WISCONSIN EMPLOYMENT RELATIONS COMMISSION
BEFORE ARBITRATOR WILLIAM EICH

IN THE MATTER OF: THE INTEREST ARBITRATION BETWEEN **MARQUETTE COUNTY (HIGHWAY DEPARTMENT)** AND **LOCAL 1740, AFSCME, AFL-CIO**	**DECISION & AWARD** Case 56 No. 63470 INT/ARB-10173 Dec. No. 31027-A

APPEARANCES

For the Union: Bill Moberly, AFSCME Wisconsin Council 40, Madison
For the County: James R. Macy, Esq., Davis & Kuelthau, Oshkosh

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SUMMARY OF DECISION

For the reasons that follow, and pursuant to the applicable provisions of the Municipal Employment Relations Act, I adopt the final offer of Marquette County on all disputed issues submitted for arbitration.

INTRODUCTION

On August 6, 2004, the Commission determined that the parties, Marquette County and its Highway Department employees, had reached an impasse in bargaining within the meaning of § 110l70(4)(cm)6, *Stats*. Accordingly, on August 17, 2004, the undersigned was appointed to arbitrate and resolve the impasse. Hearings were initially

scheduled for December 20, 2004. Around that time, a procedural dispute arose and the hearing was canceled at the parties' request. The dispute was resolved and hearings were held at the Marquette County Courthouse on February 2, 2005. Testimony was taken, and exhibits received, and a schedule was set for the parties to exchange principal briefs by March 25, and reply briefs by April 8, 2005. The schedule was extended at the parties' request.

On April 20, 2005, the County moved to supplement the record with a post-hearing exhibit showing that the County courthouse employees union had ratified a successor contract containing provisions the County maintained were relevant to the instant arbitration. The Union filed a written objection, arguing, among other things, that it would be unfair to allow the exhibit without granting the Union an opportunity to respond. On May 2, 2005, I issued a memorandum decision granting the motion and extending the time deadline for the Union's reply brief until May 18, 2005. On or about that date, the Union stated it did not intend to file a reply brief, and I informed the parties that the record was now closed.

THE PARTIES' FINAL OFFERS

During the parties' negotiation of a successor agreement to the Collective Bargaining Agreement that expired on December 31, 2003, Marquette County and its Highway Employees reached agreement on all issues except wages, health insurance, and sick leave payouts upon separation. The County's final offer proposed:

> [1] Wages: 3% increase plus an additional 10 cents an hour for both years of the contract;
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> [2] Sick Leave Credits Upon Separation: Continue a 50% payout of accumulated, unused sick leave upon resignation and termination for employees hired prior to January 1, 2004. Employees hired after January 1, 2004, would be entitled to the payout upon timely resignation, but not upon termination.
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> [3] Employee Health Insurance Contributions: For all employees hired prior to January 1, 2004, the County proposes continuing to

> pay 95% toward the premiums of regular HMO plans, and 90% toward the Standard or State Maintenance Plan premiums. For employees hired after January 1, 2004, the County would pay proposes paying 85% of the HMO premiums and 80% under the Standard or State Maintenance plans.

The Union made no final offer on insurance. It proposed retaining the sick leave payout language of the prior contract and implementation of a 3% across-the-board increase for its employees.

INTEREST ARBITRATION: FACTORS TO BE CONSIDERED BY THE ARBITRATOR

Interest arbitrators are required by statute, after hearing, to "adopt without further modification the final offer of one of the parties on all disputed issues submitted for arbitration." Section 111.70(4)(cm)6d, *Stats*. The statutory factors governing the Arbitrator's decision—and the manner in which they are to be applied—are set forth in § 111.70(4)(cm)(7), *Stats.*:

> 7. "Factor given greatest weight." In making an decision under the arbitration procedures authorized by this paragraph, the arbitrator … shall consider and shall give the greatest weight to any state law or directive … which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer….
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> 7g. "Factor given greater weight." In making any decision … the arbitrator …shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.
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> 7r. "Other factors considered." In making any decision … the arbitrator … shall also give weight to the following factors:
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> a. The lawful authority of the municipal employer.
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> b. Stipulations of the parties.
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> c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

e. 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.

f. 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 in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost of living.

h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and 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.

