributions to the cost of health insurance; that it *is* necessary; and that the other settled units received additional benefits in the form of liberalized longevity and incentive pay for remaining in the same position, which constitutes an additional

wage increase/quid pro quo for their agreeing to higher employee contributions to the health insurance plan. The Union acknowledges that the Courthouse and Highway units have enjoyed the same benefit which the settled units agreed to, (UN Br @7), but argues that the the 115 employees in the settled will receive $305.08 in each year of the 2002-2004 agreement as a result of the liberalization of longevity and incentive. (UN Br @8, reference to ER Ex 18).

****

As noted earlier, the parties also disagree as to what represents the appropriate external comparables to be used as the basis for comparison in this and in subsequent arbitration cases involving Pierce County Courthouse employees. The County maintains that the set of external comparables established in previous interest arbitration cases involving Pierce County (but not the Courthouse unit), particularly Arbitrator Baron's designation of Barron, Buffalo, Burnett, Chippewa, Dunn, Pepin, Polk, Rusk, St. Croix and Washburn Counties (Dec No. 29057-A, Pierce County, Social Service Non-Professionals and AFSCME Local 556-B, 11/7/97), (with the exception of Pepin County, because its Courthouse employees are not represented) is the appropriate set of comparables and should not be modified. (ER Br @19)

The Union proposes a primary set consisting of Polk, Dunn and St. Croix Counties, and a secondary set consisting of Barron, Burnett, Chippewa and Washburn Counties, and the Pierce County Municipality of River Falls. It bases its case for the adoption of a new set of comparables on statistics showing that Pierce County has become more affluent, and that its economic status has improved substantially with respect to per capita income, household and family income, population and property values relative to the external comparables, since Arbitrator Baron's 1997 decision. (UN Br 4-5, UN Rep Br @4) It further argues that St. Croix is the most relevant county for comparison, because Pierce County as well as St. Croix County are included in the Minneapolis/St. Paul MSA for purposes of determining pay levels for federal employees, and because of the similarity in commuting patterns between Pierce, St. Croix and the core MSP counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties. (UN Br @4-5, UN Rep Br @5-7)

While the parties each refer to statutory factors to be considered by interest arbitrators in Sec.111.70(4)(cm)7, Wis Stat, including the public interest and changes in the cost-of-living as compared with their respective wage proposals, they substantially agree that the most important questions to be addressed by this arbitrator are: whether the Union's proposed

amendment of the set of external comparables established in previous arbitration cases is warranted because of changing circumstances; whether there is a *need* for a quid pro quo by the County in exchange for higher employee contributions to the health insurance plan, and correspondingly, *if* a quid pro quo is required, is the 0.5% wage increase included in each year of the contract, as proposed by the County, a *sufficient* quid pro; and finally, does the fact that the four settled units in Pierce County received additional compensation in the form of liberalized longevity/ incentive pay constitute a basis for a higher quid pro quo than the amount offered by the County and agreed to by the settled units, and thus support the Union's claim that its wage offer should be adopted by the arbitrator.

These issues are addressed below.

The external comparables

The Union proposes a major modification of the existing set of external comparables, based primarily on what it describes as improving economic conditions in Pierce County relative to the counties included in Arbitrator Baron's 1997 decision involving a different Pierce County bargaining unit, referred to above. It cites arbitral authority in support of its contention that external comparables determined in earlier cases are not "set in concrete," and can/should be modified in response to changing conditions. It does not propose the inclusion of Minnesota counties, a concept rejected by previous arbitrators. But it does propose to limit the

pool of *primary* comparables to St. Croix, Polk and Dunn Counties, adding a secondary set consisting of Barron, Burnett, Chippewa and Washington Counties, and the Pierce County municipality of River Falls. As noted above, the primary justification for its proposed modification of the external comparables is that Pierce County is becoming more affluent; that Pierce County is included in the Minneapolis-St. Paul/MSA for the purpose of determining federal pay schedules; and that the commuting patterns of residents of Pierce County and the "core counties" of metropolitan MSP (UN Ex 21) and its proximity to MSP support its argument that St. Croix County is the most relevant comparable.

This arbitrator agrees that the previous determination of external comparables is not immutable. But the precondition for a new set of external comparables, and/or for revising an existing set, must be supported by changes in the data typically relied upon by interest arbitrators: per capita income, property values, family and household income, population, etc. In the present instance, the Union has attempted to support its proposal by citing Pierce County's improved economic circumstances, a contention not disputed by the County. But the County argues that its *position* relative to that of the external comparables previously established has not changed. The County agrees that commuting patterns of residents of Pierce County and the "core counties of the Metro MSP are well-documented, but argues that the Union offers no evidence that they have changed appreciably since Arbitrator Baron's decision in 1997.

