ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	)	
Between	)	Case 20
	)	No. 60747
CITY OF LANCASTER	)	INT/ARB-9498
(DEW, Parks & Clerical Employees)	)	
	)	Dec. No. 30580-A
And	)	
GRANT COUNTY PUBLIC EMPLOYEES UNION, AFSCME LOCAL 2378	)	

Impartial Arbitrator

William W. Petrie
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Hearing Held

Lancaster, Wisconsin
June 30, 2003

Appearances

For the Employer — LA FOLLETTE GODFREY & KAHN
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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the City of Lancaster (DEW, Parks and Clerical Employees), and the Grant County Public Employees Union, AFSCME Local 2378, with the matter in dispute the terms of a renewal labor agreement covering January 1, 2002 through December 31, 2003.

After the parties had failed to fully agree upon the terms of a renewal agreement the Union filed a petition with the Wisconsin Employment Relations Commission on January 11, 2002, seeking final and binding interest arbitration of the matter. Following a preliminary investigation by a member of its staff, the Commission, on March 20, 2003, issued certain *findings of fact, conclusions of law, certification of the results of investigation and order requiring arbitration*, and on May 13, 2003, it appointed the undersigned to hear and decide the matter.

A hearing took place in Lancaster, Wisconsin on June 30, 2003, at which preliminary mediation undertaken by agreement of the parties failed to result in a settlement. At the ensuing hearing both parties received full opportunities to present evidence and argument in support of their respective positions, and each thereafter closed with the submission of a post-hearing brief, after the receipt and distribution of which the hearing was closed by the undersigned effective August 21, 2003.

THE FINAL OFFERS OF THE PARTIES

In their final offers, hereby incorporated by reference in this decision, the parties differed as follows:

(1) *The final offer of the City* proposes as follows:

(a) Amendment of Section 13.01 of the agreement, effective *January 1, 2003*, to require those employees selecting family medical insurance to contribute, via payroll deductions, an amount equal to 5% of the difference between family plan and single plan insurance premiums.

(b) Creation of a new section of agreement, effective January 1, 2003, to provide as follows:

"13.03 Section 125 Flex Plan.
a. Employer shall contribute three hundred dollars ($300.00) per year for employee to a section 125 Flex plan with the City."

(c) Modification of Appendix A, the Wage Schedule, to provide the following wage increases and changes:

Effective January 1, 2002, increase all wage rates by 47 cents per hour (3.5% on the unit average).

Effective at 11:59 p.m. on September 30, 2002, create the position Lead Maintenance Worker and make the following adjustments to the wage scale.

	Reg. rate
Lead Maintenance Worker (new)	$15.25
Lead Wastewater Operator	$17.00
Lead Water Operator	$15.37

Effective January 1, 2003, increase all wage rates by 49 cents per hour (3.5% on the unit average).

(2) *The final offer of the Union* proposes as follows:

(a) All terms and conditions of the prior agreement, including any and all side letters and letters of agreement to remain unchanged, except as follows.

(b) Modification of Appendix A, the Wage Schedule, to provide wage increases and changes identical to those proposed by the Employer.

THE STATUTORY CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the undersigned to utilize the following criteria in arriving at a decision and rendering an award in these proceedings.

"7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislature or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparisons 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. Comparisons 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.

f. Comparisons 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 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 pension, 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 hearing.

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."

POSITION OF THE UNION

In support of the contention that its final offer is the more appropriate of the two offers in these proceedings, the Union emphasized the following principal considerations and arguments.

(1) That there are no applicable state laws or directives which limit the expenditures of the City and, accordingly, that no basis has been established for significant or determinative weight to be placed upon the *greatest weight* criterion.

(2) That the *greater weight* criterion, which includes the economic condition of comparable employers, favors arbitral selection of the primary comparables urged by the Union in these proceedings.

(a) That the nine primary external comparables in these proceedings should, in addition to Lancaster, include Baraboo, Boscobel, Platteville, Prairie du Chien, Reedsburg, Richland Center, Sparta, Tomah and Wisconsin Dells.

(b) While the Union normally views prior arbitration awards between the parties as determinative of the primary comparables, the November 1985 award of Arbitrator Gil Vernon did not definitively decide the matter.[1]

[1] Citing the contents of Employer Exhibit E-1, the *decision of Arbitrator Gil Vernon* in City of Lancaster -and- Local 2378, AFSCME, in Dec. No. 22363-A (November 26, 1985).

(c) In consideration of a *common labor market*, including *geographic proximity* and *demographics*, it submits that its recommended comparables be utilized in these proceedings.

