BEFORE ARBITRATOR WILLIAM EICH

IN THE MATTER OF:
INTEREST ARBITRATION BETWEEN

OZAUKEE COUNTY HIGHWAY EMPLOYEE'S ASSOCIATION

AND

OZAUKEE COUNTY

DECISION & AWARD

CASE NO. 58
NO. 61962
INT/ARB-9845
DEC. NO. 30562-D

Appearances

For the County: Atty. Eric Rumbaugh, Michael Best & Friedrich, Milwaukee
For the Union: Atty. George F. Graf, Murphy, Gillick & Wicht Prachthauser, Waukesha

Decision

For the reasons that follow, and pursuant to applicable provisions of the Municipal Employment Relations Act, I adopt the final offer of Ozaukee County on all disputed issues submitted for arbitration.

Introduction

By its order of September 11, 2003, the Wisconsin Employment Relations Commission, having determined that a bargaining impasse existed, appointed the undersigned to arbitrate the dispute between the parties, and "to issue a final and binding award, pursuant to § 111.70(4)(cm)6 and 7 of the Municipal Employment relations Act … by selecting either the total final offer of Ozaukee County or the total final offer of the Ozaukee County Highway Employees Association."

Hearings were held in Port Washington, Wisconsin, on December 15 and 17, 2003, and on January 26, 2004, at which the parties had the opportunity to present evidence and arguments. The hearings were reported and have been transcribed. Principal and reply briefs were filed by the parties, and the final brief was received on April 10, 2004.

While peripheral issues exist, the parties' disagreement arose when the County implemented several changes to the health care provisions of its Collective Bargaining Agreement with the Ozaukee County Highway Employees Association on January 1, 2003. The changes are reflected in the County's final offer which was filed several weeks thereafter. The parties' final offers may be found at Union Exhs. 2 and 3, and County Exhibit 1:3-20.

Interest Arbitration: Factors to be Considered

Interest arbitrators are required by statute, after hearing, to "adopt without further modification the final offer of one of the parties on all disputed issues submitted..." Section 111.70(4)(cm)6d, *Stats*. The statutory factors governing the Arbitrator's decision—and the manner in which they are to be applied—are set forth in § 111.70(4)(cm)(7), *Stats.*:

> 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.
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> 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:
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> a. The lawful authority of the municipal employer.
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> 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 excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Positions of the Parties[1]

[1] What follows represents only a summary of the parties' positions. Their arguments will be considered in detail in the Discussion that appears below. Beyond that, the parties' briefs were both thorough and thoughtful and have been fully considered.

The Union. The Union claims that the County made a "substantial change in the *status quo*" when it unilaterally implemented the changes to its employee health insurance program—changes the Union characterizes as a "reduction in insurance"—and it argues that because there was not an accompanying *quid pro quo*, the County's offer must be rejected. Specifically, the Union says that a *quid pro quo* can only exist in this case if the proposals in its own final offer are adopted in their entirety.[2] Alternatively, it argues that application of §111.70(4)(cm)(7), *Stats*, criteria demonstrates that its offer should be adopted as the more reasonable—again, "because it represents a more appropriate *quid pro quo* for the County's change in the *status quo*." (Brief, at 8)

The County. The County argues first that no *quid pro quo* is necessary because the "new" provisions in the highway employees' health care plan are identical to those that have been accepted by all other bargaining units in county government. Alternatively, it contends that its offer also contains concessions and other substantive provisions advantageous to the Union which constitute an adequate *quid pro quo* for those changes. The County claims it has established that (a) there is a demonstrable need for changes in employee health insurance, (b) the changes address that need and (c) do not impose an unreasonable burden on the employees. Finally, the County says that the overall reasonableness of its final under the applicable statutory criteria is plain and warrants its selection over the Union's offer.

Issues for Determination

While the parties' brief do not track the issues in any uniform manner, I consider the following to be the issues to be determined in these proceedings:

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[2] The Union's final offer includes the essential terms of the County's offer with respect to the health care plan. It says that it di so because the changes were *fait accompli* and because, as indicated, it believes there cannot be an acceptable *quid pro quo* for the County's changes to the plan unless all of the other terms of the Union's offer are also implemented.

I. Was the County's unilateral implementation of changes to the health care plan a justifiable departure from the *status quo*?

II. Considering the parties' final offers in their entirety, which is the more reasonable under the criteria set forth in § 111.70(4)(cm)(7), *Stats*.?

