IN THE MATTER OF THE ARBITRATION PROCEEDINGS

BETWEEN

LOCAL 2918, AFSCME, AFL-CIO,

Union,

and

ARBITRATOR'S AWARD
Case 138 No. 63167
INT/ARB-10099
Decision No. 31299-A

VERNON COUNTY,

Employer.

Arbitrator: Jay E. Grenig

Appearances:

For the Employer: Stephen L. Weld, Esq.
Weld, Riley, Prenn & Ricci, S.C.

For the Union: Daniel R. Pfeifer
Staff Representative
AFSCME Council 40

I. BACKGROUND

This is a matter of final and binding interest arbitration for the purpose of resolving a bargaining impasse between Vernon County ("County" or "Employer") and Local 2918, AFSCME, AFL-CIO ("Union"). The County is a municipal employer. The Union is the exclusive collective bargaining representative for certain courthouse and human services employees of the County.

On January 5, 2004, the Union filed a petition requesting that the Wisconsin Employment Relations Commission ("WERC") initiate arbitration pursuant to Wis. Stats. § 111.70(4)(cm)(6). On December 7, 2004, a member of the WERC staff conducted an

investigation reflecting that the parties were deadlocked in their negotiations. The parties submitted their final offers to the investigator on March 24, 2005. On April 25, 2005, the WERC appointed the undersigned as the arbitrator.

An arbitration hearing was conducted on August 30, 2005. Upon receipt of the parties' reply briefs, the hearing was declared closed on November 7, 2005.

II. FINAL OFFERS

A. The Union

1. Section 10.01 - Add "Day after Thanksgiving".

2. Section 13.01 - Amend to "If a death occurs among a member of the employee's immediate family, the employee will be excused from work to attend the funeral and make other necessary arrangements, without loss of pay, during the five (5) day period consisting of two(2) days prior to the day of the funeral to two (2) days after the day of the funeral, but no more than a total of three (3) days."

3. Section 13.02 - Add "grandparents and grandchildren" to the first sentence.

4. Section 13.03 - Delete "and two (2) days without loss of pay when death occurs to grandparents or grandchildren, which leave is taken in accordance with terms 14.01 and 14.02".

5. Section 19.04 - Amend to "On Call Employees are those who are called as needed and available when work is such that it cannot be scheduled on any sort of regular basis. On call employees shall receive $1.00 per hour regardless if served on weekdays, weekends, or holidays. The WHEAP Specialist, or equivalent position, will receive the on call pay established in this section during the active time of the WHEAP program, currently from October 1st of one year through May 15th of the next year, providing that the program receives funding and the funding source requires 24-hour staff availability."

6. Section 22.01 - Duration - 1/1/04-12/31/05.

7. Wages - WIC Coordinator - Grade M, Probationary Step
   Director of Court Services - Grade J, Step 1

8. Wages - Effective 1/1/04 - An increase of 3% ATB based on the average wage.
   Effective 1/1/05 -An increase of 3% ATB.

9. Provisions retroactive to 1/1/04.

10. All provisions not addressed in the Stipulations and Union's Final Offer to remain as in the 2002-2003 collective bargaining agreement between the parties.

B. The Employer

1. Pay increase of 2% January 1 and 1 % July 1 for year 2004 and 2005.

2. Duration: 2-year contract (January 1, 2004 - December 31, 2005).

3. Grade and Placement of WIC Coordinator. Grade L place at step 3 effective upon ratification (1/1/05 County proposed rate is 18.05), with employee's next step, in accordance with contract language, to occur after 12 months at step 3 and completion of 1950 hours, benefit date same as hire date: January 2 (2002).

4. Grade and Placement of Director of Court Services: Grade J place at step 1 effective upon ratification (1/1/05 County proposed rate is 13.73) with her next step, in accordance to current contract language, to occur after 12 months at step 1 and completion of 1950 hours, benefit date same as hire date: September 9 (2002).