(3) That arbitral consideration of the primary comparables versus the City of Lancaster, favors selection of the final offer of the Union, in the following particulars: per capita adjusted gross income; per capita value and its rate of growth; local tax levy and tax rates, and their rate of growth; and city property tax rates, and their rate of growth.[2]

(a) The City of Lancaster is shown to have modest income and per capita value, but also sustained and significant growth in both areas, which growth outstrips its comparables.

(b) The City has been able to reduce the burden on its citizens to the extent that it is the envy of the comparables, and it is a City which is thriving and doing better than its peers.

(4) Applying the above evidence to the cost of living criterion, there can be no doubt that this factor also favors selection of the final offer of the Union in these proceedings.

(5) The application of the remaining statutory criteria should apply as follows.

(a) Neither the *lawful authority of the employer*, the *stipulations of the parties*, *comparisons with private employment*, nor *changes during the pendency of the arbitration proceedings*, favor selection of the final offer of either party in these proceedings.

(b) The interests and welfare of the public criterion does not favor the City's offer. In this connection, the Union's final offer is less expensive than that of the City for 2003 and, accordingly, the City cannot credibly rely upon *the relative costs* of the final offers or upon *ability to pay*.

(6) The cost considerations referenced immediately above cannot be construed as favoring the City's final offer on cost of living grounds.

(7) In accordance with the above, it submits that the *external and internal comparison criteria* and the *normal arbitral treatment of proposed changes in the status quo ante*, are the determinative criteria in these proceedings.

(8) Interest arbitrators normally place a heavy burden upon the proponent of change in the status quo ante.

(a) The most significant issue in dispute is the City proposed modification of the health insurance provisions of the labor agreement, in which connection the Union proposes continuation of the status quo, pursuant to which the Employer pays the full premium for single and family health insurance; the City is proposing a reduced contribution by it for family health insurance effective January 1, 2003.

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[2] Emphasizing the contents of Union Supplemental Exhibit 6.

(b) The position of the Union in this area finds strong support among Wisconsin interest arbitrators.[3]

(c) A three pronged approach is normally applied in connection with proposed changes in status, which requires its proponent to establish: (1) a need for the proposed change; (2) an adequate quid pro quo for the proposed change; and, (3) clear and convincing evidence that the first two tests have been met.[4]

(i) In the above connection, it urges that neither *insurance premium levels* nor *cost increases* have established the requisite persuasive basis for the City proposed change, urging that Lancaster has enjoyed the lowest insurance rates of any of its comparables.[5]

(ii) The fact that six of the nine primary comparables pay the entire premium for family coverage, supports arbitral selection of the final offer of the Union.

(9) Internal comparisons do not establish a controlling pattern in these proceedings.

(a) A settlement in a single bargaining unit representing a minority of an employer's represented positions, cannot be said to create a settlement pattern.[6]

(b) A settlement in a small bargaining unit would be tantamount to allowing the tail to wag the dog.[7]

(10) Lancaster wage levels lag below the primary comparables.

(a) It urges that comparisons of wages paid for 2001 and 2002 at the start rate and the top of the rate ranges for the Laborer, Heavy Equipment Operator, Wastewater Operator, Lead Wastewater Operator and Clerical, show Lancaster to be among the lowest paid and well below average.

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[3] Citing the following arbitral decisions: *Arbitrator Christenson* in Menomonee Falls School District, Dec. No. 24142-A (July 1987); *Arbitrator Petrie* in Twin Lakes #4 School District, Dec. No. 26592-A (March 1991); *Arbitrator Yaffe* in Waukesha County (Highway Department), Dec. No. 23530-A (January 1987); and *Arbitrator Grenig* in City of Greenfield (Public Works), Dec. No. 22411-A (August 1985).

[4] Citing the following arbitral decisions: *Arbitrator Malamud* in D.C. Everest Area School District, Dec. No. 24678-A (February 1988), and in Middleton-Cross Plains School Dist., Dec. No. 282489-A (1996); and *Arbitrator Grenig* in Villlage of McFarland, Dec. No. 30149-A (January 2002).

[5] Citing the contents of Employer Exhibit F-12 and Union Exhibits 9-11.

[6] Citing the following arbitral decisions: *Arbitrator Grenig* in Village of McFarland, Dec. No. 30149-A (January 2002); *Arbitrator Tyson* in City of Wisconsin Dells, Dec. No. 29321-A (October 1998); and *Arbitrator Schiavoni*, Dec. No. 28983 (9/97), *Arbitrator Kessler*, Dec. No. 28960 (8/97), *Arbitrator Krinsky*, Dec. No. 28987 (9/97) and *Arbitrator Tyson*, Dec. No. 28997 (10/97), in the "Columbia County Quartet."

