

EDWARD B. KRINSKY, ARBITRATOR

In the matter of the Interest Arbitration Between :
: Ashland County :
: and :
: Case 109 No. 60404 INT/ARB-9401
: Dec. No. 30603-A
Ashland County Human Services Employees : Case 110 No. 60405 INT/ARB-9402
Local 216-L, AFSCME, AFL-CIO : Dec. No. 30604-A
: Case 111 No. 60406 INT/ARB-9403
Ashland County Courthouse Employees : Dec. No. 30605-A
Local 216-F, AFSCME, AFL-CIO : Case 112 No. 60407 INT/ARB-9404
: Dec. No. 30606-A
: Ashland County Highway Dept. Employees :
Local 216-B, AFSCME, AFL-CIO :
: Ashland County Human Services Employees :
Local 216-E, AFSCME, AFL-CIO :

Appearances: Labor Relations Consultants, Inc. by Mr. William R. Sample, for the
County

Wisconsin Council 40 by Mr. James E. Mattson Staff Representative
and Mr. Harold Lehtinen Research Analyst, for the Union

By its Order of May 13, 2003 the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as the arbitrator to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act, to resolve the impasse between the above-captioned parties "...by selecting either the total final offer of the [Union] or the total final offer of the [County]." The parties agreed to consolidate the four arbitration proceedings and to have them heard and decided together.

A hearing was held at Ashland, Wisconsin on August 26, 2003. No transcript was made. The parties had the opportunity to present evidence, testimony and arguments. The record was completed with the exchange by the arbitrator of the parties reply briefs on November 24, 2003.

The dispute involves the parties Agreements for the period of calendar years 2002-2003. There are two unresolved issues: wages and insurance.

The Union's final offer on these issues is:

Article 15, Section 1: Page 11: Change:

Effective January 1, 2003, the employees agree to pay thirty-five (\$35.00) dollars per month towards the cost of the employees hospital and surgical insurance under the family plan and to pay twenty (\$20.00) per month under the single plan.

Status Quo regarding retaining current Health Insurance plan as was offered in 2002.

Wages:

3 % ATB effective 1/1/02
3.25% ATB effective 1/01/03

The County's final offer on these issues is:

Insurance changes effective January 1, 2003 or the first of the month following thirty-one (31) days after the arbitrators decision, whichever is later.

90%/10% premium co-pay

Change to a Preferred Provider Network including both SelectCare and WPPN networks with a 90%/10% co-pay up to the out-of-pocket maximum of \$ 450.00 for single and \$1,150.00 for family coverage. (This eliminates any charges to employee for fees in excess of reasonable and customary) On a yearly basis each family chooses the network for the following year. All out of network charges are paid with a 80%/20% co-pay up to the out-of-network, out-of-pocket maximum of \$700.00 for single and \$ 1,900.00 for family coverage.

Add a utilization and review program with a \$ 200.00 penalty if not used.

Add a yearly routine physical benefit of up to \$ 500.00 per person, per year. The benefit will be described in the Plan as follows:

Physical examinations available each calendar year for each plan participant, and any services or tests rendered in conjunction with that examination, including prostate examinations, mammograms, pap tests and blood tests. The \$ 500.00 per person per calendar year physical examination benefit shall not be subject to the plans deductible and out-of-pocket charges. Any charges over and above the \$ 500.00 per person, per calendar year shall be subject to the plans deductible and out-of-pocket charges.

Add a drug card with a \$ 10.00 generic and \$ 20.00 name brand employee charge with no maximum out-of-pocket charges.

Add a provision for mail order drugs allowing a three (3) month supply of maintenance drugs for a two (2) month employee charge.

An across-the-board wage increase of 3% effective January 1, 2002.

[For the Highway unit] Across-the-board wage increase of 3.25% effective January 1, 2003 and 1% effective July 1, 2003.

[For the other three units] Across-the-board wage increase of 3% effective January 1, 2003 and 1% effective July 1, 2003.

In a letter to the Union on March 27, 2003 the County clarified its final offer:

This letter shall serve to confirm our telephone conversation today regarding a clarification of the County's final offers.

With respect to the County's proposed changes to health insurance, the final offers do not mention any change to the insurance deductible. The County's position has always been that each unit would have a \$ 200 single and \$ 400 family aggregate deductible. The result of this is that Local 216-B would have their deductible changed from \$ 100 single and \$ 300 family aggregate to the \$ 200 / \$ 400 deductible level, the same as each of the other locals.

