ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	)	
Between	)	Case 50
	)	No. 61042
MARQUETTE COUNTY	)	INT/ARB-9610
(Highway Department)	)	[Decision No. 30595-A]
And	)	
GRANT COUNTY PUBLIC EMPLOYEES UNION, AFSCME LOCAL 2378	)	

Impartial Arbitrator

William W. Petrie
217 South Seventh Street #5
Post Office Box 320
Waterford, WI 53185-0320

Hearing Held

Montello, Wisconsin
July 22, 2003

Appearances

For the Employer	DAVIS & KUELTHAU, S.C. By James Macy, Esq. 219 Washington Avenue Post Office Box 1278 Oshkosh, WI 54903
For the Union	WISCONSIN COUNCIL 40 AFSCME By Bill Moberly Staff Representative 8033 Excelsior Drive, Suite B Madison, WI 53717-1903

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between Marquette County (Highway Department) and Wisconsin Council 40, AFSCME, AFL-CIO, with the matter in dispute the deferred general wage increase applicable in calendar year 2003, the second year of a two year renewal labor agreement.

After the parties had failed to reach full agreement in their preliminary negotiations, the Employer filed a petition with the Wisconsin Employment Relations Commission on March 28, 2002, seeking final and binding arbitration. Following an investigation by a member of its staff, the Commission, on March 24, 2003, issued certain findings of fact, conclusions of law, certification of the results of investigation and an order requiring arbitration, and on April 15, 2003, it appointed the undersigned to hear and decide the matter.

A hearing took place in Montello, Wisconsin on July 22, 2003, at which time the parties received full opportunities to present evidence and argument in support of their respective positions, and each thereafter closed with the submission of post-hearing briefs and reply briefs, after the receipt and distribution of which the record was closed effective October 10, 2003.

THE FINAL OFFERS OF THE PARTIES

In their final offers, hereby incorporated by reference into this decision, the parties differ in the size of the deferred wage increase during the second year of the agreement; the County offers a 4% general wage increase and the Union a 5% general wage increase, to be effective January 1, 2003.

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 EMPLOYER

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

(1) The statutory criteria support selection of the County's offer.

(a) The County is not arguing inability to pay and, accordingly, *the greatest weight criterion* is not in issue in these proceedings.

(b) In applying the statutory *greater weight criterion* to "economic conditions in the jurisdiction of the municipal employer", the undersigned should consider the following principal factors: *employment*; *household incomes*; the *ranking of the County with similar communities*; and *relative quality of life data*.

(i) The County's 2003 *unemployment rate* of 7.0% is significantly higher than the comparables, and is eleventh highest of the 72 counties in the State of Wisconsin.[1]

(ii) The County's *adjusted gross income* averages for 2000 and 2001, are significantly below those of the primary and secondary comparables.[2]

(iii) The County's *household and family income* averages for 1989 and 1990, are well below the primary and secondary comparables and the all counties averages.[3]

(iv) The County's *relationships between expenditures and revenues for 2001, 2002 and 2003*, do not support the Union's 5% wage increase proposal.[4]

(v) The additional cost to the County of the Union proposed wage increase for 2003, will be $9,780.26, exclusive of FICA, WRS and other wage-related taxes.[5]

(vi) On the above referenced bases, arbitral application of the statutory "greater weight" criterion favors selection of the final offer of the County in these proceedings.

(c) Neither offer violates *the lawful authority of the Employer*, nor have there been any *relevant changes during the pendency of the arbitration proceedings.*

(2) The County's final offer is supported by arbitral authority favoring *maintenance of internal consistency*.

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[1] Citing the contents of Employer Exhibits #15 and #25.

[2] Citing Wisconsin Department of Revenue data contained in Employer Exhibit #16.

[3] Citing the contents of Union Exhibit #9.

[4] Citing the contents of Employer Exhibit #23a.

[5] Citing the contents of Employer Exhibit #5a.

(a) The other bargaining units have voluntarily agreed to 2 year renewal agreements covering 2002 and 2003, and to changes in health insurance, identical to those agreed upon in the Highway bargaining unit.[6]

(b) The other internal bargaining units have agreed to the same wages increases during their two year renewal agreements.

(i) As a *quid pro quo* for the change in health insurance, the County offered each unit an additional 1% wage increase to be implemented at the time the insurance change became effective; all units agreed to the change.[7]

(ii) Three of the four other bargaining units have agreed to 3% and 4% increases in 2002 and 2003.[8]

(iii) The second year increases for the Deputy Sheriff's unit included 1% due to the insurance change, but the Patrol Officers received 4% wage increases due to their certification for firearms, and the Dispatcher/Jailers settled for 2% due to schedule changes.

(iv) The Highway Unit is requesting 5% increases for 2003, without any justification or quid pro quo, and it should not be rewarded through arbitration with a higher wage increase than other units received in their voluntary settlements.

(c) Arbitral precedent reveals the importance of internal comparability.[9] Arbitrators recognize the significance of following internal settlement patterns, and they rely upon them as the best indication of where the settlement should be when one unit which has not accepted a voluntary settlement.

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[6] Citing the contents of Employer Exhibits #10 and #4.

[7] Citing the contents of Employer Exhibit #11.

[8] Citing the contents of Employer Exhibit #11.

