

**STATE OF WISCONSIN
BEFORE THE ARBITRATOR**

In the Matter of the Arbitration of
a Dispute Between

Human Services Employees of
Forest, Oneida and Vilas Counties
Local 79-A, AFSCME, AFL-CIO

and

Human Services Board of
Forest, Oneida and Vilas Counties

Case 14
No. 61921
INT/ARB 9824
Dec. No. 30718-A

Appearances

Ruder, Ware & Michler, S.C. by Dean R. Dietrich, Esq., on behalf of the
Human Services Board.

Council 40, AFSCME, AFL-CIO, by Dennis O'Brien, Staff Representative, on
behalf of **Local 79-A.**

ARBITRATION AWARD

Local 79-A, AFSCME, AFL-CIO, hereinafter Union, and the Human Services Board of Forest, Oneida and Vilas Counties, hereinafter Board or Employer, selected the undersigned to issue a final and binding award pursuant to Wis. Stats. 111.70(4)(cm)6 of the Municipal Employment Relations Act contained in said Statutes. A hearing was conducted in Rhinelander, Wisconsin on December 17, 2003. The hearing was not transcribed. The parties mailed briefs postmarked February 16, 2004 and reply briefs postmarked March 19, 2004, received by the undersigned on Monday, March 22, 2004.

Based on Wis. Stats. 111.70(4)(cm)7, the arguments of the parties, and the entire record herein, I issue the following award.

BACKGROUND

Since 1983 until the present it appears that the parties to the current dispute have entered into a series of collective bargaining agreements.

The Union herein represents a mixed bargaining unit of both professional and support staff employees. "Professionals" include social workers, therapists, case

managers, and registered nurses. "Support staff" personnel include those employed in clerical, custodial and house/resident assistant positions. The bargaining unit is contractually described as "all regular full-time and regular part-time employees of the Human Services Board of Forest, Oneida and Vilas Counties, excluding management, supervisory and confidential employees."¹

Pursuant to the provisions of Wis. Stats. 51.42, the Board maintains a Human Services Center (HSC), that provides mental health services, including assistance, counseling and therapy with respect to developmental disabilities, alcohol and drug abuse, and children with emotional and behavioral problems. In addition to operating a mental health outpatient clinic (Northwoods Guidance Center), a residential A & D treatment center ("Koinonia"), and a facility for assisting children with emotional needs (Northwoods Alliance for Children and Families), the Board also contracts for additional services with other public and private mental health care organizations.

The chief executive officer of HSC is its Director, Ann Cleereman.

Human Services Board members include selected members from the respective County Boards that govern the three participating counties.

The parties have experienced a bargaining impasse with respect to a successor labor agreement for calendar years 2003 and 2004.

The parties held their initial meeting on September 4, 2002. Subsequent meetings took place on November 4, 2002 and December 5, 2002. On December 18, 2002, the Union filed a petition for interest arbitration with the Wisconsin Employment Relations Commission. WERC Attorney-Mediator Lauri Millot was appointed to investigate the alleged bargaining impasse. Ms. Millot began an informal investigation on February 6, 2003 at the Human Service Center. Although the parties continued to exchange proposals on several occasions thereafter, they failed to reach complete accord on a successor agreement. On September 29, 2003, Ms. Millot advised the Commission that the parties were deadlocked. The Commission so found and certified the respective final offers of the parties to interest arbitration. From a panel of arbitrators submitted to the parties by the Commission, the parties selected the undersigned to serve as interest arbitrator of the dispute, and he was so appointed by the Commission on October 30, 2003. In his capacity as arbitrator, the undersigned conducted a hearing on December 17, 2003 at the Human Service Center in Rhinelander, Wisconsin.

FINAL OFFERS

The parties have reached a number of tentative agreements that are not in dispute and are included in their respective final offers.

The **Board** proposes the following Final Offer:

¹ 2002 Labor Agreement between The Human Services Board of Forest, Oneida and Vilas Counties and Local 79-A, Wisconsin Council 40 of the American Federation of State, County and Municipal Employees.

1. Continue all terms and conditions of the 2002 Labor Agreement between the Human Services Board and Local 79-A except as modified by this Final Offer.
2. Revise Article 10 – Hours of Work, by adding a new paragraph D – Shift Differential to read as follows:

D. Shift Differential: Employees working a Koinonia shall receive shift differential pay when assigned to work the second shift or third shift. The shift differential pay shall be 10 cents per hour in addition to the regular rate for hours worked on the second shift (20 cents in 2004) and 20 cents per hours for hours worked during the third shift (40 cents per hour in 2004)

3. Revise Article 12 – Insurance, Paragraph A – Group Coverage, by adding the following:

Effective as soon as practical after receipt of arbitration award, the Board will implement a Preferred Provider Option Plan.

Effective upon implementation, the parties agree that the Board contribution for health insurance premiums will be limited to 90% of the revised health insurance premium after implementation of the Preferred Provider Option insurance plan. In the event the premium decreases at any time, the Board contribution will be 90% of the reduced premium. In the event the premium increases at any time, the employee will be responsible for all increases in premium above the 90% contribution by the Human Services Board based upon the premium for the newly revised level of insurance benefits.

4. Revise Article 14 – Classification and Wages, Paragraph B to read as follows:

B. Employees will be paid on the basis of 26 pay periods per year. When a payday falls on a holiday or weekend, the payday will be the preceding workday. All employees will be required to have a direct deposit to a bank of their choosing for payroll purposes.

5. Revise Article 15 – Holidays, by adding a new Paragraph E – Work on Holiday to read as follows:

E. Work on Holiday: Employees in the position of House Staff at Koinonia shall receive time and one-half for all hours worked on a holiday, provided the majority of the employee shift falls during the 24-hours period of the holiday.

6. Revise Article 16 – Vacation, Paragraph G to read as follows:

G. The position of House Staff shall be considered eligible for vacation benefits pursuant to the nonprofessional employees' vacation schedule contained in this Article, however, employees in the position of House Staff prior to January 1, 2003, shall be eligible for vacation benefits pursuant to the professional employee vacation schedule.

7. Revise Article 27 – Duration, Paragraph A – Current Agreement provide for a two year agreement for calendar years 2003-2004 with the language to read as follows:ouse Staff

This Agreement shall be in full force and effect as of January 1, 2003 and shall continue in full force and effect until December 31, 2004.

8. Wage increase for the custodian position shall be 50 cents per hour for the calendar year 2003 and 3% for calendar year 2004.
9. Revise wage schedule for nonprofessional employees and professional employees to provide for a 3.25% wage increase in calendar year (except for the custodian position) and a 3% wage increase for calendar year 2004 in accordance with the attached schedules. (Wage Schedules submitted by Board are attached as Exhibit A and incorporated as if fully set forth herein.)

* * *

The **Union** proposes the following Final Offer:

- 1) PPO Insurance Plan based on existing Insurance Plan with implementation of the following changes:
 - Maintain 90/10 split for year 2003 & 2004.
 - \$5/\$7/\$10 co-pay on prescription drugs effective when new policy goes into effect.
 - Annual deductible of \$300/\$450/\$600 per year when new policy goes into effect.
 - Ability to get three (3) months prescription drugs for two (2) co-pay amounts.
 - \$10 doctor's visit co-pay effective when policy goes into effect.
 - \$50 Emergency Room Co-pay – waived if admitted to the hospital.
- 2) Koinonia shift differential of .10 per hour for 2nd shift in 2003 and .20 per hour for 2nd shift in 2004.
- 3) Koinonia shift differential of .20 per hour for 3rd shift in 2003 and .40 per hour for 3rd shift in 2004.

- 4) Koinonia House Managers/Resident Assistant to receive time and a half pay for required work done on holidays.
- 5) Koinonia – grandfather current House Managers/Resident Assistant professional vacation schedule. New House Manager/Resident Assistant hires get non-professional vacation schedule.
- 6) Custodian receives .50 per hour raise for year 2003 and 3% increase for the year 2004.
- 7) General pay increase of 3.25% effective 1/1/03.
- 8) General pay increase of 3.00% effective 1/1/04.
- 9) Employees will be paid on the basis of 24 pay periods per year. When a pay day falls on a holiday or weekend, the payday will be the preceding workday.
- 10) All current employees will have the choice of having electronic deposit to the bank of their choosing. If existing employee does not have an active account, they will not be required to get one. All new hires will be required to have electronic deposit of their paycheck to a bank.
- 11) 2-year contract.

SUMMARY OF REMAINING ISSUES

A review and comparison of the parties' respective Final Offers indicates that the parties have reached agreement on a number of issues. Specifically, the Union and the Board are in accord with respect to the following matters:

- Contract duration.
- Shift differentials at Koinonia.
- Premium pay for Koinonia house staff (house managers/resident assistant) for work performed on holidays.
- Revised vacation schedule for house staff at Koinonia hired after 1/01/03.
- Wage adjustment for custodians.
- General wage adjustment.
- Certain changes or modifications to the Health Insurance Plan.
- Respective employer/employee contributions to health insurance premiums, **for 2003.**

Notwithstanding the parties' success in reaching agreement to the items listed above, they were unable to agree on how to resolve four remaining issues:

- The amount of the prescription drug co-pay in 2004.
- Respective employer/employee contributions to health insurance premiums, **for 2004.**
- Number of pay periods within the calendar year.
- Direct deposit of paychecks.

Each party has identified the two health insurance issues as the major issues of this dispute.

For convenience, the parties' respective positions on these four remaining issues are listed in summary form.

