ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	)	
Between	)	Case 20
	)	No. 61814
UNIFIED COMMUNITY SERVICES OF GRANT & IOWA COUNTIES	)	INT/ARB-9787
	)	Dec. No. 30621-A
And	)	
WISCONSIN COUNCIL OF COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 3377-A AFSCME, AFL-CIO	)	

Impartial Arbitrator

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Hearing Held

Dodgeville, Wisconsin
November 18, 2003

Appearances

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between Unified Community Services of Grant and Iowa Counties and AFSCME Local Union 3377-A, with the matter in dispute the terms of a renewal labor agreement covering January 1, 2003 through December 31, 2004.

After the parties had failed to reach full agreement on the terms of a renewal agreement the Union filed a petition with the Wisconsin Employment Relations Commission on November 20, 2002, alleging the existence of an impasse and seeking final and binding interest arbitration. Following a preliminary investigation by a member of its staff, the Commission, on May 19, 2003, issued certain *findings of fact, conclusions of law, certification of the results of investigation and order requiring arbitration*, and on June 18, 2003, it appointed the undersigned to hear and decide the matter.

After voluntary preliminary mediation had failed to result in a negotiated settlement on November 18, 2003, a hearing followed in Dodgeville, Wisconsin, at which both parties received full opportunities to present evidence and argument in support of their respective positions. Both thereafter closed with the submission of post-hearing briefs and reply briefs, after the receipt and distribution of which the hearing was closed by the undersigned effective February 2, 2004.

THE FINAL OFFERS OF THE PARTIES

In their final offers, hereby incorporated by reference into this decision, the parties differ on two items, the wage increases to be implemented during the term of the renewal agreement, and the matter of employee contributions to health insurance premiums.

(1) The Employer proposes the implementation of *2.5% and 3.0% wage increases, respectively, in the first and second years of the agreement*, and *payment by it of 95% of the lowest applicable premiums for all four categories of employee health insurance, in the second year, within two of which it had previously paid 100% of such premiums*.

(2) The Union proposes the implementation of *3.00% wage increases in each of the two years of the agreement*, and it favors *continuation of the insurance premium payment practices provided for in the prior agreement*.

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.
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> 7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.
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> 7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:
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> a. The lawful authority of the municipal employer.
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> b. Stipulations of the parties.
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> 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.
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> 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.
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> 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.
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> 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.
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> g. The average consumer prices for goods and services, commonly known as the cost-of-living.
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> 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.
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> 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 offer is the more appropriate of the two final offers, the Union emphasized the following principal considerations and arguments.

(1) That a *preliminary review of the various statutory criteria* indicates that they should be considered and applied as follows in these proceedings.

(a) In connection with *the greatest weight* and *the greater weight criteria*, there is no evidence in the record of the existence of any law of directive which would prevent the Employer from paying for either final offer.[1]

(b) That there is no evidence to support a finding that the following statutory criteria favor selection of either final offer: the *lawful authority of the municipal employer*; the *stipulations of the parties*; the *interests and welfare of the public* and the *financial ability to pay;* the *private sector comparisons*; the *cost-of-living*; and *changes in circumstances*.[2]

(c) That the following *statutory criteria,* will be determinative in these proceedings: *comparisons with other public sector employees performing similar services*; *comparisons with other public sector employees generally*, in the *same community and in comparable communities*; the *overall compensation presently received*, and the *continuity and stability of employment* of the municipal employees; and *other factors normally or traditionally taken into consideration* in the determination of wages, hours and conditions of employment.[3]

(d) That the parties are in agreement that the *primary external comparables* should continue to consist of the following counties: Adams, Columbia, Crawford, Grant, Green, Iowa, Juneau, LaFayette, Richland, Rock, Sauk and Vernon.[4]

(2) The Employer is improperly attempting to change the status quo through arbitration.

(a) Arbitrators place a heavy burden of proof on the proponent

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[1] Referring to Section 111.70(4)(cm)(7) & 7(g).

[2] Referring to Section 111.70(4)(cm)(7r), (a), (b), (c), (f), (g) & (i).

[3] Referring to Section 111.70(4)(cm)(7r), (d), (e), (h) & (j).

[4] Citing the contents of Employer Exhibit #24, the *decision of Arbitrator Michelstetter* in Unified Board of Grant and Iowa Counties, Decision No. 27960-A (October 27, 1994).

of change in the negotiated status quo ante.

(b) The Employer's proposal would result in a reduced premium contribution by it from 100% to 95% for the *single*, the *employee/spouse* and the *employee/children* categories of health insurance coverage, effective January 1, 2004; for *family* coverage the Employer has already been paying 95% of the premium for the lowest cost available plan.