THE PARTIES' POSITIONS SUMMARIZED

As a preliminary note, I agree with the parties that several of the statutory factors set forth above are inapplicable here. Neither side has argued, for example, that the "greatest" / "greater" weight provisions of subsecs. 7 and 7g—or the "local authority," "public interest" or "ability to pay" provisions of subsecs. 7r a. and c.—have any

relevance to the issues submitted for arbitration. They agree that this is an "other factors" case under applicable provisions of § 111.70(4)(cm), where the primary questions for resolution—at least on the core health insurance issues—are those of external and internal comparability and consistency, and traditional *status quo* and *quid pro quo* analyses.

The Union centers its health insurance argument on the following proposition: because the County's exposure to rapidly-rising health insurance costs has been largely controlled through voluntary, negotiated agreements between it and the Union, no need exists for further savings in this area—and, as a result, the County's proposal to shift some premium costs to the employees must fail.[1] It also argues that there is no established pattern among the external comparables for the County's sick-leave payout offer.[2]

The County argues first that the terms of both its health insurance and sick-leave payout offers are the same as those voluntarily agreed to by all other internal bargaining units. It stresses the importance of internal consistency and the dangers of disrupting the internal settlement pattern, and it disagrees with the Union's assertions that its health insurance costs have been adequately controlled through the bargaining process. The County says that it has, in addition, provided a *quid pro quo* for the health insurance premium contributions: the additional ten-cents-per-hour wage increase for each year of the contract. Finally, it points out that its wage offer exceeds increases in the Consumer Price Index, that its sick-leave payout proposal is not only supported by the internal comparables, but is also "in line with comparable counties."

DISCUSSION

A. Health Insurance Premiums

[1] The Union also contends that the "two-tiered" nature of the proposal is unsupported by the external comparables.

[2] As indicated earlier, the Union does not argue wages in these proceedings.

The Union begins its argument by noting that, in determining whether a change in the *status quo* is justified, arbitrators have traditionally invoked a four-part analysis, considering: [1] whether there is a demonstrated need for the change; [2] whether the proposal reasonably addresses the need; [3] whether the proposal is supported by the comparables; and [4] the nature of the quid pro quo, if one is offered.[3] According to the Union, the County's offer fails on all levels.

1. T*he Need for Change*

(a) Existence of the Need. The Union maintains that there is no demonstrable need for the County's proposal. It states that, in negotiating their 2002-2003 contract, the parties agreed that the County would switch health insurance carriers—from WPS to the State Plan; and it says that this change "created a real dollar savings for the County of $49,758.12, equaling an eight percent … reduction in the County's health insurance costs from [2002]." (Brief, at 7) The Union acknowledges that, at the same time the County agreed to the carrier change, it also increased its contribution to premiums for employee-selected HMOs from 90% to 95%. The Union states, however: "the fact remains that the parties were able through arms length negotiations to reach an agreement to address the County's concerns about rising insurance costs." (Brief, at 7) Further illustrating the point, the Union asserts:

> Chapter ETF 40, 40.10 (1) (b) requires a Public employer participating in the State Plan to pay no less than fifty percent (50%) and no more than one hundred and five percent (105%) of the least costly qualified health plan. Marquette County has no "qualified" HMO's and therefore the only qualified plan is the State's Standard Plan. The monthly premiums for the Standard Plan are two thousand and fifty three dollars and fifty cents ($2053.50) for a family plan, and eight hundred and forty three dollars and seventy cents ($843.70) for a single plan. Utilizing the Chapter ETF 40 rules the A County must pay no less than one thousand and twenty six dollars and seventy five cents ($1026.75) towards an employees HMO and

[3] *See*, ***Elkhart Lake-Glenbeulah School District***, No. 26491 A (1990).