I felt that you understood the County's position, but we both agreed that this letter would eliminate any future questions as to what the County's position was with respect to insurance deductibles.

In making his decision the arbitrator is required to consider factors enumerated in the statute. There is no dispute with respect to some of them, and/or no persuasive argument that they should affect the outcome of this case: (7) 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. (7r.a) the lawful authority of the employer; (7r.b) stipulations of the parties; that part of (7r.c) pertaining to the financial ability of the employer to meet the costs of the proposed settlement; (7r.g) cost of living; (7r.h) the overall compensation...; (7r.i) changes in circumstances during the pendency of the arbitration. The remaining factors will be discussed below.

The parties are in agreement with respect to the other counties which should be used for the purpose of making comparisons: Bayfield, Burnett, Douglas, Iron, Price, Sawyer, Washburn. Other comparables referred to are the City of Ashland, the Ashland School District, and several private companies in the area.

Factor (7g) states that "...the arbitrator...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." The County argues that this factor favors its final offer. The Union does not agree.

The County bases its argument on the fact that all but one of the comparable counties has a higher allowable operating levy than does Ashland County, and only one of the comparables has a higher percentage than does Ashland County of the actual operating levy to the allowable levy in both 2001 and 2002. Ashland is second lowest among the comparables in terms of equalized value. What this means, the County argues, is that the second poorest county in terms of property value is taxing at the second highest rate. The County ranks second among the comparables in population. The County argues, What this means is that Ashland is providing the same services as the other counties, to more people than all but one, with less money than all but one. Also, the County's per capita income dropped from third among the comparables to fourth. While all of the comparables reduced their levy rates for 2001 and 2002, Ashland's levy rate is the second highest of the comparables.

The Union points out that the County's operating levy rate was less than the limit by \$158,468, in 2000, and in 2002 it was under the limit by \$ 432,752, and the County reduced its mil rate from 6.12 to 5.83. The Union argues that in the past two years the County's property value has increased 15.17% and 10.65%, and its per capita income remains above the comparables average. In the Union's view, the greater weight factor should not influence the outcome of this case, and particularly, it argues, since the Union's final offer is less costly than the County's. In the Union's view, the economic position of Ashland County is not bad, and is improving.

The arbitrator is not persuaded that the greater weight factor should be weighed in favor of either party's final offer.

The arbitrator must consider the part of factor (7r.c) pertaining to the interests and welfare of the public. The County argues that the public will benefit from the reduced costs of health insurance which will occur if the County's final offer is selected, since there will be a reduction in the significant transfers of funds necessary if the County is to balance the insurance account. The arbitrator views this factor as supportive of the County's final offer.

The arbitrator must consider factors (7r.d) and (7r.e). Factor (7r.d) is a comparison between the employees involved in this dispute with other employees performing similar services with respect to wages, hours and conditions of employment. Factor (7r.e) is such a comparison with other

employees generally in public employment in the same community and in comparable communities. The arbitrator will discuss these two factors together.

The County argues that its final offer reflects the pattern which has been established within the County. The Union argues that there is no pattern of internal comparability among the unionized employees of the County. The County bargains with Union's representing five bargaining units. Four of them are involved in this proceeding. The fifth is the unit of Deputy Sheriffs. The County argues that the terms on which the Deputies settled, which included the County's proposed insurance arrangements, coupled with what was given to the non-unionized employees of the County, which included the County's proposed insurance arrangements, should be viewed as an internal pattern of settlement to which the units in this arbitration should be made to adhere. The arbitrator disagrees with the County's view that there is an internal pattern which should be given weight, both because four of five units have not reached a settlement, (notwithstanding that they are all represented by AFSCME), and because these units represent 61.2% of the unionized employees.

The County asserts that there is no inequity in its wage offer to the AFSCME units in relation to the wage offer accepted by the Deputies. It argues that it did not offer a quid pro quo to the Deputies for acceptance of the insurance. Rather, "...the higher wage increases were granted along with other structural changes in the Labor Agreement as a wage catch up factor..." The result, the County argues, was to bring the Deputies from a rank of six among the seven comparables, and below the average by 51 cents on January 1, 2001, to a rank of five, and below average by 39 cents on December 31, 2003. The Union argues that the County's catch-up rationale for the Deputies is not persuasive since there are positions in the four AFSCME units which were further behind the comparables than 51 cents, and no catch-up increase was offered to these units. The Union notes that the County gave the Deputies unit for 2002: 2% on 1/1, 1% on 7/1 and 1% on 12/31; and for 2003, 2% on 1/1, 1% on 7/1 and 1% on 12/31. The Union argues, the lift in wages for this unit far exceeds the wage offer to the other four bargaining units for the change in health insurance. [There is] a total inequality in the respective wage offer to the Deputy Sheriffs unit compared with the wage offer to the four units in question.