<u>Status Quo</u>	<u>Employer</u>	<u>Union</u>
	<u>Amount of Prescription Drug Co-Pay</u>	
\$ -0- (no formulary)	\$10 – generic \$20 – name brand	\$5 – generic \$7 – name brand
	<u>Employer/Employee Contributions To Health Insurance Premiums for 2004</u>	
Employer – 90% Employee – 10%	Cap employer's contribution to 90% of 2003 health insurance premium. Employee to contribute 10% of 2003 premium plus the amount of any premium increase in 2004.	Status Quo
	<u>Number of Pay Periods within Calendar Year</u>	
24	26	24 (Status Quo)
	<u>Direct Deposit of Pay Checks</u>	
No Requirement	Each employee be required to authorize direct deposit to bank of his/her choice.	Direct deposit be optional for current employees, but required for new employees.

RELEVANT STATUTORY PROVISIONS

Pursuant to the provisions of Wis. Stats., 111.70(4)(cm)6.d., the arbitrator is required to adopt without further modification the final offer of one of the parties on all disputed issues that are submitted.

In reaching a decision, the undersigned is further required by Wis. Stats. 111.70(4)(cm)7 of the Municipal Employment Relations Act to consider and apply the following criteria to the evidence and arguments of the parties:

Wis. Stats. 111.70(4)(cm)7.

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 legislative 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. “Factors 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. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in generally in public employment in the same community and in comparable communities.
- f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

ESTABLISHMENT OF COMPARABILITY POOL

Each party notes that since it has never engaged in interest arbitration with the other, no pool of comparables has been established. Each regards this threshold issue as one of significance, in large part because each believes that the comparability pool used in this case may become the comparability pool used in future collective bargaining between them. Each addressed the comparability issue both in its respective initial and reply briefs.

Board of Human Services

The Board's position with respect to the establishment of a comparability pool is in the alternative.

A. Arbitrator should not establish a definitive comparability pool.

The Board first urges that no comparable pool should be established because wages are not an item in issue. The parties have agreed to wage levels and increases for 2003 and 2004, and there is no evidence or indication that the bargaining unit members are paid below average. Without a comparative analysis that includes consideration of wages levels and wage increases, the Board does not believe a meaningful economic comparison can be made.

The Board cites arbitral precedent for an arbitrator declining to establish a definitive comparable pool. In City of Mosinee (DPW), Dec. No. 30177-A (4/17/02) Arbitrator Sherwood Malamud declined to establish a definitive comparability pool. He reasoned that the case was the first interest arbitration between the parties and the pool could remain for and impact the parties' future bargaining relationships, but increases to wage levels was not in issue, he preferred to resolve the dispute without resort to a definitive comparability pool.

Applied to the instant matter, the Board notes that the Arbitrator is assessing only the narrow issues of health insurance, number of pay periods, and direct deposit of

paychecks. Levels of fringe benefits, not wages, are the only important pieces of evidence in this case, says the Board. Thus, according to the Board, the Arbitrator should not establish a definitive comparability pool in this case, but decide it “. . . by looking mainly at the previous bargaining history (most notably, the Tentative Agreement).”

B. In the Alternative, if the Arbitrator Chooses to Establish a Definitive Set of Comparables, Board Nominates Slate

But if a comparability pool is established, the Board believes the following set is most comparable to the Human Service Center: Courthouse employees of Forest, Oneida, and Vilas Counties; North Central Health Care; Clark County Health Care Center; Petersen Health Care Center (for health insurance purposes, only).² The Board is also agreeable to adding the professional bargaining units employed by Oconto, Marinette and Taylor Counties.

The Board agrees with the Union that the bargaining unit employees of the three underlying counties could be helpful guides as to the non-professional bargaining unit members employed by the HSC. However, the Board points out that the HSC professionals have no professional counterparts that share mental health, developmental disability, or A & D service responsibilities in the three counties; therefore, according to the Board, any other professional bargaining units employed by these counties are not directly comparable to the bargaining unit professionals employed by HSC.

However, the Board believes that North Central Health Care is comparable to the HSC. Each is operated tri- laterally by a Wis. Stats. 51.42 board consisting of members from three counties.³ North Central Health Care is geographically proximate to the Rhinelander-based HSC. Moreover, the non-professionals at North Central can be directly compared to those at HSC. The Board acknowledges, however, that the professionals at North Central Health Care are not unionized.

The Board also includes the Clark County Health Care Center in its comparability pool. According to the Board, the Clark County operation is county-run, geographically proximate to Forest, Oneida and Vilas Counties, and has various non-professional positions comparable to positions at the HSC. The Board also suggests adding the professional bargaining units employed by Oconto, Marinette, and Taylor Counties.

Finally, the Board nominates Petersen Health Care as a comparable as to health care only. The Board describes Petersen as a private, non-unionized facility located in Rhinelander. The Board notes that the HSC contracts for services with Petersen, and has

² The Board withdrew its earlier nomination of the Price County Human Services Department on two grounds: 1) the Price County Human Services Department contracts out the work performed by the HSC social workers so the Price County social workers actually employed by the County are not comparable to the social workers at the HSC, and 2) the Price County Human Services Department has no non-professional (support staff) employees to compare with those at HSC.

³ The three counties involved in the North Central operation are Langlade, Lincoln and Marathon.

an obvious geographical proximity not only with HSC, but the home residences of most HSC employees.

The Board objects to the Union proposal to include professionals directly employed in Lincoln and Langlade Counties in the comparability pool. The board reasons that since these two counties participate in the tri-county 51.42 Board that operates North Central Health Care, comparable professionals in either of those two counties are employed directly by North Central, not the counties. The Board also objects to inclusion of Florence, Iron and Price Counties in the comparability pool on the grounds that since these counties contract out the professional services provided by the professional bargaining unit members employed at HSC, the other professionals employed by these three counties are not comparable to those at HSC.

Finally, the Board objects to the inclusion of the City of Rhinelander or the Rhinelander School District, noting that the Union has not submitted information regarding health insurance for these two entities. Moreover, the Board argues that cities and school districts are governed by different state legislation and fiscal dictates than are 51.42 boards, and comparing employee benefits of their respective employees is inappropriate for interest arbitration purposes.

The Board justifies its proposal to include three nursing homes in the comparability pool (Clark County Health Care Center, North Central Health Care and Petersen Health Care). The Board asserts that while a nursing home is one function that each of these three provides, they all work with persons with developmental disabilities as well as with other mental health and A & D issues.

In summary, the Board posits that all professional units in surrounding counties do not perform services similar to those performed by HSC professionals, and thus should not be automatically included in a comparability pool. Based on similarity of services, similarity of employees and geographic proximity, the Board urges the Arbitrator to choose comparability pool that the Board proposes.

Union

The Union believes a set of comparables should be established, and nominates its own slate (that in part overlaps the Board's proposed pool). The Union acknowledges certain difficulties arise in constructing an appropriate set because of the tri-county funding of HSC and the fact that the bargaining unit includes both professional and non-professional (support staff) personnel.

The Union agrees with the Employer that the courthouse bargaining unit employees of Forest, Oneida and Vilas Counties should be included in the comparability pool, but also seeks to insert other public employers in the Rhinelander area whose employees perform similar job duties. Presumably, "other public employers" would consist of the City of Rhinelander and the Rhinelander School District.

The Union goes on to assert that since 65% of the HSC bargaining unit consists of professionals, a more expansive, broader comparability group beyond the tri-county area is required.

The Union constructs its comparability pool nominees by adding not only the City of Rhinelander and, apparently, the Rhinelander School District (as to support staff comparisons), but also adding counties that are contiguous to Forest, Oneida or Vilas County, plus Taylor County.⁴ Thus, the Union's group of comparables consists of the following: Forest, Oneida and Vilas Counties; Iron, Price, Taylor, Lincoln, Langlade, Oconto, Marinette, and Florence Counties; City of Rhinelander and Rhinelander School District.⁵

The Union "firmly believes" that its proposed grouping is supported by historical criteria used by arbitrators. More specifically, the Union describes its set of comparables as demonstrating ". . . a regionally compact group of counties in northeast Wisconsin that share many physical, demographic and economic characteristics."

The Union lists a number of reasons in support of its objection to the comparability pool nominated by the Employer. The Union criticizes the Employer's proposed set as inadequate and inappropriate. In contrast to the Union's selection, the Employer's "falls far short of delineating an adequate comparative group," according to the Union.

The Union asserts that including the courthouse bargaining units of Forest, Oneida and Vilas Counties as comparables for only the non-professionals does not offer reasonable comparisons for the HSC professional employees (who comprise a majority of the HSC bargaining unit members. The Union points to the hearing testimony of HSC Director Ann Cleerman, who stated not only that there is a similarity of work between HSC and Oneida County professionals, but that they interact with each other.

According to the Union, the employer-proposed group lacks geographical integrity. The Union is critical of the Employer's inclusion of Clark County on its proposed list of comparables when coupled with the Employer's failure to include Langlade and Lincoln.

⁴ As a colored map inserted in the Union's initial brief demonstrates, Taylor County, though not contiguous to Forest, Oneida or Vilas Counties, is contiguous to both Langlade and Lincoln Counties, both of which participate in the tri-county North Central Health Care operation. The Board ultimately agreed with the inclusion of Taylor, Oconto and Marinette Counties to provide comparables for the professionals.