> four hundred and twenty one dollars and eighty five cents ($421.85) towards a single HMO plan. The available HMO's in Marquette County are Dean Care and Unity Community. The 2005 rates for Dean Care are seven hundred and ninety one dollars and eighty cents ($791.80 family), and three hundred and twenty four dollars and ten cents ($324.10 single). Unity Community rates are one thousand and twelve dollars and ten cents ($1012.10 family) and four hundred and twelve dollars and twenty cents ($412.20 single). Both Unity Community and Dean Care's total cost of the monthly premium is less than the required fifty percent (50%) of the Standard Plan. The current contract language requiring a ninety five percent (95%) Employer contribution, and the County's proposed second tier requirement of an eighty five percent (85%) contribution for employee's hired after January 1, 2004 accomplish nothing in terms of saving the County any money. Based on the current rates for the Standard Plan the County will be required to pay 100% of the cost of health insurance.

From all this, the Union concludes that, looking back to 2002, the year prior to the carrier change, the County's premium costs with Unity Community have increased by only 4%, while its premiums with Dean Care have decreased by "as much as 20%." (Brief, at 9)

In its reply brief,[4] the County, acknowledging that it did experience some savings as a result of the voluntary change in carriers from WPS to the State Plan, points to the fact that the employees, too, experienced a savings because of the lower State Plan premiums and the County's picking up an additional 5% of employee-paid premiums. It also disputes the Union's cost figures for the Standard, Unity, and Dean Care plans—and the Union's arguments and conclusions drawn from those figures. Citing its own *and* the Union's exhibits, the County says that the actual 2005 Standard Plan premiums are not $2054.50 (family) and $843.70 (Single), as the County maintains, but $2242.90 and $914.40. (County Exhibit 6 and Union Exhibit 15). And it says the Dean Care and Unity premiums are not (respectively) $791.80/$324.10, and $1012.10/$412.20, as the Union posits, but rather $900.10/$367.40 and $1131.10/459.80—again citing Union Exhibit 15.

[4] As indicated above, the Union elected not to file a reply brief.

The Union's evidence is somewhat contradictory on the point. Union Exhibit 15 lists the State Plan, Dean and Unity premiums as the County has characterized them. Union Exhibit 18, however—the exhibit cited by the Union in its brief—lists the figures used by the Union in its brief. Without further explanation, it is difficult to resolve the conflict; and I am unable to conclude from the evidence that the changes are as the Union has presented them in its argument.[5]

Even so—assuming some level of cost-savings to the County as a result of changing carriers—if there is one operable fact common to both private- and public-sector bargaining, whether in Wisconsin or elsewhere, it is that health-care and health-insurance costs are rising, and rising rapidly. Indeed, Wisconsin arbitration awards making that point are so numerous as to not warrant citation; and health insurance costs, as so often has been said, constitute a mutual problem for both municipal employers and employees. As the Kaiser Family Foundation study of employer-sponsored heath benefits indicates, double-digit annual premium increases have been routine nationwide for the past several years, and that trend is expected to continue unabated. (County Exhibit 26, p. 1)[6]

It is true, as the County acknowledges, that, at least for the year 2004, the County's insurance expenses were comparatively moderate; and this fact fuels, in large part, the Union's "lack-of-need" argument. But, as the County states in its brief, "language and benefit changes are not solely proposed to impact current practices and benefits; proposals also address future costs and possible savings." (Reply Brief, at 2) Escalating health insurance costs are a fact of early twenty-first century life in America;

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[5] The uncertainty carries over to the Union's citation of an 18-20% decrease in Dean Care premiums between 2002 and 2005, and a 3-4% increase in Unity premiums during the same period. Here, too, the Union uses the 2005 figures as shown in Union Exhibit 18. The County, taking the figures from Union Exhibit 15 (as set forth above), states the changes as follows: an increase in Unity rates of 15-16%, rather than the 3-4% put forth by the Union; and a 7-9% decrease in Dean premiums, rather than the 18-20% decrease argued by the Union.

[6] I note also that the Kaiser study indicates that over 80% of covered workers with single coverage, and over 90% of workers with family coverage, made contributions to their health insurance premiums in 2004. ***Id***., at p. 3

and, as discussed in more detail below, interest arbitrators have recognized that these trends create a need for both private- and public-sector employees to share the burden of these costs through reasonable premium contributions. It is recognized, too, that, while it is yet to be known whether, or to what degree, such cooperative efforts will help curb insurance costs in the future, they are to encouraged. *See*, ***Kenosha County (Correctional Officers)***, *supra*, p. 9.