(c) The Union's opposition to the Employer proposed change in the status quo finds strong arbitral support that such changes are not to be taken lightly.[5]

(d) Arbitrators have adopted a three-pronged set of requirements in determining the merits of proposed changes in the status quo ante: *first*, requiring proof of the existence of *a need for the proposed change*; *second*, requiring *an adequate quid pro quo* for the proposed change; and, *third*, requiring *clear and convincing proof* of the prerequisite requirements.[6]

(3) The Employer has failed to establish the above referenced prerequisite bases for its proposed changes in the status quo.

(a) Neither insurance premium levels nor cost increases establish the requisite need for the Employer proposed changes in this area.

(i) While insurance costs are increasing at rates which exceed the overall rates of inflation, the record does not show that the increases are so excessive as to justify arbitral change in the status quo.

(ii) In the above connection, it is helpful to have evidence to show how insurance rates have changed over time, as well as how these rates compare with those of the comparables.

(iii) Evidence of record indicates 2003 premium increases, depending upon the plan selected, ranging from 8% to 12.5%, and for either plan the 2004 premium increases are on the order of 20%.[7]

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[5] Citing the following arbitral decisions: *Arbitrator Christenson* in Menomonee Falls School District, Dec. No. 24142-A (1987); *the undersigned* in Twin Lakes #4 School District, Dec. No. 26592-A (1991); *Arbitrator Yaffe* in Waukesha County (Highway Department), Dec. No. 23530-A (1987); *Arbitrator Grenig* in City of Greenfield (Public Works), Dec. No. 22411-A (1985); and *the undersigned* in Iowa County (Courthouse and Social Services), Dec. No. 28697-B (1997).

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

[7] Citing the contents of Union Exhibits #5 & #6, and Employer Exhibit #4.

(iv) While there is no evidence in the record showing premium levels paid by comparable employers, it is reasonable to infer that their premium increases are comparable; the record, however, shows that the employer premium contribution levels for the comparables have remained unchanged over their renewal contract terms.[8]

(v) The Employer's health insurance plan includes recently negotiated modifications which will provide some amelioration of the Employer's insurance costs.[9]

(b) Consideration of external comparisons demonstrate support for continuation of 100% paid premiums.

(i) The Employer is not paying an inordinate share of insurance premiums, when compared with the primary external comparables in the areas of *single* and *family coverage*.[10]

(ii) A second fault in the Employer's offer is that it contains no specific *quid pro quo* for its proposed insurance change.

(iii) In the above connection, the Employer has not sought to "*buy out*" the insurance change with a larger-than-normal wage increase offer.

(4) Consideration of the other *internal settlement* supports selection of the Union's wage offer.

(a) While the Employer characterized its settlement within the non-professional bargaining unit as including a 2.5% wage increase for 2003, six of the ten employees in the unit are Secretaries, who received an additional 10¢ per hour effective July 1, 2003.

(b) The Secretaries thus received 3.4% wage increases in 2003, which translated to average wage increase of 3% in the entire unit.

(5) The *pattern of external wage settlements* supports selection of the Union's wage offer.

(a) It urges that the percentage wage increases paid by the primary external comparables in 2003 averaged 3.43%, as compared to the 3% proposed by the Union and the 2.5% proposed by the Employer.

(b) It urged that the 2.5% wage increase proposed by the Employer would rank eleventh among the twelve primary external comparables.

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[8] Citing the contents of Union Exhibits #8-#13 and Employer Exhibits #11-#23.

[9] Citing the contents of Union Exhibit #12.

[10] Citing the contents of Union Exhibit #7.

(6) The UCS wage levels *lag behind the comparables* in *base year 2002*, as reflected in five classification comparisons covering 19 of the 21 positions in the bargaining unit.[11]

(a) While the starting rates for the UCS positions compare favorably with the comparables, the maximum UCS rates are below the average of the comparables in four of the five classifications.

(b) That the maximum rates paid have far more influence on career earnings than the starting rates.

(c) That not only do the Employer wage levels lag behind the comparables, but implementation of lower than average wage increases would exacerbate this situation,

(7) The Employer proposed, below average wage increases in 2003, would cause erosion in the external wage relationships by adversely affecting some rankings among the primary comparables within the five comparable classifications.

(8) Since the parties propose identical wage increases for 2004 and in consideration of the fact of various unsettled contracts, there is no need for detailed benchmark comparisons for 2004.