⁵ The Union appears to include each represented bargaining unit of each county it names in the comparability pool. This includes professional units in the three funding counties. The Union's rationale is that ". . . the manner in which each of the three funding counties negotiated settlements with each of its own represented employees should be important in what Oneida, Vilas and Forest considered reasonable." Information from each bargaining unit in the other named counties was offered to demonstrate 1) that no agreement provided for a fixed dollar cap on the employer's contribution to employee health insurance premiums and 2) that the Board's offer in this case is well beyond the norm.

The Union is further critical of the Board's inclusion of three nursing homes in the comparability pool because the Board's operations in the instant matter do not include nursing home services. According to the Union, no workers involved in the instant dispute do the type of work performed in nursing homes. The Union additionally notes that most of the HSC bargaining unit professionals have Bachelor degrees and several have Masters. These professionals should be compared to persons with similar education and job responsibilities, the Union states.

The Union acknowledges that North Central Health Care is an agency with a dual function. One aspect is a nursing home, but the job titles in that operation (e.g., storekeeper, dietary aide, laundry worker and certified nursing assistant) do not reasonably relate to work performed at HSC. For the same reason, the Union objects to the inclusion of Clark County Health Care and Petersen Health Care.

Although the Union objects to comparing HSC professionals with professionals employed at North Central's nursing home, the Union acknowledges that its own Exhibit 10 demonstrates that a second component of North Central is comparable. This component ". . . does in fact mirror much of the work done by the professionals at the Human Service Center, including registered nurse, clinical social worker, CPS Director and Clinical Coordinator." The Union acknowledges that "(t)his agency (North Central) does similar work as the Human Service Center, if not using the same job title, (adding) however, the comparisons of the professionals at the Human Service Center to the nursing home function of North Central is inappropriate."

Finally, the Union strongly objects to the inclusion of unrepresented workers in the Employer's proposed set of comparables. Neither the Petersen Health Care workers nor the North Central professionals are union-represented. Thus, the Union argues, the terms and conditions of employment for these employees have been unilaterally established by their respective employers instead of collective bargaining.

POSITIONS OF THE PARTIES

Board of Human Services

The Board of Human Services describes itself as a tri-county entity created pursuant to the provisions of Wis. Stats. 51.42. It is a unique structure that has many funding challenges, the Board believes. The Board explains that its funding emanates from state and federal grants, community aid programs, as well as appropriations from the three underlying counties. Fees for services also account for a small portion of Board revenue. Since it is in large part fiscally dependent upon other governmental entities – entities that are themselves facing difficult fiscal times – the Board faces difficult budget decisions. As an example, HSC Director Ann Cleereman cited 2003 budget cuts in the levels of services for lack of funds.

The Board notes that the parties reached a tentative agreement on February 6, 2003 after several months of bargaining. However, at its ratification meeting one month later, the Union membership rejected the tentative agreement.

The Board argues that the Union's unwillingness to ratify the Tentative Agreement the parties had reached has caused the Board to lose out on the saving of implementing the new insurance plan for 2003 and part of 2004 that had been part of the tentative agreement. The Board reasons that its Final Offer that included a requirement any health insurance premium increase over 2003 be picked up by employees "... was predicated on the knowledge that switching to the PPO plan would significantly lower the total premium amounts and (further) that increasing the drug co-pay amounts in 2004 would mitigate any substantial premium increases in 2004.

The Board contends that the Union's rejection of what the Board believes was a "reasonable" tentative agreement has resulted in the Board having to pick up extra costs associated with the current health insurance plan.

The Board explains that its proposals regarding the number of pay periods and direct deposit of paychecks are designed to simplify the payroll process for management and employees. The Board contends that the current cycle of 24-pay periods (per year) results in employees making errors on their time sheets and extra work for the bookkeeper. Switching to an annual cycle of 26-pay periods would alleviate some of the common problems and streamline the payroll process, according to the Board.

Direct deposit of paycheck is regarded by the Board as a cost savings in terms of the cost of printing paper checks and costs (and liability) of paying an employee to drive to various banks to deposit paychecks for employees. In view of its tenuous financial situation, the Board views the ability to cut costs as extremely important.

The Board believes the parties worked hard to reach a tentative agreement, and their efforts culminated in a tentative agreement on February 6, 2003. The Board notes that it ratified the TA on February 11, 2003, but the Union membership rejected it at a membership meeting on March 6, 2003.

The Board argues that the Board's Final Offer is exactly the same as the tentative agreement reached by the parties' negotiators. (The Board agrees that the \$10 office co-pay that is included in the Board's current Final Offer was not included in the tentative agreement, but was nonetheless agreed to by both parties.)

The Board explains what it describes as a "side letter agreement" in the tentative agreement under which the Board's contribution toward health insurance premiums would be capped at 90% of the revised health insurance premium after the PPO plan was implemented. In the event the premium would decrease, the Board would be responsible for 90% of the reduced premium. In the event the premium would increase during the term of the agreement the employees would be responsible for any amount above the 90% initial contribution level.

The Board responds to the Union's concern as to the insurance language in the tentative agreement. (The Union worried that the Board would regard the capping of its premium contribution at 90% in the event of a premium increase as the *status quo*. If this view prevailed, the Union believed it would have to offer a *quid pro quo* to change the new contribution rate paid by the Employer.)

According to the Board, it wanted to include language indicating that the side letter agreement would not become the *status quo*. However, neither did the Board agree that the health insurance contribution system would automatically revert back to a 90-10 split when the labor agreement expired. The Board felt that the parties should be on an equal footing to negotiate a new health insurance contribution arrangement for 2005 and beyond. According to the Board, those negotiations could end up with the Board contributing 90% toward employee health insurance premiums, “. . . but the give and take of the bargaining table would determine that contribution level.”

The Board adds that it views its Final Offer in this matter in the same way it viewed the tentative agreement, described above. “When negotiations begin for a new contract, the parties will have to negotiate a new health insurance contribution system.” Under this view, “. . . (n)either side will have the leverage of the *status quo*, and both will have to present its case with comparable support.”

In the Board's opinion, the Tentative Agreement would have been beneficial to each party.

The Board believes the Tentative Agreement reached by the parties in this matter should be given substantial weight. Arbitrators, says the Board, are supposed to place the parties into the place they would have been if they had reached a voluntary settlement. The Board argues that a tentative agreement is a very strong indication of what the parties would have agreed to at the bargaining table.

The Board asserts that many arbitrators have agreed that tentative agreements should be given some, if not determinative, weight in interest arbitration. The Board quotes Arbitrator Malamud as declaring, “A tentative agreement represents the culmination of the parties' bargaining give and take.”⁶ The Board also cites Arbitrator Flaten: “Although arbitrators have concluded that a final offer of a party should not be adopted solely by reason of the fact that there has been a prior tentative agreement by the bargaining teams of the parties, that tentative agreement must have contained a certain degree of reasonableness or the parties would have never agreed to it in the first place. . . This is especially true when no new facts have been offered . . .”⁷ The Board adds Arbitrator Krinsky's observation that (a) tentative agreement is entitled to some weight.”⁸

Thus, the Board argues that arbitral precedent supports the idea that the tentative agreement should be closely examined by the Arbitrator in reaching a decision. Not giving weight to the tentative agreement reached in the instant matter could chill future

⁶ Village of DeForest (DPW), Dec. No. 28784-A (Malamud, 3/17/97)

⁷ City of Wauwatosa (Fire), Dec. No. 27869 (Flaten, 8/30/94)

⁸ City of Marshfield (Fire), Dec. No. 27039-A (Krinsky, 4/13/92)

bargaining between the parties, for each party would lack confidence that the other was empowered to make substantive bargaining decisions, according to the Board. The Board views the tentative agreement reached in this matter as the likely outcome of what would have happened if the parties had been able to reach a voluntary settlement.

Moreover, the Board argues, the Board's proposals as to health insurance are fair and reasonable. According to the Board, the health insurance plan needed to be changed and the Union received adequate *quid pro quos* for the changes.

As to the need for change, the Board reports that the Board's insurance premiums increased 236% in a matter of just 9-years. Major factors in the increases are perceived as increased usage of medical services and prescription drugs. The Board believes its proposed changes are specifically designed to deal with these problems.

The Board described those proposed changes as including a PPO plan with increased deductibles and prescription drug, office visit, and emergency room visit co-pays. The Board justifies these changes as based on the high cost of health insurance.

The Board is dismissive of the Union's contention at hearing that it would be responsible for additional change in the co-insurance provision, for the new plan indicates that the employee would pay no co-insurance when he or she chooses to visit an in-network provider. The Board says the employee would incur additional cost only when choosing an out-of-network provider.

The Board alleges that rejection of the tentative agreement kept the board from implementing the new health insurance plan in 2003 and realizing any savings. Indeed, according to the Board, it has paid more than it anticipated due to high 2003 insurance premiums under the current plan.

The Board points out that the Board's offer states that the employees are responsible for any increase over the 2003 insurance premium amounts. That language, says the Board, was contained in the tentative agreement and was predicated on the view that the actual health insurance increase would be quite small based on moving to the PPO plan and the increased 2004 prescription drug co-pays.

But, says the Board, since the health insurance switch did not occur in 2003, under the Board's final offer employees will be liable for any increase over what the Board actually paid in 2003.

The Board views this to the Union's advantage. "Under either Final Offer, employees will switch to a PPO Plan with deductibles and co-pays (the amount of the drug co-pays in 2004 are undecided) and the total premium amount will be less than what it will be under the current health insurance plan."

