In the Matter of the Final and Binding
Interest Arbitration of a Dispute Between

OCONTO COUNTY

and

OCONTO COUNTY COURTHOUSE EMPLOYEES AFSCME LOCAL 778-A,	Case 162 (Courthouse) No. 64070 INT/ARB-10284 **Decision No. 31350-A**
OCONTO COUNTY PROFESSIONAL EMPLOYEES AFSCME LOCAL 778-D,	Case 163 (Professional) No. 64784 INT/ARB-10462
and	**Decision No. 31351-A**
OCONTO COUNTY HIGHWAY EMPLOYEES AFSCME LOCAL 778.	Case 164 (Highway) No. 64785 INT/ARB-10463 **Decision No. 31352**

Arbitrator: James W. Engmann

Appearances:

Mr. John J. Prentice, Petrie & Stocking, S.C., Attorneys-at-Law, 111 East Wisconsin Avenue, Suite 1500, Milwaukee, WI 53202, appearing on behalf of Oconto County.

Mr. Dennis O'Brien, Staff Representative, AFSCME Council 40, AFL-CIO, 5590 Lassig Road, Rhinelander, WI 54501, appearing on behalf of Oconto County Employees AFSCME Local 778, Local 778-A and Local 778-D.

ARBITRATION AWARD

Oconto County (County or Employer) is a municipal employer which maintains its offices in the Oconto County Courthouse, 301 Washington Street, Oconto, WI 54153. Oconto County Courthouse Employees AFSCME Local 778-A, Oconto County Professional Employees AFSCME Local 778-D, and Oconto County Highway Employees AFSCME Local 778 (Unions), are labor organizations which maintain their offices at 5590 Lassig Road, Rhinelander, WI 54501, and

which, at all times material herein, have been the exclusive collective bargaining representative of these employees. The Employer and the Unions have been parties to a series of collective bargaining agreements. The parties exchanged their initial proposal and bargained on matters to be included in the 2005-2006 successor collective bargaining agreement. On October 14, 2004, a petition was filed by the Union with the Wisconsin Employment Relations Commission (Commission) requesting the Commission to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA).
An investigation was conducted by a member of the Connission staff on October 18, 2004, which reflected that the parties were deadlocked in their negotiations. The parties submitted their final offers to the Investigator, as well as a stipulation on matters agreed upon, by May 27, 2005, after which the Investigator notified the parties that the investigations were closed and the Commission that the parties remained at impasse. On June 6, 2005, the Commission certified that the conditions precedent to the initiation of arbitration as required by statute had been met and ordered the parties to select an arbitrator from a panel of arbitrators submitted by the Commission.

The parties selected the undersigned to resolve said impasses by selecting either the total final offer of the Employer or of each of the Unions. The parties stipulated at hearing that the issue between the County and the three Unions was the same in each of the three cases, that being, longevity pay; that the minor differences in language among the three contracts had no significance in regard to the matters before the arbitrator; that the decisions should, therefore, be consistent among the three units; and that the three decisions should be consolidated into one Award.

Hearing was scheduled for October 15, 2005, but was postponed at the request of the parties. Hearing was held on December 6, 2005, in Oconto, WI, at which time the parties were afforded the opportunity to present evidence and make arguments as they wished. The hearing was not transcribed. The parties filed briefs and reply briefs, the last of which was received August 17, 2006, after which the record was closed. Full consideration has been given to all of the testimony, exhibits and arguments of the parties in issuing this Award.

FINAL OFFERS

The final offers of both parties contain items agreed upon by both parties which are not in dispute. The only contractual dispute between the parties involves longevity.

Union: The Union proposes the status quo which reads in pertinent part as follows:

COURTHOUSE
ARTICLE XI - WAGES, PROBATION, LONGEVITY PAY, NIGHT SHIFT DIFFERENTIAL, RECLASSIFICATIONS

> Section 3. Each employee, after the completion of five (5) years of service, shall receive the following longevity pay: Three percent (3%) of the monthly wage, multiplied by the number of years of service, shall constitute the longevity pay . . .