[7] Citing the decision of *Arbitrator Torosian* in Marathon County, Dec. No. 29519-A (October 1999).

(b) That the wage increases to be implemented under either final offer are also modest in relation to the comparables.

In summary and conclusion, that the final offer of the Union is favored by the following considerations: (1) differences between the offers of the parties represent an attempt on the part of the City to impose a change in the status quo ante regarding its payment of family health insurance premiums; (2) a single internal settlement involving a small number of City employees is insufficient to justify the same concessions from a much larger group; (3) the Union proposed primary comparables are reasonable and should be adopted in these proceedings; (4) the health insurance premiums paid and the increases in costs incurred by the City are hundreds of dollars below the comparables, and they fail to show a need for change; (5) the external comparables strongly support the position of the Union; (6) the bargaining unit employees, already disadvantaged in wages, should not have an unfavorable standing in terms of their health insurance. Based upon the record as a whole and the considerations addressed in its brief, the Union urges that its final offer most closely adheres to the criteria contained in Section 111.70(4)(cm)7 of the Wisconsin Statutes, and asks that it be selected in these proceedings.

POSITION OF THE EMPLOYER

In support of the contention that its final offer is the more appropriate of the two offers in these proceedings, the Employer emphasized the following principal considerations and arguments.

(1) That the background information and related facts, material and relevant in these proceedings, principally include the following.

(a) While bargaining between the City and the Union has resulted in voluntary settlements over a period of many years, the 1985 agreement was settled by interest arbitration, at which the Union prevailed.[8]

(i) The parties had then been at impasse over the appropriate wage increases and an employer proposed health insurance premium contribution by employees.

(ii) Since the prior interest arbitration, the Employer has unsuccessfully sought some level of employee insurance premium sharing.

[8] Citing the contents of Employer Exhibit E-1, the November 26, 1985 *decision of Arbitrator Gil Vernon*.

(b) In the fall of 2001, the City's health insurance carrier communicated that policy renewals would entail a 13.5% cost increase.[9] Other surrounding communities were then achieving success in securing employee premium contributions and the City then reaffirmed its desire to achieve premium sharing.

(i) In June 2000, the Police contract was finalized with 3.5% increases in each of its three years, and employee contribution toward the cost of health insurance equivalent to those proposed in these proceedings. The City's *quid pro quo* was its implementation of a $300 contribution for *each* employee into a Section 125 Plan account; those who elected single coverage benefitted from the $300 stipend, while those who elected family coverage were not harmed because they also received the $300 contribution, as an offset against the first one and one-half years of premium contributions.

(ii) In June 2002, the City implemented a resolution for the non-union employee health insurance policy provisions, which changes included therein were identical to the negotiated changes in the Police contract.

(c) During the same period, the DPW unit steadfastly refused to accept any employee premium contributions, and the parties, therefore, proceeded to interest arbitration.

(2) There is *a need for the City's final offer*, in that it *addresses a legitimate problem which requires attention*, it *reasonably addresses the problem*, and it *provides a sufficient quid pro quo in support of its health insurance proposal*.

(a) There is an ongoing escalation of health care costs that is being felt nationally, statewide and within the City of Lancaster.

(b) The City has tried, for years, to encourage each of its two bargaining units to embrace the need for employee premium participation, but has previously dropped its proposals in lieu of proceeding to interest arbitration.

(c) During the current negotiations the City pushed a bit harder for its goal, secured internal consistency with all other City employees, and found its position to be overwhelmingly supported by the external comparables.

(d) While its offer is a change in the *status quo*, insurance premiums have not stopped escalating and its offer addresses a *legitimate problem*, and its final offer provides both *relief for the problem* and an *exemplary quid pro quo* for the proposed change.[10]

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[9] Citing the contents of Employer Exhibits F-1.

[10] Citing the *decision of Arbitrator Petrie*, the undersigned, in School District of Mellen, Dec. No. 30408-A (3/21/03).

(i) In urging the *legitimacy of the underlying problem* it emphasized the following considerations: *first*, the increasing costs of health insurance per hourly equivalent, its increasing percentage of total hourly earnings, and its increasing percentages of hourly wages;[11] *second*, that Union reliance on lower than average comparable premium increases does not detract from the dramatic escalation in actual costs; and, *third*, that any Union claims that it would have taken less than the going wage rates should be rejected in consideration of the fact that its final offer proposes the same wage rate increases and classification adjustments proposed by the Employer.