According to the Board's calculations, under the current health insurance plan the 2004 premiums are \$810.97/month for single coverage and 2223.72/month for family coverage. Under the Union's proposed plan (with \$5/\$10 prescription drug co-pays in 2003-04) the 2004 health insurance premiums are \$736.01/month for single coverage and

\$2018.16/month for family coverage. Under the Board's proposed plan (with \$10/\$20 prescription drug co-pays in 2004) the 2004 premiums are approximately \$719/month for single coverage and \$1972.75/month for family coverage.

The Board's calculations continue. In 2003, the Board contributed \$613.34/month towards single coverage and \$1681.80/month for family coverage. Under the Union's Final Offer, the Board finds employees paying \$73.60 for single coverage (90% of \$736.01) and \$201.82/month for family coverage (90% of \$2018.16) in 2004. Under the Board's Final Offer, in 2004 employees would pay \$106.11/month for single coverage (\$719.45 minus \$613.34), and \$290.50/month for family coverage (\$1972.75 minus \$1681.80).

Based on the foregoing, the Board calculates the difference between the two final offers to be approximately \$30/month.

The Board contends that the Union's rejection of the tentative agreement cost the Board a great deal of time and money. The Board believes it is only fair that the Union share some of the costs that resulted.

Finally, the Board argues that its external comparables strongly support its health insurance offer. The Board points out that all of the external comparables have deductible and/or co-pays and believes that more and more employers are switching to health insurance plans with co-pays and deductibles to lower premium costs.

The Board also points out that compared to its comparables, the HSC's health insurance plan is very expensive. Under either Final Offer, the single health insurance coverage for 2004 for HSC bargaining unit employees is the most expensive. Under the Board's Final Offer for 2004, only family health insurance coverage for Forest County employees is more expensive.

The Board calculates the employee premium contribution under the Board's Final Offer to "be around 15%." The Board notes that employees at the Clark County Health Care Center contribute 15% toward their health insurance premiums, and computes the average employee contribution for health insurance in the Board's comparables to be about 90%. The Board argues this it is not overreaching in light of the money the Board lost by the rejection of the tentative agreement and the *quid pro quos* offered by the Board.

Finally, the Board argues that switching to 26-pay periods is not only reasonable, but is supported by the its external comparables. The Board notes the current system of 24-pay periods has caused confusion for many employees, particularly the bookkeeper. It offers an example: if the last day of the pay period falls on a Friday, employees have until Monday to submit their time sheets. This allows only one day to check and calculate each time sheet in order to complete payroll processing in a timely manner. But other employees also have difficulties with the current 24-pay period schedule. Some forget to turn in their time sheets on the 5th and 20th days of the month. Moreover, a consistent 75 hour pay period would allow better weekend scheduling for Koinonia employees.

The Board notes that most of its comparables are now on a 26-pay period schedule. The Board argues that a change to a 26-pay period system does not require a *quid pro quo* and offers arbitral authority in support of this contention.⁹ The Board claims that it offered the Union *quid pro quos*, notwithstanding.

Finally, the Board urges that requiring all employees to have direct deposit is reasonable. The Board argues that this is both a cost saving measure as well as one that would stop liability issues inherent in the payroll clerk driving around delivering paychecks. In addition, it would insure timeliness of paycheck delivery. The Board notes that approximately ½ of the HSC employees have voluntarily agreed to participate in direct deposit.

The Board believes that Factor 7r-c¹⁰ supports selection of its Final Offer. Based on the economic situation of the Board, the local economic conditions in the three underlying counties, and the Union's rejection of a reasonable tentative agreement, the Board urges that the interests and welfare of the public dictate selection of the Board's Final Offer.

The Board notes it is not making an "inability to pay" argument, but points out that it is plagued by financial constraints. Some are created by an increase in court-ordered placements. Others are created by a decrease in state and community funding while costs have continued to rise. The Board points out it has used significant amounts of its reserve to cover costs for the past few years. As a result of budget cuts by funding sources, the Board also has had to make cuts in its budget, including staff and services reductions. Although the Board could request more money from the three funding counties, based on the recommendations of the county board members who also sit as members of the Human Services Board, it decided not to, for the counties, also, are struggling with budget problems.

In summary, while money to fund the Union's Final Offer can be found it will probably result in further cuts and potential layoffs.

In addition, the Board argues that the economic condition of Forest, Oneida and Vilas Counties do not support the Union's Final Offer. These counties are also feeling the effects of a troubled economy, says the Board, pointing to local unemployment rates that top national and state averages. Cities within those counties, especially Rhinelander, where the HSC is located and most HSC employees reside, has experienced business closings and layoffs. For instance, in 2002, Precision Twist Drill laid off approximately 200 employees.

Finally, the Board argues that the interest and welfare of the public is not served by allowing the Union to "flippantly disregard all of the work that went into the Tentative Agreement" and reject it.

⁹ When the comparable fully support the position of the party seeking the change, the need for a *quid pro quo* is minimized if not eliminated. Rhinelander School District, Dec. No. 27136-A (Vernon, 9/21/92).

¹⁰ This factor [Wis. Stats. 111.70(4)(cm)7r-c] mandates consideration of the interests and welfare of the public.

The Board also believes its Final Offer is supported by Factor 7r-h¹¹, and asserts that the overall compensation of HSC employees offers both reasonable wages and a generous package of benefits. The Board notes that it offers its HSC employees dental insurance and pays ½ of the premium in contrast to most of the external comparables. The Board also pays 100% of the employees' retirement contributions, and contributes .5% of an employee's salary towards income continuation insurance. Few of the Board's external comparables offer these benefits. The Board further believes it is very competitive in terms of vacation, sick leave, holidays, and retirement..

The Board acknowledges that the Consumer Price Index, though one of the factors mandated for consideration¹², is not a decisive factor in this case. Nonetheless, the Board presents figures in support of its belief that the Board's Final Offer exceeds the North Central States CPI.

In October 2003, the CPI the North Central States was 0.7%. The Board calculates the total package cost of its Final Offer at 6.58% in 2003, parenthetically noting that it would have been a total package increase of 3.8% if the health insurance plan had been implemented in 2003. The 2004 total package increase, when compared to what was actually paid in 2003 is -0.38%. (Savings are created by switching to a PPO in 2004.) The 2004 total package increase, when compared to the Board's 2003 Final Offer, amounts to 2.29%.

The Board also offers its calculations on the costing of the Union's Final Offer. According to the Board, the Union's total package increase for 2003 as proposed in its Final Offer amounts to 6.58%. The Board computes the cost of the Union's total package increase for 2004 as reflected in the Union's Final Offer to be 4.25%. Board figures find the 2004 total package increase, when compared against the Union's 2003 Final Offer to be 7.05%.

In summary, the Board finds the total package increases for under both Final Offers to be identical in 2003. It further reports that the Union's Final Offer exceeds the CPI by a larger margin than does the Board's for 2004.

Union

In the Union's view this dispute is unmistakably “. . . a dispute about health insurance, specifically, what is a reasonable contribution rate for employees and employers.” In general, the Union asserts that its Final Offer is more reasonable than that of the Board and is supported in the applicable factors mandated in Wis. Stats. 111.70(4)(cm)7.

The Union finds several factors inapplicable. Specifically, the Union sees no evidence in the record that the Employer would be prevented by state law or directive

¹¹ This factor [Wis. Stats. 111.70(4)(cm)7r-h] requires the arbitrator to consider the overall compensation presently received by municipal employees, including wages, benefits, and stability of employment.

¹² Wis, Stats/ 111.70(4)(cm)7r – g.

from implementing either Final Offer (Sec. 111.70(4)(cm)7. Neither does the Union find any record evidence that requires consideration of subs. 7r-a,7r-b, and 7r-i.¹³

The Union cites Arbitrator Weisberger's explanation in Lincoln County (Decision No 55700) as an interpretative guide to factor¹⁴ 7g to which arbitrators are directed to give "greater weight."

The Union quotes Arbitrator Weisberger:

"Given the unambiguous and mandatory statutory language of that section, the undersigned believes that she must give 'greater weight' to the data submitted in this proceeding which indicates that local economic conditions within Lincoln County are sufficiently favorable to support the Union's final offer (in addition to the County's final offer) even though she also believes that this statutory factor alone does not mandate selection of the Union's final offer."

Applying that factor to the instant matter, the Union argues that the economic conditions in Forest, Oneida and Vilas Counties "show that the local economy is doing well." In support of this argument, the Union notes:

"There is a steady growing population and a vibrant construction industry. The three county area has a diverse economic base, including tourism, industrial, and natural resources. The population has increased faster than the state average for the past decade."

The Union also cites improving per capita income for each of the three counties in the last several years and increasing per capita land values in each of the three counties as further evidence of a healthy local economy.

The Union next considers Factor 7r-c¹⁵, which it believes also favors the Union's Final Offer. This factor speaks to the interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement. The Union argues that each of the three counties involved herein has the ability to pay for the Union's offer, as evidenced by the low rank in levy each shows when compared statewide to other counties. Each of the three counties shows significant space between its legally allowable operating tax levy and its actual operating tax levy.

¹³ Subs. 7r-a inquires as to the lawful authority of the municipal government; subs. 7r-b refers to any stipulations of the parties, and 7r-i requires consideration of any changes of any factor circumstances while the interest arbitration case is pending.

¹⁴ Factor 7g directs that consideration and greater weight be given "to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r

¹⁵ Factor 7r-c directs consideration of the interests and welfare of the public and financial ability of the unit of government to meet the costs of any proposed settlement

The Union further predicts that selection of the Board's Final Offer would create turnover in the ranks of HSC employees as they seek a "fairer deal," and this would not be in the public interest.