Said payment shall be made annually at the first pay period after the anniversary date of employment.

PROFESSIONALS
ARTICLE IV - WAGES

2. Longevity. After five (5) years of service, each employee shall receive longevity pay in the amount equal to three percent (3%) of h/er monthly wage multiplied by the number of years of service of each employee. Said payment shall be made annually at the first pay period after the anniversary date of employment.

HIGHWAY
ARTICLE IV - GENERAL WAGE PROVISIONS - LONGEVITY PAY UNEMPLOYMENT

2. Each employee, after five (5) years of service shall receive longevity pay calculated as follows: Three percent (3%) of the monthly wage, multiplied by the number of years of service shall constitute the longevity pay . . . Said payment shall be made annually on a separate check in January.

Employer: The Employer proposes that the sections in question be modified as follows (with deletions ~~struck out~~ and additions underlined):

COURTHOUSE
ARTICLE XI - WAGES, PROBATION, LONGEVITY PAY, NIGHT SHIFT DIFFERENTIAL, RECLASSIFICATIONS

Section 3. ~~Each employee~~ Employees hired before January 1, 2005, after the completion of five (5) years of service, shall receive the following longevity pay: Three percent (3%) of the monthly wage, multiplied by the number of years of service, shall constitute the longevity pay . . . Said payment shall be made annually at the first pay period after the anniversary date of employment . . . Employees hired after January 1, 2005 shall receive the following longevity program:

After five (5) years:	$300.00 annually
After ten (10) years:	$375.00 annually
After fifteen (15) years:	$450.00 annually
After twenty (20) years:	$525.00 annually

PROFESSIONALS
ARTICLE IV - WAGES

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After fifteen (15) years:	$450.00 annually
After twenty (20) years:	$525.00 annually

ARBITRAL CRITERIA

Section 111.70(4)(cm) MERA states in part:

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:

1. The lawful authority of the municipal employer.

2. Stipulations of the parties.

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

4. 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.

5. 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.

6. 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.

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

8. 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.

1. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

10. 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.

POSITIONS OF THE PARTIES

Employer on Brief

The Employer argues that the Union's attempt to alter the comparables should be rejected; that the Union offered no compelling reason to alter the established comparables; that, once established, arbitrators are typically loathe to tamper with comparables unless there is a significant change in circumstance or a very good reason to do so; that this is understandable, considering the important role comparables play in the bargaining process; that they typically drive the bargain, set the parameters and force the parties to be reasonable and reach voluntary agreement; that bargaining teams use data from the comparables to plan their negotiation strategies; that the comparables set the benchmarks for the parties, especially when it comes to compensation; that knowing from the start what comparables arbitrators will use allows the parties to assess their positions in bargaining; that, consequently, stability in the comparables is critical; that there is simply no justification for altering the comparable group now; that they were established in arbitration in 1987 and have remained unchanged; and that Brown County is not comparable to the County.

The County also argues that the comparables support the County's proposed modification of the longevity benefit; that even with the modification proposed by the County, future employees will still receive the most lucrative longevity benefit of the comparables; that the County's longevity benefit is unique among the comparables inasmuch as it is the only program based upon a percentage of the employee's annual earning and not a flat dollar amount; that modification of the longevity benefit does not require a quid pro quo in this case; that comparability is a two-edged sword; that if the Union can use comparables to drive wages up, the County can use comparables to correct disparities; that the original purpose of the present longevity is no longer valid; that prudent financial management of sound public policy requires the County's proposed modification; and that, in light of the above, the County requests the arbitrator select its final offer.