[9] Citing the following arbitral precedent: the November 2, 1995, *decision of Arbitrator McAlpin* in County of Oshkosh, Dec. No. 28284-A; the August 28, 1984, *decision of Arbitrator Fleischli* in City of Waukesha, Dec. No. 21299; the March 3, 1993, *decision of Arbitrator Gundermann* in City of Oshkosh, Dec. No. 26923-A; the December 6, 1995, *decision of Arbitrator Oestreicher* in Mount Horeb School District (Auxiliary Personnel), Dec. No. 7301; and the March 24, 1987, *decision of Arbitrator Krinsky* in Walworth County (Dept. of Social Services), Dec. No. 23627-C.

(d) Internal settlement patterns should not be destroyed by means of interest arbitration awards.[10] Unions should not benefit from taking a case to arbitration and seeking a higher wage increase than accorded other County Employees; to award such higher wage increase sends the wrong message about collective bargaining and the importance of voluntary contract settlements.

(e) The arbitration process should not be used to counteract and undermine bargaining for settlements.[11] Preferential treatment to the Highway Unit as reflected in the Union's offer does not encourage voluntary settlements. Maintaining labor peace between organized units is critical to the ongoing services offered to County residents. There is no evidence in the record to suggest that Highway employees should be treated more favorably than the County's other organized units.

(f) Internal settlements should carry greater weight than external settlements, in situations involving multiple internal bargaining units.[12] When compared to the settlement of internal bargaining units, the County's final offer is the more reasonable of the two. The Union should not be rewarded for seeking a larger wage increase in arbitration, than received by any other internal comparables in voluntary settlements.

(3) The County's final offer meets the criteria set by arbitrators.

(a) The County's offer is more reasonable under either comparable pool selected by the Arbitrator.[13]

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[10] Citing the following arbitral precedent: the November 1978 *decision of Arbitrator Krinsky* in School District of Barron, Dec. No. 16276; the September 4, 1980, *decision of Arbitrator Hutchison* in Walworth County (Department of Social Services), Dec. No. 17729-B; the January 1987 *decision of Arbitrator Christenson* in Village of Hartland, Dec. No. 23829; the August 28, 1984, *decision of Arbitrator Fleischli* in County of Waukesha, Dec. No. 21299; and the November 1984 *decision of Arbitrator Vernon* in City of Madison (Firefighters), Dec. No. 213450-A.

[11] Citing the following arbitral precedent: the 1973 *decision of Arbitrator Krinsky* in County of Superior (Fire), Dec. No. 11585-C; the March 5, 1990, *decision of Arbitrator Gundermann* in Oneida County, Dec. No. 26116-A; the January 1985 *decision of Arbitrator Haferbecker* in Jackson County (Sheriff's Department), Dec. No. 21878; the April 1986 *decision of Arbitrator Malamud* in Marinette County (Sheriff's Department), Dec.No. 22910; the April 1995 *decision of Arbitrator Freiss* in Pierce County Sheriff's, Dec. No. 18187-A; the December 1995 *decision of Arbitrator Rice* in Village of Grafton, Dec. No. 28424; and the February 12, 1993, *decision of Arbitrator Krinsky* in County of New Berlin, Dec. No. 27293-B.

[12] Citing the following arbitral precedent: the April 20, 1989, *decision of Arbitrator Vernon* in City of Appleton (Police Department), Dec. No. 25636-A; and the November 1989 *decision of Arbitrator Kerkman* in Douglas County Health Department Employees, Dec. No. 25966-A.

[13] Citing the following arbitral precedent in which factors such as *location*, *population*, *geographic size*, *total property value*, *per capita property value*, *income*, *athletic conference membership*, and *labor market parameters* have been utilized in determining *primary external comparison pools*: the August 29, 2000, *decision of Arbitrator Baron* in LaCrosse County (Highway), Dec. No. 29742-A; the July 17, 1995, *decision of Arbitrator Michelstetter* in Juneau County (Highway), Dec. No. 28229-A; and the April

(i) Marquette County has gone to interest arbitration in two of its bargaining units in the past.

1991 decision of *Arbitrator Yaffe* in Wausaukee School Disetrict, Dec. No. 26600-A.

- In 1997 Arbitrator Robert Mueller determined the primary external comparables to be Adams and Green Lake Counties, the secondary comparables to be Columbia and Sauk Counties, and he excluded Waushara County from the primary pool due to the fact that it was then non-union, but accorded it some consideration.[14]

- In 1987, before Arbitrator Rose Marie Baron, the parties agreed that the primary comparables were Adams, Columbia, Green Lake, Sauk and Waushara Counties.[15]

(ii) The County has chosen the pool identified by Arbitrator Mueller in 1997, with the primary comparables consisting of Adams, Green Lake and Waushara Counties, and the secondary comparables consisting of Columbia and Sauk Counties.[16] The Union has chosen the same comparables with the exception of its exclusion of Sauk County and addition of Juneau County; since it does not object to the inclusion of Juneau, the County will utilize all of the suggested comparables when analyzing external comparisons.

(b) The highway employees do not suffer in relationship to the average under the County's proposal, when measured by the rates paid to the Mechanic, Patrolman and Heavy Equipment Operator classifications.[17]

(i) The Mechanic II classification was $1.11 below the average in 2001 and, under the County's offer, it slightly improves to $1.08 below the average in 2003; similarly the Mechanic I classification moves from $.88 below average in 2001 to $.84 below average in 2003.