Although the matter of establishing an/or revising the set of external comparables was not initially central to this interest arbitration case the parties, by virtue of their exhibits, briefs and reply briefs, have indicated that it is a matter which this arbitrator must address. While he agrees with the Union argument, supported by cited arbitral authority that changing circumstances can justify the adoption of a revised set of external comparables, he is not convinced that such changes have been demonstrated by the Union. By contrast, he is impressed by the analytical approach, and by the high degree of skill and professionalism with which Arbitrator Baron approached the matter of determining the appropriate external comparables in a case involving Pierce County Social Service Non-Professionals. The Union has not produced any evidence that Arbitrator Baron's conclusions were arrived at incorrectly, or without proper attention to the key variables.

The Union's attempt to use commuting patterns and Pierce County's inclusion in the federal government's MSA for Minneapolis-St. Paul is of considerable interest, but it bears little relevance to the instant interest arbitration case. Accordingly, the arbitrator concludes that the ten counties included in Arbitrator Baron's set of external comparbles, with the exception of Pepin County for the reason cited by the County (e.g., the non-represented status of its courthouse employee), is the preferable of the alternatives proposed by the parties.

The Need for/Adequacy of a Quid Pro Quo

As noted above, and as the Union acknowledges, the central issue in this case is the need for a quid pro quo in exchange for higher employee contributions to the health insurance plan, and the adequacy of the County's wage offer with respect to addressing this matter. The Union contends that a quid pro quo is necessary, and that the amount offered by the County *is not adequate* because of the additional money which employees in the settled unit will receive, which is part of their quid pro quo, which must be matched.

Before turning to a discussion of these questions, the arbitrator must observe that neither the Union nor the County has made a serious effort to define the meaning of the term "quid pro quo" as commonly used in interest arbitration cases (or "case law" pertaining to this subject). While the term does not appear in Wis Stats Sec. 111.70(4)(cm)7, it is a concept widely, but not universally accepted by interest arbitrators. From the perspective of this arbitrator, it applies to the proposition that if a party to interest arbitration (presumably the union) proposes a benefit not included in the current collective bargaining agreement, it should be prepared to accept a *quid pro quo*, e.g., the elimination of a benefit of equivalent value; conversely, if a party (presumably the employer) proposes to eliminate an existing benefit, he/she should be prepared to offer a new or improved benefit of approximately equal value.

The question here is whether this maxim applies to health insurance in general, and to cost sharing in particular. As a number of arbitrators have observed, health insurance occupies a special place in the employment relationship. A benefit which was once reasonably affordable has become increasingly expensive, as demonstrated by the 2003 monthly premium of $1,092 for family coverage under the CCS plan for members of the Courthouse bargaining unit, an increase of 15.7% since 2001 (ER Exs 51-53). Over the three years of the contract, *total health insurance costs* are projected to increase by $116,399, or 32.94%. (ER Ex 5)

This escalation of health insurance costs is not a phenomenon limited to Pierce County, as highlighted by frequent media reports dealing with this issue, e.g., one headlined "Employees Paying Even Bigger Share for Health Care" (New York Times, September 10, 2003), and one entitled "Health Costs Slam Firms Again (Milwaukee Journal, September 14, 2003). The theme of these and similar articles is that the cost of health care is a matter of nearly universal concern, particularly in labor/management relations, since, in the United States, the availability of health insurance is ordinarily job-related.

Accordingly, the agreement between Pierce County and its Courthouse employees (and employees in its other, settled units) to increase the employee share of health care premiums is hardly unprecedented, and under current conditions, represents a logical decision on the part of the parties. Furthermore, with the

exception of increased employee contributions, health insurance benefits remain intact.

The County argues that "its wage offer includes a relatively small increase in employee contributions towards health insurance premiums." (ER Br @5) While the increase is *relatively* small, it is not insignificant: in 2003, for example, 5% of the 2003 premium for family coverage (the employee contribution rate before the agreed-upon change) would equal $54.60, but $76.44 under the (revised) agreed-upon contribution rate of 7%, an increase of $21.84. Not huge, perhaps, but not insignificant.

None of the above, however, is responsive to the question of whether increased employee contributions towards the cost of health insurance *requires* a quid pro quo, and whether the County's wage offer is sufficient to meet the above test. The Union contends that it is not, because the other, settled units received increased longevity and incentive pay which, by its calculations, and by reference to ER Ex 18, results in an average increase of $505.60 per employee.

The Union further calculates that the average wage rate wage rate for Courthouse employees at the end of the 3-year contract, applying the County's proposal would be $15.93/hour; applying the Union's wage proposal to the same wage rate over 3 years would be $16.09, a difference of $0.16 an hour. (UN Br @8) According to the Union, this difference does not equal the value of the higher longevity and incentive pay which the employees in the settled

units will receive at the end of three years by comparison with the higher compensation which employees in the Courthouse unit will receive if the Union's offer is adopted ($915.24 versus $436.80), but comes closer to meeting the test of a required quid pro quo. (UN Br @8-9). The difference, e.g., $436.80 apparently represents the extra money which Courthouse employees would receive if the Union's offer is adopted, in excess of the County's offer, but which is less than employees in the settled units will receive as the result of being the beneficiaries of liberalized longevity and incentive payments.