5. Schedule joint meetings to discuss Health Insurance options including the new State deductible plan.

6. Add 1 (one) Personal Holiday (section 10.01) in exchange for reducing Personal days from 3 to 2 (section 12.07). Personal Holiday may be used in 8 and 4 hour increments and taken at a time mutually agreed between the employee and department head, and the Personal Holiday is use or lose by the end of the calendar year and is not payable at employment termination, and it is prorated the first and last years of employment.

7. (Section 13.01) Amend to "If a death occurs among a member of the employee's immediate family, the employee will be excused from work to attend the funeral and make other necessary arrangements, without loss of pay, during the five (5) day period consisting of two (2) days prior to the day of the funeral to two (2) days after the day of the funeral, but no more than a total of three days."

8. Amend Section 19.04 On-call Social Workers who are on-call during non-working hours shall receive $.85 per hour regardless if served on weekdays, weekends, or holidays. The WHEAP Specialist who is assigned on-call during non-working hours will receive $10 per emergency call received during the active time of the WHEAP program, currently from October 1st of one year through May 15th of the next year, providing that the program receives funding, the funding source requires 24-hour staff availability, and the County assigns on-call duties to this position. A County form will be used by the WHEAP position with specific data to be completed with each call to include purpose of call, contact name and number, time and date, what action was taken.

9. Wage increase in item #1 retroactive to 1/1/04. All other provisions effective immediately following ratification/settlement of the contract.

10. All other items status quo.

11. All items on this proposal are contingent upon the final agreement. And the County reserves the right to add to, modify or delete any of these proposed items.

III. STATUTORY CRITERIA

111.70(4)(cm)

. . .

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. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. ‘Other factors considered.’ In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. 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.

IV. POSITIONS OF THE PARTIES

A. The Union

Acknowledging that the present holiday provision is consistent with the holidays of the other County bargaining units, the Union says that the present holiday schedule is below that of the external comparables. The Union takes the position that holidays should be compared only to holidays when looking at external comparables. The Union argues that the Employer is not required to keep the courthouse open the day after Thanksgiving. Conceding that the day after Thanksgiving holiday cannot be given for 2004, the Union suggests the parties could work out this issue "or the Arbitrator may have an ingenious solution."

The Union argues that most of the external and internal comparables support the Union's final offer in regard to funeral leave. According to the Union, the Employer's failure to include this change in its final offer "is one of the fatal flaws included in the County's Final Offer."

It is the Union's position that the Employer is substantially behind the external comparables with respect to on-call pay. The Union claims that "the County's failure to include this change in its Final Offer is one of the fatal flaws included in the County's Final Offer." The Union argues that the Employer's change in the on-call language would limit existing on-call payments to Social Workers. The Union believes that, if the Wisconsin Home Energy Assistance Program (WHEAP) specialist is placed on-call, then the Union says the specialist should receive on-call payments. The Union says the on-call payments are made because employees must be available by telephone or beeper 24 hours a day, seven days a week.

With respect to the Women, Infants and Children (WIC) Coordinator, the Union says it desires the position to be in Pay Grade M (same as Public Health Nurse) at a 2003 maximum rate of $20.33 rather than the Employer-proposed Pay Grade L (same as Social Worker) at a 2003 maximum rate of $18.28.

The Union points out that the County's Highway Department employees received 3% wage increases for 2004 and 2005. It also notes the County's Sheriff's Department employees received a 3% increase for 2004. The remaining bargaining units have arbitration proceedings pending. The Union argues these voluntary internal wage settlements should be given great weight.

It is the Union's position that the County's wage rates are on the lower end of the comparables. The Union contends its final offer is not unreasonable when examining the comparable wage increases, especially in light of the "catch up" situation of County employees. Noting that social workers received an "equity adjustment" a few years ago that has resulted in the clerical and paraprofessional employees being further behind than the

professional employees, the Union asserts that its offer is an attempt to give the clerical and paraprofessional "some 'catch-up' without costing the County additional monies."