Discussion

I. Health Care Changes: *Quid pro Quo*?

It is beyond dispute that the County's plan represents a significant change in the *status quo* insofar as the health care provisions of the existing Collective Bargaining Agreement are concerned. As the Union points out, at the very least the "new" plan imposes $250 and $500 deductibles for single and family in-network services (and $500/$1000 for out-of-network services), where none existed before. [Un. Exh. 1:3a; 2:] It also imposes a "new" $20 co-payment charge for doctor's office visits, and increases the emergency room co-payment from $50 to $75. Union Exh. 1:3b; 2:3b. Also increased were the co-payment amounts for generic ($9 to $10), and formulary ($14 to $20/$30) medications. [Un.Exh.1; 2:3b, 3d1]

The parties describe the rule applicable in such situations in different terms. The County, quoting from ***Woodruff-Arbor Vitae Joint School District***, Dec. 26268-A (Reynolds, 1990), and ***Winnebago County***, Dec. 26037-A (Miller, 1989), suggests the following three-part test for determining whether a substantial change in the *status quo* is justified in a particular case:

i. Does the present contract language give rise to conditions that require a change?

ii. Does the proposed language remedy the situation?

iii. Does the proposed language impose an unreasonable burden upon the other party?

The Union sets forth a somewhat different statement of the rule, citing ***Village of Fox Point***, Dec. 30337-A (Petrie):

> [The proponent must establish] a very persuasive basis for such change, typically by showing that (1) a legitimate problem exists which requires attention, (2) that the disputed proposal reasonably addresses the problem, and (3) that the proposed change is accompanied by an appropriate *quid pro quo*.

The Union concedes for the purpose of these proceedings that the first two criteria, however they may be recited in the cases, have been met.[3] As for the third criterion, I consider the difference in wording to be inconsequential. Requiring the contract changes to be accompanied by "an appropriate *quid pro quo*" is, to me, the equivalent of stating that they must not impose an unreasonable burden on the other party. The idea that substantial changes to the *status quo* may only be made unilaterally when there is an adequate *quid pro quo* finds general acceptance in the decisions. *See*, for example: ***City of Greenfield***, Dec. 30685-A (Zeidler, 2004); ***Village of Fox Point***, Dec. 30337-A (Petrie, 2002); ***Waukesha County***, Dec. 29533-A (Torosian, 1999); ***City of Whitewater***, Dec. 29432-A (Petrie, 1999).

The County argues first that no *quid pro quo* is necessary in this case, citing arbitral authority for the proposition that a *quid pro quo* for increased employee contributions to their health insurance is not required where "the same benefits … have been provided to other … employees for the period of th[e] contract," ***City of Beaver Dam***, Dec. 26548-A (Oestreicher, 1991), or "where the reasonableness of the … proposal is clearly supported by the internal comparables." ***City of New Berlin***, Dec. 29061-A (Yaffe, 1997). The Union points out, however, that at least in ***City of New Berlin***, the Arbitrator noted that the City's proposal did not amount to a significant

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[3] The Union states in its brief (p. 3): "The first two elements are not being challenged in this case for two reasons. The County has already implemented its health insurance changes, and the Union has in its Final Offer acquiesced in the *fait accompli* by including the County's insurance changes in its final offer with the caveat that there be an acceptable *quid pro quo*."

change in the *status quo*. And it argues that just the opposite is true here: that the changes were significant, and that even if similar changes have been accepted by other bargaining units, those units received more in exchange than highway employees will receive under all of the provisions of the County's proposal. In my view, that is the first issue for consideration: whether a reasonable *quid pro quo* has been offered to the Union. I am not persuaded by the County's argument that it need not offer one in these circumstances.[4]

Arbitrator Torosian has stated as follows with respect to the nature of the *quid pro quo* in interest arbitration::

> There is no set answer as to what constitutes a sufficient *quid pro quo*. It is, in the opinion of the arbitrator, directly related, inversely, to the need for change. Thus, the *quid pro quo* need not be of equivalent value or generate an equivalent cost savings as the change sought. Generally, the greater the need, the lesser the *quid pro quo*.

Oconto County Unified School District, Dec. 30295-A (Torosian, 2002). *See*, also, ***Village of Fox Point***, Dec. 30337-A (Petrie, 2002), where the Arbitrator stated:

> [T]he spiraling costs of providing health care insurance for its current employees is a *mutual problem for the Employer and the Association* … In light of the *mutuality of the underlying problem*, the requisite quid pro quo would normally be somewhat less than would be required to justify *a traditional arms-length proposal to eliminated or modify negotiated benefits or advantageous contact language.* (Emphasis in the original)

In support of its argument that its overall proposal offers an acceptable *quid pro quo* for the changes, the County points first to its proposal for a "wellness incentive"

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[4] As indicated below, however, there is authority for the proposition that increasing health care costs on the part of the employer, can significantly reduce its burden of establishing a *quid pro quo* for healthcare changes.