(ii) In urging that the City's offer *reasonably addresses the underlying problem* it emphasized the following considerations: *first*, that those opting for single health care coverage would still have 100% employer paid coverage; *second*, that those opting for family coverage would pay only 5% of the difference between the cost of the single and family plans (i.e., $18.68 per month or 3% of 2003 premium dollar costs).[12]

(iii) In urging the existence of *a reasonable quid pro quo*, it emphasized the following considerations: *first*, its proposed annual contribution of $300 per year into each employee's Section 125 Plan account, which monies can be used for medical, dental, vision or child care expenses that are not otherwise covered; *second*, that the $300 contribution for 2003, will provide those with single coverage with net gains of $300, and those with family coverage with net gains of $75.84.[13]

(3) The Union's final offer on health insurance completely disregards the need for *internal consistency*.

(a) Internal consistency controls the outcome of health insurance benefit disputes.

(i) It is particularly important in health insurance, it discourages whipsaw bargaining, and it guarantees equity and stability throughout the bargaining process and in future contractual relationships.

(ii) It urges that its position is supported by various Wisconsin interest arbitration decisions.[14]

(b) The Union's *status quo* health proposal would maintain a benefit which others in the City no longer enjoy.

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[11] Citing the contents of Employer Exhibits B-4 through B-6.

[12] Citing the contents of Employer Exhibit F-2.

[13] Citing the contents of Employer Exhibit F-2.

[14] Citing the following arbitral decisions: *Arbitrator Rice* in Walworth County Handicapped Children's Education Board, Dec. No. 27422-A (5/93); *Arbitrator McAlpin* in City of Oshkosh, Dec. Nos. 28284-A and 28285-A (12/95); *Arbitrator Nielsen* in Dane County, Dec. No. 25576-A (2/89); and *Arbitrator Friess* in Pierce County (Sheriffs), Dec. No. 28187-A (4/95).

(i) The Union's offer would result in the AFSCME bargaining unit members enjoying health care coverage at a lower employee cost than others within the city.

(ii) The Union rejects the reasonable notion that as health costs continue to increase, the employee's stake should also increase.

(iii) The Union's position is unreasonable on its face, and ignores the need of advancement toward internal consistency, and an approach to health care on a City-wide basis.[15]

(4) The City's health insurance proposal is *economically reasonable* as on the following summarized bases: health care costs have soared for several years, hitting both the private and the public sectors; reputable surveys have shown that at least half of surveyed companies indicate that they would increase employee premium contributions; and various Wisconsin governmental units have recently done so.[16]

(a) It proposes a fair monthly premium contribution formula: there is no change proposed for employees opting for single coverage; and the monthly costs for those opting for family coverage would be 5% of the difference between single and family coverage, or $18.68 per month.[17]

(b) The tax advantages associated with the City's Section 125 plan generates a lower net employee premium cost.[18]

(5) The City proposed external comparable pool is more appropriate because it incorporates the same grouping previously endorsed by an interest arbitrator.

(a) The City proposes the identical comparables previously utilized by Arbitrator Vernon, in addition to the contiguous City of Platteville and Grant County, of which Lancaster is the County Seat.[19]

(b) The union apparently ignored the previous Vernon award, and has presented an entirely different comparable pool.[20]

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[15] Citing the *decision of Arbitrator Stern* in City of Oshkosh (Police), Dec. No. 15258-A (4/87).

[16] Citing the contents of Employer Exhibit F-15, surveys by Wilson Wyatt and SMC Business Councils, and Employer Exhibit F-16, showing first time institution of employee premium contributions in 2003, in Oshkosh, Waukesha and Eau Claire counties.

[17] Citing the contents of Employer Exhibit F-2.

[18] Citing the contents of Employer Exhibits F-9 and F-10.

[19] Citing the contents of Employer Exhibit E-2.

[20] Citing the contents of Union Exhibit 8.

(c) Arbitrators normally recognize parties' historical comparison groups, because to do otherwise would undermine the continuity and stability necessary in contract negotiations.[21]

(d) Despite the fact that the Vernon arbitration decision was issued several years ago, the comparison group utilized by him is still appropriate. The Union, which had initially recommended the comparables utilized by Vernon, is now, perhaps tactically, urging a much smaller cluster of area communities.

(e) The City urges utilization of the Vernon comparables, with the addition of Platteville and Grant County.

(6) Consideration of *external comparables* demand acceptance of the City's final offer.

(a) Consideration of the external comparables support the City proposed adoption of an employee family plan premium contribution.

(i) For five comparable employers participating in the State Health Plan, the average employee percentage premium contributions average 16.44% as compared to the 3.03% contribution proposed by the City.[22]

(ii) For five comparable employers not participating in the State Health Plan, the average employee percentage premium contributions average 8.89% as compared to the 3.03% contribution proposed by the City.