The Union is "troubled" that the Employer is proposing that only the wage increase be retroactive. The Union takes the position that it is "just bad public policy to not have the provisions of a contract be retroactive."

The Union does not see the proposal regarding health insurance meetings as an important issue because the contract will expire on December 31, 2005, and the Union has already notified the Employer of its intent to negotiate a successor agreement for 2006. The Union says it is ready, willing and able to further discuss the health insurance issue, but nothing can be done for 2006. Pointing out that the rates for the Unity health plan have drastically reduced, the Union says there is no incentive for the Employer to change carriers for 2006.

The Union takes the position that arbitrators have generally compared the CPI to the increase in wages. The Union asserts that the increase in the CPI clearly supports the Union's final offer.

For the foregoing reasons, the Union asks that its final offer be adopted.

B. The Employer

The Employer argues that it is a rural, low-income county whose constituents earn far lower wages and benefits than the vast majority of employees in the bargaining unit. It points out that a substantial number of the County's residents are self-employed farmers with no health insurance coverage.

According to the Employer, double-digit health insurance premium increases are hitting the Employer hard. The Employer observes that the high percentage of uninsured County residents contributes to an increasing financial burden to the County and other employers in the County who provide health insurance for their employees. The County notes it can only increase next year's tax levy by $196,381 because of statutory revenue caps.

It is the Employer's position that the County's wage proposal compares favorably with the external comparables and represents the tentative agreement reached by the parties during negotiations. Declaring that both wage proposals result in a three percent lift each year of the contract, the Employer says that its wage offer fits well within the established settlement pattern of the comparable counties.

The Employer argues that the Union's final offer demands several improvements to the status quo for which the Union offers absolutely no quid pro quo. The Employer says that the Union must demonstrate a need for the change and a quid pro quo in order to change the status quo through arbitration.

With respect to the Union's demand for an additional holiday on the Friday after Thanksgiving, the Employer states that the Union's offer would increase the total number of holidays from nine to ten for the Union. It also says the Employer would have to shut-down the courthouse on that day since the number of remaining non-union employees would be insufficient to adequately staff the various courthouse and human services departments that have always been open on the day after Thanksgiving. The Employer points out that none of the other County employees receives ten holidays and none receive the day after Thanksgiving as a holiday.

The Employer disagrees with the Union's assertion that the County "is clearly below most of the external comparables" when it comes to holidays. The Employer says it is actually a leader when personal days are included in the comparison.

Turning to the on-call pay proposals, the Employer says there are significant differences between the on-call duties of the social workers and those of the WHEAP specialist. Social workers' activities are significantly restricted when on call—they must be available to take and respond to emergency calls. On the other hand, the Employer states that the WHEAP specialist has no restrictions on her activities, as the WHEAP program requires a 48-hour response time for emergency energy assistance requests (18 hours if the situation is life threatening). The WHEAP specialist is not required to stay in the area. The Employer argues that, in light of the lack of comparable support for the Union's on-call proposal and the lack of corresponding quid pro quo for the proposal, the $10,000 increase in on-call costs found in the Union's final offer are not justified.

The Employer contends the Union's funeral leave offer seeks a benefit improvement with no corresponding quid pro quo. Even if the comparable data is sufficient proof of a need to change, the Employer says the fact remains that the Union has failed to provide a quid pro quo.

It is the Employer's position that its wage proposal for the WIC Coordinator and Director of Court Services reflects the WERC's decision that it is neither a supervisory nor a managerial position. As a result of the WERC's April 2004 decision, the two positions were accreted into the unit. The Employer notes that both parties propose the same wage grid placement for the Director of Court Services, but they disagree on the effective date. The parties differ regarding both the effective date and amount of pay for the WIC Coordinator. The Employer says the Union's proposal for the WIC Coordinator is not supported by the comparable data. The Employer points out that the WERC expressly found that the WIC Coordinator was not a professional employee.