whereby highway employees would receive $125 per year ($250 for families) for scheduling annual physical examinations. The County's human resources director, John Kuhnmuench, testified that this benefit is "a way of attempting to achieve some means of assisting the employees ... with some of the out-of-pocket healthcare costs that are now subject to deductibles and co-pays." Tr. 402. It then refers to its proposal for a "flexible spending account"— a proposal whereby the County would contribute $250 ($500 for families) to serve as a "medical reimbursement" to the employees, and give them the opportunity "to shelter dollars on a pre-tax basis to cover medical expenses that are not reimbursed under insurance." Brief, at 29. The County sets forth figures outlining potential actual savings to the employees in this regard of $307.63 for individuals and $595.65 for families. Other proposals the County contends create an acceptable *quid pro quo* include a "non-duplication" provision that would pay $400 per month to any employees electing to utilize a spouse's insurance coverage, a $3.00 monthly increase in longevity pay, and removal of existing "caps" on employee life insurance and long-term disability insurance. It says that removal of the life insurance cap will allow significant increases in the highway employees' life and disability policies—at additional cost to the County. Brief, at 31. Finally, the County says its offer also "broadens" existing "funeral leave" provisions of the contract and increases the allowable sick leave accumulation. The funeral leave proposal expands the list of relatives for whom the employee's leave would be authorized, and the sick leave proposal increases the maximum number of sick leave days employees may accumulate from 120 to 150—which, the County says, "will allow the employee to maintain a larger accumulation of sick leave time which can be used toward the payment of health insurance premiums at the time of retirement. Brief, at 32; Co. Exh. 1-027.

As indicated, the Union contends that these benefits are inadequate as a *quid pro quo* for the other changes in the health care plan. It points out first that the wellness incentive and flexible spending account plans—which it acknowledges provide benefits

to Union members[5] were granted to all other bargaining units as well, and that all of those units received additional, "richer," benefits than those offered to the highway employees—particularly in the area of wages, sick leave, retiree insurance and longevity pay. And it says that, "to a lesser degree," the County's failure to offer an adequate *quid pro quo* is shown "by the evidence … as to the other applicable statutory guidelines." Brief, at 3.

Taking the Union's objections one by one, it argues first that County's wage offer (3% on January 1, 2003 and 3% on January 1, 2004) is less than that received by other bargaining units. Specifically, it points to the LaSata unit receiving 4% in each of the two years of its 2003-04 contract. It says that the Sheriff's Department and the OPEIU each received what the Union has proposed in this case: 2% on January 1, 2003, 2% on July 1, 2003, 2% on January 1, 2004, and 2% on July 1, 2004.[6] And it states that, since January 1, 1997, the highway employees have received smaller wage increases than the other units—19% as opposed to increases of 24.5%, 22.25%, and 21% for the others. The County doesn't respond to this argument, other than to note that its proposal includes an hourly-rate increase for foremen, and to point out that, in comparison to highway workers in comparable counties, the Ozaukee County employees' wages are higher.

As for sick leave and retiree insurance (the employees' ability to use accumulated sick leave to pay health insurance premiums after retirement), the parties both propose increasing maximum sick-day accumulations to 150 days. They differ

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[5] The Union states in its reply brief that it is uncertain whether "certain Highway employees" will actually receive benefits from the wellness incentive plan. Reply Brief, at 6. It does not explain the statement further; nor is there any reference to the record for supporting testimony or documentary evidence. I assume the statement refers to remarks made in its opening brief where the Union, acknowledging that there was "no solid evidence presented … as to whether highway employees were able to register in time to be included in the [flex account and wellness-benefit programs]." Brief, at 11. The Union went on to state, however: "[W]e will assume [that] Highway employees either have or will be able to participate in [these programs]." Id.

[6] As will be discussed in greater detail below, these units received additional increases for the period December 29, 2003 through June 27, 2004.

with respect to the payment to be received for the excess over that amount. The Union seeks payment for 75% of the "forfeited" sick leave days, and the County has offered a 50% payment. The Union acknowledges that the County's proposal is the same as it has proposed for the LaSata Unit, but says it is less than that proposed for the Administrative Unit and the Sheriff's Department—each of whom accrue sick leave at a grater rate (.048 per hour compared to .0461 per our), and each of whom have the right to apply unused sick leave to payment of health insurance premiums on retirement on what the Union says are more beneficial terms than those offered to the highway employees. [7]

There is also disagreement over the introductory language to this section in the County's offer, which begins: "Employees with twenty or more years of continuous service, who retire from Ozaukee County ... shall be eligible to participate in the County health plan provided full payment of the premium is made on a timely basis...." The Union says this amounts to a twenty-year-length-of-service requirement for the benefit; and it asserts that members of other bargaining units can utilize similar benefits at a specified age with either no length-of-service requirement, or with a length-of-service requirement of fifteen years. It also states that such a proposal "will severely impact several [Highway] employees." Brief, at 16.

John Kuhnmuench, the County's human resources director, testified that the twenty-year language was erroneously inserted in the County's final offer. He said: "We made a mistake. It was placed there in error. ....That isn't supposed to be there." Tr. 431 He said it was an error "from the very beginning," and that it couldn't be deleted from the offer itself under WERC rules relating to the timeliness of final-offer submissions. Id. I see no reason to disbelieve that testimony; and I hold the County to it. I do not, therefore, consider the County's final offer to include a twenty-year employment precondition to a retiring employee's ability to continue in the County's

health insurance plan. Beyond that, under the existing Collective Bargaining Agreement, highway employees between the ages of 55 and 65 can use a portion of their unused sick leave to pay health insurance premiums after retirement. Co. Exh. 1:B:8. And while there is some uncertainty on the question, the County's offer appears to leave intact the concept of use of sick leave accumulations for payment of retirees' health insurance premiums (and the Union does not appear to argue in its brief that the general ability to use accumulated sick leave reserves for post-retirement health insurance premiums has been eliminated by the County).