(ii) The Patrolman classification was $.47 below average in 2001 and, under the County's offer, it improves to $.35 below average in 2003. The Union's final offer would move the County's rank ahead of Green Lake County in 2003.

(iii) The Heavy Equipment Operator classification was $.54 below average in 2001 and, under the County's offer, it improves to $.46 below average in 2003.

(iv) Under either final offer, the highway wages for the three classifications are below the average; in two of the positions Marquette County ranks 5th out of 7,

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[14] Citing the contents of Union Exhibit #5, the December 16, 1997 *decision of Arbitrator Mueller* in Marquette County and Teamsters "General" Local No. 200, Dec. No. 29024-A, at page 10.

[15] Citing the contents of Union Exhibit #6, the February 13, 1987, *decision of Arbitrator Baron* in Marquette County (Social Service Employees) and Teamsters "General" Local No. 200, Dec. No. 23880-A.

[16] Citing the contents of Employer Exhibit #12.

[17] Citing the contents of Union Exhibits #17 through #17, with comparisons based upon the maximum rates, and excluding longevity pay which is common only to Marquette, Columbia and Sauk Counties.

which would remain under the County's offer.

(v) There is nothing in the record to suggest that the County's wage relationship with its comparables is different from what it has been in recent years and, accordingly, there is no showing of need to restore the wages to their previous positions.[18]

(vi) The County's wage offer does not deteriorate the current rankings or averages among the comparables, but the Union's final offer would significantly change the relationship among the comparables; what is lacking in the Union's proposal is evidence to back its proposed change.

(4) The change in insurance benefits both parties to the agreement.

(a) As a result of the health insurance change, both the County and its employees will save money on premiums.[19]

(b) Employees will see in-pocket savings as a result of the changes in insurance and the 1% *quid pro quo* for its adoption.[20]

(5) The *tentative agreements between the parties* are relevant, and must be considered by the Arbitrator.

(a) These tentative agreements include the following: increases in the annual stipend for toolbox and coverall allowances from $200 to $250; expansion of funeral leave to include stepchildren and grandchildren; substitution of two personal holidays for previous paid holidays on Presidents Day and Columbus Day; County payment for up to 75% of the cost of one pair of safety shoes per employee per year; an increase in pay for lead duties from $.20 to $.40 per hour, effective January 1, 2003; addition of a fair share clause to the agreement; and an additional step providing five weeks of vacation after 25 years of employment.[21]

(b) The Union proposed 5% wage increase for 2003 is unwarranted, based, in part, upon the above tentative agreements, which factor should be considered in the final offer selection process.

(6) The County's offer exceeds the CPI.

(a) The *Non-Metropolitan Urban Area* and *National Consumer Price Indexes* show increases of .86% and 1.58%, respectively, for 2002, and 2.6% and 2.5%, respectively, for the first six months of 2003.[22]

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[18] Citing the January 13, 2000, *decision of Arbitrator Krinsky* in Clintonville School District (Support Staff), Dec, No. 29575-A.

[19] Citing the contents of Employer Exhibit #8b.

[20] By way of example it urged that an employee choosing the Dean Health Family Plan, *for example*, would save $887.28 on health insurance premiums and $332.80 for the additional 1% wage increase, or a total of $1,220.08.

[21] Citing the contents of Employer Exhibits #4 and #7.

[22] Citing the contents of Employer Exhibits #21 and #22.

(b) Both parties are proposing 3% wage increases for 2002, and the County proposes 4% and the Union 5% for 2003. The County's offer surpasses the cost of living indicators, and is thus favored in these proceedings.

(7) The length of service and turnover among Highway Department employees favors the position of the County.

(a) There are 27 employees in the Highway Department, with service ranging from less than 1 year to 35 years, with an average service of 12.48 years.[23]

(b) The length of service within the Department reveals it to be a place where employees enjoy working, the average length of service of those leaving the County is 21 years, and the Company receives approximately 38 applications for each job opening. The minimal turnover does not support the additional wage bump proposed by the Union.[24]

(8) In summary, the final offer of the County should be selected on the following described bases.

(a) The Union has offered no explanation or compelling need to make a significant change in the relationship between highway employees and other organized employees; it appears that it is merely attempting to sweeten its deal without any compelling need or other justification; and arbitration is not the place to break a pattern of internal settlement consistency.

(b) The external comparables support the selection of the County's offer; there has been no downward change in rank or relationship to the average paid by the comparables; and the Union proposed change is supported by neither compelling evidence nor a quid pro quo.

(c) Both wage offers exceed the CPI indices, and there is no reason to exceed those percentages as reflected in the Union's offer.

(d) Employee length of service within the Highway Department is very positive, the County is not experiencing hiring problems, and departmental turnover is significantly low.

In its reply brief, it principally emphasized the following considerations and arguments.

(1) Contrary to the Union's stated conclusion to the contrary, that the greater weight criterion is relative to the dispute at hand.[25]

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[23] Citing the contents of Employer Exhibit #6.

[24] Citing the contents of Employer Exhibit #7.

[25] Citing Union Brief, page 4.

(a) In this connection, arbitrators review such economic conditions as unemployment, income, and ranking of the employer among comparable communities.[26]

(b) That the unemployment rate, gross income, and budgetary information presented by the County are relevant to this dispute, and should be considered by the Arbitrator in the final offer selection process.[27]

(2) The primary external pool of comparables to be used for the Highway Department is best represented by using all counties proposed by the parties.