According to the Employer, its health insurance proposal merely calls for the Union to participate in joint meetings to discuss alternative health insurance options. The Employer stresses that with rapid increases in health insurance costs, it is essential for the parties to discuss ways of dealing with the impact of these costs.

For the foregoing reasons, the Employer asserts that its final offer is more reasonable than the Union's.

V. FINDINGS OF FACT

A. State Law or Directive (Factor Given the Greatest Weight)

In order for this factor to come into play, employers must show that selection of a final offer would significantly affect the employer's ability to meet State-imposed restrictions. *See Manitowoc School Dist.*¸ Dec. No. 29491-A (Weisberger 1999). No state law or directive lawfully issued by a state legislative or administrative officer, body or agency placing limitations on expenditures that may be made or revenues that may be collected by a municipal employer is at issue here.

B. Economic Conditions in the Jurisdiction of the Municipal Employer (Factor Given Greater Weight)

This factor relates to the issue of the municipal employer's ability to pay. Ability to pay is not at issue in this proceeding. This factor indicates that the County has the financial ability to fund either offer.

C. The Lawful Authority of the Employer

There is no contention that the Employer lacks the lawful authority to implement either offer.

D. Stipulations of the Parties

While the parties were in agreement on many of the facts, there were no stipulations with respect to the issues in dispute. They have, however, reached agreement on a number of issues. Specifically, both parties' final offers contain three proposals that are not in dispute: (1) the contract duration (2004 through 2005), (2) clarification of the funeral leave language (Section 13.01), and (3) wage grid placement for the Director of Court Services (Grade J, Step 1). However, the parties disagree with respect to the effective date of the grid placement for the Director. The Union proposes an effective date of January 1, 2004, and the County proposes that the grid placement take effect on the date the Arbitrator's Award is issued.

E. The Interests and Welfare of the Public and the Financial Ability of the Unit of Government to Meet these Costs

This criterion requires an arbitrator to consider both the employer's ability to pay either of the offers and the interests and welfare of the public. The interests and welfare of the public include both the financial burden on the taxpayers and the provision of appropriate municipal services. The public has an interest in keeping the Employer in a

competitive position to recruit new employees, to attract competent experienced employees, and to retain valuable employees now serving the Employer. Presumably the public is interested in having employees who by objective standards and by their own evaluation are treated fairly.

The public has an interest in keeping the County in a competitive position to recruit new employees, to attract competent experienced employees, and to retain valuable employees now serving the County. Presumably the public is interested in having employees who by objective standards and by their own evaluation are treated fairly. What constitutes fair treatment is reflected in the other statutory criteria.

F. Comparison of Wages, Hours and Conditions of Employment

1. Introduction

The purpose in comparing wages, hours, and other conditions of employment in comparable employers is to obtain guidance in determining the pattern of settlements among the comparables as well as the wage rates paid by these comparable employers for similar work by persons with similar education and experience.

2. External Comparables

One of the most important aids in determining which offer is more reasonable is an analysis of the compensation paid similar employees by other, comparable employers. Arbitrators have also given great weight to settlements between an employer and its other employees. *See, e.g., Rock Village (Deputy Sheriffs' Ass'n)*, Dec. No. 20600-A (Grenig 1984). The parties agree the comparable counties to be considered in this proceeding are Crawford County, Iowa County, Jackson County, Juneau County, Monroe County, Richland County, Sauk County, and Trempealeau County.

In 2004, Crawford, Iowa and Jackson implemented wage increases of 2%; Juneau, a split increase of 1% and 1%; Trempealeau, a 2.5% increase; and Sauk, a 2.75% increase to professional employees and a 2%, 1% split to support staff employees. Monroe implemented a 2%, 2% split and Richland a straight 3% increase. The Union's offer provides a wage increase greater than that provided by all but two of the comparables. The Employer's proposal provides an increase slightly less than the increases in two of the comparables; the Employer's proposal provides an annual lift greater than the increase in any of the settled comparables.