In light of the foregoing, I do not consider there to be a significant difference in the sick-leave provisions offered by the County to the highway employees and those it has offered to other bargaining units—at least no differences significant enough[8] to warrant rejection of the County's proposal on the basis argued by the Union. This is especially so, I believe, in light of arbitral authority indicating that where, as here, the employer has shown it is paying increased health-care costs,[9] its burden to provide a *quid pro quo* for health-care changes is "reduced significantly." ***Pierce County (Human Services)***, Dec. 28186-A (Weisberger, 1995).

Finally, the Union points to what it claims are significant differences in the treatment of Highway employees *vis-à-vis* other county employees with respect to longevity pay; and it says that these differences conclusively establish the lack of a *quid pro quo* for the health care changes. The Union acknowledges that the County has proposed an increase in longevity pay, but contends the increase is much less than that proposed for other bargaining units. Under the County's proposal, highway employees would receive monthly payments according to the following scale: $10 per month for

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[7] It also appears, as indicated at p.17, *infra*, that only one of the other internal comparables—the LaSata unit—has sick-leave payout provisions in its contract.

[8] *See*, pp. 16-17, infra, for a more detailed discussion of the internal sick-leave differentials.

[9] As discussed in more detail below, the County offered testimony that, without implementation of its health-care proposals, it was facing a 21% increase in premiums in 2003 alone. County Exhibit 1-115; 1-115.

employees with five to nine years of service; $33 for employees with ten to fourteen years; $48 for fifteen to nineteen years; and $63 for 20 years or more. Union Exhs. 2, 5 The Union's proposal is that employees with five or more years of service receive an additional $3 for each month of service, with payments to be made on January 1 of each year. Id. The Union, acknowledging that the County's proposal would "initially give employees in each category a bit more money," says that it provides no "opportunity for growth during the 5 years the employee remains in a particular grouping." Brief at 14. It states that, while LaSata employees are receiving the same (or less) than the highway employees in this respect, Sheriff's deputies receive $4 per month of service paid into a trust fund for payment of health insurance premiums upon retirement, and while the OPEIU employees currently receive the same longevity pay contained in the highway employee contract, the OPEIU benefits are paid monthly and will increase to $4 per month in 2004. There is, in short, says the Union, a significant difference in longevity pay between the highway employees and the Sheriff's Department and OPEIU, and essentially none between highway and LaSata employees. The County does not respond directly in terms of the *quid pro quo* argument; rather, it says that there is no "uniformity" among the other bargaining units and that external comparables support its position. The argument is better directed toward application of the statutory criteria.

What does all this mean? It appears that, on the items specifically argued by the parties—wages, sick leave, retirement health insurance and longevity pay—the differences in two areas (sick leave and retirement health insurance) are either neutral or slightly favor the County, and two (wages and longevity pay) favor the Union's position. In addition, at least two of the County's other health-care proposals—those relating to wellness incentives and flexible spending accounts—concededly provide additional benefits to highway employees. There are also the County's proposals for [a] non-duplication of health insurance (a $400-per-month payment to employees electing to take insurance under a spouse's policy), [b] removal of the existing cap on the amount of long-term disability and life insurance benefits available to employees,

[c] placement of a $250/$500 cap on employee out-of-pocket prescription medication expenses, where, in prior years, the employee was responsible for 100% of his or her medication expense, and [d] addition of an "employee-plus-one" plan, which has resulted in decreased health insurance premiums for at least fourteen members of the bargaining unit.

All in all, I conclude that, considered in light of the totality of the parties' proposals and all of the other circumstances—including the arbitral authority referred to above—the health care changes adopted by the county do not, in and of themselves, require either outright rejection of the County's changes (or, as the Union posits, adoption of all provisions of its own final offer) on grounds that the County has failed to offer a reasonable *quid pro quo* for those changes. To the contrary, I believe it has.

The question remains, then: which party's final offer is the more reasonable under the applicable statutory criteria?

II. The Reasonableness of the Offers Under Applicable Statutory Criteria

A. *The "Greatest Weight" Factor*

As indicated, the statutes direct that, in determining reasonableness, the Arbitrator is to give greatest weight to any state law or regulation "which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer." Section 111.70(4)cm(7), *Stats*.

While the County presented evidence pointing out the economic problems currently facing government at all levels, it has not pointed to any law or rule specifically limiting either its expenses or revenues that would prevent it from meeting the Union's offer. As for the general statutory levy limits, the Union presented testimony that, while the County's levy limit is $2.97, its 2004 tax levy is $1.94. Union Exh. 47. The greatest weight factor has not really been argued by the parties and thus need not be considered.