(iii) Not only are various of the exhibits submitted by the Union either misleading or simply incorrect, but it simply cannot ignore the fact that area communities are seeking and achieving levels of employee contribution to health care costs, to address the skyrocketing premiums.

(b) The cumulative costs to the affected employees is significantly below those of the comparables.

(i) Employee premium contributions are not the only determinants of costs to be absorbed by them, in that each plan design considers such factors as deductibles, co-pays, and prescription drug charges.

(ii) City of Lancaster employees enjoy such benefits as zero dollar deductibles, no coinsurance requirement, zero dollar office visit and emergency room admissions, and a $5 general drug co-pay and a $10 name brand co-pay.

(iii) The only employee cost, with the exception of prescription drug co-pays, will be the $18.68 month premium contribution.

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[21] Citing the following arbitral decisions: *Arbitrator Petrie*, the undersigned, in Germantown School District, Dec. No. 28520-A (7/3/96); and *Arbitrator Grenig* in *City of Marshfield (Firefighters)*, Dec. No. 29027-A (10/97), wherein he cited various other arbitral decisions.

[22] Citing the contents of Employer Exhibit F-12.

(7) The City's State shared revenues are at risk, calling into question the Union's unwillingness to voluntarily resolve the health insurance issue.

(a) Due to the economic situation facing the State of Wisconsin, projections at the time of the hearing were that the City could lose up to $140,824 in shared revenue, an 11% reduction.[23]

(b) Now is not the time for employees, and AFSCME, to reject reasonable requests for cost-saving measures.

(8) The supplemental exhibits submitted by the Union after the hearing, by agreement of the parties, do not discount the validity of the Employer proposed comparable pool.

(a) It has not put forward any evidence as to why it has proposed changing the 1985 Vernon pool.

(b) The Union originally proposed the Vernon pool. It urges that it has now gone *comparable shopping* in an effort to locate communities that better serve its desire for *status quo* employer premium contributions.

In summary and conclusion, the City urges that the health insurance crisis is a major problem for all employees, and that national, state and local employers, both public and private, have addressed its spiraling costs through premium contributions, deductibles, copays, and restriction of prescription costs. Such approaches recognize the desirability for employees to have some ownership and to encourage responsible plan usage. Employees within the City of Lancaster have been fortunate to have enjoyed competitive health coverage in the past, but the Union's current resistance to change is unreasonable on the following principal bases: the Police Union voluntarily agreed to the same premium contributions sought in these proceedings; the non-represented employees are covered by the same premium contribution formula set forth in the City's final offer in these proceedings; the City's offer is supported by a proven need, a proposed remedy, and a quid pro quo; and the City's offer seeks a premium contribution lower than any of the external comparables. On these summarized bases, it requests arbitral selection of its final offer in these proceedings.

FINDINGS AND CONCLUSIONS

[23] Citing the contents of Employer Exhibits H-5 and H-3.

Prior to applying the various arbitral criteria, reaching a decision, and rendering an award in these proceedings, the undersigned will address two major areas of considerations: ***first***, *the bargaining history of the parties* considered in conjunction with *the composition and application of the primary intraindustry comparison* criterion;[24] and, ***second***, whether the Employer proposed change in *the negotiated status quo ante* has been accompanied by the normal determinative prerequisites utilized in the interest arbitration process?

The Bargaining History, and the Composition and Application of the Primary Intraindustry Comparison Criterion

As the undersigned has noted in many prior Wisconsin interest arbitration proceedings, *apart from legally mandated priorities and/or unusual circumstances*, *comparisons* in general are normally the most important arbitral criteria, and so-called *intraindustry comparisons*, are normally the most important of the various types of comparisons. These considerations are very well described in the following excerpts from the authoritative book by Irving Bernstein:

> "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the Union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill...Arbitrators benefit no less from comparisons. They have the appeal of precedent...and awards, based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.
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> "a. *Intraindustry Comparisons*. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. Most important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.
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[24] Two clarifications are noted in this areas: (1) while the terms "*intraindustry comparisons*" obviously originated in the private sector, their use in public sector interest arbitrations refer to *external comparisons with similar units of employees employed by comparable governmental units*; (2) the *bargaining history criterion* falls well within the scope of Section 111.70(4)(cm)7(j) of the Wisconsin Statutes.