Union on Brief

The Union argues that Brown County should be included as a comparable because the commuting pattern of Oconto residents into Brown County has grown; that the US Department of Labor has recognized this significant relationship and as of 2005 includes Oconto in the Green Bay Metropolitan Statistical Area; that the County can not demonstrate an urgent, pressing need to

impose the County's offer on the Union; that the County chose not to offer a *quid pro quo* for its proposed change to the status quo; that the Union's offer is much closer to the settlements in the external comparables; that it is identical with the County Sheriff's employees; that these parties have fought this identical battle in the recent past; that there have been no material changes in the relative status of the County when compared to the external comparables; that the County's financial situation has not deteriorated; that the County cannot demonstrate any urgent pressing need that would compel the acceptance of a significant change to the status quo; that, even if the County showed a great need to alter the longevity benefit, it has offered nothing of reasonably equivalent value in exchange; and that the Union's final offer should be included in the successor agreements.

Employer on Reply Brief

The Employer argues that the two primary factors that drove the establishment of the present longevity benefit no longer exist, that is, the need to attract and retain employees, and the relatively unfettered ability to use municipal taxing authority to pay for it; that while the Union's final offer simply maintains the status quo, it completely ignores the issue of longevity pay which has been a thorn in the parties' relationship for at least ten years; that the issue has not been resolved through negotiation, mediation or arbitration and will continue to be an issue until the parties address the realities of a statutory levy cap and changing economic and social demographics; that ignoring the issue will only exacerbate it; that delaying the inevitable will not serve the parties' interests; that the issue is ripe for resolution; and that, unfortunately, arbitration seems to be the only remaining option for reaching that resolve.

The Employer also argues that there is no basis for altering the comparables to include Brown County; that the statutory levy cap precludes the Union's final offer on longevity pay; that the County's final offer conforms the County's longevity benefit with those of its comparables; and that if "catch-up" supported by comparables does not require a quid pro quo, the reverse should be true.

In addition, the County argues that the Union's analysis of the statutory criteria is unpersuasive; that the Union completely ignores the factor to be given greatest weight; that in terms of the factor to be given greater weight, the County's relative wealth is irrelevant when a tax levy cap limits the County's ability to increase revenues to keep up with ever-rising costs; that the factors of the lawful authority of the employer and the stipulations of the parties are not in dispute; that in terms of the interests and welfare of the public and the financial ability of the unit of government to meet the cost of any proposed settlement, the County is not contesting that it can continue to provide the current longevity benefit; that the County's final offer will continue to pay for longevity with only gradual savings over time; that, in terms of the external comparables, the County is in the upper half and above the average; that in terms of internal comparables, the majority of the County's employees have the longevity benefit offered by the County; that in terms of comparisons with employees in private employment, private employers in the County often complain that they cannot compete with the County's wages and benefits; and that in terms of the cost of living, the Consumer Price Index includes health care costs, which are highly subsidized by the County.

In conclusion, the County argues that the need for a quid pro quo in a case like this is minimal, just as the Union would argue if the tables were turned and it was pursuing "catch-up;" that it would appear that the Union's idea of quid pro quo is a "hand for a hand" or an "eye for an eye;" that the County's offer does not affect current union members; that the status quo will be maintained for them; that the County's offer only seeks to modify a benefit for future employees and then only marginally; that while the present longevity program will not relieve the County's immediate economic difficulties, it is part of the County's long-term plan; and that because the County's final offer is the only offer to advance this ultimate objective, the County requests that its final offer be selected.

Union on Reply Brief

The Union argues that it is not trying to "force" anything; that it has legitimately referenced the fact that the US Census Bureau has determined that the County will be included in the Green Bay metro area statistical analysis; that the Bureau states that the southern part of the County was a "bedroom" community for Green Bay; that there is a very substantial commuting pattern which has more than doubled since the last round of negotiations; that the County compares quiet favorably to Brown County in per capita property values, levy rates, growth of per capita personal income from 1990 to 2003, and median household income; that the County is in the same labor market as Brown County; and that it is the comparability anticipated in the various criteria utilized in the statutes.