B. *The "Greater Weight" Factor*

Economic conditions in the county are to be given greater weight than other factors in determining reasonableness. Section 111.70I4)cm(7g), *Stats*.

The Union maintains that Ozaukee County "is in terrific financial shape" economically—both in the abstract and when compared to comparable Wisconsin Counties.[10] Brief, at 9, 10; Reply brief, at 4. According to the Union's exhibits—specifically Union Exh. 41—Ozaukee County ranks first among the comparables in *per capita* personal income, and lowest with respect to its tax levy.[11] The exhibit also shows that—at least by 2000 figures—the County enjoys a similar comparable ranking with respect to per-tax-return income. Id., at 13-18. And the Union says that all the County has shown is that it, like most other units of local government, is facing "tough times" that require a little "belt-tightening." And it says that, on that basis, its offer is to be favored under the "greater weight" standard.

The County's evidence on the point began with a description of its overall economic condition. As indicated earlier, it, along with most other units of state and local government, has been experiencing large—and largely unprecedented—increases in health care expenses for its employees. Even with the plan changes which are the subject of these proceedings, it is facing an 11%-13% annual increase in health insurance premiums.[12] According to its witnesses, the County anticipates a $1.6 million loss in overall revenues in 2004; and, beyond that, increased expenses and revenue losses have resulted in the elimination of 20 positions from its 2004 budget—none of them in the highway employees' bargaining unit. Co. Exh. 1-116; 1-053; 1-060. The county also points to the loss of three major employers and more than 1000 jobs in the

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[10] With one exception—discussed below—the parties are in agreement as to the appropriate comparable counties. They are: Waukesha, Washington, Sheboygan, Fond du Lac and Walworth.

[11] Statewide, Ozaukee's levy ranks 70th of Wisconsin's 72 counties; and the comparables' ranks are 11, 25, 51 and 66. Union Exh. 47:12.

[12] Without the changes, the annual increase would be in excess of 20%. County Exh. 1:114-15.

area, and, according to one of its witnesses, a "significant reduction" of $304,000 in State shared revenue resulting from the well-publicized state budget crisis. Tr. 354; 407-08; Co. Exh. 1-053.

The Union discounts that evidence as a simple "recitation that times are tough," and that the county, like most others, merely "has to tighten its 'economic' belt" in order to meet Union demands. Brief, at 9. On that basis, it says there can be no doubt that the economic factors favor its offer. I disagree. The Union's position is, in a nutshell, that Ozaukee County must be presumed to be in "terrific" financial shape because its *per capita* income is relatively high—in other words, because it has many wealthy residents—and because its tax levy is relatively low. The County's evidence, on the other hand, is more specifically related to its ability to meet its governmental obligations to its residents in a time of rising costs and dwindling revenues. It may be that one way out of the dilemma is simply to raise taxes. But that is an abstract concept unsuitable for analysis on this record. In addition, I note Arbitrator Torosian's comments in ***Wausau City Hall Employees***, Dec. 29533-A (Torosian, 1999), that even where the employer's economic condition is shown to be strong, it "does not automatically mean that the higher of the two offers must be selected, or, conversely, a weak economy automatically dictates a selection of the lower final offer." To me, the Union's more general evidence is not at all controlling on the issue. I consider that the "greater weight" factor marginally favors the County's position. That margin, however, is so slight that, while it is a significant factor in these proceedings, I do not believe it controls the outcome.

C. *The Other Factors*

1. The Interests and Welfare of the Public. Section 111.70(4)(cm)7r(c), *Stats.*, lists "[t]he interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement" as one factor to be considered in the analysis.

The Union's argument here is simply that, when we come (later in this decision) to "examine the internal and external comparables," that examination will establish that "the [highway] employees ... are being singled out to be treated less favorably than their peers..;" and it says that its proposal should be selected because it "favors relative equality with other Ozaukee workers and those in comparable communities." Brief, at 10. It doesn't explain the argument further. The County doesn't address this criterion at all. Since neither party advances any specific argument on the public interest factor, I need not consider it further.

2. Internal Comparables. The Union's position on internal comparables is that, apart from wages, longevity pay and sick leave/retiree insurance, "there is little difference between the Union and County proposals." Brief, at 17 As touched upon in the *quid pro quo* discussion, *supra*, the Union maintains that these three remaining factors strongly favor its offer. It acknowledges that all other county bargaining units have accepted health coverage terms identical to those contained in the County's proposal for the Highway employees. It maintains, however, that these units also received greater benefits in these other areas than are being offered to its employees.