Indeed, in ***Sauk County***, Dec. No. 28584-A, February 4, 2000, another health insurance premium contribution case, Arbitrator Vernon noted that "[t]he fact that the Employer's proposal is universally supported in the internal and external comparables, establishes a need in its own right." To a similar effect, Arbitrator Torosian concluded in ***City of Wausau (Support/Technical),*** Dec. No. 29533-A, November, 1999, that the action of four of five internal comparables in agreeing to the changes proposed in the arbitration was enough, in and of itself, to establish the need for change.

> Four of the five City units have voluntarily settled for the same insurance change proposed here, *which persuades the Arbitrator that the internal comparables support the Employer's "need" to make a similar change in this unit* and that its proposal reasonably addresses the need. The undersigned is of the opinion that the need for uniform benefits in the area of health insurance is vitally important. Some municipal employers have as many as 15 - 20 collective bargaining units each with its own collective bargaining agreement. To allow each unit to alter its total package with respect to health insurance benefits and the level of premium contribution, if any, by its employees, would make the administration of a health insurance program more difficult and raises a fairness issue among its employees. (Emphasis added.)

Finally, the County argues that, in times such as these—times where, again according to the Kaiser Foundation study, increased employee contributions to health insurance costs are a recognized necessity of doing business—asking for a relatively modest contribution from Highway Department employees (maintaining the existing 5% HMO contribution for existing employees asking for a 10% contribution from new hires) cannot be considered unreasonable. The argument makes sense; and, in light of the

evidence and the considerations just discussed, I am satisfied that the County has demonstrated that a need exists for a change in the employer-employee allocation of health insurance premiums.

(b) <u>*Does the County's Offer Reasonably Address That Need?*</u> Arbitrator Weisberger offered the following thoughtful comments on this issue in ***Kenosha County (Correctional Officers)***, *supra*, p. 9 :

> In this era of rapidly escalating health care costs which is producing a spreading crisis throughout our nation, it is not unreasonable to expect that all County employees, including members of this bargaining unit, absorb some of the increases for their health care. It is also not unreasonable that the County wishes its employees be covered by a health plan that promotes turning patients into knowledgeable and cost-conscious consumers of health care services.
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> * * * * *
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> In light of rapidly rising costs for health care services and prescription drugs, the County's effort to enlist assistance from all its employees to help control this large - and rapidly escalating - County budget item is a common route now taken by many public as well as private sector employers who continue to provide the bulk of funding for these key job benefits. (Given the costs involved, it is no longer appropriate to consider this benefit a "fringe benefit.") Given the very high cost of health care, particularly in southeastern Wisconsin, the County would be remiss if it failed to explore seriously ways to contain at least some of its rapidly rising health care expenditures.

Put another way:

> The arbitrator believes that it would be in the interests and welfare of the residents of Monona for the law enforcement officers to share in the cost of health insurance. Fairness alone dictates that the City's residents should not have to bear the burden of double digit yearly increases in health insurance costs by themselves. The clear trend is for employees to share in the high costs of their health insurance, and no good reason has been given why the members of the police

> bargaining unit should be exempt from paying a reasonable part of the cost of this benefit that they receive. The real question is what is reasonable.

City of Monona (Police), Dec. No. 30991-A, December 16, 2004 (Kossoff).7 And, as indicated above, ***City of Wausau (Support/Technical)***, supra, p. 9, may be read as standing for the proposition that near-unanimous support of health insurance changes in the internal comparables is sufficient to establish both the need for the change and its reasonableness.

In this case, it is unanimous: all other Marquette County bargaining units have settled their contracts with provisions identical to those contained in the County's final offer to the Highway Department employees. I agree with Arbitrator Torosian, and the other arbitrators whose awards have been discussed herein, that this, together with the other considerations I have discussed, establishes both the need for change and its reasonableness. Consistency and equity in the treatment of employees is a laudable goal in labor relations at any level, and in any context. *See*, ***City of Waukesha***, Dec. No. 21299, August 28, 1984 (Fleischli).