(a) The County does not disagree with the Union proposed inclusion of Juneau County, but believes that Sauk County should also be part of the pool.[28]

(b) Sauk, like Juneau, is two counties removed from Marquette County, and Arbitrator Mueller considered it in his 1997 analysis of the final offers before him, and it was also discussed by Arbitrator Baron in her 1987 decision.[29]

(c) The Union has presented neither evidence nor argument as to why Sauk should not be a part of the primary external comparables.

(d) Based upon the above, that both Juneau and Sauk Counties should be included in the primary external pool of comparables.

(3) The fact that one unit settled for a different wage increase in 2003 does not weaken the internal settlement pattern maintained by the County.

(a) The Deputy Sheriff's voluntary settlement does not automatically grant the additional 1% requested by the Union in the Highway Unit.

(i) The Union fails to note that the Sheriff's unit is comprised of three different sets of employees: *first*, the Patrol Officers; *second* the Dispatcher/Jailers; and, *third*, the Secretaries.

(ii) The Patrol Officers received 4% based upon their certification for firearms (excluding the 1% granted for the insurance change). Thus a quid pro quo was provided for the certification.

(iii) The same quid pro quo argument holds true for the Dispatcher/Jailer Sergeant and Dispatcher/Jailer, wherein the 2% wage settlement was agreed upon in exchange for a schedule change.

(iv) The Secretaries within the Sheriff's unit received the

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[26] Citing the September 3, 1997, *decision of Arbitrator Schiavoni* in Columbia County (Highway), Dec. No,. 28983-A.

[27] Citing the contents of Employer Exhibits #5a, #16, #23a, and 25.

[28] Citing Union Brief, pages 4-5.

[29] Citing the contents of Union Exhibits #5 and #6.

same 3% in 2002 and 4% in 2003, as offered to the Highway Unit in the case at hand.

(v) The Union attempts to claim that the limited change provided the Patrol Officers weakens the County's internal settlement pattern but what it is seeking is an additional 1% bump in wages without a quid pro quo.[30] This would pose a problem in future negotiations with the various units which had voluntarily settled in this round of negotiations.[31]

(vi) The Union must not prevail based upon the evidence and arguments presented in these proceedings. It has failed to offer any reason to disturb the relationship between the County and its other organized bargaining units. While it points to the limited exception provided to one small part of the Sheriff's unit, a quid pro quo distinction exists with that group. The public interest, labor peace, morale and, job satisfaction would be undermined if the Union is allowed to disturb these relationships, and the County offer is thus the more reasonable of the two.

(b) The cost of the additional items tied to wages is irrelevant.

(i) The Union argues that adjustments or add-on's should be considered as part of the total value of an economic settlement.[32]

(ii) There is no question but that wage adjustments and step increases have an impact upon settlements, but the entire picture must be considered when analyzing the adjustments. As previously stated, the Deputies and Dispatchers negotiated an agreement that was of benefit to both parties, but this give and take bargaining in one unit, did not render the four other internal settlements irrelevant.

(iii) The County must not be penalized for its efforts to establish peace among its units. The Union has offered neither quid pro quo nor other convincing evidence suggesting that its additional 1% increase should be granted in these proceedings.

(c) The tentative agreements in the Highway Bargaining Unit are significantly greater than those agreed upon in other units.[33]

(i) The Union must consider the benefits granted by virtue of the tentative agreements. Allowing the Highway employees to receive an additional 1% increase in 2003 is totally unjustified based upon a review of the tentative agreements, as well as the other evidence of

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[30] Citing Union Brief, pages 11-12.

[31] Citing the October 11, 2001, *decision of Arbitrator Malamud* in City of Green Bay (DPW), Dec. No. 30022-A.

[32] Citing Union Brief, page 12.

[33] Citing the contents of Employer Exhibits #4 and #11.

record.

(ii) The internal settlements simply do not support the added bump in wages, and there is nothing in the record to suggest that Highway employees should be treated more favorably than those employees in other bargaining units.

(iii) Successful bargaining requires a give and take relationship, and the tentative agreements of the parties indicate that the County has agreed to the "give" part of the relationship.

(d) The catch-up argument presented by the Union allows County employees to change their rank and/or relationship between the average wages of comparable municipalities.

(i) Wage data presented by the County on the Mechanic, Patrolman and Heavy Equipment Operator classifications show that its offer will not change the rankings, but the wage relationship will improve under either of the two final offers.

(ii) The Union claims that the County's offer would further increase the cents per hour spread between its pay rates and those of the external comparables, but the actual data proves to the contrary.[34]

(iii) The County's offer will not reduce the 2001 relationship among the averages, but rather improves some such relationships. The Union proposes to change some relationships, particularly the Patrolman's ranking, without establishing a need for such action.[35]

(4) Both parties have benefited from the negotiated change in health insurance.

(a) While the County does not deny that its insurance costs will be reduced as a result of the change, it is also true that employee insurance costs will be significantly reduced.

(b) Realistically there is no "savings" in insurance costs, but rather a slowing down of its accelerating costs.

(c) The fact that such "savings" are not equal between an employer and its employees, does not mean that the changes are unfair, or that the Union's wage offer is justified due to insurance "savings."

(d) The wage offer of the County is both fair and equitable. The wage proposal of the Union is excessive, not reasonable, and not supported by either the internal or the external comparables.