In 2005, Iowa County agreed to a 2% increase; and Jackson, 2.25% for courthouse employees and 2% for its two human services units. Crawford agreed to a 4% increase in exchange for the employees' agreement to switch to the State of Wisconsin health plan in 2005. Trempealeau County provided a 3% wage increase coupled with the employees' agreement to increase their contribution to health premiums by 2.5% in 2005

and another 2.5% in 2006. Monroe County had not settled for 2005 by the close of the record. In 2005, only one county's wage increase exceeded 3%.

Arbitrators have recognized that the lift provided by a split increase is the more critical comparison because it establishes wage rates that will serve as the basis for the parties' future bargaining relationship. *See, e.g., Trempealeau County (Courthouse)*, Dec. No. 30595-A (Honeyman 2003); *Monroe County (Highway)*, Dec. No. 29586-A (McAlpin 1999); *City of Fond du Lac (Firefighters)*, Dec. No. 13248-A (Zeidler 1975). A split increase holds down short-term costs, while generating the full value of the total sum of the increases by the year following the split increases.

Only one of the comparable counties (Crawford) ranks lower than the Employer with respect to adjusted gross income per capita for 2003. Only two of the comparable counties rank lower than the Employer for adjusted gross income per tax return for 2003.

The record shows that the range of starting wage rates in 2003 for social workers in the comparable counties ranges from $13.43 (Juneau County) to $17.12 (Sauk County). In 2003 the social worker minimum wage rate in Vernon County was $15.71. The maximum wage rate in 2003 ranged from $18.23 (Iowa County) to $22.74 (Jackson County). The Employer's maximum wage rate for a social worker in 2003 was $18.26. The record does not indicate whether the Employer's relative wage rates have improved or declined with respect to the comparables in recent years. These comparisons do not include longevity pay.

The Employer provides employees with significant longevity benefits based on years of service with the County. County employees begin receiving longevity pay at five years of service. Only one other comparable county (Crawford) has a longevity program comparable to the Employer's. Both programs provide an additional 4% of salary after 20 years of service. Four of the comparable counties have no longevity program. The other three counties have flat-dollar programs providing lower benefits than the Employer provides.

Five of the comparable counties (Crawford, Monroe, Richland, and Sauk) subcontract out their WHEAP program. In Jackson and Trempealeau counties, the WHEAP duties are performed by employees who have no on-call responsibilities and receive no on-call pay. Iowa county has a similar position but the position is vacant. None of the external comparables provides any on-call pay to its WHEAP personnel.

The majority of the comparable counties with WIC coordinator positions pay more than either party is offering here. However, the WIC positions in the comparable counties, with the exception of Juneau County, appear to have supervisory or managerial status.

3. Internal Comparables

Generally, internal comparables have been given great weight with respect to basic fringe benefits. *Rio Community School Dist. (Educational Support Team)*, Dec. No. 30092-A (2001 Torosian); *Winnebago Village*, Dec. No. 26494-A (Vernon 1991). Significant equity considerations arise when one unit seeks to be treated more favorably than others. Ordinarily, employers try to have uniformity of fringe benefits for all their bargaining units because it avoids attempts by bargaining units to whipsaw their employers into providing benefits that were given to other bargaining units for a very special reason. *Village of Grafton*, Dec. No. 51947 (Rice 1995).

Compensation of nonunionized employees is of little persuasion in an interest arbitration. An employer can unilaterally make changes for nonunionized employees, while an employer must bargain those changes for unionized employees. See *Columbia County (Professionals*), Dec. No. 28987-A (Krinsky 1997).

The Employer and its highway bargaining unit agreed to a 3% wage increase in both 2004 and 2005. This was the only cost item in the highway settlement. The Employer agreed to a 3% annual wage increase for 2003-04 for the Sheriff's Department. The Vernon Manor bargaining unit is in arbitration for 2004.