The Union also argues that the comparables do not support the County's proposed modifications of the longevity benefit; that modification to the longevity benefit does require a quid pro quo; that the original purpose of the present longevity benefit is still valid; that prudent financial management of sound public policy does not require acceptance of the County's proposed modification; that the arguments offered by the Union demonstrate that its position is more reasonable than the County's when the statutory criteria and evidence in this record are considered; and that, in conclusion, the Union asks that its final offer be selected for inclusion in the successor agreement.

DISCUSSION

Introduction

Each of these three units and this employer arbitrated their contracts for the 1997-99 term. The main issue for the County was modification of the longevity program. The County offered some changes in health insurance as a quid pro quo. The Unions' issue was including Brown County in the comparables. The parties are now in arbitration for the 2005-06 collective bargaining agreement. The issue for the County is modification of the longevity program. The Unions' issue is including Brown County in the comparables. As Yogi Berra said, "It's *dèjá vu* all over again."

As these parties have been here before, this is familiar territory and familiar issues for them. For the three 1997-99 arbitrations, the parties selected a different arbitrator for each unit. None of the three arbitrators agreed with the Unions' argument to include Brown County in the comparables. All three arbitrators rejected the County's proposal to modify the longevity program.[1]

In 2005-06, the parties selected this arbitrator to hear all three arbitrations and agreed that any decision should be consistent between the three units. So here we are. This arbitrator will not second guess the arbitrators who have previously decided aspects of these issues between the parties. So the focus of this decision will not be the two issues in totality, because major parts of them have been previously and consistently decided by arbitrators almost a decade ago. The focus must, therefore, be on those aspects of these two issues which have changed in the intervening years. Nothing changes if nothing changes.

But there are two major difference between these cases and the 1997-99 arbitrations: first, statutory tax levy caps are in place for the County; and second, the County does not offer a *quid pro quo* for the change it is seeking. But the first issue to be decided is the appropriate comparable group. Then we will evaluate the merits.

Determination of the Comparables

[1]See Oconto County (Highway), Decision No. 29084-A (Dichter, 2/98) (hereinafter Highway); Oconto County (Courthouse), Decision No. 29085-A (Krinsky, 1/98) (hereinafter Courthouse); and Oconto County (Professional), Decision No. 29086-A (Brotslaw, 2/98) (hereinafter Professional).

The parties agree that the comparables designated in an arbitration between the County and the Courthouse unit in 1987 are appropriate: Door, Forest, Langlade, Marinette and Shawano Counties.[2]

In the 1997-99 arbitrations, each of the Unions argued for the inclusion of Brown County. In the Courthouse unit, Arbitrator Krinsky determined that the outcome of the dispute would not be affected by the inclusion of Brown County as a comparable so he did not address the issue.[3] In the Professional unit, Arbitrator Brotslaw found the County's argument against including Brown County in the list of comparables to be valid.

> Geographical proximity and commuting patterns aside, Brown and Oconto are strikingly dissimilar with respect to the economic variables normally used withe respect to the selection of comparables. The population of Brown is far larger, its 1990 median family income is substantially greater, and its manufacturing base far eclipses that of Oconto (in 1987, there were 315 manufacturing establishments in Brown, versus 70 in Oconto). Brown County is also the site of a major sports franchise, while Oconto, to the best of this arbitrator's knowledge, has no professional sports team. This comment is not offered facetiously. By any objective standard, the Green Bay Packers are a major "industry," generating many millions of dollars in revenue, a factor which further supports the County's argument that Brown County's (sic) is not a suitable comparable. The County is also correct when it argues that "proximity is not the sole factor when determining comparability."[4]

In the Highway unit, Arbitrator Dichter did not include Brown County, though he viewed it as a closer argument.

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[2]Oconto County (Courthouse), Decision No. 24218-A (R.J. Miller, 9/87). Apparently, the Union did not argue for inclusion of Brown County in the comparable group.

[3]Courthouse at page 5

[4]Professional at page 23.