In conclusion it urges that the final offer of the Union is the more reasonable of the two offers on the following summarized bases: *first*, the differences between the two offers indicate an attempt by the Employer to impose a change in the status quo ante regarding the *single*, the *employee/spouse* and the *employee/children* health insurance premium contributions, in addition to its proposal for a *sub-standard wage increase*; *second*, the final offer of the Union seeks to maintain the status quo on health insurance premium payments, which insurance plan has already undergone changes to provide some savings through negotiations with the same Local Union in another bargaining unit; *third*, there is no current trend among the comparables for increasing employee health insurance premium contributions; *fourth*, there is no showing that the cost of health insurance experienced by the Employer distinguishes it from the primary external comparables; *fifth*, the 2003 wage increase proposed by the Employer is below the standard set by the external comparables; and, *sixth*, the internal settlement for 2003 does not support the Employer proposed 2.5% wage increase. Based upon consideration of all of the above and the record as a whole, it urges that the

[11] Alleging the existence of various classifications within the primary external comparables, comparable to the *AODA Counselor II*, the *CSP/Professional*, the *CSP/Masters*, the *Psychotherapist* and the Case Manager Classifications, within the bargaining unit.

Union's final offer is justified by application of the arbitral criteria, and it asks that it be selected by the Arbitrator in these proceedings.

In its *reply brief* the Union emphasized or reemphasized the following summarized considerations and arguments.

(1) That the Employer's insurance proposal will do nothing to stem the rate of increase in health insurance costs, but will merely shift them from itself to the employees. By way of contrast, Local 3377-A has agreed to a series of plan modifications other than cost-sharing in its Grant County Professional Employees unit, which at least modestly address the "*root*" of the health insurance cost problem.[12]

(2) That the significant rate of increase in the cost of health insurance in the professional unit cited by the Employer, was at least partially attributable to changes in personnel.[13]

(3) That the Employer has failed to provide evidence in support of its claim that some bargaining unit employees had opted for higher cost *employee/spouse* or *employee/children* coverage solely because it was available to them at no additional cost.

(4) As also noted in its initial brief, that the Employer has presented no evidence that the insurance premiums paid by it are in any way "out of line" with the premiums paid by the primary intraindustry comparables.

(5) That the Employer's brief devoted little attention to the wage issue: its argument based upon the internal comparables was based upon a flawed evaluation of the support staff contract wage agreement; and it ignored evidence that those in the bargaining unit are underpaid relative to the primary intraindustry comparables.

POSITION OF THE EMPLOYER

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

(1) That the following summarized facts are material and relevant to the outcome of these proceedings.

   (a) The Employer functions as a provider of community programming for mental health, developmental disabilities and substance abuse services under the auspices of Secs. 51.42 and 51.437, Wis. Stats.

   (b) UCS currently has a total of 40 employees, 20 of which are in the professional bargaining unit represented by Local 3377-A, 10 of which are in a non-professional bargaining unit represented by Teamsters Local 695, and the remaining 10 occupy supervisory or managerial positions.

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[12] Citing the contents of Union Exhibit #12.

[13] Citing the contents of Employer Exhibit #27 and Union Exhibit #4.

(c) AFSCME Local 3377-A has represented the professional unit since May 1991, and its first labor agreement was the product of an interest arbitration award by Arbitrator Stanley Michelstetter on October 27, 1994.[14]

(d) In the parties' 2001-2002 agreement, the employees received annual wage increases of 3% in the first year and split increases totalling 4% in the second year, plus the addition of a fifth step in the rate ranges covering 5 of the 8 then existing classifications.[15] By way of contrast, the Teamsters' 2001-2002 agreement provided a 3% wage increase in the first year and a 2½% increase in the second year; and in 2003 the Teamsters unit received a 2½% wage increase, with secretaries receiving an additional 10¢ per hour increase during the last 6 months of the agreement.[16]

(e) In the case at hand UCS has proposed a 2½% increase for 2003, the same across-the-board increase agreed upon in the Teamsters' unit, the Union has proposed a 3% increase for 2003, and both parties have proposed 3% increases for 2004.[17]

(f) UCS currently offers two health insurance plans, DeanCare and Medical Associates, and there are four categories of coverage from which employees can choose: *single*; *employee/children*; *employee/spouse*; and *family*.[18] UCS currently pays 100% of whichever single plan is chosen and 95% of the lowest cost family plan.

(g) In 2004, the only difference in the parties' final offers is the Employer's proposal that employees with *single*, *employee/spouse*, or *employee/children* coverage pay 5% of the premium based upon the lowest cost provider. While the *employee/spouse* and *employee/children* elections were not explicitly provided for in the prior agreement, the premiums for such coverage were substantially lower than for *family* coverage, and employees electing such coverages were not contributing to the premium costs. The Employer's insurance proposal reflects changes already implemented for its non-represented employees on January 1, 2004.[19]

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

[15] Citing the contents of Employer Exhibit #1.

[16] Citing the contents of Employer Exhibits #10 and #28.

[17] Citing the contents of Employer Exhibits #1 and #2, and Union Exhibit #2.