2. Internal Comparables

There are five bargaining units in Marquette County: Highway, Courthouse, Social Services-Professional, Social Services Non-Professionals, and the Deputy Sheriff's Association. As has been mentioned, all units except Highway have agreed to health insurance contribution provisions identical to those proposed by the County in these proceedings. (County Exhibits 12, 31) In addition to these bargaining units, nonrepresented employees hired after January 1, 2004, receive the same benefits. (County Exhibit 12).

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[7] While Arbitrator Kossof was discussing other statutory criteria, his remarks are equally applicable here.

Most arbitrators, myself among them, regard internal consistency as a significant factor in interest arbitration, and are hesitant to disrupt an established internal settlement pattern. *See*, for example, Arbitrator Torosian's remarks in ***City of Wausau (Support/Technical)***, quoted *supra*, at p.9. And in ***City of Marshfield***, Dec. No. 30726-A, July 17, 2004, Arbitrator Yaeger noted:

> The undersigned believes that internal comparability in matters of a fringe benefit as significant as health insurance should, aside from the [statutory] greatest weight and greater weight factors, receive paramount consideration. Other arbitrators have concluded similarly. See arbitrator Vernon in Winnebago County, Dec. No. 26494-A (6/91); arbitrator Malamud in Greendale School District, Dec. No. 25499-A(1/89); arbitrator Nielsen in Dane County (Sheriff's Department), Dec. No. 25576-B (2/89); arbitrator Kessler in Columbia County (Health Care), Dec. No. 28960-A (8/97); and arbitrator Torosian in City of Wausau (Support/Technical), Decision No. 29533-A, (11/99).

See, also, ***Walworth County (Sheriff's Department)***, Dec. No. 30435-A, April 15, 2003 (Bilder).

The Union, recognizing, to a degree at least, the importance of internal comparables when assessing proposed changes to a health insurance plan, contends that the "bargaining history" of the other units, and the "construction of the[ir] … Contracts" demonstrates that the other units' settlements should be given scant consideration. It says, for example, that, "historically, settlements within the individual groups have varied," offering the following examples:

> For the 2002-2003 Contract the Highway Department employees received a three percent (3%) wage increase for 2002 and a four percent (4%) wage increase for 2003 (the extra percent for 2003 was a quid pro quo for health insurance changes). Within the Sheriff's Department, Patrol Officers received the same 3% for 2002 and 4% for 2003, but as noted by Arbitrator Petrie the extra percent for 2003 was for firearms certification, not health insurance, while dispatcher received only a 2% increase because of scheduling changes. The Human Services and Social Services Contracts call for one (1) week

> of vacation after six months of seniority, while the highway Department does not earn their first week until after one (1) full year. In the most recent bargain the same two unit won a fifth (5th) week of vacation after twenty five (25) years of seniority, while the Highway Department Contract does not 16 allow a fifth (5) week until after twenty seven (27) years of seniority. Human Services and Social Services receive ten specified (10) full holidays and two specified half (½) holidays, while the Highway Contract calls for eight (8) specified full day holidays, two (2) specified half (½) day holidays and two (2) personal days. Neither the Human Services or Social Services Contract have personal days. The Sheriff's Department vacation accrual is identical to the Highway Department, and their holiday schedule is consistent with Social Services and Human Service. Although, the Sheriff's Department earns holidays after three (3) months, Human Services, Social Services and the Highway Department do not earn holidays until they have completed six (6) months. The Highway and Sheriff's Department Contracts define the immediate family, for the purpose of funeral leave as: father, mother, spouse, children and stepchildren, grandchildren, brother, sister, father-in aw and mother-in-law. Neither the Social Services and Human Services Contract include grandchildren as immediate family. And only the Highway Department does not receive a day of funeral leave for the death of a grandparent. The Highway Department is also allowed to use one (1) day of sick leave to serve as a pallbearer. The Sheriff, Social Services and Human Service Contracts do not provide that benefit.