The Union demonstrates that from 1985 through 1992, annual county board contributions from the three counties remained constant, amounting to a total of \$568,520. (Union Ex. 9-E) From the decade beginning in 1993, annual county board contributions from the three participating counties more than doubled, reaching a total of \$1,250,000 in 2003. (Union Ex. 9-E)¹⁶

Union exhibits also recited that 2003 contributions from the three supporting counties ranged from 4.6% (Vilas) to 5.9% (Forest). Oneida County's contributions amounted to 5.8% of its total budget.¹⁷ Thus, the Union argues that the counties contributions are modest when compared to HSC's total operating budget and when considered as a percentage of the annual budget of each contributing county.

The Union is critical of the Board's decision to restrict its request for funds to the three counties in late September 2002. Union Ex. 9-E. The Union underscores that from 1986 to the present the Board failed to request any increase in county contributions in 11 of 18 years, even though the population of the area served was growing and presumably creating an increased demand for HSC services.

Finally, the Union stresses that "the unwillingness to pay should not be confused with the inability to pay." Even if the HSC Board limited its requests for county contributions in developing the current budget, the Union does not believe this action should be rewarded.

The Union emphatically asserts that in applying Factor 7r-e¹⁸, there are internal comparables to be considered. The Union argues that HSC employees share a special relationship with the employees of each of the three contributing counties in that:

- 1) Tax revenues from the three counties fund at least a portion of HSC's operating expenses;
- 2) The Human Services Board and respective county boards of the contributing counties share many members;
- 3) The workers of the HSC perform similar duties as workers in each of the contributing county courthouses, both clerical and professional.

¹⁶ For one-half of the decade (1996-2001) annual county board contributions remained constant at \$845,65. In 2002 they burgeoned by almost a quarter of a million dollars, and in 2003 grew by an additional \$161,000.

¹⁷ Union Ex. 4-C. In dollar amounts, Vilas County contributed \$387,500 to HSC, Forest contributed \$187,500 and Oneida, \$675,000.

¹⁸ Factor 7r-e directs a comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

The Union presents wage data for therapists and custodians “. . . only for the purpose of demonstrating that employees of the Human Services Center are in the normal range or below when compared with employees both locally and (what the Union regards as) the external comparable counties. The Union acknowledges that the three contributing counties and the Board are not the same employer “. . . but neither are they as distinct from each other as they are from, for example, Langlade or Marinette. The Union suggests that if the “more comparables” are considered brothers and sisters, and the “less comparables” are considered neighbors, “. . . then the Human Service Center employees are at least “cousins” of the employees in public employment of each of the three funding counties. From this analogy the Union concludes that the settlements and contractual arrangements for benefits, particularly health insurance in the counties of Forest, Oneida and Vilas, should be given great weight in determining the outcome of this dispute.

The Union asserts that there has been a 38% increase for the cost of health insurance premiums at HSC in the past two years. The Union claims a substantial amount of this would not have occurred if the health insurance plan changes the union proposes in its final offer had been implemented for 2003 and 2004.

The Union calculates that under the Board’s Final Offer, in 2004 each bargaining unit employee would be required to increase his or her current contribution to health insurance premiums of 10% to 24%. According to the Union’s analysis, under the Board’s proposal, in 2004 an employee’s share of the health insurance premium for single coverage would exceed the cost to employees electing family coverage at any of the Union’s comparables. Moreover, the Union argues, even under the Union’s proposal HSC employees will continue to contribute significantly more than employees employed by the Union comparables.

Moving to Factor 7r-g¹⁹, the Union anticipates that the Board will argue that each of the final offers exceeds recent Department of Labor statistics on the rate of inflation. But the Union argues that is an inadequate representation of the effect of the Board’s Final Offer on the cost of living for HSC employees. The Union believes a better measure of the cost of living for a particular area is achieved by consideration of the settlement pattern of the comparables.

The union includes a comparison of wage percentage increases for 11 of the 13 members of the Union’s comparability pool. The comparison purports to show that for 2003 the agreed wage increases for HSC employees (3.25%) were less than wage increases for employees in six of the listed comparables, exceeded wage increases for employees in three of the listed comparables, and equal to employee wage increases in the 2 remaining comparables that were shown. Wage increase data for 2004 was apparently available for only 4 of the 13 comparables and indicated that the agreed 2004 wage increases for HSC employees (3.00%) were one-half of a percentage point less than

¹⁹ Factor 7r-g inquires into the average consumer prices for goods and services, commonly known as the cost of living.

wages increases in 2 of the comparables, and equal to wage increases granted in the remaining 2.

The Union stresses the negative effect selection of the Board's final offer would have on the HSC employees. Constructing hypothetical employees to represent both support staff and professionals, the Union argues that under the Board's proposal for employee contribution to health insurance premiums for 2004, each employee would actually suffer a reduction in compensation. According to Union figures, in the case of the support staff person, the reduction would amount to a paycheck reduction of 1/3rd. For any employee, the Union finds the cost of the family plan would cause a total compensation reduction equal to \$2.86 per hour. For an employee opting for single coverage plus one, the Union computes a total compensation reduction would be equal to \$1.99 per hour. For an employee choosing single coverage, the total compensation reduction would be equal to \$1.04 per hour, according to the Union. These results, says the Union, are grotesque.

The Union perceives support for its position from Factor 7r-h.²⁰ The Union's data finds " . . . nothing extraordinary about the benefits received by the employees of this Union when compared with employees from the comparables (presumably those in the Union's pool). Paid holidays, sick leave accumulation, longevity at 20 years and vacation show HSC employees either very slightly below or slightly above the Union's comparables. In accumulated sick leave payout, HSC employees are shown at a disadvantage compared to the Union's "comparable average." However, the Union acknowledges that other benefits (e.g., dental insurance) exist for HSC employees, but not for Forest, Oneida or Vilas County employees.

The Union first makes the point that the benefits listed are not remarkable for HSC employees when compared to comparable other public employees. The Union follows this with the assertion that a changing the *status quo* to include the Board's proposal as to health insurance contributions from employees would drastically alter the total compensation package of HSC employees.

Finally, the Union urges the arbitrator to give great weight to Factor 7r-j.²¹ The Union points out that these parties have negotiated voluntary settlements for 20 years. Both have proposed significant changes to the health insurance plan design effecting deductibles, co-pays for drugs, doctor visits, emergency room usage, and a change for fee for service or indemnity plan to a preferred provider organization. Notwithstanding these developments, the Union charges, the Board is advocating a radical change with respect to employee contribution to insurance premiums – a change that would have a

²⁰ Factor 7r-h requires consideration of "(t)he overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received."

²¹ Factor 7r-j requires consideration of "(s)uch 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 public service or in private employment."

devastating effect on HSC employees. The Union notes that tentative agreements from 1994 to 2001 in the past in several bargains demonstrate that the Union has agreed with the Employer on ways to help hold in check the rise of health insurance premiums. If those efforts were inadequate, it was a mutual failure on the part of both Board and Union.

The Union devotes little space to the parties' disagreement on the 26-payday cycle and direct deposit issues. The Union finds these disputes pale in comparison to the health insurance issues. As to these issues, the Union simply argues that the *status quo* should not be changed without compelling reason, and claims the Board offered little rationale during negotiations to make the changes it now proposes. According to the Union, the *status quo* remains more reasonable.

The Union further argues this case is unlike several recent interest arbitration union losses in Wisconsin where unions were insisting on status quo in the face of significant premium increases. In this case, the Union asserts, it has agreed to significant health insurance modification without demanding or receiving any *quid pro quo*. The Union denies the Employer's contention that there was a *quid pro quo* for Union agreement to insurance plan changes, and argues that any additional improvements that benefited Koinonia employees cited by the Employer helped only a small minority of bargaining unit workers and were already reflected in the courthouse units of two of the three funding counties.

The Union accuses the Board of attempting to achieve a result in arbitration that it could not get at the bargaining table.

In conclusion, the Union urges that the tentative agreement previously reached in this matter should not be regarded as significant. According to the Union, after the tentative agreement was negotiated, a disagreement developed over whether the employee contribution to health insurance proposal for 2004 would sunset with the expiration of the term of the contract. The Union also asserts additional interpretation differences of opinion on other language items of the tentative agreement also arose. The Union vigorously disputes the Board's contention that its current Final Offer is the same as the understood terms of the Tentative Agreement. The tentative agreement was overwhelmingly rejected by the Union membership on March 6, 2003, the Union explains.

OPINION AND DISCUSSION

Comparability Pool

The parties differ not only on the composition of the comparability pool, but as to whether one should be created.

Absent a wage dispute that produces data comparing wage levels and increases, the Board suggests that comparing only the proposed Final Offer benefits in this case

with the established benefits of other bargaining units will be incomplete and may be misleading. In the alternative, if the arbitrator prefers a comparability pool, the Board proposes a pool consisting of the courthouse employees of Forest, Oneida and Vilas Counties, the professional bargaining unit employees of Oconto, Marinette and Taylor Counties, and North Central Health Care, Clark County Health Care Center, and Petersen Health Care Center (but for health insurance comparison purposes only).

The Union agrees with the inclusion of the courthouse employees of Forest, Oneida and Vilas Counties in the comparability pool for comparison with the non-professionals in the HSC bargaining unit. The Union further nominates all represented bargaining units in Iron, Price, Taylor, Lincoln, Langlade, Oconto, Marinette, and Florence Counties, plus the City of Rhinelander and the Rhinelander School District, arguing all (except Taylor County) are contiguous to the three counties that are Sec. 51.42 partners in the operation of HSC.