> I am not persuaded that those factors normally utilized (size, proximity, and duties) favors including Brown by a sufficient amount to warrant disregarding the fact that Brown has never been used by any unit in the County. Were I the first arbitrator involved in any case in the County, whether to include or exclude Brown would be a close call. Given the history, however, I cannot find adequate reason to disregard that history. There are no unique factors about this unit that warrants different treatment. I shall not include Brown.[5]

The Union argues that Brown County should now be included as a comparable because important factors have changed since those decisions; specifically, the Union argues that the commuting pattern of Oconto residents into Brown County has grown since the previous arbitrations and that the US Department of Labor has included Oconto in the Green Bay Metropolitan Statistical Area as of 2005.

Indeed, the commuting pattern between Oconto and Brown Counties has increased as follows: Brown into Oconto 525 in 1994 to approximately 700 in 2004, and Oconto into Brown 3115 in 1994 to approximately 6500 in 2004. These are significant changes. The inclusion of Oconto County in the Green Bay Metropolitan Statistical Area by the US Department of Labor shows that population and the economics that accompany it are changing in the area, and adds to the Union's argument. In addition, the Union points out that Brown County is contiguous to Oconto County.

Arbitrators are in almost total agreement that stability in external comparables is critical to both parties and to the process. Specifically, Arbitrator McAlpin has stated, "Consistency in the comparables helps bring certainty not only to the interest arbitration process, but also to the collective bargaining process."[6] Once a group of comparables has been established, especially where there is a long history of the parties using the group, changes to the group requires that the moving party carry the burden of showing a compelling reason for the change. Arbitrator Grenig stated as much as follows:

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[5]Highway at page 7. But in the accompanying footnote, Arbitrator Dichter wrote, "It should be noted that the inclusion or exclusion of Brown in this case in actuality changes little. The longevity payments that it gives is a flat dollar amount and that amount is similar to that given by the other comparables."

[6]City of Oshkosh, Decision No. 30312-A (McAlpin, 2002).

> Once an interest arbitration has determined comparable employers, disruption of the established comparables should be discouraged. An established comparability group should be maintained and the burden of persuasion to change the established comparability groups rests on the party that wants to make the change. Continuity and stability of the comparables is important to provide the parties with an appropriate grouping from year to year.[7]

But while the Union's arguments regarding inter-county commuting and the inclusion of the County in the Department of Labor's statistics for Green Bay carry some weight, and even though the Union has shown that the gap in per capital personal income and median household income has decreased between the two counties, none of this rises to the level of a compelling reason to make a change at this time in the long established comparables used by the parties.

[7] Grant County, Decision No. 30258-A (Grenig, 2002).

Therefore, this arbitrator rejects the Unions' argument to include Brown County in the list of external comparables.[8] Instead, I will use those comparables relied upon by the parties in the past: Door, Forest, Langlade, Marinette and Shawano Counties. This is not to say that the Unions will never be able to show that Brown County should be included in the comparables, but that there is not nearly enough in this record to make that change now.

Factor Given Greatest Weight

The County argues that under Section 111.70(4)(cm)7 of MERA, the 'Factor given greatest weight' criterion, the statutory tax levy cap precludes the Union's final offer on longevity pay. Putting that assertion aside for a bit, what this criterion does require is that the arbitrator "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." Indeed, it requires that the arbitrator "shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision."

But let us also be clear as to what this criterion does not mean. This criterion does not give counties *carte blanche* to determine what is and what is not in collective bargaining agreements with their employees. Nor does it mean that an arbitrator has to accept a county's proposal, no matter how unreasonable or arbitrary, because the county has cloaked said proposal under the cover of "limitations on expenditures that may be made or revenues that may be collected by a municipal employer." Certainly it does not mean that an employer automatically sways an arbitrator to its position when it says that it wants to lower the cost of its longevity program previously agreed upon with its bargaining units because, even though it can pay it, it wants to spend that money elsewhere, if not now, then later, and, therefore, the employees should forego the amount of longevity that the employer no longer wants to pay.