In summary and conclusion it urges selection of its final offer on the following bases: *first*, the County's main argument is to maintain internal consistency among its units, and not to make it more difficult during future

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[34] Citing Employer Brief, pages 18-20, and Union Brief, page 16.

[35] Citing Union Brief, page 19.

negotiations to reach voluntary settlements within the other units; *second*, contrary to its arguments, external comparability does not support the selection of the Union's final offer; *third*, the County's wage offer exceeds the CPI, allowing employees to gain in real terms; *fourth*, the County does not have hiring problems, in that length of service time is very positive, and turnover is quite low; *fifth*, the County has numerous units of employees seeking preferential treatment, but it must settle on terms which are equitable to all bargaining units or suffer the consequences; *sixth*, the County has budget considerations to contend with, it has citizens demanding fiscal responsibility, and it has attempted to put its best foot forward by offering additional benefits to its employees, offering a fair and equitable wage increase, and offering settlement equity to all employees.

POSITION OF THE UNION

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

(1) The primary and secondary external comparables should be based upon the following considerations.

(a) An interest arbitration between the County and another Union, involving the Courthouse Bargaining Unit, resulting in arbitral identification and utilization of the *primary external comparables* consisting of Adams, Green Lake and Marquette counties, and *secondary external comparables* consisting of Columbia, Sauk and Waushara counties.[36]

(b) The parties have agree to the use of Adams, Waushara and Green Lake counties as *primary comparables*, and Columbia County as a *secondary comparable*.[37]

[36] Citing the December 16, 1997, decision and award of *Arbitrator Robert J. Mueller* in Marquette County and Teamsters Local No. 200, Case 45, No. 53629, INT/ARB-7868, Decision No. 29024-A, at page 10.

[37] It noted that Waushara Country, which had been previously been excluded from the primary external comparables by Arbitrator Mueller because it was then non-union, had subsequently become organized

(c) That Juneau County, while not contiguous, should be considered a *secondary comparable* on the basis of such factors as relative income, population and property value data.[38]

(d) That Sauk County, contrary to the position of the County, should not now be included as a *secondary comparable*.

(2) Arbitral consideration of the *internal settlements* within the County do not necessarily support selection of its final offer.

(a) While the Marquette County settlement with the Marquette County Deputy Sheriff's Association settlement calls for a first year general wage increase of 3%, other elements of the settlement significantly affected this wage increase.

(i) It provided that all Sheriff Department Secretary II's and Secretary III's would have their rates revised, prior to application of the 3% increase, to match the Secretary II and Secretary III rates in the Courthouse bargaining unit, which actually raised the first year percentage wage increases for these classifications to 6% and 6.5%, respectively.[39]

(ii) Year two of the Sheriff Department agreement reflects an increase of 4% for Traffic Patrol, Patrol Sergeant and Detective Sergeant, with an additional 1% adjustment, "when the proposed change in health insurance takes place."[40] These health insurance changes were effective on January 1, 2003.

(iii) In accordance with the above, 65% of the bargaining unit received a 5% increase in 2003 and, when the secretaries were included, 75% of the Sheriff's Department bargaining unit received wage increases equal to or greater than those proposed and/or tentatively agreed to by the parties in the Highway Department bargaining unit.

(b) While Mr. Macy offered testimony that the Patrol Officers, Sergeants and Detective Sergeants were required to keep up with certain certifications and that the 1% was added to offset these costs, he offered no explanation or evidence in support of such claim.

(c) Arbitrators have found it proper when analyzing internal comparisons, to consider wage adjustments or add-ons as part of the total value of such settlements.[41]

(d) In light of all of the above, the Union submits that its proposed 5% second year wage increase is not without internal precedent.

(3) Benchmark wage analysis of comparable employees, supports the

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[38] Citing the contents of Union Exhibits #9, #10 and #14.

[39] Citing the contents of Employer Exhibit #11.

[40] Citing the contents of Employer Exhibit #11.

[41] Citing the September 2, 1998 decision of *Arbitrator June Weisberger* in Lincoln County, Decision No. 29340-A,

Union proposed catch-up increase in these proceedings.

(a) Comparison of the Mechanic, Patrolman and Heavy Equipment Operator classifications support the position of the Union in these proceedings.[42]

(b) The Highway Department employees continue to receive percentage increases comparable to those received by higher paid comparables, the wage spread between will increase to the disadvantage of Marquette County workers.

(c) Both the Union's and the County's second year wage proposals include a 1% *quid pro quo* for the agreed upon and implemented health insurance changes which were implemented on January 1, 2003.[43] When evaluating the offers, therefore, the County and the Union proposed 3% and 4% second year increases, with 1% quid pro quos added thereto.

(d) The negotiated insurance changes, while reducing the monthly premiums contribution paid by employees and adding 15 to 40 cents per hours to their wages, also resulted in a significant economic benefit to the Employer.[44]

(e) Negotiated wage increases within the comparability pool, with the exception of wage leader Adams County, have been greater than the 3% per year actually proposed by the County.[45]

(f) On the basis of all of the above, the Union's second year wage offer is preferable because it allows Marquette County workers to catch-up and to narrow the wage gap between themselves and the comparability pool, without upsetting the rankings within the pool. Absent the additional 1% quid pro quo, the County's offer does not provide the needed catch-up; selection of its offer would give it *double credit* for the additional 1% and would allow the wage gap to grow between Marquette County and the external comparables.

In its reply brief, it principally emphasized the following considerations and arguments.