Given this broad disagreement on the issue of a comparability pool, it is tempting to accede to the Board's suggestion that none be established. For even if an attempt to create a set of comparables is made, as the Union points out, such task is complicated by two facts: 1) HSC is partially funded by three counties, not one, and 2) the bargaining unit in this case consists of both professional and non-professional or support staff.

Undeniably, in this matter only benefits – specifically health insurance benefits, not wages – are the main items in dispute. In fact, neither party argues that wage levels or increases are of any particular relevance, except, perhaps, that they are neither unusually high nor unusually low. Yet, I am not persuaded that these circumstance preclude some appropriate comparisons as to health insurance benefits from being made that may offer helpful guidance in resolving this dispute.

I begin with a certain predisposition to include comparables on which the parties are in agreement.

Moving from this starting point, I also believe that even though this case involves a bargaining unit that mixes professional employees with non-professionals, external comparisons with other employees should not be mixed. Professionals should be compared with professionals of similar education and expertise; non-professionals should be compared with their non-professional colleagues.

I find desirable at least a general similarity of purpose and function of the employing unit proposed for use as a comparable with that of the subject employer. School districts, for instance, cannot normally be fairly compared to hospitals, even though each employs both professionals and non-professionals and each serves an essential purpose in the community.

I believe a reasonably compact geographic proximity is also a helpful ingredient of an appropriate comparability pool. Customs, amenities, and expectations, as well as physical and economic conditions and trends often vary in different areas, which, of

course, can distort comparison attempts. Geographically proximate comparables, on the other hand will normally share demographic, population, economic, and environmental characteristics that allow more realistic comparisons to be made.

Finally, in my opinion, consideration of union status is necessary in establishing an appropriate pool of comparables. While geographically proximate public or private sector enterprises that employ unrepresented employees may offer helpful insights into local economic conditions, I am not persuaded that it is equitable to compare conditions and benefits that have been unilaterally awarded by an employer with those that have been bargained collectively.²²

Consistent with the foregoing, for the purpose of comparing benefits received by comparable non-professionals, I am including all of the Board's nominations with the exception of the Clark County Health Care Center and the Petersen Health Care Center. In my view, the Clark County operation, located in Central Wisconsin, is simply too geographically remote from the Health Service Center, located in Northeastern Wisconsin, to offer data of meaningful assistance. The data from the Rhinelander-based Petersen Health Care of Wisconsin may be of some value as a means of reflecting a facet of local economic conditions in the private sector health-care industry, particularly since the clinic is listed as one of Oneida County's top ten employers.²³ However, given the unrepresented status of the Petersen workforce, the data's utility as a comparable is not compelling. North Central Health Care Center is included for health insurance purposes, only, and only as to the non-professionals.

Neither does the Union persuade me that the City of Rhinelander and the Rhinelander School District should be added as comparables to this pool. As the Board notes, each of these municipalities functions under an entirely different statutory scheme than the HSC, has dissimilar funding mechanisms, and fulfills entirely different purposes.

Thus, the table of comparables for the non-professionals that I will consider consists of the courthouse units of Forest, Oneida and Vilas Counties, along with North Central Health Care Center. It is admittedly an unusual pool, somewhat small, but having elements of both internal and external comparables — not inappropriate, perhaps, for use in conjunction with a relatively unusual bargaining unit that mixes both pros and non-pros.

Also consistent with my views on appropriate comparability pools, for the purpose of comparing benefits received by comparable professionals I include the professional bargaining unit of Oneida County, as well as those in Forest and Vilas. As suggested by the Board, I also include the professional units employed by the adjoining

²² In accord, Merton School District # 9, Dec. No. 27568 (Baron, 8/30/93): "In addition to language issues, the economics of wages and hours are better analyzed in light of what has happened at the bargaining tables of organized school districts than with conditions of employment that have been unilaterally imposed by an employer."

Also in accord, Potosi School District, Dec. No. 19997-A (Johnson, 4/08/83).

²³ Board Exhibit 39

counties of Oconto and Marinette. As also suggested by the Board, I further include the Taylor County professionals; although Taylor County does not abut any of the three counties that fund HSC, it is within relatively easy driving range of Rhinelander. I exclude the Clark County Health Care Center on the grounds that it lacks sufficient geographic proximity to HSC.

I exclude North Central as a comparable for the professionals. Like HSC, the North Central operation is under the statutory aegis of Sec. 51.42. One of its two functions is explicitly acknowledged by the Union to mirror operations at HSC. However its professionals are not union-represented, and their benefits appear to be limited to those unilaterally imposed by their employer. For this reason, even if included in the list of professional comparables, the instructive value would be quite limited. I fully recognize that including North Central in the comparability pool for non-professionals, but excluding it as a comparable for professionals, may lead to mixed results when applied to a mixed bargaining unit. On the other hand, equity of comparability may be better served by results not as neat and orderly as we might normally prefer than by either a complete abandonment of North Central as a comparable or its total inclusion for both professionals and non-professionals.

My inclusion of Oneida County with the pool of professional comparables is based on several factors: 1) HSC is located in that county's seat (Rhinelander); 2) many of the HSC employees reside in the Rhinelander area; 3) at hearing, HSC Director Ann Cleereman observed that there is a similarity between the work performed at HSC and that done at the Oneida County Social Services Department.

As for the inclusion of Forest and Vilas, both are joint Sec. 51.42 partners with Oneida in HSC operations; accordingly, intuition and common sense suggest that if there is a relationship between the professionals employed by Oneida County and HSC, it is likely that a professional relationship exists between the professionals of Forest and Vilas Counties and those of HSC, as well.

Discussion and Opinion on Contract Issues

With the Comparability Pool(s) thus established, I move to consideration of the four-disputed contract issues. Each party was well represented and offered extensive and thoughtful arguments.

Pursuant to the provisions of Wis. Stats., 111.70(4)(cm)6.d, I am required to adopt without further modification the final offer of one of the parties on all disputed issues

26 Pay Period Cycle

The Board argues that switching to an annual 26-payday cycle is reasonable and would benefit both parties. The Board notes that the current 24-payday cycle has caused confusion for both employees required to turn in timesheets and the bookkeeper required

to verify calculations. Switching to a 26-payday cycle would greatly reduce the burden on the payroll clerk.

The Board notes that a majority of the external comparables supports a shift to the 26-payday cycle. Of the comparables to be utilized herein, only North Central deviates from the practice of paydays every other Friday.

In response the Union argues merely that the *status quo* (24-payday cycle) is more reasonable than the shift proposed by the Board and complains that the Board offered little rationale for making the change.

On this issue I find the Board's offer the more reasonable of the two. Clearly, the Board is in a better position to assess the economies that would result from a change. Bargaining unit members are not being asked for any economic concessions. What some bargaining unit members may regard as an inconvenience appears to be nothing more than a human resistance to change. Any inconvenience to employees in their personal budgeting would, in my view, quickly fade, as the employees became accustomed to the new payday schedule.

Furthermore, as the Board points out, the change is supported by a great majority of the external comparables. But where as here, the Employer's proposed change 1) is relatively small, 2) will result in greater effectiveness or efficiency of the operation, and 3) involves no economic concessions by employees or significant or long-lasting inconvenience to them such proposal also appears to be in the interests and welfare of the public.

The Board also argues that given the support of the comparables a *quid pro quo* is unnecessary. I agree,²⁴ particularly, again, where, as here, the proposed change 1) is relatively small, 2) will result in greater effectiveness or efficiency of the operation, and 3) involves no economic concessions by employees or significant or long-lasting inconvenience to them.

Based on these reasons, the circumstances of this case and the arguments of the parties, I find the Board has demonstrated sufficient cause for modifying the *status quo*. Accordingly, as to this item I believe the proposal of the Board for a 26-payday cycle is more reasonable than the objections posed to it by the Union. The Board's proposal is justified by not only the comparables cited by the Board but the interests and welfare of the public, as well.

Direct Deposit

The Board asserts that about ½ of the bargaining unit employees now avail themselves of the opportunity of direct deposit. The Board would require that all employees do so.

²⁴ In accord, Rhineland School District, Dec. No. 27136-A (Vernon, 9/21/92).

The Board justifies its proposal on the grounds that full participation in direct deposit by all employees would create greater efficiency, save time, save costs and reduce potential HSC liability (if payroll clerk involved in an accident as she makes her required drive to 5-banks).

The Union's response is to propose that only new employees be required to participate in direct deposit. Existing employees would be free to participate or not.

Although the Union's proposal is responsive to the Board's concerns on this issue, it is not clear that any greater efficiency would be created unless the entire bargaining unit were required to participate in direct deposit. The most that can be said for the Union's proposal is that when the employees not favoring deposit retire or otherwise leave employment with HSC and are all replaced with new employees, direct deposit for all will be the rule.

Conceivably, requiring even the objectors to participate in direct deposit could create greater inconvenience to the personal budget procedures of some than, say, shifting to a 26-payday cycle. At the same time, a direct deposit requirement involves no economic concessions by any employees, is presently found convenient by approximately ½ of the bargaining unit members, and presumably could be adjusted to with relative ease by those not opting for it at the present time.

The Board claims to have provided *quid pro quos* for this. Given the relatively minor and transitory inconvenience to bargaining unit members who would be required to participate in direct deposit under the Board's proposal, and the cost-savings that would result, I am not sure a *quid pro quo* is necessary, even absent a showing of support by the comparables.