With respect to the Union's holiday proposal, no other group of County employees receives ten holidays and none receive the day after Thanksgiving as a holiday.

G. Changes in the Cost of Living

The governing statute requires an arbitrator to consider "the average consumer prices for goods and services, commonly known as the cost of living." While a number of arbitration awards suggest that changes in the cost of living are best measured by comparisons of settlement patterns, such settlements, do not reflect "the average consumer prices for goods and services." Despite its shortcomings, the Consumer Price Index ("CPI") is the customary standard for measuring changes in the "cost of living." Settlement patterns may be based on a number of factors in addition to changes in the "average consumer prices for good and services."

Both offers exceed the increase in the cost of living during the term of the contract when the increased cost of health insurance paid by the Employer is taken into consideration.

H. Overall Compensation Presently Received by the Employees

In addition to their salaries, employees represented by the Union receive a number of other benefits. While there are some differences in benefits received by employees in comparable employers, it appears that persons employed by the Employer generally receive benefits equivalent to those received by employees in the comparable employers.

The Union's proposal for WHEAP on-call pay would result in an additional $4,096 of on-call wages per year for one member of the bargaining unit.

I. *Changes During the Pendency of the Arbitration Proceedings*

The parties have not brought any changes during the pendency of the arbitration hearings to the Arbitrator's attention.

J. Other Factors

This criterion recognizes that collective bargaining is not isolated from those factors comprising the economic environment in which bargaining takes place. *See, e.g., Madison Schools*, Dec. No. 19133 (Fleischli 1982). Good economic conditions mean that the financial situation is such that a more costly offer may be accepted and that it will not be automatically excluded because the economy cannot afford it. *Northcentral Technical College (Clerical Support Staff)*, Dec. No. 29303-B (Engmann 1998). *See also Iowa Village (Courthouse and Social Services)*, Dec. No. 29393-A (Torosian 1999) (conclusion that employer's economic condition is strong does not automatically mean that higher of two offers must be selected or, conversely, a weak economy automatically dictates a selection of the lower final offer).

VI. ANALYSIS

A. Introduction

While it is frequently stated that interest arbitration attempts to determine what the parties would have settled on had they reached a voluntary settlement (*See, e.g., D.C. Everest Area School Dist. (Paraprofessionals)*, Dec. No. 21941-B (Grenig 1985) and cases cited therein), it is manifest that the parties' are at an impasse because neither party found the other's final offer acceptable. Realistically, if the parties reached a negotiated settlement, the final resolution would probably be the result of compromise and the outcome would be contract provisions somewhere between the two final offers here. The arbitrator must determine which of the parties' final offers is more reasonable, regardless of whether the parties would have agreed to that offer, by applying the statutory criteria.

B. Wages

The record establishes the parties reached a tentative agreement in September 2003, accepting the Employer's 2%, 1% split for each year of the contract. (The Union claims the tentative agreement was contingent upon the Employer's acceptance of the Union's total package. A tentative agreement that has been rejected is entitled to some weight. *See, e.g., St. Croix County (Law Enforcement)*, Dec. No. 30598-A (Grenig 2003); *City of Marshfield (Firefighters)*, Dec. No. 27039-A (Krinsky 1992) (reaching of tentative agreement is evidence negotiators mutually viewed the tentative agreement as a reasonable compromise of their differences); *City of Wauwatosa (Firefighters)*, Dec. No.

27869-A (Flaten 1994) (tentative agreement must have contained a degree of reasonableness or the parties never would have agreed to it on a tentative basis in the first place); *Mukwonago Area School Dist. (Teachers)*, Dec. No. 25821-A (Kerkman 1989) (there is certain presumption of reasonableness in proposal where parties reached a tentative agreement containing proposal that later becomes an issue in arbitration). *Cf. DeSoto School Dist.*, Dec. No. 21184-A (Malamud (1984) (rejection of tentative agreements carries with it the potential of seriously undermining the credibility of the bargaining representative and/or bargaining committee of the party rejecting the agreement).