(1) That the second year external wage pattern emphasized by the Union should prevail and, further, that no internal wage pattern exists.

(a) While internal comparisons frequently receive greater weight in connection with certain types of benefits impasses, external patterns normally control in pure wage disputes.[46]

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[42] Citing the contents of Union Exhibit #17.

[43] Citing the contents of Employer Exhibit #11.

[44] Citing the contents of Employer Exhibit #8b.

[45] Citing the contents of Employer Exhibit #18.

[46] Citing the November 11, 2002 *decision of Arbitrator Petrie*, the undersigned, in Village of Fox Point, Dec. No. 30337-A.

(b) The second year wage increase proposal of the Union is intended to address the erosion of wages of Marquette County Highway employees, as compared to the primary comparables.[47]

(2) The Union proposal acknowledges historical economic conditions among and between the comparables.

(a) The Employer argument that Marquette County's economy is weaker than that of the comparables, is based upon conditions which have been unchanged for several years, and is inconsistent with the parties' agreement to the primary comparability pool.[48]

(b) The parties' agreement that Adams, Green Lake, Marquette and Waushara counties comprise the primary pool of comparables should mean just that; the County should not thereafter be able to "*cherry pick*" when the comparables should apply or not apply.

(c) The Union proposal takes into account the historical relationship within the primary comparability pool, recognizes that Marquette County is not a wage leader, and does not propose changing the historical rankings within the comparability pool. It merely properly addresses the growing wage gap which results from consistent application of percentage wage increases.[49]

(d) Stated simply, the Union's proposal merely addresses the eroding wage differentials within the comparability pool, and would allow Marquette County Highway workers to keep pace with their higher paid counterparts.

(3) The Employer alleged Adams County settlements for 1% wage increases in each of 2003 and 2004, is incorrect; to the contrary, the parties have reached an impasse, presented certified final offers, and Arbitrator Herman Torosian has been appointed to hear the case.[50]

In summary and conclusion that the final offer of the Union should be selected on the following summarized bases: *first*, the evidence does not support that an internal wage pattern exists; *second*, the Union's case is based upon Marquette County's economy and ranking among comparables; *third*, the Union proposes the need for catch-up pay for its constituency without upsetting the rankings within the comparability pool; and, *fourth*, it believes its case regarding the increasing wage differential between Marquette

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[47] Citing the March 19, 1989, *decision of Arbitrator Kerkman* in Rock County, Dec. No. 25698-A.

[48] Citing the February 11, 1997, *decision of Arbitrator Dichter* in Vernon County, Dec. No. 28775-A.

[49] Citing the December 16, 1997, *decision of Arbitrator Mueller* in Marquette County, Dec. No. 29024-A.

[50] Referring to Adams County (Highway Department), Case No. 62143 INT/ARB-9897, Dec. No. 30703-A.

County employees and the external comparables is strong and should be recognized and adopted by the Arbitrator.

FINDINGS AND CONCLUSIONS

The final offers of the parties differ only in the size of the deferred general wage increase applicable during the second year of the two year renewal labor agreement, with the Employer proposing 4% and the Union seeking a 5% increase. In addressing their respective positions, either or both of the parties emphasized the application and significance of the following principal statutory criteria: the *stipulations of the parties*; the *greater weight* criterion; the application of the *intraindustry and the internal comparison criteria*; and *cost-of-living* considerations. Prior to reaching a decision and rendering an award in these proceedings each of these areas will be separately addressed below.

The Stipulations of the Parties

In this connection, it must be recognized that the parties' preliminary negotiations resulted in various changes in the renewal agreement, including but not limited to significant changes in its health insurance provisions; contrary to the situation in many current interest arbitration proceedings, however, the parties reached full agreement upon an appropriate *quid pro quo* for the health insurance changes. Accordingly, in selecting the more appropriate of the two offers in these proceedings, the undersigned is *not* required to significantly address or consider these fully negotiated and agreed-upon changes in health insurance, in the final offer selection process.

The Greater Weight Criterion

In presenting their respective positions in these proceedings, the parties disagreed as to the application of the greater weight criterion in the case at hand. The Union merely articulated its conclusion that it had no significant application in the final offer selection process in these proceedings. The Employer, however, emphasizing various economic related characteristics of the County which distinguish it from the primary external comparables, including its *relatively high recent rates of unemployment*, its *lower than average adjusted gross income, family income, and household income*, and the *recent relationships between its expenditures and revenues*, urges

application of the *greater weight criterion* in these proceedings.

Without unnecessary elaboration, the undersigned will merely note that the economic criteria cited by the Company fall well within the statutory reference to "*economic conditions in the jurisdiction of the municipal employer*" and they thus require arbitral consideration of the *greater weight criterion* in the case at hand.