In any event, in my opinion, the Board's proposal requiring direct deposit participation by all bargaining unit employees is reasonable and adequately supported by consideration of the interests and welfare of the public. The Union's proposal as to this item is not necessarily unreasonable, but the Union does not adequately explain why it is preferable to the Board's.

New Health Insurance Plan

A. Prescription Drug Co-Pay for 2004

The parties have already agreed to substantial changes in the employees' health insurance plan. The principal change involves a shift from the current "indemnity" or "fee for service" plan into a Preferred Provider Organization (PPO). Deductibles have increased, as have out-of-pocket maximums. Employees will pay a small fee for doctor's office visits and a larger one for emergency room visits (unless the emergency room visit leads to hospitalization).

Under the agreement to the new plan already reached by the parties, co-pays for prescription drugs would also increase. In 2003, the parties have agreed to co-pays that would have amounted to \$5 for generic drugs and \$10 for brand-name drugs. (The Union had also proposed a \$7 co-pay for formulary drugs, but the health insurer's plan does not provide for formulary drugs. Under that circumstance, coupled to the Union's agreement to the items enumerated in the two preceding paragraphs, I regard the parties in agreement as to prescription drug co-pays for 2003.)

The only part of the new PPO plan with which the parties are not in accord appears to be the prescription drug co-pays for 2004. The Board proposed an increase in the co-pays to \$10 for generic drugs and \$20 for brand-name drugs. The Union proposes to continue the prescription drug co-pay agreement (\$5/\$10) that it proposed for 2003.

The Board estimates premium savings of \$16.56/month for single health and \$45.41/month for family health if the Board's co-pay proposal were adopted.²⁵

Under this circumstance, my initial impression is that neither of the respective co-pay proposals of each party are unreasonable. Each side initially reacted to the problem of drastically escalating, exorbitant health insurance costs – a problem hardly limited to Northeast Wisconsin²⁶ with a balanced, reasonable solution that each could support. Both Board and Union seem to recognize their mutual interests would be served by a reasonable solution that each could support. The disagreement they now encounter on a relatively minor element of the new insurance plan should in no way discredit the hard work each party demonstrated in reaching an almost total consensus.

An arbitrator's task is said by some to be an attempt to place the parties in the same position they would be if they had been able to achieve a voluntary settlement at the bargaining table.²⁷ Based on the evidence and arguments submitted as to this item, however, I cannot predict with any degree of certainty which co-pay proposal, if either, would have prevailed if the parties had been able to reach agreement on a solution to this issue. Indeed, given the reasonable nature of each proposal, it is entirely possible that the parties would have found a solution somewhere in-between.

The statutory criteria relating to "comparability" appear to have the most direct application to assessing the competing proposals. Although the 2004 comparables for the non-professionals (Forest, Oneida and Vilas Counties, North Central Health Care Center show a somewhat mixed result, in my view a slight preference for the Board's proposal may be demonstrated: Forest County has prescription co-pays of \$5 (generic), \$10 (brand name); Oneida County shows \$10.60 (generic), \$15.90 (formulary), \$31.80 (brand name); Vilas County apparently has no prescription drug co-pay; North Central shows

²⁵ Board's Initial Brief at pp. 24-5.. The Board indicates that the premium cost if the Union's co-pay proposal were adopted for 2004 would be \$736.01/mo.(single) and \$2018.16/mo. (family). The Board's proposed co-pays would result in "approximate" premiums of \$719.45/mo. (single) and \$1972.75/mo. (family) for 2004.

²⁶ Employers Exhibits 46 – 82 consist of credible news media and industry reports that describes in some detail the alarming proportions of the health insurance crisis in Wisconsin and nation-wide.

²⁷ Burnett County (Professionals), Dec. No. 29204-A (Petrie, 8/14/98)

\$10 (generic), \$20 (formulary), \$40 (brand name).²⁸ Thus, even Forest County has a higher co-pay requirement than the Union's proposal; Oneida County's co-pay is somewhere between the two proposals; Vilas County shows no co-pay requirement, and North Central's co-pay requirement exceeds even the Board's proposal.

2004 comparables for the professionals show the same results for Oneida County professionals as exist for the non-professionals.²⁹ Co-insurance in the Marinette County agreement with its professionals is listed merely as "Plan H" and "Plan W" options at 2.4% and 5% without further information; the labor agreement between Oconto County and the Oconto County Professionals contains no information as to co-insurance; the labor agreement between Taylor County and the Taylor County Professionals employed in the Courthouse and Human Services Department includes a prescription drug co-pay provision of \$5 (generic) and \$10 brand name.³⁰ Thus, information as to the co-pay required of Marinette County professionals appears to be inconclusive, was not provided for Oconto County, is slightly higher than the Union's proposal in Taylor County and somewhere between the two proposals for Oneida County. The prescription drug co-pays applicable to professionals in Forest and Vilas Counties are the same as reported for the non-professionals.

There does, however, appear to be \$16.56/mo.premium savings for single health and \$45.31/mo.premium savings for family health if the Board's prescription drug co-pay were selected. Although not always possible or desirable, some of the higher co-pays can be avoided, of course, by ordering generic, as opposed to brand name drugs.

The impact on the bargaining unit of the Board's proposal on this item is not argued and is difficult to forecast. Although not compelling, the comparability pools for the non-professionals at least may suggest a slight advantage for the Board's proposal. Based on the relatively small premium advantage to the Board's proposed co-pays, I find the Board's proposal on this item to have a slight advantage in working towards the interest and welfare of the public.

B. Contribution to Health Insurance Premiums

The final issue between the parties – contribution to group health insurance premiums – proved to be the ultimate deal-stopper. Absent this issue, optimism that the parties would have cobbled together a ratifiable voluntary settlement is not unreasonable.

The competing positions as to this item are quite clear. Not in dispute was a new health insurance plan (Preferred Provider Option). What was in major dispute was the premium contribution percentage applicable to each party.³¹ For 2003, the Board offered to maintain the premium contribution ratio in effect for the "fee for service" insurance

²⁸ The figures are extrapolated from Employer's Exhibit 27.

²⁹ Employer's Exhibit 27.

³⁰ These figures and information are extrapolated from labor agreements for Marinette, Oconto and Taylor Counties included as Union Exhibits 11-H, 11-I and 11-K, respectively.

³¹ Compared to this issue I regard the prescription drug co-pay for 2004 as relatively minor.

plan. As set forth in the parties' 2002 labor agreement,³² the Board was responsible for payment of 90% of the health insurance premiums for that plan, and the insured bargaining unit employees were responsible for the remaining 10%.

But for 2004 the Board proposes that its contribution be limited to 90% of the revised health insurance premium after implementation of the Preferred Provider Option insurance plan. In the event the premium decreases at any time, the Board contribution will be 90% of the reduced premium. In the event the premium increases at any time, the employee will be responsible for all increases in premium above the 90% contribution by the Human Services Board based upon the premium for the newly revised level of insurance benefits.

The Union's counter-proposal seeks to maintain the existing contribution percentages, with the Board paying 90% and the employee 10%, regardless of premium increases or decreases.

With the rejection of the tentative agreement by the Union, no successor labor agreement has been in place for 2003-04, and a contractual hiatus between the parties has resulted. Thus, the PPO insurance plan has not been implemented, the "fee for service" health insurance plan provided in the 2002 agreement has continued in effect, premiums have increased for each party, with the Board continuing to contribute 90% of the health insurance premiums, and employees, the remaining 10%.³³

Actual figures presented are illustrative. The Board describes the competing offers in these terms:

"In 2003 the employee paid \$68.15/month towards single health insurance premiums and 186.67/month for family health insurance premiums under the current health insurance plan. (Emp. Ex. 26.) Under the Board's Final Offer, employees would pay \$106.11/month (\$719.45 minus \$ 613.34) for single health insurance and \$290.50/month (\$1972.75 minus \$1681.80) for family health insurance in 2004. (Emp. Ex. 27.) Under the Union's Final Offer, employees would pay 73.60/month (90% of \$736.01) for single health insurance and \$201.82/month (90% of \$2018.16) for family health insurance. That is a difference of \$30/month between the two Final Offers."³⁴

The Board adds:

³² Board's Exhibit 92; Union's Exhibit 1. Each exhibit, of course, is identical.

³³ The Board indicates that under the current (fee for services) insurance plan, 2004 monthly premiums are \$810.97 for single health and \$2223.72 for family health. Assuming the 90-10 premium contribution split between Employer and the employees has remained in place, employees are currently contributing to their month health insurance premiums in the amounts of \$81.97 (single) and \$222.37 (family).

³⁴ Board's Initial Brief at p. 24 and Board's Reply Brief at p. 6.

Even though both Final Offers call for the new health insurance plan to be implemented in 2003, that is impossible. If the new health insurance plan had been implemented in 2003, the 2004 premium rates would most likely be even less after a full year of usage at the lower levels. Unfortunately, those savings cannot be realized by the Board or the Union anymore. Employees now have to face the consequences of not ratifying the Tentative Agreement and share the costs the Board has been forced to absorb over the last year.”³⁵

In its Reply Brief, the Union expresses no disagreement with the numbers presented by the Board, but points out that in 2004 the Board’s premium contribution proposal for family coverage will cost employees \$1064 more than under the Union plan. The Union argues that the Single + 1 and Single coverage premiums will see similar increases.

According to my calculations based on the figures presented by the Board, the Board’s proposal to cap its premium contribution will result in a 56% premium contribution increase for the employees. This contrasts markedly with the 8% premium contribution increase for employees under the Union’s premium contribution proposal.