[18] Citing the contents of Employer Exhibit #4 and Union Exhibits #6 and #12.

[19] Citing the contents of Employer Exhibits #8 and #9.

(h) Based upon current levels of participation within the AFSCME unit, the change would have no effect on those who already have family coverage or who have waived coverage altogether; it would affect the two employees with single coverage; and it would affect the 13 employees who had elected employee/spouse or employee/child coverage, who have not contributed toward their health insurance coverage.[20]

(i) Based upon 2004 premiums, an employee electing single coverage with the lower cost carrier's plan would pay $21.06 per month, while an employee with employer/spouse or employee/child coverage would pay $44.20 or $40.00 per month, respectively. By way of contrast, an employee with family coverage, based upon the lower cost provider, would pay $51.66 per month under either final offer.[21]

(2) In connection with *the health insurance impasse item* that the following considerations should be determinative.

(a) The Union readily admitted the existence of problems with health insurance costs.[22]

(b) The expired agreement described two basic approaches: *first*, Employer payment of 100% of the single premium costs for employees electing *single coverage*, not to exceed the highest premium charged for HMO coverage under plans offered by it, and if no HMO is offered, the premium shall equal 100% of the lowest premium offered *single coverage*; and, *second*, for those electing *family coverage*, the Employer pays 95% of the lowest family premium and the employees pay the remaining premium, if any, through payroll deduction.

(c) As a practical matter the above language has been interpreted to actually include four premium levels: *single*, *employee/spouse*, *employee/children* and *family*. In these connections it was further interpreted so as to utilize 95% of the *lowest cost family premium* to determine what, if anything, an employee was required to pay toward *employee/spouse* or *employee/children coverage*, which premiums have been sufficiently low as to result in no employee contributions toward the *employee/spouse* or *employee/children* premiums.

(d) Referencing the 2002 and 2003 premium costs, it noted that Medical Associates' *single* and *family* premiums had increased by 22.3% in 2004, and that the Dean HMOs' single and family premiums had increased by 19.6% in 2004.[23]

(e) It also noted that UCS's overall costs of providing health insurance had increased by 11% in 2003 and an additional 25% in 2004, and that the costs within this bargaining unit had increased more rapidly than in the Teamsters' unit or within the agency as a whole. [24]

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

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

[22] Citing the *opening statement of the Union* at Hearing Transcript, page 13.

[23] Citing the contents of Union Exhibit #5 and Employer Exhibit #5.

[24] Citing the contents of Employer Exhibit #27.

(f) It attributed a significant amount of the premium increases to the increasing propensity of those in the bargaining unit to elect to *employee/spouse* or *employee/children* coverage, because it was no more expensive to them than single coverage.[25] In a number of cases the additional/duplicate coverage is not needed, but is merely taken because it is available with no cost to the employees, or at less cost than coverage purchased through a spouse.[26]

(g) Contrary to the position of the Union, employee participation in the payment of health insurance premiums is ***not*** the exception among the primary external comparables; to the contrary, four of the twelve comparables require employees to pay 10% of the single coverage premiums, and seven of the twelve require employee to contribute 10%, 15% or 20% of the family coverage premiums.[27]

(h) What is not clear from the record is whether any or all of the comparable employers, except for Grant County, offer employee/spouse or employee/child coverage options. If not, the majority of these employees who opted for more than single coverage would have to pay at least 10% of the premiums, as compared with the 5% contribution herein proposed by the Employer.[28]

(i) UCS's health insurance proposal results in greater employer assumption of health insurance premiums than the comparables, while adding a modest disincentive for carrying unnecessary or duplicative coverage.[29]

(j) While the Union will undoubtedly argue than any change in the status quo should be supported by a *quid pro quo*, the necessity and the extent of any such *quid pro quo* is judged on the basis of a variety of circumstances such as the mutuality of the problem, the presence of a compelling problem, and/or proposed changes merely conforming to those already undertaken by a majority of the primary external comparables.[30]

(k) The proposed change in the *single* premium contribution affects only two bargaining unit employees, while the change in the *employee/spouse* and *employee/children* premiums merely

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[25] Citing the contents of Employer Exhibits #6 and #7, showing a drop in single coverage from *12 of 39 or 31%* in January 2002, to *4 of 37 or 11%* by March 2003.

[26] Citing the testimony of *Jennifer Marr, Stacey Place and Cheryl Knapp* at Hearing Transcript, pages 56-57 and 64-65.

[27] Citing the contents of Union Exhibit #7,

[28] Citing the contents of Employer Exhibit #26.

[29] Principally citing the contents of Union Exhibit #14 and Employer Exhibits #5 and #26.