The significance of the application of *the greatest weight* and *the greater weight* criterion upon traditional arbitral application of the intraindustry comparison criterion in situations involving impaired ability to pay, was recently addressed by the undersigned as follows:

> "The long standing and traditional arbitral handling of wage disputes indicating the traditional primacy of *intraindustry comparisons* over *financial impairment* in the arbitration of wages, is described as follows by Bernstein:
>
> > 'Most arbitrators incline to give more influence to the intraindustry comparison than to financial hardship, provided that both are of roughly equivalent validity. That is, a tight comparison tends to carry greater weight than a clear showing of distress. If one is not substantiated, of course, the other gains relatively in force. An illustration of the general rule is the Triburo Coach case. The company demonstrated that it operated at a deficit and the union showed that wages were low for transit in the city. 'The inability of the company to pay,' the board held, 'should not prevent the employees from receiving fair compensation for their work. It cannot be a justification for fixing its employees' wages below the lowest wages presently paid for comparable services by comparable employers within this area.'
>
> How has the application of the intraindustry comparison criterion in situations involving professed inability or impaired ability to pay situations been modified by the Wisconsin Legislature's mandate that interest arbitrators apply two specific statutory criteria on prioritized bases: ...
>
> (1) It first mandates that such arbitrators place ***the greatest weight*** upon '...any state law or directive lawfully issued by a state legislature or administrative officer, body or agency which places limitations upon expenditures that may be made or revenue that may be collected by a municipal employer.'
>
> (2) It then mandates that such arbitrators place ***greater weight*** upon '...economic conditions in the jurisdiction of the municipal employer' than to the remaining arbitral criteria contained in Section 111.70(4)(cm)(7r) of the statutes.
>
> If either or both of the above criteria apply to a particular dispute, Wisconsin interest arbitrators must accord them the statutorily described weight. Conversely, if neither of the factors is applicable to a particular dispute, the remaining criteria will carry their normal weight in the arbitral decision making process.
>
> The legislature clearly conditioned application of the *greatest weight criterion*, upon presence of the *requisite limitations on*

expenditures or revenues. The *greater weight criterion* apparently applies in at least two ways: *first*, by ensuring that an employer's economic condition is fully considered in the composition of the primary intraindustry comparison group; and, *second*, by ensuring that the economic costs of a settlement are fully considered in relationship to the '...economic conditions in the jurisdiction of the municipal employer.' In other words, *like employers should be compared to like employers*, and *undue and disparate economic burdens should not be placed upon an employer significantly and comparatively affected by the requisite limitations*. Application of these criteria, however, do not *alone* require arbitral selection of the least costly of two alternative final offers, without consideration of their reasonableness and the remaining statutory criteria."[51]

On the above described bases, the undersigned has preliminarily concluded that the *greater weight criterion* must be applied, as appropriate, in conjunction with application of the other statutory criteria in the final offer selection process in these proceedings.

The Application of the Intraindustry and the Internal Comparison Criteria

[51] See the October 9, 2003, *decision of the undersigned* in Random Lake School District (Support Staff), Case 13, No. 61614, INT/ARB-9744, pages 33-35. (footnote omitted)

Note that while the "*intraindustry comparison terminology*" obviously derives from the private sector, its use in the public sector normally refers to external comparisons with similar units of employees employed by comparable governmental units.

The parties are in slight disagreement with respect to the identity of the primary and secondary intraindustry comparables in these proceedings. As emphasized by the undersigned in many prior proceedings, interest arbitrators operate as extensions of the collective bargaining process, and their primary goal in applying the various arbitral criteria is to attempt put the parties into the position they would have reached at the bargaining table. In dealing with disagreement over the composition of the primary intraindustry comparables, arbitrators look closely to the parties' *negotiations history*, including prior interest arbitration proceedings; in the absence of *agreement of the parties* to the contrary and/or *unusual circumstances*, they normally utilize the same comparables utilized by the parties in their prior negotiations.[52]

In applying the above principles to the case at hand it is recognized that in a Marquette County interest arbitration proceeding in another bargaining unit in 1997, the Arbitrator made the following determinations.

(1) He identified the *primary external comparables* as Adams, Green Lake and Marquette counties, noting that they were each contiguous to one another, they shared the same breadbasket of goods and services and labor pool, their populations and equalized values were relatively comparable, and all three had settlements in place for the same periods of time.

(2) He identified the *secondary external comparables* as Columbia, Sauk and Waushara counties, noting that Columbia and Sauk had much greater populations and equalized valuations, that Sauk was not contiguous, and that Waushara was non-union, even though it shared the same breadbasket and labor pool.[53]

Because Waushara County has become organized since Arbitrator Mueller's earlier decision, both parties now agree that it has become part of the *primary external comparables*. The Union has proposed the inclusion of Juneau County and exclusion of Sauk County from the *secondary external comparables*, and while the Employer acquiesced in the inclusion of Juneau County it has not agreed to the exclusion of Sauk County. In the absence of agreement of the parties or any persuasive basis for its exclusion, the undersigned finds that

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[52] The *negotiations history* criterion falls well within the scope of Section 111.70(4)(cm)(7)(r)(j) of the Wisconsin Statutes.

[53] See the contents of Union Exhibit #5, the December 16, 1997, *decision of Arbitrator Robert J. Mueller*, in Marquette County -and- Teamsters Local No. 200, Case 45, No. 53696 INT/ARB-7868, Dec. No. 29024-A.

Sauk County should remain a *secondary comparable*.[54]

Pursuant to the above, therefore, the *primary comparables* are Marquette, Adams, Green Lake and Waushara Counties, and the *secondary comparables* are Columbia, Sauk and Juneau Counties.

[54] See the contents of Union Exhibit #6, the February 13, 1987, *decision of Arbitrator Rose Marie Baron*, in Marquette County -and- Teamsters Local No. 200, Case 24, No. 35920 Med/Arb 3602, Dec. No. 23880-A, wherein she also considered Sauk County to be an *external comparable*.