Currently, of course, employees are contributing 10% of the health insurance premium cost. Under the Union proposal that percentage would remain constant unless modified by future negotiations. But under the Board’s premium contribution proposal, again based on the figures supplied by the Board, the employee contribution for both single and family health coverage would increase in 2004 from the current 10% to 15% and the Board’s share of the contribution would decrease from 90% to 85%. The Board’s contribution percentage, of course, would continue to decrease in future years if premium rates were raised, without any need to bargain further (though the Board’s actual dollar costs would remain constant).

I recognize the Board’s contention that it suggested language indicating that the side letter contribution arrangement would not become the *status quo*. But neither was the Board willing to allow the contribution arrangement to revert back to the 90-10 split. According to the Board, this would put each party on equal ground during future negotiations as to a successor agreement. As a practical matter, however, it appears that adoption of the Board’s proposal would achieve at least a continuation of the new arrangement during any future contract hiatus period, with whatever bargaining leverage that may or may not provide

Even if the comparables suggested this kind of percentage adjustment, I believe it inequitable to require this great a change to individual premium contributions in such a relatively short period of time – particularly when benefits have been trimmed. I note, however, that as I review the insurance contributions by employers and employees

³⁵ Ibid.

included in both the professional and non-professional comparability pools I am using in this case, the only comparable that nears this percentage is North Central Health Care.³⁶

Indeed, I find no comparable in either of the comparability pools I am using (and, for that matter, no comparable cited by either party) that attempts to freeze or cap the employer's contribution to a dollar amount. The Board appears to be swimming against the current provided by the comparables in this instance.³⁷ This is not to say that a premium contribution modification of this type cannot be achieved in future negotiations, but it seems to me that will require either more identifiable and/or acceptable *quid pro quos* than were recorded in this instance or a more felicitous set of comparables.

The Board insists that allowing the Union to reject the tentative agreement reached by the parties is contrary to the interest and welfare of the public. I do not agree for several reasons.

First, although the Board makes a creditable case that its financial wells are not flowing as abundantly as in earlier years resulting in some cutbacks, it acknowledges that it has the current ability meet the costs of the Union proposal. Thus, Statutory Factor 7 (to which "greatest weight is to be accorded) is not applicable to this dispute.

Certainly the Board presents some evidence that the Rhinelander community has shared in some of the economic problems of many other communities in the State.³⁸ But the problems reported appear to be counterbalanced by a strong new housing and construction industry, increased populations, increased per capita income, and increased per capita land values.

Moreover, the interest and welfare of the public is benefited by a fairly compensated, stable work force, particularly in as sensitive an operation as the public

³⁶ Board Exhibit 26 shows North Central contributes 86.45 to employee health insurance premiums (apparently for both professionals and non-professionals). The same exhibit lists Oneida, Vilas and Forest Counties as contributing 95%, 100%, and 92.5% respectively for non-professionals. According to Union Exhibits 11-H and 11-I, Marinette and Oconto Counties respectively contribute 95% and 90% of the health insurance premiums for their professionals. Union Exhibits 11-B and 11-C, show Oneida County contributing 95% of the premium cost for its social workers and professional public health workers, Union Exhibit 11-K lists professional employees in Taylor County contributing \$ amounts toward health insurance coverage: \$75/mo.(family), \$64/mo. (single + 1), \$30/mo.(single).

³⁷ The comparables also provide a realistic balance to the CPI percentage that the Board correctly cites as less than each Final Offer. See City of Oak Creek, Dec. No. 30398-A (McAlpin, 5/5/03); Forest County, Dec. No. 29552-A (Tyson, 11/27/99). In addition, it appears that if either Final Offer been able to be implemented in early 2003, the CPI comparison with the total package percentage increase would be more favorable.

³⁸ The Board cites HSC budget cuts that have resulted from constriction of state aids and other grants, claims unemployment rates that top national and state averages, and note Precision Twist Drill recently laid off approximately 200 employees. Yet the unemployment rates cited in Board Exhibits 38-40 do not reflect the same degree of bleakness. For instance, unemployment in Forest County is reported at 4.3%, Oneida, 3.8% and Vilas, 4.3%. The same exhibits note that an unemployment rate "of around 6% is not unusual for a northern Wisconsin county, that the percentage of persons in the labor force but not working in Oneida County is much lower than in historical levels in the '70s and '80s, and the unemployment percentage in Vilas County "is still much lower than in the 1970s and 1980s."

health concerns addressed by HSC. Although the Board correctly identifies as speculative the Union's argument that the increased employee premium contribution would cause an exodus of employees from HSC, in the absence of far more compelling economic straits than appear to exist in the HSC community, some employees might be sufficiently angered or discouraged to seek employment elsewhere.

I recognize that the delay in obtaining an agreement has cost the Board some premium contribution savings it had anticipated. (I note that bargaining unit members have also contributed more dollars for health insurance policy premiums under the old "fee for service" policy, of necessity continued during the contract hiatus than if the Board had acceded to the Union's proposal to continue the 90-10 ratio.) The Board seems to be arguing that that the Union should absorb a greater share of the cost. In effect, the Board seems to be suggesting that the Union deserves to be penalized for its temerity in refusing to ratify an agreement that contained a provision it did not support.

The Board's frustration with the failure of the Union to ratify is understandable. If the Union had engaged in misconduct I would fully agree. But I believe it inequitable to penalize a party for exercising a legal right – particularly when, as here, it appears to have been exercised in good faith.

In a collective bargaining setting, both Union and Employer negotiators are representatives, not masters, of those they represent. In effect, they are trustees of the best interests of the parties they represent. If either of the principals – that is, bargaining unit members or the Employer's policy makers – believes its representative has exceeded his or her authority, the interest and welfare of the public is best served by allowing a repudiation or rejection of the tentative agreement to which objection is raised. Certainly, objections that lead to rejection of a tentative offer must be rational, reasonable, and in good faith. But the legal authority to ratify a tentative agreement necessarily implies the legal authority to reject it, subject, of course, to long established parameters of good faith bargaining. This is a fundamental cornerstone of union democracy.

In the instant case, I see no violation of any good faith obligations. There appears to have been a disagreement as to the interpretation of the Board's proposal to cap its dollar contributions to employee health insurance premium. The Union explains that its negotiators initially believed the 90-10 premium contribution ratio would be restored at the end of the term of the contract. That was not the understanding of the Board negotiators who wanted to install a permanent dollar cap on its premium contribution. But the intent of the Board negotiators was emphatically rejected by the bargaining unit membership, regardless of how its own negotiators had originally interpreted the proposal. According to Union Exhibit 5-F, the tentative agreement was rejected overwhelmingly by vote of 44 to 5.

The Board argues that it extended certain *quid pro quos* to the Union in exchange for the changes to the Health Care Plan (and, for that matter, the payroll changes). It points to the language changes involving vacation, shift differential and holiday pay for certain workers at Koinonia, along with and additional 2.5% on wages in 2003.

Though the Board may have so intended, the picture is blurred as to Union understanding that these items were specifically being offered as specific inducements to reach agreement on a new health care plan and payroll change. For the items appear to affect only a limited number of HSC employees, whereas the proposed premium contribution alteration would significantly impact virtually every bargaining unit employee. Neither can the notion be discarded that these items now described as “*quid pro quos*” for insurance concessions were offered in the context of what the Union understood to be a responsive proposal to specific concerns that had been raised by the Union. Moreover, neither party identifies these items as unusual when compared to benefits provided by other municipalities in the comparability pools.³⁹

In any event, whether or not Board negotiators regarded these items as *quid pro quos* for Union health insurance concessions, it is not at all clear that Union negotiators did. What is absolutely pellucid, however, is that by vote of 44 to 5, the bargaining unit membership did not.

Based on the foregoing discussion, I believe the *status quo* premium contribution ratio of 90-10 proposed by the Union better meets the statutory factors set forth in Wis. Stats. 111.70(4)(cm)7.

AWARD

Clearly, the issue of premium contribution drives this contract dispute. That issue, compared to the other three, is the dominant one in this case, for it appears to me to have a far greater impact on both the Employer and the bargaining unit members than the other three, combined.

The parties, themselves identify the two health insurance issues as the major ones in this dispute. In considering those issues, I found a slight preference for the Board’s proposal on the prescription drug co-pay for 2004 and a decided preference for the Union’s proposal on the issue of how premium contributions by the Employer and the bargaining unit employees should be shared. On the other two more minor issues (number of paydays and direct deposit of paychecks), I found a preference in favor of each of the Employer’s proposals

However, I am prohibited from determining this dispute on an issue-by-issue basis. I am required by law to adopt without modification the Final Offer of one of the parties. Based on my consideration and assessment of the issues, each of the factors enumerated in Wis. Stats. 111.70(4)(cm)7, 7g and 7r, the evidence submitted, the arguments presented by the parties, the discussion above, and the decided preference I find for the Union’s proposal as to premium contribution, I adopt the Final Offer of the

³⁹ For that matter, consideration of the total compensation received by HSC employees as mandated by Wis. Stats. 111.70(4)(cm)7r-h does not suggest that HSC employees receive benefits or wages that are out of line with those received by other municipal employees in comparable pools. In some cases, HSC employees are a bit ahead, in others a bit behind. Overall, they appear to be more or less in equal balance.

Union as the most reasonable overall and direct that it be incorporated into the parties' collective bargaining agreement for the years 2003 and 2004.

May 18, 2004

A. Henry Hempe, Arbitrator