The arbitrator does not have adequate information to know whether the higher wages given to the Deputies unit was bargained as catch-up pay, as the County asserts was the case, or as a quid pro quo for the insurance changes, as the Union asserts was the case. The arbitrator notes that the parties are not in dispute over wages for 2002. For 2003 the wage lift offered by the County was 4 % for three units, and 4.25% for one unit. The lift for the Deputies for 2003 was 4%. The arbitrator is not persuaded that the units in this proceeding are being treated inequitably in relation to the Deputies unit, and in any event these arguments are less significant than they would be if there were an internal pattern which had been established.

With respect to wages, the parties offers are identical with respect to 2002. For 2003, the final offers differ with respect to three of the units by .25% effective January 1, 2003, and the County has offered an additional 1% to all of the units effective July 1st. The more important dispute is the parties disagreement about whether the additional 1% is an adequate quid pro quo to gain the Union's acceptance of the County's proposed changes in insurance. Leaving aside that difference, the parties do not argue about the adequacy of the wage offers in comparison to the other counties.

The County proposes to change from a standard health insurance plan to a PPO. Six of the seven comparables have PPOs for their employees, and in the seventh, a PPO is a subject of negotiations for 2003.

The County proposes that employees pay 10% of the premium. In each of the comparable counties employees pay a portion of the premium, and the median payment is 10% for both single and family plans. The Union proposes to have employees pay a dollar amount, maintaining the current \$ 20 monthly payment for single plan, and increasing the payment from

\$ 20 to \$ 35 for the family plan. Converting the percentage figures for comparable counties to dollars, the median monthly premium payment by employees in the comparables who have single plans is \$ 34.88 and for family plan the median payment is \$ 102.29. The figures are for 2003. The Union argues that if the County's final offer is adopted, the percentage for co-pays (as opposed to dollars) "... will automatically drive up employee costs without any quid quo pro in the years to come." The County argues that by increasing co-payments, it is attempting to do what the experts say good employers should do. That is to take the first step to creating an environment where health insurance cost increases can be slowed to a manageable level.

Employees in all of the comparable counties pay deductibles. The median figure for 2003 is \$ 100 for single, and \$ 300 for family. The current deductibles, which the Union proposes be maintained, are at or above the median of the comparables. The County proposes that the current deductibles of \$ 200 and \$ 400 be maintained for the three units which currently have them. For the fourth unit, the Highway employees who currently have deductibles of \$ 100 and \$ 300, the County proposes to raise them to \$ 200 and \$ 400, in line with the three other units. The Union notes the higher than average proposed deductibles paid by the employees and argues that they negate the County's arguments that under current arrangements employees do not have incentive to be careful with their insurance utilization.

At the present time the employees do not pay anything for prescription drugs. The County proposes that there be a drug card, and that employees pay \$ 10 per generic prescription and \$ 20 for brand name prescriptions. The County notes that six of the seven comparable counties have a drug card. The median prescription costs are \$ 5 for single; \$ 14.50 for brand names. The Union argues that the County has not offered proper compensation as incentive for employees to accept a drug card and prescription payments, arguing there is simply no justification for these expensive changes. It argues that the employees would go from currently having no drug co-payment to having the highest among the comparables.

The County argues also that, going to a PPO network eliminates the current standard insurance provision of reasonable and customary charges for services. This was a major bone of contention with many of the Union employees and the PPO Network eliminates this problem.

The Union views as significant the fact that the total premium paid by the County is the lowest among the comparables for family premium (\$ 600; the median is \$ 960.62) and is fifth of seven for single premium (\$ 365; the median is \$ 382.45). The County proposes no change in the total premium. The Union argues that given the County's low premium costs, there is no need for it to change to a PPO. It views these low premiums as detracting "...significantly from the County proposal to increase premium co-payments and institute drug co-payments higher than the comparables."