While the Employer's wage rates are in the lower range of the comparables, the record does not show that there has been an erosion of the Employer's relative standing among the comparables in recent years. Nothing in the statutory criteria requires an Employer's wage rates to be at or above the average or median wage rate of the comparables.

Although the County's Highway Department bargaining unit agreed to a 3% wage increase in both 2004 and 2005, this was the only cost item in the highway settlement. The Highway Department did not seek additional leave benefits or other economic items. The 3% annual wage increase for the Sheriff's Department was for 2003-04—not for 2004 or 2005.

The Employer's generous longevity plan must be factored into any determination. *See, e.g., Shawano County (Health Care Center)*, Dec. No. 27691-A (Anderson 1993) (another significant factor in this determination is the substantial value of the county's longevity schedule). Over two-thirds of the County employees are currently eligible for longevity. Nine more employees will qualify after just one more year of employment. The significance of the longevity provision in the County's contract was recognized by the Union in its reply brief, where the Union observed that "when the employees of Vernon County achieved the longevity, they gave the County a "quid pro quo" in the form of a reduced wage increase."

The Employer's wage proposal is more closely aligned with the comparables than the Union's. Furthermore, if a "catch-up" were needed, both final offers provide employees with a 3% lift. Under the statutory criteria, the Employer's wage proposal is slightly more reasonable than the Union's.

C. Holidays

Both holidays and personal leave must be considered when comparing paid holidays. Arbitrator Weisberger has written:

> In determining which party's position on paid holidays is to be preferred, the undersigned concurs that the issue must be considered in the context of related fringe benefits, not solely on the number of paid holidays enjoyed by bargaining unit member. Particularly in light of the 36 hours of annual

> paid personal leave each Village bargaining unit member enjoys . . . the Arbitrator concludes that an additional paid holiday has not been justified.

Village of Pulaski, Dec. No. 30496-A (Weisberger 2003). Here, the employees in the bargaining unit receive more paid holidays and personal days off than all the external comparables except one.

Presently employees in the bargaining unit receive nine holidays per year—the same as the County's other four employee groups. Courthouse employees may use three days of sick leave per year as personal days. Two of the Employer's other employee groups may also use three days of sick leave as personal days (highway and non-union employees). Employees at Vernon Manor may use two days of sick leave as personal days and law enforcement employees receive no personal days. The Employer's final offer provides courthouse employees with an improvement in the holiday benefit because they will receive a guaranteed extra personal holiday that they will not have to deduct from sick leave. The Employer's offer maintains the existing consistency among the internal units in terms of the total number of holidays and personal days.

Although the parties disagree on the costing of the Union's holiday proposal, it is quite clear that the Union's proposal has a cost in the form of lost productivity. Where a union requested an additional holiday, Arbitrator Dichter commented:

> It is still a cost that this Employer has not incurred before and that it has not incurred in any other bargaining unit. The additional cost to the Employer from this proposal is too great a burden without a concomitant concession.

Manitowoc County Dec. No. 29440 (Dichter 1999) *See also Monroe County*, Dec. No. 29593-A (Dichter 1999) (because loss of employees impacts the operation of the facility, to say those absences have no cost ignores the impact of the absences).

In light of the internal comparables and the importance of having some internal consistency in fringe benefits, the Employer's holiday pay proposal is more reasonable than the Union's.

D. On-Call Pay

Presently, the only employees who are eligible for on-call pay are the social workers who receive eighty-five cents per hour of on-call time served. The Employer proposes maintaining the present rate, and the Union proposes to increase it to $1.00 an hour. Both parties propose to begin providing on-call pay to the WHEAP specialist position. The Union proposes the same $1.00 per hour that it proposes for the social workers. The Employer proposes to pay $10 for each emergency call.