As frequently recognized by the undersigned and by many other Wisconsin interest arbitrators, *comparisons, in general*, are normally the most important arbitral criteria in the arbitration of wages, and so-called *intraindustry comparisons*, in particular, are normally the most important of the various types of wage comparisons.[55] The weight to be placed upon *internal comparisons* by arbitrators, however, will vary greatly with the *degree of organization of an employer* and the differences between the final offers of parties and the internal and external wage increases/wage levels relied upon by the parties.

(1) An employer which has negotiated uniform internal wage increases in various other bargaining units, can persuasively urge that substantial weight be accorded these settlements for at least two reasons: *first*, agreements reached in arms length collective bargaining in other bargaining units is, under normal circumstances, a persuasive indication of the bargain that might well have been reached at the bargaining table; and, *second*, failure to respect a pattern wage settlement in such situations can clearly undermine future prospects for negotiated agreements. These considerations are particularly persuasive when the final offers of the parties are relatively close to one another; conversely, if there is a large differential between internal and intraindustry settlements, a persuasive case for so-called catch-up increases can frequently be made.

(2) If a hypothetical employer deals with only a single bargaining unit it may still have a significant interest in internal wage uniformity, but its unilaterally established internal wage rates may not necessarily reflect the settlement which might have been reached at the bargaining table, and the *intraindustry negotiated settlements* might be a much better indication of what could have been agreed upon at the bargaining table. Such a determination could also depend, in part, upon the extent of the differential in the final wage offers of parties.

[55] In certain types of *non-wage disputes*, internal comparisons may be accorded significantly greater weight than external comparisons.

In applying the above described considerations to the case at hand the undersigned first notes that the parties are only one percent apart in their proposed wage increases for calendar year 2003. The Union logically urges that Marquette County has historically had lower than average wages in the benchmark jobs cited, that successive percentage based wage increases will increase cents-per-hour gaps between lower and higher paid positions, and that some catch-up is appropriate. As particularly emphasized by the Employer, however, the implementation of its final offer in these proceedings would at least *marginally reduce* such wage differentials, and would not affect the ranking of any of the benchmark jobs. When these observations of the Employer are considered in conjunction with the *greater weight criterion*, the *bargaining history* of the parties, and the *various other improvements recently agreed upon by them*, the undersigned has concluded that the *intraindustry comparison criterion* supports the selection of the final offer of the County.[56]

What next of the Union's argument that the County cited 3% and 4% wage increase pattern for 2002 and 2003, was not really a pattern due to additional increases granted to the Patrol Officers, who are to receive additional 1% increases in 2003, upon their certification for firearms, and the Dispatcher/Jailer Sergeant and the Dispatcher/Jailer who settled for 2% increases due to the parties agreement to a schedule change for them. As urged by the Employer these changes in second year increases for some members of one bargaining unit were based upon circumstances peculiar to each classification, resulted from the give and take of normal collective bargaining within the unit, and cannot logically be inferred by the undersigned to justify an additional 1% added to the 2003 wage increase for all of those in the Highway Department bargaining unit, one of five bargaining units within the County.

On the above described bases, the undersigned has concluded that consideration of the *internal comparison criterion* clearly supports of the final offer of the County in these proceedings.

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[56] See the contents of Employer Exhibit #4/Union Exhibit #4, and Employer Exhibits #8a and #8b.

Cost of Living Considerations

Without unnecessary elaboration the undersigned notes that the 2003 wage increase proposed by both parties exceed movement in the CPI, which at least somewhat supports selection of the final offer of the County 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) The final offers of the parties differ only in the size of the deferred general wage increase applicable during the second year of the two year renewal labor agreement, with the Employer proposing 4% and the Union seeking a 5% increase. In addressing their respective positions, either or both of the parties emphasized the application and significance of the following principal statutory criteria: the *stipulations of the parties*; the *greater weight* criterion; the *application of the intraindustry and the internal comparison* criteria; and *cost of living* considerations.

(2) The parties' preliminary negotiations resulted in various changes in the renewal agreement, most importantly including significant modification of its health insurance provisions. Contrary to the situation in many if not most current interest arbitration proceedings, however, the parties reached full agreement upon an appropriate *quid pro quo* for these health insurance changes. Accordingly, in selecting the more appropriate of the two offers in these proceedings, the undersigned is *not* required to significantly address or consider these fully negotiated and agreed-upon changes in health insurance, in the final offer selection process.

(3) The *greater weight criterion* must be applied, as appropriate, in conjunction with application of the other statutory criteria in the final offer selection process in these proceedings.

(4) In applying the *intraindustry comparison* and the *internal comparison* criteria, the undersigned has determined as follows.

   (a) The *primary intraindustry comparables* are Marquette, Adams, Green Lake and Waushara Counties, and the *secondary comparables* are Columbia, Sauk and Juneau Counties.

   (b) When considered in conjunction with the *greater weight criterion*, the *bargaining history* of the parties, and the *various other improvements recently agreed upon by them*, the *intraindustry comparison criterion* supports the selection of the final offer of the County in these proceedings.

   (c) Arbitral consideration of *the internal comparison criterion* clearly supports selection of the final offer of the County in these proceedings.

(5) Arbitral consideration of *the cost of living criterion* somewhat supports selection of the final offer of the County 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 County 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 advanced by the parties 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 County is the more appropriate of the two final offers before the Arbitrator.

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

WILLIAM W. PETRIE
Impartial Arbitrator

December 11, 2003