[30] Citing the following arbitral decisions: the *undersigned* in Mellen School District, Dec. No. 330408-A (2003); *Arbitrator Krinsky* in LaCrosse County, Dec. No. 30321-A (2002); and *Arbitrator Roberts* in Ashwaubenon School District, Dec. No. 30339-A (2002).

put those employees electing such coverage on a more equal (but still superior) footing to those electing *family* coverage.

(l) That the Union acknowledged that rising health insurance premiums are a problem for everyone.[31]

(m) That UCS had previously absorbed 100% of the increases in the single premiums and 95% of the increase in the family premiums, by the way the formula has been applied, and it has also picked up 100% of the increase in the employee/spouse and employee/child increases.[32]

(n) In the underlying negotiations the parties agreed to improved vacation benefits, to a more general sick leave payout for retirees, and UCS agreed to pick up any increases in Wisconsin Retirement System contributions.[33]

(o) That the bargaining unit, by virtue of its wage increases for 2002 and 2003, had already received a *quid pro quo* in the prior agreement.

On the basis of all of the above, it submits that its *health insurance proposal* is the more reasonable of the two proposals.

(3) In connection with the *wage increase impasse item*, it submits that the following considerations should be determinative.

(a) The 2½% first year increase proposed by UCS is the same as that negotiated in the Teamster represented, non-professional unit, and it is also the percentage increase received by UCS's managerial and supervisory staff.[34]

(b) 2½% on an average wage rate of over $18.00 goes much further toward covering any additional health care costs than 2½% on an average wage of $11.00 per hour, even with a portion of the non-professional unit having received an extra 10¢ per hour in the second half of 2003.

(c) That there is no claim of any need for *catch-up*, and the parties are in agreement on the second year increase of 3%; the only wage dispute, therefore, is the first year difference in the final offers of ½ of 1%.

(d) That a 2½% versus a 3% wage increase in 2003 will not adversely affect UCS's *ranking* among its comparables; it will, however, provide a measure of *internal equity* within what is a relatively small workforce.

On the basis of all of the considerations addressed above, the Employer urges that its is the more reasonable of the two final offers and seeks its

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[31] Principally citing the contents of Union Exhibit #5 and Employer Exhibit #5.

[32] Citing the contents of Union Exhibits #4 and #5, and Employer Exhibit #4.

[33] Citing the contents of Union Exhibit #1, Stipulation #7.

[34] Citing the contents of Employer Exhibit #10 and the *testimony of Mr. Crone* at Hearing Transcript, page 54.

selection by the undersigned.

In its *reply brief* the Employer emphasized or reemphasized the following summarized considerations and arguments.

(1) That while the prior agreement had not explicitly provided that the Employer would pay 100% of the *employee/children* or the *employee/spouse* insurance premiums, this had normally been the case due to the significantly higher *family* coverage premiums, which phenomenon had caused a significant migration from *single* to *employee/children* or *employee/spouse* coverage.

(2) That the Union's claim that some 2003 insurance premiums had gone down is simply not factual.[35]

(3) Contrary to the Union's calculation of the "*average*" employee contribution toward health insurance in its brief, no one receives 105% of their actual premium, and in seven of the twelve primary external comparables, the employer pays 90% or less of the premiums for family coverage.[36]

(4) The Union claim that it has already addressed the issue of soaring health care costs by agreeing to modifications in coverage with Grant County is flawed on a variety of bases.

(5) Health insurance costs continue to skyrocket, and under the current system the vast majority of employees can obtain full or even excess or duplicative coverage without cost; there is thus no incentive to be *prudent consumers*. Stated simply, increases in health insurance costs equal to 4% or 5% of an employee's hourly wage rate is a material change in the status quo, and it is not reasonable to assume that such increases are to be automatically passed on to an employer under the "status quo" rubric.

(6) The Union's emphasis upon the 10¢ per hour increase for secretaries in the non-professional unit is misplaced, in that it ignores the substantially better wage package received by the professional unit in 2002.

(7) The Union's argument that a 2½% increase in 2003 will distance UCS wage rates from the comparables is based upon misdirection and speculation, rather than evidence in the record.

(8) The Union's comparison/ranking of classifications with the external comparables presupposes, without the benefit of evidence, that the job titles compared are equivalent. In the same area, it ignores the fact that many of the external classifications used for comparison purposes require much longer periods to progress to the top of their rate ranges, and it failed to utilize UCS's current wage rates, thus distorting the "averages."

(9) In arriving at a 3.43% *average* wage increases for 2003 among the external comparables, the Union used the "*lifts*" and not the actual cost of increases where there had been mid-year adjustments.

(10) While the Employer proposed 2003 wage proposal was on the lower side of the settlements to date, the Union did agree to 2003-2004

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

[36] Citing the contents of Union Exhibit #7.

settlement in Adams County with 2% increases in each year, while this county pays only 90% of either single or family medical insurance premiums.