The duties of and restrictions on the on-call social workers and the WHEAP specialist differ in significant respects. The on-call social workers frequently handle several calls per weekend. On the other hand, the Employer says the WHEAP specialist averages only one or two calls per month and most of those are limited to telephone time. The WHEAP specialist has no restrictions on activities during the time the specialist is on-call; she must simply be reachable.

Given the differences in the duties and restrictions of the positions, there is no reasonable justification for providing both positions with the same on-call pay. The Employer's proposal is slightly more reasonable with respect to this issue.

E. Funeral Leave

The Union's proposal would increase the number of available days for the death of grandparents and grandchildren from two to three. The Employer's offer would maintain the status quo. The Union's proposal would bring employee funeral leave within the range of the two the three internal comparables (Sheriff's Department and Highway Department). The Union's proposal with respect to funeral leave is slightly more reasonable than the Employer's.

F. Wage Proposals for Director of Court Services and WIC Coordinator

These positions are not professional positions. Thus, comparing them with other professional employees such as the public health nurse is inappropriate. It has not been shown that the positions in the external comparables are truly comparable with respect to responsibilities. Although this issue, affecting only two employees is not outcome determinative, the Employer's proposal is slightly more reasonable than the Union's.

G. Health Insurance

The Union unrealistically minimizes the importance of this issue on the grounds that it is too late to do anything about 2006, and that health insurance premiums are not a significant issue as the premiums for one carrier have gone down. This ignores the fact that health insurance continues to be a growing problem for employers and employees. The parties need to consider solutions that reduce the cost of insurance or at least mitigate premium increases. The parties need to work together to explore creative alternatives dealing with this issue in the future. Other parties have explored wellness programs and incentives for using health insurance wisely. *See, e.g., Milwaukee Bd. of School Directors,* Dec. No. 31105 (Grenig 2005) (although the parties could not reach agreement, they explored a number of creative solutions to the health insurance problem that are described in the award). Although not outcome determinative, the Employer's proposal regarding health insurance is more reasonable than the Union's.

H. Retroactivity

In its brief, the Union recognizes the problem that could arise if its retroactivity proposal were accepted. The Union suggests that "the parties could work out this issue", or "the arbitrator may have an ingenious solution." It is questionable that the Arbitrator has the power to come up with an ingenious solution inasmuch as the Arbitrator's authority is limited to selecting one of the final offers. In addition, it does not seem reasonable to select a party's proposal that would likely result in more disagreement and possibly more arbitration. Accordingly, the Employer's retroactivity proposal is more reasonable than the Union's.

I. Conclusion

The Arbitrator is required to select one party's final offer; the Arbitrator cannot choose some provisions in one offer and some provisions in the other offer. Nor can the Arbitrator modify or edit final offers. Clearly, a negotiated agreement in which the parties select the best individual offers, modify them so they are mutually acceptable, and work together to clarify the language would be preferable to imposing one final offer on the parties. Unfortunately, the parties were unable to reach a negotiated settlement and it was necessary to have the matter resolved in arbitration.

Applying the statutory criteria, it appears that the Employer's wage offer, Thanksgiving holiday offer, on-call pay offer, health insurance offer, and retroactivity offers are more reasonable than the Union's. While the Union's funeral leave offer and WIC Coordinator and Director of Court Services proposals are more reasonable than the Employer's the other offers have a greater impact on the Employer and on a larger number of employees than the Union's. Accordingly, the Employer's final offer is more reasonable than the Union's.

VII. AWARD

Having considered all the applicable statutory criteria, all the relevant evidence and the arguments of the parties, it is concluded that the Employer's final offer is more reasonable than the Union's final offer. The parties are directed to incorporate into their collective bargaining agreements the Employer's final offer.

Executed, this seventh day of January 2006.

_____

Jay E. Grenig