A corollary of the preeminence of the intraindustry comparison is the superior weight it wins when found in conflict with another standard of wage determination. The balancing of opposing factors, of course, is central in the arbitration function, and most commonly arises in the present context over an employer argument of financial adversity."[25]

In next addressing the identity of the *primary intraindustry comparisons* in these proceedings, it is noted that the parties disagree as follows:

(1) *The Union urges* that the primary comparables in these proceedings should consist of the following Wisconsin cities: Dodgeville; Mineral Point; Platteville; Prairie du Chien; and Richland Center.

(2) *The City urges* that the primary comparables should consist of Grant County, and the following Wisconsin Cities: Baraboo; Boscobel; Platteville, Prairie du Chien; Reedsburg; Richland Center; Sparta; Tomah; and Wisconsin Dells.

In the above connection, it is recognized that each party has an obvious incentive to urge arbitral consideration of those intraindustry comparables which best support selection of its final offer. Interest arbitrators, however, operate as extensions of the parties' collective negotiations process, and they are extremely reluctant to ignore *bargaining history* by abandoning the *wage and benefit comparisons which the parties themselves have relied upon in the past*, including those established in prior interest arbitration proceedings. This principle is well described in the following additional excerpts from Bernstein's book:

"The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define, the industry, change the method of wage payment, and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..."[26]

The same principles discussed above are also addressed in the following excerpt from the widely cited and authoritative book originally authored by Elkouri and Elkouri:

"In the public sector, many state statutes regulating interest arbitration direct the arbitrator to consider a comparison of the wages,

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[25] See Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, pages 54, 56, and 57. (footnotes omitted)

[26] See The Arbitration of Wages, pages 63, 66. (footnotes omitted)

hours, and conditions of employment of employees involved in the arbitration proceeding with those of other employees performing similar services in comparable communities. Comparison among comparable communities may also be made on such benefits as health and life insurance, retirement, holiday, sick leave accrual, retiree health insurance, longevity pay, and overtime opportunities.

As this is one of the factors the arbitrator is required to consider, it is not unusual for the parties to disagree on the list of communities to be considered. In such instances, the arbitrator may be required to resolve the parties' differences.

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Where each of the various comparisons had some validity, an arbitrator concluded that he should give the greatest weight to those comparisons that the parties themselves had considered significant in free collective bargaining, especially in the recent past."[27]

In applying the above principles to the case at hand, the undersigned notes that the primary intraindustry comparisons identified by *Arbitrator Gil Vernon* in his earlier decision for the parties consisted of the following Wisconsin cities: Baraboo; Boscobel; Prairie du Chien; Reedsburg; Richland Center; Sparta; Tomah; and Wisconsin Dells.[28] There is nothing in the record to indicate that the parties had previously either added to or deleted from these comparables in their intervening negotiations. The Employer, however, now urges the addition of Grant County, of which it is the County Seat, and the contiguous City of Platteville, and the Union, despite the fact that it had originally recommended the eight comparables utilized by Arbitrator Vernon, now rejects six of the eight, but also proposes addition of the City of Platteville.

In consideration of *the parties' negotiations history* in relationship to the composition of the primary intraindustry comparison group, the undersigned finds that neither party has provided persuasive reasons for arbitral disregard of Arbitrator Vernon's prior identification of the group; since both parties currently propose the addition of the City of Platteville, however, it is clear that it should now be added to the group. Following is a

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[27] See Volz, Marlin M. and Edward P. Goggin, Co-Editors, *Elkouri & Elkouri* How Arbitration Works, Bureau of National Affairs, Fifth Edition - 1997, pages 1109, 1113. (footnotes omitted)

[28] See the contents of Employer Exhibit E-2.

group comparison of the *rates of increase in single and in family health insurance coverage in 2003*, along with *employer and employee monthly contributions for family coverage* for those opting for such coverage.

The Primary Intraindustry Comparables	2003 Incs over 2002 Sgl. Fam.		Epl/EE Contribs. -Family Plan-	
City of Baraboo	7.28%	7.05%	$710.70	0
City of Boscobel	7.28%	7.05%	$710.70	0
City of Prairie du Chien	-2.35%	-2.40%	$833.00	$20.00
City of Reedsburg	13.88%	14.51%	$1,087.03	$32.50
City of Richland Center	7.28%	7.05%	$710.70	0
City of Sparta	0.44%	-4.37%	$920.34	$102.26
City of Tomah	22.71%	22.57%	$1,034.40	0
City of Wisconsin Dells	7.28%	7.05%	$710.70	0
City of Platteville	15.69%	15.70%	$860.27	$64.75
Averages	8.83%	8.25%	$841.98	$54.88[29]

In analyzing the above data for the *primary intraindustry comparables*, it is noted that they averaged 8.83% and 8.25% premium increases for single and for family coverage in 2003. In addition, the only employers *not* requiring employee contributions for family coverage are the five who have elected to participate in the State Health Plan (*i.e.* Baraboo, Boscobel, Richland Center, Tomah, and Wisconsin Dells), and only those employees who have opted for the least costly coverage do not have to contribute for family coverage.[30] Of the five employers who have not opted for the State Health Plan (*i.e.*, Platteville, Prairie du Chien, Reedsburg, Sparta and Lancaster), *only* Lancaster does *not* presently require employee contributions for family health coverage, and both the average and the actual required employee contributions

[29] See the contents of Employer Exhibit F-12.