(11) The Employer's proposed change in health insurance is a modest effort to address a major problem in a way which encourages prudent access to coverage, it merely adopts the formula already in place for its supervisory/management employees, and it reflect's the State of Wisconsin's initiative that state employees share the cost of health insurance at each level of coverage.

FINDINGS AND CONCLUSIONS

In these proceedings the undersigned is faced with two impasse items: *first*, the Employer proposed additional employee sharing of health insurance premium costs; and, *second*, the relative merits of the Employer proposed wage increase of 2½% versus the Union proposed 3% wage increase to apply in the first year of the renewal agreement. In arguing their respective cases both parties principally emphasized application of *the comparison criteria*, both external and internal, and the normal arbitral prerequisites to *approval of proposed change in the negotiated status quo ante*, and neither party urged application of the *greatest weight or the greater weight criteria*, or various other criteria. Each of the two impasse items will be separately addressed below, prior to applying the various statutory criteria, reaching a decision, and rendering an award in these proceedings.

The Wage Increase Impasse Item

The primary reliance of both parties in connection with the wage impasse item is the comparison criteria, with the Employer emphasizing *internal comparisons* with other UCS employees and the Union emphasizing *comparisons with the primary external comparables*.

As noted by the undersigned in many prior Wisconsin interest arbitration proceedings, apart from legally mandated priorities and/or unusual circumstances comparisons are normally the most important arbitral criteria, and so-called intraindustry comparisons are normally the most important of the various types of comparisons.[37] These considerations are well described as follows, in the venerable and still authoritative book by the late Irving

[37] While the term "*intraindustry comparisons*" originated in the private sector, its application in public sector interest proceedings refers to *external comparisons with similar units of employees employed by comparable governmental units*.

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. More 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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> 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."[38]

In the absence of any *ability to pay issues* and/or *legally mandated priorities* applicable to the dispute at hand, it is clear that the comparison criteria are entitled to their normal weight in evaluating the final offers of the parties in these proceedings. In this connection, the parties are in apparent agreement that the primary external comparables consist of the twelve counties previously identified and utilized by Arbitrator Michelstetter.[39] In its initial brief the Union has identified, as follows, the percentage wage increases applied by the intraindustry comparables in 2003.[40]

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

[39] See the contents of Employer Exhibit #24 at page 10.

[40] The computations utilized by the Union which showed a 3.43% average increase for 2002, were modified by the undersigned to reflect the *actual dollar costs* of the *split increases in Grant and Richland Counties*, and the *midpoint of the variable increases in Sauk Counties*.

COUNTIES - 2003 GWI

(1)	Adams	2%	
(2)	Columbia	5%	
(3)	Crawford	3%	
(4)	Grant	2.75%	(2% on 1/1 & 1.5% on 7/1)
(5)	Green	3%	
(6)	Iowa	3%	
(7)	Juneau	3.33%	
(8)	LaFayette	3%	
(9)	Richland	3.5%	(2% on 1/1 & 3% on 7/1/03)
(10)	Rock	3.5%	
(11)	Sauk	3.36%	(varied from 2.5% to 4.22%)
(12)	Vernon	3.5%.	
	Average	**2.99%**	

When the above data is compared with the final wage offers of both parties it is clear that the 2.99% average wage increase among the primary intraindustry comparables is much closer to the 3% increase proposed by the Union than to the 2.5% increase proposed by the Employer for the year 2003. The 2.5% wage increase offered by the Employer for 2003 has also negatively impacted the size of the 3% wage increase proposed by it for 2004, and the actual 2003 wage lifts in Grant and Richland Counties against which their 2004 wage increases were applied, also enhanced the application of their percentage wages increases in 2004.

While it is clear to the undersigned that the wages paid within the bargaining unit are reasonably comparable to those paid by the primary intraindustry comparables, and despite the Employer's argument that the parties' 2003 wage increase offers differ by only ½ of 1%, it is clear that arbitral consideration of the *intraindustry comparison criterion* clearly favors the 3% wage increase proposed by the Union for 2003.

Despite the arguments of the Union relating to the extra 10¢ per hour paid the Secretary Classification in addition to their 2.5% general wage increase in 2003, it is apparent to the undersigned that arbitral consideration of the *internal comparables*, including both represented and non-represented employees, favors the final wage increase proposal of the Employer. As explained above, however, the weight accorded the intraindustry comparables normally far exceeds that accorded other wage determination criteria, including internal compararison of general wage increases.