The County argues that its proposal is not designed to lower premium costs, and it acknowledges that its premiums are relatively low. It argues that the premiums understate the County's cost of health insurance. It notes that most of the comparable counties are not self funded, so their premiums to the insurance company are the maximum amounts which they pay. The County's plan is self funded, and employee benefit costs are rising and they are exceeding the stop loss maximums. It notes that the County pays 100% of the costs up to its stop loss, and pays for the stop loss insurance. It views this as a growing problem and notes that in order to balance its accounts it would take a transfer from the general fund to the insurance fund of \$764,822 to cover the excess costs since 2000. It argues that because of the method of funding, "...the true costs of the employees insurance is significantly higher than the premium..." It notes that its insurance costs have increased 33.6% since 2000 and thus it has a compelling need to control its health insurance costs.

The County's proposal reduces the out-of-pocket maximum expense to employees who stay within the PPO network from the current maxima of \$ 600-700 (depending on which unit) for single coverage to \$ 450 , and from \$ 1800-1900 for family coverage to \$ 1150. For out-of-

network coverage, the maxima stay at current levels under the County's offer for three of the units (\$700 and \$ 1900), and for the Highway unit the maxima are increased to that level from \$ 600 and \$ 1800. The reduced levels still will be second highest among the comparables for both single and family coverage within network, and second highest for single and highest among the comparables for out-of-network coverage. The Union argues that the County is proposing a penalty for out-of-network care and is doing so without offering a proper quid pro quo or justification for such expensive changes. Under the Union's proposal there would be no changes in the out-of-pocket maxima.

The County's proposal includes payment of \$ 500 per year per person for an annual physical examination. Currently there is no payment for an annual physical. For 2003 only two of the comparable counties pay for an annual physical examination. One pays \$ 200; the other pays \$ 100.

The arbitrator is persuaded that the County has justification for attempting to significantly lower its health insurance costs. The premiums which it has set in recent years, although comparably relatively low, have not kept up with the true costs of insurance under its self funding arrangements, and increasingly larger sums transferred from other funds are necessary to balance these losses. The record does not make clear what portion of those overages are attributable to the experience of these four bargaining units, but the problem is one which the County is compelled to address in some manner, and the County anticipates lower costs if its employees are in a PPO. The record also makes it clear that most of the comparable counties and other comparables, public and private, have PPO arrangements, co-payments in percentage terms and drug cards. One can only speculate about the result of the County's proposed plan from the standpoint of the employees costs. It is speculative because it depends on whether the employee is in the single plan or family plan, whether the employee gets medical services in the network or outside of it, whether the employee hardly ever uses medical services or uses them a great deal, and whether the employee is required to fill few prescriptions or many.

If for purposes of discussion, the focus is on an employee who takes the family plan, the County's proposal will cost the employee \$ 25 more per month (\$60 instead of \$35) for co-payments than the Union's proposal, or \$ 300 per year. If the family has been using medical services of \$ 1900 or more per year, the \$ 1900 has been the maximum out-of-pocket expense, whereas under the County's proposal it is \$ 1150 per year, thus saving the employee \$ 750 per year (\$1900 instead of \$1150). Combining the higher co-payments and the lower maximum out-of-pocket expenses will result in an annual savings to this employee of \$ 450 (\$ 750 savings less \$ 300 additional cost. The savings would be lower if the family incurred less than \$ 1900 per year of medical expenses). A potentially significant additional cost to the family is the cost of prescription drugs. If the family uses generic drugs, the \$ 450 savings will be used up if the family requires that 45 prescriptions be filled during the year at \$ 10 each. If the employee and/or family has had annual physical exams, there are further savings to the employee under the County's proposal of an annual physical exam up to \$ 500 per person. There are additional costs (\$200) if an employee does not utilize the new utilization and review program.

Given all of the variables, and the different levels of utilization of medical services by employees and/or their families, the arbitrator cannot know whether, on average, the employees in these units will experience additional net costs or expenses under the County's proposed plan.

The County argues that, all in all "...the proposed insurance package compares very favorably to insurance benefits enjoyed by employees in comparable counties. Moreover, the County's proposal provides incentives which do not currently exist for employees to be careful with insurance utilization."

The Union disagrees, arguing that currently, among the comparables, Ashland ranks third of seven with respect to out-of-pocket costs when deductibles and co-payments are combined. The

Union acknowledges that "the County's proposal has some improvements, but also several severe drawbacks..." and it emphasizes "...the insufficient wage offer made by the County and the higher structured percentage premium costs and new drug card co-pay penalties."