[30] While the Union urged that anyone who had opted for anything other than the minimum coverage would have to be *crazy* and that only the minimum coverage cost figures should be utilized in these proceedings, there is nothing in the record to prove or disprove this argument.

by the other four employers are higher than the amount herein proposed by the City of Lancaster.[31]

What is the significance of the above summarized data when considered in conjunction with *the parties' extended negotiations history on employee contributions for family health insurance*?

(1) Review of the *primary intraindustry comparables* indicates that all have recognized the escalating costs of employee health insurance as a very significant problem. They have adjusted to these rising costs *either* through participation in the Wisconsin Public Employers' Group Health Insurance Program with its choices of carriers and coverage, *or* through non-participation in the State Program with some form of employee contribution to the insurance premiums for family health insurance.

(2) In the parties' past contract renewal negotiations, the Employer has periodically proposed employee contribution toward family health insurance premiums, but the Union has neither accepted nor counter-proposed any changes to address the *mutual problem* of *steeply escalating costs of group health insurance*.

Wisconsin's *final offer selection process* is designed to motivate the parties to move as close as possible in their negotiations prior to entering the interest arbitration process, so that any subsequent arbitral decision can place them into a position which approximates the agreement they might have reached at the bargaining table. If both parties consistently adopt an uncompromising position on an item of *mutual concern* and they thus remain significantly apart in their final offers, a subsequent arbitrator may be faced with a "*Hobson's choice*" between two final offers, neither of which approximates what might have been agreed upon at the bargaining table. If one party refuses to engage in meaningful preliminary negotiations on an item of *mutual concern* and thus remains significantly above or below a reasonable settlement level, it assumes the obvious risk of having the other party's final offer selected in arbitration.

On the basis of all of the above, the undersigned has preliminarily concluded that consideration of the *negotiations history of the parties* and *the actions of the primary intraindustry comparables* clearly and persuasively favor the final offer of the Employer in these proceedings.

The Normal Determinative Prerequisites in Interest Arbitration in Considering Proposed Changes in the Negotiated Status Quo Ante

[31] See the contents of Employer Exhibit F-12.

Both parties have recognized that the proponent of significant changes in the negotiated status quo ante is normally required to establish three determinative prerequisites; ***first***, that *a significant and unanticipated problem exists*; ***second***, that *the proposed change reasonably addresses the problem*; and, ***third***, that *the proposed change is accompanied by an appropriate quid pro quo.*

Without unnecessary elaboration the undersigned must recognize the ongoing, significant and continuing escalation in the costs of employee health insurance. These cost increases are *far in excess of what could have been anticipated by the parties when they initially agreed to employer payment of the full cost of individual and family health insurance premiums*, they represent *a significant and continuing mutual problem*, and they *clearly meet the first of the three referenced prerequisites*.

It is next noted that one of various possible approaches in addressing the escalating costs of employee health insurance is adoption of a reasonable level of employee contribution to health insurance premiums.[32] As described earlier, Prairie du Chien, Reedsburg, Sparta and Platteville, the four primary intraindustry comparables which have opted for employee sharing of family health insurance premiums, require contributions averaging $54.88, as compared to the $18.68 per month proposed by the City of Lancaster, and there is simply nothing in the record to indicate that the Employer proposed level of employee contribution is unreasonable. On these basis the undersigned must conclude that the Employer proposed monthly contribution to family health insurance premiums reasonably addresses the underlying mutual problem of the parties, and *it clearly meets the second of the three referenced prerequisites*.

In next addressing *the adequacy of the Employer proposed quid pro quo*, *i.e.*, the creation of an annual $300 employer contribution to a Section 125 plan, the undersigned finds that it offsets the significance of the monthly family premium contribution for the affected employees, and represents a net gain for those with single coverage. Under all of the circumstances present

[32] Indeed, this is the *only* approach to the underlying problem which is before the undersigned in these proceedings.

in the matter at hand, the undersigned has concluded that the Employer proposed *quid pro quo* is adequate and reasonable, and it thus *clearly meets the third of the referenced prerequisites*.