It is next noted that the Employer correctly observed that there is insufficient evidence in the record to establish the comparability of the

classifications used by the Union in support of its arguments relating to the relative ranking of pay rates paid by the primary intraindustry comparables. This observation does not, however, detract from the significance of the percentage wage increase comparisons addressed above.

On the above described bases it is clear to the undersigned that arbitral application of the comparison criteria, particularly the intraindustry comparison criterion, clearly favors the wage increase component of the final offer of the Union in these proceedings.

The Employee Insurance Premium Contribution Impasse Item

In Article 24, Section 24.02 of the predecessor agreement the parties agreed that the Employer would *normally* pay the full premium cost for *single coverage* and 95% of the premium cost for *family coverage*.[41] In applying this provision in the past, however, two additional categories of insurance coverage had been offered, *employee/spouse* and *employee/children,* and, *effectively*, the Employer had paid the full premium cost for these categories of coverage. Practically speaking, therefore, no employee premium contributions had been required for either *single*, *employee/spouse* or *employee/children coverage*, and a 5% employee contribution had only been required for *family coverage*. The Employer's final offer proposes that the referenced prior language be modified, effective January 1, 2004, to provide that the Employer would normally pay 95% of the premium cost for either *single*, *employee/spouse*, *employee/children* or *family coverage* and, accordingly, that a 5% employee contribution would be required for such insurance premiums.

Wisconsin interest arbitrators generally recognize that the proponent of

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[41] See *Article 24, Section 24.02* of Employer Exhibit #1, which provides as follows:

> "The Employer agrees to pay an amount equal to one hundred percent (100%) of the single premium for employees electing single coverage, except that the Employer's contribution shall not exceed the highest premium charged for HMO coverage under the plans offered by the Employer. In the event that no HMO is offered, the premium shall be equal to 100% of the lowest premium for single coverage offered. For employees electing family coverage, the Employer agrees to pay an amount equal to ninety-five percent (95%) of the lowest family premium. Employees shall pay the remaining premium, if any, by payroll deduction."

change 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.*

In applying the above criteria to the Employer proposed expansion in the application of the 5% employee medical insurance premium contribution to include the *single*, *employee/spouse* and *employee/children* categories of coverage, the following considerations are determinative.

(1) The dramatic, ongoing, and frequently double digit escalation in the cost of public and private sector health care costs is far exceeding both *the rate of inflation* and/or *what might reasonably have been anticipated by the parties* when they had originally negotiated employer payment of the full cost of individual and/or family health insurance premiums.[42] Accordingly the situation represents *a significant and continuing mutual problem*, and *it clearly meets the first of the referenced status quo prerequisites*.[43]

[42] See the contents of Employer Exhibit #5, and Union Exhibits #5 and #6.

[43] While the Employer also urged that the problem had been exacerbated by an increasing number of bargaining unit employees who had opted for *single/spouse* or *single/children* coverage because it had been available to them without additional cost beyond *single coverage*, it is unnecessary to address this argument in detail in that the problem of escalating costs of employer provided medical insurance is *sufficient, alone, to constitute the requisite significant and unanticipated problem*.

(2) It is next noted that one of various possible approaches to the escalating costs of employee health insurance is the *adoption of a reasonable level of employee contribution to health insurance premiums*, the only approach to the underlying problem before the undersigned in these proceedings.[44] In this connection it is also noted that seven of the twelve intraindustry comparables have higher percentages of employee contribution to health care costs than proposed by the Employer, with Adams, Columbia, Green and Sauk Counties having 90% employer premium contributions for *both single* and *family coverage*, and with Grant, LaFayette and Vernon Counties having 85%, 90% and 80% employer premium contributions, respectively, for *family coverage*[45]. On these bases, the undersigned has concluded that the Employer proposed expanded application of a 5% employee contribution toward health insurance premiums reasonably addresses the underlying problem, and *it thus meets the second of the referenced status quo prerequisites*.

(3) In next addressing the *quid pro quo requirement*, it is noted that the District is not proposing the elimination or major modification of a recently negotiated and/or stable benefit. The Employer is quite correct in noting that various Wisconsin interest arbitrators, including the undersigned, have recognized escalating health insurance costs as an *ongoing, continuing and mutual problem*, have distinguished proposed changes in this area from other types of proposed status quo changes, and have required relatively little, if any, *quid pro quos* in support of reasonable proposed changes to control these costs.

(a) In the case at hand no apparent quid pro quo has been advanced in support of the Employer proposed change: there is no evidence that the modest agreed-upon changes in sick leave payouts for retirees, vacation benefits, and WRS contributions were related to the Employer's health insurance proposal; and absolutely no basis exists for crediting the Employer's argument that wage increases under the prior agreement had *prospectively* provided the Union with a *quid pro quo* in the case at hand.