[a] *Wages*. As indicated above, the County's wage offer to the Union is less than that offered to the other bargaining units: 3% in each year of the two-year contract, as opposed to approximately 4% for the others.[13] County Exh. 1:98; Union Exh. 27, 29, 31 and 32. There was also evidence that prior wage settlements similarly favored the other units. County Exh. 1:98

The County puts forth no direct response to the Union's internal wage-differential argument. It simply points out that it is offering a fifty-cent-per-hour increase for foremen, and states: [a] "there is no uniformity of pay or other benefits

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[13]The County's proposal for highway employees contemplates an increase of 3% on January 1, 2003 and 2004. The OPEIU settlement was 2% on January 1 and July 1, 2003, and 2% on January 1 and July 1, 2004. For Sheriff's department employees, the increases were 2% on December 29, 2002, June 29, 2003, December 28, 2003 and June 27, 2004. LaSata employees received 3% on December 29, 2002, 1% on June 29, 2003, 3% on December 28, 2003, and 1% on June 27, 2004. Id.

across internal units,"[14] and [b] the other units have all accepted the health coverage terms proposed for the Highway employees. On the latter point, I agree with the county that, with respect to health care (and other fringe benefits), uniformity is an important consideration. *See*, for example, ***Columbia County***, Dec. 28960-A (Kessler, 1997); ***Village of Shorewood***, Dec. 26625–A (Kerkman, 1991). But the unexplained wage-increase differential between the highway employees and members of the other bargaining units leads me to conclude that the wage subset of the internal comparables favors the Union's proposal.

[b] *Longevity*. The County points out that its proposal will increase the amount of longevity pay, based on the current 5-10 years/10-15 years/15-20 years/20+ years schedules, by an additional $3.00 per month in each category. County Exh. 1:8 The Union's offer, as discussed earlier, proposes a greater benefit: $3 for each month of employment for all employees with five or more years of service. County Exhibit 1:139 indicates that the County's proposal to the highway employees is higher—at least for 2003—than both the OPEIU and LaSata employees, but less than for the Sheriff's deputies. And the Union argues that, even where the County's offer is the same or higher than the others, the fact that the County is proposing to pay the Highway employees monthly, whereas the others are paid on January 1 of each year, skews the balance in the Union's favor. The argument is largely unexplained, however, and I do not accord it great weight. Similarly, given the fact that Sheriff's deputies have different retirement and other provisions in their contracts. I conclude that this factor does not significantly favor either party's offer.

[c] *Sick Leave and Retiree Insurance*. The Union acknowledges that the parties do not differ with respect to the accrual of sick leave: it will accrue at the rate of .046154 per hour to a maximum of 96 hours per year, with a maximum overall accumulation of 150 days. The parties differ, however, with respect to the payment to

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[14] The County suggests in its brief that where there is little uniformity in "internal" wage rates and increases, such discrepancies carry little weight. Because, however, it cites no authority for the proposition, I am unable to ascertain the validity of the proposition.

be received for the excess over 150 days. The Union wants payment for 75% of the forfeited sick days, while the County is offering 50%. As for the latter, It appears that only one of the internal comparables—the LaSata unit—has any annual "payout" provision, and that is the same as the County's offer here: fifty percent. County Exh. 1:144. As for leave accrual rates, the Union says that each of the other bargaining units accrue sick leave at a greater rate—.048 per hour—compared to the County's offer of .046154.[15] It is only a very modest difference over the 150-day (1200 hours) maximum, however: 18/100 of one cent-per-hour (4.80¢ - 4.62¢ = 0.18¢ = $0.0018). As a result, I do not consider the sick leave differences as favoring either side.

The Union also acknowledges that the contracts for both the Sheriff's Department and the OPEIU employees have the same provisions as the highway employees' contract with respect to use of accrued sick leave for payment of post-retirement health insurance premiums. It asserts, however, that the Sheriff's Department and OPEIU employees can utilize this benefit at age 50/55, with no length-of-service requirement, and again points to the introductory language to the retiree insurance provisions in the County's offer: "Employees with twenty (20) or more years of continuous service....." I have discussed this dispute above and, as indicated, have accepted the County's representation—through the testimony of its director of human resources—that that language was erroneously included in the offer, and that it is not something the County was either proposing or seeking in these proceedings. Here, too, it is difficult to say that either side's position is clearly favored.

As indicated, consideration of internally comparable wage offers favors the Union's offer. The other factors, however, are so close as to be neutral—with the

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[15] The Union also states that the other units "are allowed to accumulate up to 1200 hours (150 days) *in contrast to the 120 maximum offered to Highway*." Brief, at 15 (emphasis added). The latter statement appears to be in error, as, only a few lines earlier in the brief, the Union notes that "Both parties have the same proposal that sick leave will accrue at the rate of .0445154/hour to a maximum of 96 hours/year *with a maximum accumulation of 150 days*. Brief, at 15 (emphasis added). Similarly, Union Exh. 5, outlining the provisions of the parties' final offers, recites the County's offer as allowing a 150-day accumulation.

result that the internal comparables, taken as a whole, may be said to favor the Union's position.

3. External Comparables.

[a] *The Appropriate Comparables*. The comparable counties established in an April, 1990, arbitration award involving these parties[16] are Fond du Lac, Sheboygan, Walworth, Washington and Waukesha. The County proposes the addition of Manitowoc County based on [a] its geographic proximity to Ozaukee County, [b] similarity in population, and [c] a highway department roster within the range of the other comparables. Brief, at 16; County Exhs. 1:99; 100.