The arbitrator is required to consider factor (7r.f), comparison with other employees in private employment. Data were presented about several area companies. For the sake of brevity, and because the arbitrator attaches greater weight to the public sector comparisons, and because analysis of the private sector data does not change the outcome of this dispute, the arbitrator has not presented the private sector data and analysis.

The arbitrator is required to give weight to factor (7r.j) such other factors "...which are normally...taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining..." One such factor is consideration of whether the party seeking to change previously bargained arrangements has offered an adequate quid pro quo for doing so.

Has the County offered a sufficient wage offer to compensate the employees for making the proposed insurance changes? The arbitrator has considerable sympathy for the County's point of view that no quid pro quo is necessary, given that among the comparables, PPOs, drug cards, and percentage co-payments are commonplace. Certainly if this were not so, and the County were pioneering in its proposed changes, a quid pro quo would be necessary. In the current situation, some quid pro quo is necessary because the County is proposing wholesale changes in the bargained arrangements which up until now have consisted of a standard plan with no drug costs to the employee, and a specified dollar premium co-payment rather than a percentage. Moreover, the proposed co-pays and drug card are higher than those in effect in the comparable counties.

As discussed above, the County's health insurance proposal does not take effect until after the issuance of the arbitrators decision. There was no quid pro quo offered for 2002 since no changes in health insurance were proposed to be effective in 2002. There was a quid pro quo offered for 2003 which, it must be assumed, was premised on the implementation of the new health insurance arrangements at some time during calendar 2003. The arbitrator will consider the quid pro quo using that assumption, and will not take account of the fact (resulting from the length of these proceedings) that employees will receive the quid pro quo for 2003 if the County's final offer is selected, notwithstanding that the insurance arrangement will not take effect until some time in early 2004.

In the County's view, its offer of an additional wage percentage in July, 2003 is a sufficient quid pro quo for the insurance, and particularly since in its view none is needed at all, given the facts that the County is experiencing rapidly rising health insurance costs, and that employees in comparable units already share in health insurance costs to a greater degree than employees in these four units. In the County's view, its proposal is more reasonable than the Union's which "...doesn't address the problem, but rather simply perpetuates it, with the County...continuing to absorb all cost increases...and creates no incentive to consider insurance costs."

The Union argues that its final offer, recognizes that by gradual means employee will pay more towards health insurance premiums. Possibly, other health insurance expenses could be added to employees in a gradual means and over time and with proper compensation. In this case, the County attempt [sic] to impose all cost to the employees and to give them in exchange a general wage increase that falls far short of being an equitable compensation for all these drastic changes. In viewing its proposal as more reasonable than the County's the Union argues that the reduction in coinsurance expenses for a heavy insurance utilizer under the County's offer (because of lower out-of-pocket maxima), doesn't make up for the increase in premium co-payments, high drug co-payments, and relatively high deductibles.

The quid pro quo offered by the County for 2003 is an additional 1% of wages on July 1, 2003, (which is .5% viewed on an annual basis). This is above the 3% wage increase [3.25% for Highway] for 2003 which was the norm negotiated among the comparables. The County calculates the value of the 1% increase in July, to be worth to the employee in the lowest wage bargaining unit in this proceeding, as being on average .14 per hour, or \$21.23 per month, which is (x 6 months) \$ 124.36 for the period July through December, 2003. This is the additional payment to employees for agreeing to change health insurance arrangements which may or may not result in cost savings to the employee.

If the employee saves money under the new health insurance arrangements, and also receives the quid pro quo wage increase, that seems to the arbitrator to be a reasonable outcome. The outcome is not reasonable from the viewpoint of an employee who incurs additional net costs under the County's health insurance offer, and where the result is a financial loss even after taking into account the quid pro quo wage increase. As indicated above, the arbitrator is not able to ascertain with any degree of certainty what percentage of employees will benefit from implementation of the County's final offer and what percentage will suffer a financial loss.

As stated at the outset of this decision, the arbitrator is required by the statute to select one party's final offer in its entirety. This is always a difficult decision, and it is particularly difficult in this case. The arbitrator has decided that the County has demonstrated the need to alter the existing health insurance arrangements to reduce costs. Its final offer is supported by public and private sector comparisons. The arbitrator is not as persuaded by the Union's arguments about the inadequacy of the County's proposed wage quid pro quo for gaining the Union's acceptance of these arrangements.

Based upon the above facts and discussion, the arbitrator hereby makes the following

AWARD:

The County's final offer is selected.

Dated this 31st day of December, 2003 at Madison, Wisconsin

Edward B. Krinsky
Arbitrator