While the County denies that a quid pro quo is required because of precedents established in previous interest arbitration cases and for the reasons cited above, e.g., the special nature of health insurance as an employee benefit, it observes, on several occasions, that its wage offer *does* contain a quid pro quo in the form of an additional 0.5% wage increase in each year of a 3-year contract (ER Br @25, ER Rep Br @2), and that the maintenance of internal consistency with regard to negotiated wage increases among its six employee units is of paramount importance. It agrees with the Union's claim that the settled units received increased longevity and incentive pay as part of their negotiated settlements, but that the changes brought these benefits up to a level long enjoyed by members of the Courthouse bargaining unit, and that the equalization of these benefits among the six bargaining units represents good public policy with respect to

employee compensation. The County maintains that it should not be penalized for its decision to equalize benefits among its bargaining units, and that it should not be required to pay more to what it describes as the previously advantaged group of employees; if it did, "the attempt to equalize benefits would simply result in maintenance of ratched-up, but unequal benefits." (ER Br @17-18)

Observations and conclusions

The parties presented extensive and well-reasoned arguments, at the hearing, in the exhibits introduced into evidence, and in their respective post-hearing and reply briefs. While it is not possible for the arbitrator to respond to all of the arguments and evidence, the following represents a summary of his observations and conclusions with respect to the most salient points raised by the Union and the County.

The external comparables

As noted previously, the Union has not presented persuasive evidence in support of its contention that the number of primary external comparables should be reduced to three, with the remainder of their suggested comparables constituting a secondary pool. The County's position is far more responsive to economic reality; with respect to this matter, its position must prevail.

Increased employee contributions towards health insurance premiums

There is substantial arbitral authority to the effect that increased employee participation in the cost of health insurance plans is an accepted practice. While the need for a precise quid

pro quo has not been established in the instant case, it would appear that the parties have given this matter careful consideration and that the County's wage offer comes reasonably close to matching increased employee contributions to the cost of a largely unchanged, comprehensive health insurance plan. Thus, the term "quid pro quo," as applied to the circumstances described above, is more semantic than substantive in character.

Longevity and incentive payments to employees in the settled units

The Union argues that employees in the settled units will receive substantially more money during the term of the three-year agreement, a matter not disputed by the County, because they will benefit from the liberalized longevity and incentive payments which are included in their 2002-2004 collective bargaining agreements. Specific dollar amounts are cited by the Union in support of its contention.

The Union argument is not without merit, since members of the Courthouse bargaining unit will receive a smaller increase in their total compensation by comparison with employees in the settled units. At the same time, the Union agrees with the County's observation that the Courthouse employees have been beneficiaries of the higher longevity and incentive payments now extended to other Pierce County employees for many years. Accordingly, the question before this arbitrator is whether the equalization of these benefits would support the higher wage increase proposed by the Union.

Admittedly, the Union's offer, which includes split increases of 3%/1% in 2002 and 2003, results in a fairly small increase over the County's offer, although the effect of the "lift" generated by the split increases total compensation costs for the County in subsequent years, but again, not by a substantial amount. The more important question is whether the County's decision to equalize longevity and incentive payments among its six employee bargaining units represents an argument in support of the Union's (higher) wage proposal.

In the context of the negotiations leading up to this interest arbitration case, the Union's argument is understandable. But its adoption would mean that the County is being penalized for its arguably commendable practice of equalizing benefits among Pierce County employees. By contrast, its insistence upon the maintenance of internal consistency with respect to bargains struck with its several bargaining units enjoys considerable arbitral authority, with which this arbitrator concurs.

Other considerations

Other considerations, such as changes in the cost-of-living, the status of Pierce County Courthouse employees with employees in the comparable counties, and the interests and welfare of the public, by the consensus of the parties, are largely inapplicable to the instant case. since the County's "ability to pay" is not at issue, and the amount of the parties' respective wage offers equal or exceed current and prospective changes in the cost-of-living.

VI. AWARD

In consideration of all of the facts discussed above, and after a careful review of the briefs and exhibits submitted by the parties and after review of the oral testimony offered at the hearing held in Ellsworth, Wisconsin on May 20, 2003, it is the opinion of this arbitrator that the County's offer is the preferable of two submitted to him for his consideration, and is hereby ordered to be implemented effective, retroactively to the expiration date of the previous collective bargaining agreement between the parties, for 2002-2004.

Dated

October 3, 2003

Irving Brotslaw
Arbitrator