The County argues that most of the "differences" in benefits cited by the Union are illusory—and it stresses that this case is about health insurance premium contributions, not about "wage stipends [in exchange for] firearms certifications," or about scheduling changes or vacation or holiday benefits. And it says that, even so, all units have the same number or holidays (or that they are at least within one day of each other). And, while the Sheriff's Department employees earn holidays after three months service, it does not appear to be the case, as the Union asserts in its brief, that the other bargaining units do not receive holiday benefits until they have completed six months of service. The County notes that the only contract provisions containing a reference to "six months" are those setting forth the six-month "probationary" term for hew hires—provisions which go on to state that "the County may grant probationary employees benefits that are generally available to County employees in accordance with County

personnel practices." *See*, County Exhibit 14, p. 4 (Human Service-Professional Contract); County Exhibit 15, p. 4 (Social Services Support Staff Contract) And the County once again emphasizes that, in the area here under consideration, health insurance premium contributions, all other bargaining units have agreed to the identical terms contained in its final offer to the Highway Department employees.

I also agree with the County that the Union's attempt to distinguish the various units' contracts on the basis of definitions of "immediate family" (for funeral leave purposes)—or on the basis of an isolated time-off benefit for "pallbearer service"—lack significant relevance to the issues at stake in this arbitration. There is no evidence before me suggesting that there is, or has been, any history of significant differences in the health insurance provisions bargained for, and agreed to, by the other units that would significantly lessen—much less override—the County's internal settlement patterns.

Finally on this point, the Union argues that, to defer to any degree to the internal settlement patterns would be to "strap the Union with the results of bargaining" by other units "that it had no role in." (Brief, at 17) It says that Wisconsin's interest arbitration laws "encourage employers to hold out and not agree voluntarily at the bargaining table," thus forcing the Union to decide to either accept the last offer or enter into a "time-consuming and protracted arbitration process." All this, says the Union, frequently causes unions to "choose the quick fix, convinced that arbitration will simply take too long," and it stresses that its workers "should not be penalized because of the failures of their counterpart unions." (Id.)

Again, I must disagree. A pattern in which nearly all employee units settle for essentially equal wage and benefit provisions is consistent with sound public policy. Such settlement patterns are recognized as both a major consideration in contract negotiations and, as discussed above, a significant factor to be considered in interest arbitrations. I have discussed at some length the body of arbitral authority to the effect that the successful negotiation of voluntarily-agreed to terms with other unions is to be given great—if not controlling—weight in assessing the employee's offer of identical

terms in the arbitration. See, for example, Arbitrator Torosian's discussion in ***City of Wausau (Support/Technical)***, quoted *supra*, at p. 9. There is no question that the internal comparables strongly favor the County's offer.

3. External Comparables[8]

The Union, arguing that the external comparables do not support the County's final offer, points to what it says are Marquette County's contributions to family/single premiums of $854.80/$346.60 (Dean) and $1032.80/$417.80 (Unity), and compares those figures to $1173.23/$489.41 in Adams County, and $1325.32-$1403.29/$472.97-$500.78 in Waushara County.[9] The Union also says that none of the comparables—either primary or secondary—have the type of two-tiered system proposed by the County in this case.

The County disputes the Union's figures in several respects But even if I were to take the Union's position as proven—that there is only a modicum of support for the County's proposal among the external comparables—its arguments are unavailing. As discussed above, a majority of Wisconsin arbitrators recognize internal comparables and internal settlement patters as carrying unusually great weight with respect to interest arbitration health insurance issues. Indeed, Arbitrator Vernon, in ***City of Appleton (Police Department)***, Dec. No. 25636-A, April 20, 1989, stated that internal settlements are both indicative and representative of the entire mix of interest-arbitration criteria:

> A pattern of consistent increases agreed to by various bargaining units is a collective consensus of the appropriate influence all the various statutory criteria should have as a whole relative to the particular economic circumstances in any [municipality]. It really is a good yardstick for the proximate mix of all the factors as it

[8] The parties agree that the counties of Adams, Waushara and Green Lake constitute primary comparables, and that Columbia, Sauk and Juneau may be considered secondary comparables.