I agree with Arbitrator Torosian's comments in ***Langlade County Sheriff's Department***, Dec. 29916-A (Torosian, 2001), that

> … use of a consistent set of comparables is considered beneficial to the collective bargaining process because it adds stability to the parties' relationship. For [this] reason it is a well-established principle among arbitrators that once a set of comparables has been established as appropriate in a prior arbitration case[], it will not be disturbed unless there has been a sufficient change to support a persuasive argument for change.

The five-county pool of comparables was determined in a prior arbitration between these parties, and I do not see a general similarity in population, department size and geographic proximity, as constituting a "persuasive argument" for changing that pool by increasing it.

The County also objects to a reference in the Union's brief to wages paid to highway employees in four cities located in Ozaukee County (Mequon, Port Washington, Cedarburg and Grafton) and the concomitant proposition that these wages—which appear, in some instances at least, to be slightly higher than those in effect in Ozaukee County—"give some guidance of what is considered an appropriate

rate of pay for this type of work when performed in Ozaukee County." Brief, at 20. No testimony was offered at the hearing specifically explaining why these cities were comparable, however. The Union, pointing to the same arbitration award in which the comparable counties were established, states that that award also identified the four municipalities as comparables. ***Ozaukee County (Highway Department)***, *supra*. And the County's position—that these comparables should be rejected because the award is 14 years old—falls short of the type of evidence of change that is typically required before additions or deletions from established lists of comparables will be undertaken. I agree that municipal demographics and other issues and trends are not cast in stone; but absent some specific evidence as to the need for change, I believe adherence to established comparables (and arbitral principles) is appropriate. Accordingly, I consider the comparables listed in the prior arbitration—the four Ozaukee County municipalities as well as the comparable counties—to constitute the appropriate template in these proceedings.

[b] *Wages*. The Union points out that, as I have noted above, the average wage increase on base salary in Fond du Lac and Sheboygan Counties was 3% in 2002, 3.25% in 2003 and 3% in 2004—with increases accruing once a year, on January 1st. This may be compared to Ozaukee County's increases of 3.5% in 2002 and 3.0% n 2003 and 2004. County Exh. 1:112. The same exhibit shows that, in Walworth, Washington and Waukesha Counties, the increases were somewhat higher overall. Walworth County increases were 4% in 2002 (2% on January 1 and 2% on July 1); and 3% in 2003 and 2004. Id. Washington County's were 4% in 2002 (1.5% on January 1 and 2.5% on July 1), 4.5% in 2003 (1.5% on January 1 and 3% on July 1); and 3% in 2004. In Waukesha county, the raises were: 3% in 2002, ten cents an hour on June 28, 2003, 3% plus twenty-five cents an hour on December 27, 2003, and no increase for 2004. Id. In sum, two of the counties had slightly lesser increases (Fond du Lac and Sheboygan), two had higher increases (Walworth and Washington) and one (Waukesha) is difficult to pinpoint as a result of the two hourly increases in 2003.

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[16] ***Ozaukee County (Highway Department)***, Dec. 26100-A (Weisberger, 1990). Union Exh. 7.

With respect to actual salaries paid, there is no dispute: Ozaukee County ranks first among all the comparables. For general highway employees, the average maximum wage in the comparable counties in 2002 was $36,349, compared to Ozaukee County's $38,1205. For 2003 the figures were: comparable average $37,948 – Ozaukee County $39,645; and for 2004, $39,000 to $40,435. County Exh. 1:108. The wages for highway mechanics were to the same effect: in 2002 $36,990 to $39,457; in 2003 $38,080 to $40,601; and in 2004 $39,536 to $41,787. Id. The pay differentials for foremen are in a similar ratio. Id. While the Union's proposal contemplates slightly higher salaries than the County's, both are well above those paid in the comparable counties.

Here, too, the Union's argument centers on what it describes as Ozaukee County's "wealth," and it asserts that the counties whose wage-increase offers were somewhat higher than Ozaukee's are comparably "wealthy." The fact remains, however, that the actual maximum wages Ozaukee County pays its highway workers are significantly higher than those paid to comparable workers in the comparable counties—and those employees will retain that status under the County's final offer.

As to wages paid to highway workers in the Ozaukee County cities, workers in Mequon, Port Washington, and Cedarburg earn roughly $2 per hour more than the Ozaukee County workers. A fourth city, Grafton, has wage rates relatively comparable to Ozaukee County's. Union Exh. 45. In my opinion, placing significant reliance on the fact that three municipalities within the County pay their highway workers more than Ozaukee County does—especially in light of the rather lopsided advantage Ozaukee County workers have over their counterparts working for comparable county governments—would be more understandable if the evidence showed that the demographics in the three municipalities were representative of those in the county as a whole. As the Union acknowledges, Mequon, Port Washington and Cedarburg are demonstrably wealthy communities; and it may be that, because of the wealth

concentrated in these three municipalities, Ozaukee county scores relatively high in terms of *per capita* income and some of the other factors the Union has stressed in these proceedings. What is unknown is how representative those three municipalities are of the panoply of other towns and villages in Ozaukee County.