On the above bases it is clear that *the Employer has met the normal determinative prerequisites justifying its proposed change in the negotiated status quo ante*, which clearly favors its position in these proceedings.

The Remaining Arbitral Criteria

Although the intraindustry comparables and the quid pro quo considerations were the criteria primarily emphasized by the parties in these proceedings, and are essentially determinative of its outcome, various other statutory criteria were also addressed.

(1) Neither the *greatest weight*, the *greater weight*, the *lawful authority of the employer*, the *ability to pay*, nor the *cost of living* criteria are entitled to either *significant or determinative weight* in the final offer selection process in these proceedings.

(2) Neither party has specifically emphasized *external private sector comparisons* in support of its position in these proceedings.

(3) In the Wisconsin *interest arbitration process* it is conclusively presumed that the current and prior negotiations and interest arbitrations have completely disposed of all wages and benefits items, with the exception of those contained in the parties' current certified final offers; in other words, the undersigned is not charged with the responsibility of re-examining the adequacy of every prior wage level agreed upon by the parties. While the Union has advanced the argument that the present and proposed wage levels within the bargaining unit lag behind the comparables, the parties have fully agreed to these wage levels in their prior agreements and in their final offers in these proceedings. On this basis the undersigned has concluded that *the current and prior agreed upon wage rates within the bargaining unit cannot be assigned any significant weight in the final offer selection process* in these proceedings.

(4) While the Employer is quite correct that *internal comparables* frequently command significant if not determinative weight in the final offer selection process when uniformity of medical insurance coverage is in issue, the Union is also correct in urging that this principle is entitled to less weight when a settlement within a small bargaining unit is urged to be controlling in subsequent interest arbitration involving a much larger unit. While consideration of the internal comparables favors the position of the Employer in these proceedings, it is not *alone* entitled to determinative weight in these proceedings.

Summary of Preliminary Conclusions

As addressed in greater detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions.

(1) In connection with *the bargaining history*, and *the composition and application of the primary intraindustry comparison criterion*, the undersigned has determined as follows.

(a) Apart from legally mandated priorities and/or unusual circumstances, *comparisons in general* are normally the most important arbitral criteria, and so-called *intraindustry comparisons*, are normally the most important of the various types of comparisons.

(b) The *primary intraindustry comparables* in these proceedings consist of the cities of Baraboo, Boscobel, Lancaster, Platteville, Prairie du Chien, Reedsburg, Richland Center, Sparta, Tomah and Wisconsin Dells.

(c) Arbitral consideration of the *negotiations history of the parties* and *the actions of the primary intraindustry comparables* clearly and persuasively favor the final offer of the Employer in these proceedings.

(2) The proponent of *significant changes in the negotiated status quo ante* is normally required to establish three determinative prerequisites; ***first***, that *a significant and unanticipated problem exists*; ***second***, that *the proposed change reasonably addresses the problem*; and, ***third***, that *the proposed change is accompanied by an appropriate quid pro quo.*

(a) The ongoing, significant and continuing escalation in the costs of employee health insurance represent *a significant and continuing mutual problem*, and they *clearly meet the first of the three referenced prerequisites*.

(b) The Employer proposed monthly contribution to family health insurance premiums reasonably addresses the underlying mutual problem of the parties, and *it clearly meets the second of the three referenced prerequisites*.

(c) The Employer proposed *quid pro quo* is adequate and reasonable, and it thus *clearly meets the third of the referenced prerequisites*.

(d) The Employer has fully met the normal determinative prerequisites justifying its proposed change in the negotiated status quo ante, which *clearly favors its position in these proceedings*.

(3) Neither the *greatest weight*, the *greater weight*, the *lawful authority of the employer*, the *ability to pay*, nor the *cost of living* criteria are entitled to either *significant or determinative weight* in the final offer selection process in these proceedings.

(4) Neither party has specifically emphasized *external private sector comparisons* in support of its position in these proceedings.

(4) The *current and prior negotiated wage rates* within the bargaining unit cannot be assigned any significant weight in the final offer selection process in these proceedings.

(5) While arbitral consideration of *the internal comparables* favors the position of the Employer in these proceedings, it is not *alone* entitled to determinative weight in these proceedings.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, including arbitral consideration of all of the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, in addition to those elaborated upon above, the Impartial Arbitrator has concluded that the final offer of the City of Lancaster is the more appropriate of the two final offers, and it will be ordered implemented by the parties.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the City of Lancaster is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the City of Lancaster, hereby incorporated by reference into this award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Arbitrator

November 2, 2003