[9] As for Green Lake County, the Union says its contribution is "approximately 4% of the total premium." (Brief, at 12)

> subsumes all oft them. As such, the internal pattern is more important than any single other criteria.

Thus, even if I were to conclude that the external settlements did not entirely—or even significantly—favor the County's proposal, it would not detract from the overall reasonableness of the County's health insurance proposal—a proposal that has been shown to be reasonably designed to meet a demonstrable need, and one that has been voluntarily—and unanimously—accepted by all other County bargaining units.[10]

4. <u>Quid pro Quo</u>

While it begins its brief with the well-established rule stating that, in determining whether a change in the *status quo* is justified, arbitrators are to consider, among other things, "the nature of a *quid pro quo*, if offered," the Union does not argue the issue in its brief.

The County notes that, in recent years, arbitrators have held that the undisputed economic impact of rising health insurance costs has reduced the employer's burden of establishing a traditional *quid pro quo* where health insurance benefits are at issue. That is true. In ***City of New Berlin***, Dec. No. 29683-A, May 18, 2000, for example, Arbitrator

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[10] The Union also briefly criticizes the two-tiered nature of the County's proposal—in which it offers to contribute 90% of the premiums for employees hired prior to January 1, 2004, and 85% for employees hired after that date. It says, in a single sentence: "Only Waushara County has a two-tiered system for employee premiums and that has been in place for the last eleven … years, otherwise no other primary or secondary comparable has a two-tiered system as proposed by Marquette County…" (Brief, at 12) Later, it adds—with respect to external comparables: "No County has a two-tier system that penalizes employees hired after a specified date." (Brief, at 16) Without more, I see no reason to reject the County's offer on that basis. In many of the cases cited and discussed above, arbitrators have recognized that, while some employer health-care premium proposals have yet to be tested in terms of their ability to control future cost increases, they do "hold out some promise" toward that end and are thus appropriately and reasonably put forth in final offers. In one such case, Arbitrator Weisberger stated: "Given the very high cost of health care …. The County would be remiss if it failed to explore seriously ways to contain at least some of its rapidly rising health care expenditures." ***Kenosha County (Correctional Officers)***, *supra,* p. 9. And I believe the two-tier aspect of the County's proposal in this case, unanimously supported as it is by the internal comparables, constitutes a reasonable effort toward that end. For a similar result, s*ee*, ***Village of Fox Point (Public Works Department)***, Dec. No. 30337-A, November 7, 2002 (Petrie) (two-tiered employee premium-contribution proposal held to be reasonable based on its support by internal settlements, and the arbitrator's view that the question would be better addressed during contract negotiations).

Dichter ruled that, where the Union was a "lone holdout" in that all other units in the municipality had agreed to the disputed health insurance proposal, no *quid pro quo* was necessary. Other decisions have simply stated that, where employee contributions to health insurance premiums are the issue, the *quid pro quo* requirement is relaxed. *See*, for example, ***Village of Fox Point***, *supra*, p. 16, note 10 , where Arbitrator Petrie stated:

> [T]he spiraling costs of providing health care insurance for its current employees is a mutual problem for the Employer and the Association …. In light of the mutuality of the underlying problem, the requisite quid pro quo would normally be somewhat less than would be required to justify a traditional arms-length proposal to eliminate or modify negotiated benefits or advantageous contract language.

In another health insurance premium case, ***Pierce County(Human Services)***, Dec. 28186-A, April, 1995, Arbitrator Weisberger observed that: "where, as here, the employer has shown it is paying increased health-care costs, its burden to provide a *quid pro quo* for health-care changes is "reduced significantly."

The County argues in its principal brief that, even so, it has provided a *quid pro quo* to the Union in the form of a $0.10 per-hour wage increase for 2004 and 2005 in addition to the 3% increase for the two-year period; and it notes that the additional $0.10 is more than what was received by other County bargaining units. (County Exhibit 12) It also points to the fact that its wage offer to the Highway Department employees results in a higher percentage increase over the two-year period than the Union's final offer.