On this record, the overall comparison of wages—in terms of actual salaries paid, as well as the percentage increases—favors the County's offer. While, as indicated, the wage-increase comparison is a mix, Ozaukee County plainly pays its Highway Department workers substantially more than comparable counties. And that tips the scales in its favor in this analysis.

[c] *The Cost of Living*. The statute requires consideration of "the average consumer prices for goods and services, commonly known as the cost of living." Section 111.70(4)(cm)(7)(g), *Stats*. That factor is generally considered to be embodied in the Consumer Price Index (CPI).

The County offered evidence that, since January, 1992, the wages of Ozaukee County Highway Department employees have risen at a rate that was often considerably greater than the rise in the CPI. In only one year (2000) was it lower. In all other years it exceeded the CPI increases by sixteen (3.5% compared to 3.0% in 1996) to slightly more than one hundred (3.24% compared to 1.60% in 1998) percent. County Exh. 1:106. This factor strongly favors the county's position.

[d] *The Overall Compensation Package*. There is no question, as discussed above, that the County's wage offer to the Highway Department employees is lower than that offered to the internal comparables. Nor is there any question that the County's offer results in maximum wages for highway department employees that are considerably higher than those in the comparable counties. Even in percentage-increase terms, the County's proposed percentage wage increases, while lower in some areas, are not unreasonably so. Beyond that, the County presented evidence indicating that it

is spending 6.29% ($157,658) more on total department compensation in 2003 than it did in 2002; and that the average total compensation received by department employees would increase by 5.16% ($140,544) in 2004. County Exh. 4 And while the County's longevity-pay proposal is somewhat less than the internal comparables, like its wage package, this proposal fares much better when considered in light of the external comparables—three of whom offer no longevity pay whatsoever, while one pays a higher amount and one substantially less.[17] County Exh. 139.

As the County points out, removal of the life insurance cap is another benefit to Highway Department employees, as is its proposed removal of the maximum monthly salary amount for long-term disability insurance. The County's proposal also broadens the provisions relating to funeral leave—expanding the definition of "family" so as to make the leave benefit more broadly available to employees. Finally, the County's proposal for flexible benefits accounts and wellness incentives constitute conceded benefits to the Highway employees. I conclude that, on balance, the overall compensation package favors the County's proposal.

D. *Conclusion*

It is true that arbitral authority generally accords more weight to internal, rather than external, comparables—although most of the cases in this area speak in terms of fringe benefits.[18] It is also true, as discussed above, that the County's wage proposal is lower, in terms of annual percentage increases, than the internal comparables. The

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[17] In its reply brief, the Union sought, by way of an exhibit, to include in the record the text of a county ordinance dealing with longevity pay which was apparently passed by the Ozaukee County Board on March 3, 2004. The transcript of the final hearing in this matter, held on January 26, 2004, indicates that the record was closed on that date. Tr. 576-77. Consequently, the exhibit to the brief, and the Union's argument based thereon, has not been considered in this Decision and Award.

[18] Arbitral authority cited by the County in this regard—authorities also acknowledged by the Union in its reply brief (p. 5)—include ***Wausau City Hall*** Employee, Dec. 29533-A (Torosian, 1999) (health insurance benefits); ***Winnebago County***, Dec. 26494-A (Vernon, 1991) ("basic fringe benefits, particularly health insurance benefits); ***Dane County***, Dec. 25576-B (Nielsen, 1989) (insurance benefits).

other areas of internal comparison are essentially a wash, with the result that, on the whole, while the internal comparables favor the Union's proposal, they do so only moderately. Other factors—not only the external comparables (by a comfortable margin), but also the overall compensation package—favor the County's offer. Additionally, the County's annual wage-increase offers—past and present—are, in general, significantly above the applicable cost-of-living indices. Finally—and perhaps most significantly—the "greater weight" factor, the economic conditions actually operating in the county, very generally favor the County's proposal.

Balancing the statutory factors is, as I have said, a close question in this case. But when the mix of factors discussed throughout this decision is enriched by the recognition that [a] the ongoing (and widening) increases in health care costs constitute a "mutual problem"—one shared by municipal employers and employees, *see*, for example, ***Village of Fox Point***, Dec. 30337-A (Petrie, 2002), [b] other units in the county have accepted the same provisions, and [c] the County's proposal maintains the Highway Department employees as the top earners among their peers in comparable counties (and continues to outpace the Consumer Price Index), the scales tip toward the County's proposal. For these, and the other reasons discussed above—and in recognition of the statautory mandate requiring adoption of one of the parties' offers in its entirety—I conclude that the County's offer is the more reasonable, and I therefore enter the following

Award

Based upon the statutory factors and the record in these proceedings, and for the reasons discussed above, I select the final offer of the County and direct that it be incorporated into the parties' Collective Bargaining Agreement for the year(s) in question.

Dated at Madison, Wisconsin, this 16th day of June, 2004.

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William Eich, Arbitrator