(b) If the insurance premium payment dispute had been the only impasse item before the undersigned in these proceedings, a persuasive argument could perhaps have been made that little or no *quid pro quo* was required to justify selection of the Employer's final offer. The Arbitrator is, however, required to select the final offer of either party, *in toto*, including the 2003 wage increase proposals discussed above.

(c) On the above bases, a question remains as to whether the Employer, *under all of the circumstances of the case*, has fully justified its proposed change in the *status quo ante*.

Summary of Preliminary Conclusions

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

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[44] It is inappropriate to attach any weight to the Union's argument that the Employer's increasing costs of insurance premiums could have been significantly ameliorated by the contract negotiations between Grant County and Local Union 3377-A in 2003, covering another bargaining unit.

[45] See the contents of Union Exhibit #7.

(1) The undersigned is faced with two impasse items: *first*, the Employer proposed expansion of employee sharing of health insurance premium costs; and, *second*, the relative merits of the Employer proposed first year wage increase of 2½% versus the Union proposed increase of 3%.

(2) In arguing their respective cases both parties principally emphasized application of *the comparison criteria*, both external and internal, and both addressed the typical arbitral prerequisites to *approval of proposed change in the negotiated status quo ante*, and neither party urged application of the *greatest weight or the greater weight criteria*.

(3) The primary reliance of both parties in connection with *the wage impasse item* is *the comparison criteria*, with the Employer emphasizing *internal comparisons* with other UCS employees and the Union emphasizing *external intraindustry comparisons* with the twelve *primary external comparables*.

(a) Apart from legally mandated priorities and/or unusual circumstances, comparisons 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 2.99% average wage increase among the primary intraindustry comparables is much closer to the 3% increase proposed by the Union than to the 2.5% increase proposed by the Employer for the year 2003. The 2.5% wage increase offered by the Employer for 2003 has also negatively impacted the size of the 3% wage increase proposed by it for 2004, and the actual wage lifts for Grant and Richland Counties in 2003, against which their 2004 wage increases were applied, also enhanced the value of their percentage wages increases in 2004.

(c) It is clear that arbitral consideration of the *intraindustry comparison criterion* clearly favors the 3% wage increase proposed by the Union for 2003.

(d) Arbitral consideration of the *internal comparison criterion*, including both represented and non-represented employees, favors the wage increase proposal of the Employer for 2003.

(e) The weight accorded to *intraindustry comparables* normally far exceeds that accorded other wage determination criteria, including *internal comparables* of general wage increases.

(f) On the above bases, arbitral application of the comparison criteria, particularly the intraindustry comparison criterion, clearly favors the wage increase component of the final offer of the Union in these proceedings.

(4) The primary reliance of both parties in connection with *the employee insurance premium contribution impasse item* has been application of *the comparison criteria,* and the application of the normal prerequisites to arbitral selection of *proposed changes in the negotiated status quo ante*.

(a) Under the prior agreement, no employee health insurance premium contributions had been required for *single*, *employee/spouse* or *employee/children* categories of insurance coverage, and a 5% employee premium contribution had only been required for *family coverage*.

(b) The *Employer's final offer* proposes that the prior contract be modified, effective January 1, 2004, to provide a 5% employee health insurance contribution for *single*, *employee/spouse*, *employee/children* and *family* coverage.

(c) Wisconsin interest arbitrators generally recognize that the proponent of change 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.*

(i) The dramatic and ongoing escalation in the cost of health care represents *a significant and continuing mutual problem*, and *it clearly meets the first of the referenced status quo prerequisites*.

(ii) The Employer proposed expanded application of a 5% employee contribution toward health insurance premiums reasonably addresses the underlying problem, and *it thus meets the second of the referenced status quo prerequisites*.

(iii) In connection with the *quid pro quo requirement*, it is noted that various Wisconsin interest arbitrators have recognized escalating health insurance costs as an *ongoing, continuing and mutual problem*, have distinguished some proposed changes in this area from other types of proposed changes, and have required relatively little, if any, *quid pro quos* in support of reasonable proposed changes to control such costs.

(iv) If the insurance premium payment dispute had been the only impasse item before the undersigned in these proceedings, a persuasive argument could perhaps have been made that little or no *quid pro quo* was required to justify selection of the Employer's final offer. The Arbitrator is, however, required to select the final offer of either party, *in toto*, including the 2003 wage increase proposals of the parties.

(d) On the above bases, a question remains as to whether the Employer, *under all of the circumstances of the case*, has fully justified its proposed change in the *status quo ante*.

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), in addition to those emphasized by the parties and elaborated upon above, the undersigned has concluded that the final offer of the Union 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 Union is the more appropriate of the two final offers before the Arbitrator.

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

WILLIAM W. PETRIE
Impartial Arbitrator

April 3, 2004