In these circumstances—and in light of the arbitral authority discussed above—I consider the County's $0.10 wage add-on for the employees, and the fact that its wage offer exceeds that of the Union's sufficient to constitute a *quid pro quo* for the health insurance premium changes embodied in the County's final offer.

B. <u>Sick Leave Accrual & Payout</u>

As indicated, the current contract language provides for a 50% payout of accumulated sick leave upon retirement *or termination* of employment. The County's final offer would continue that payout unchanged, but only for employees hired prior to January 1, 2004. Those hired after that date would receive the payout only for timely resignation or retirement—not upon termination of employment. The Union claims the offer should be rejected as unreasonable because there "is no consistent pattern" among either the primary or secondary comparables "for accrual … or payout of accumulated … sick leave at the time of separation from employment." (Brief, at 12) Among the primary comparables, Adams County employees can accumulate up to 108 sick-leave days and receive a 50% payout (75% if employed more than fifteen years) at retirement, death or termination; in Green Lake County, employees may accumulate 100 days and, at retirement, receive a payout based on a maximum of 80 days; and Waushara County employees may accumulate 90 days and, on retirement, receive a 75% payout.[11] Summarizing that information—and its reasons for seeking rejection of the proposal—the Union states:

> It is very evident from the above summary that among the external comparables there is no clear pattern for accumulation or the payout of sick leave at the end of an employee's employment with their respective County employer. No County has a two tier system, and only Juneau and Adams Counties have system that allows for greater payout with seniority. No County has a two tier system as proposed by Marquette County to reduce payout for employees hired after a specified date. Marquette County's allowed accumulation of 107 days ranks behind Columbia, Sauk, Juneau (all 120 days) and Adams (108 days); and is greater than only Waushara (90 days), and Green Lake County (100 days). (Brief, at 14)

With respect to the external comparables, the County points out that only one county in the combined primary/secondary pool, Adams County, provides for payout of accumulated sick leave credits on termination of employment, with all others limiting payouts to resignation, retirement, death or disability—as it has proposed in its offer in

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[11] The secondary comparables are similar. Employees may accumulate between 107 and 120 days, and may convert between 55% and 75% of the sick-leave pay for those days (sometimes calculated on the basis of longevity) either in cash or in health insurance premium credits. based on seniority)

this case. And it says that its proposal is thus consistent with all of the others (save Adams), and that this fact favors its offer to eliminate payouts upon termination of employment.

Beyond that, the County notes, once again, that the identical provisions have been agreed to by all other Marquette County bargaining units, and it refers again to the arbitral authority indicating that, in furtherance of "good public policy" goals and in the interest of maintaining internal consistency within the municipality, such settlement patterns are "significant," and "carry great weight."

I have discussed those, and similar cases above, and, as before, they satisfy me that because the sick-leave accumulation and payout provisions of the County's final offer find unanimous support in the agreements reached, and settlements made, with its other bargaining units, and because it cannot be said that, in and of itself, the proposal is *in*consistent with the external comparables, I consider it to be both reasonable and favored by the evidence.

C. **Wages**

The Union's brief does not challenge the County's wage offer—a 3% increase plus an additional 10 cents an hour for both years of the contract. Indeed, as motioned earlier, the County's wage offer, in dollar terms, exceeds that proposed by the union.[12] It also exceeds the percentage increases in the Consumer Price Index for the applicable years. Finally, the average length of service of County Highway Department employees (19 years), together with turnover figures,[13] and I agree with the County that this is an indication of a competitive wage and benefit structure.

CONCLUSION & AWARD

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[12] The Union's offer was a straight 3% across-the-board.

[13] Of the seventeen employees who have left the County since 2003, nine retired and one left by mutual agreement. Only six left for other employment.

For the above reasons, and in consideration the applicable statutory criteria, together with the evidence, exhibits and arguments put forth by the parties, I conclude that the Final Offer of the County, Dated June 18, 2004, more closely adheres to the statutory criteria than that of the Union, and I therefore direct that that offer be incorporated into the parties' Collective Bargaining Agreement in resolution of this dispute.

Dated at Madison, Wisconsin, this ____ day of ___________, 2005

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William Eich, Arbitrator