I have reviewed the financial documents presented by the District. Yes, statutorily imposed tax levy caps do limit the County's ability to generate the taxes it may need to run its government. This is compounded by reductions in federal and state revenue sharing. It is made even worse by

[8] The County asserts that "Brown County's inclusion or continued exclusion would have no bearing on the outcome of the issue at dispute here." See County Brief at page 5. This is consistent with the Arbitrator Dichter's footnote in Highway at page 7. See footnote 5. Even though it favors the County in this instance, I agree that including Brown County would not change the outcome of this case.

escalating health insurance and energy costs. But two things must be noted. Oconto County is not alone in this – every county is facing these restraints, these reductions in revenue sharing, and cost increases . It is statewide. And this criterium does not mean that the County can unilaterally select what it wants to cut and use this criterion to support such a cut in an interest arbitration against one or more of the unions representing its employees.

There is no showing by the County that acceptance of the Union's offer will significantly affect the County's ability to comply with the state mandated revenue caps. The County is not making an argument that it can not pay. There is no evidence that the state imposed spending limits would, in any way, prevent the County from funding the Union's final offer.[9] Nor is there any evidence which shows that an immediate reduction in longevity benefits is required by current economic conditions.[10]

Thus I find, contrary to the County's assertion, that tax levy limits do not preclude the Union's final offer on longevity pay and, therefore, that the factor given greatest weight does not prevent the County from funding the basic parts of Union's proposal. But I also find that this factor does not favor the Union, either; therefore, it will not be a determining factor in this arbitration.

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[9]The County argues that Fund 10 monies should not be used for salary and benefit increases as argued by the Union. I agree. This arbitrator would stand with those who have ruled that Fund 10 accounts should not be used for recurring expenses, such as longevity. But that does not mean that the Fund 10 balance is irrelevant to interest arbitration proceedings because a healthy fund balance is a sign of a healthy local economy.

[10]Arbitrator Krinsky came to the same conclusion: "The Union is correct, however, in arguing that the evidence does not show that an immediate reduction in longevity benefits is required by current economic conditions". Courthouse at page 8.

Issue of Longevity

Longevity was first implemented in the 1972-74 collective bargaining agreement between the County and its Highway unit.[11] The formula at that time was 2% of the monthly wage multiplied by years worked starting after five years of service. In the 1974-76 contract, the formula was changed to its present state by increasing the percentage to 3%.[12]

The current value of this benefit is shown in part by Table 1 as follows:

[11]The record is unclear, but it appears it was included in the Courthouse unit contract when it was organized later in the 1970's and in the Professional unit contract no later than 1981. Therefore it has been around for somewhere between 25 and 34 years.

[12]The record is unclear, but it appears that by the time that the Courthouse and Professional units settled their first contract, the 3% rate was already the norm.

Table 1: Current Longevity Program[13]

Bargaining Unit	Low after 10 years	Low after 20 years	High after 10 years	High after 20 years
Courthouse	$655	$1,309	$894	$1,788
Professional	$810	$1,620	$1,116	$2,233
Highway	$832	$1,664	$1,041	$2,082

The County proposes to change to a longevity program based on dollar amounts, not percentages, with said dollar amounts the same for all three bargaining units, as shown in Table 2 as follows:

Table 2: County's Proposed Longevity Program: All Bargaining Units

After five years:	$300	After fifteen years:	$450
After ten years:	$375	After twenty years:	$525

Four of the five comparables have longevity plans consistent in format with the longevity plan proposed by the County in this case. The fifth does not have longevity.[14] The value of those benefits are sown in Table 3 below.

Table 3: Comparables' Longevity Programs (in part)[15]

[13]See Reply Brief of County at pages 13-16.

[14]Shawano County employees hired before January 1, 1996, have a longevity payment after five years of service of 2% of an employee's monthly salary multiplied by the number of years of service, the very formula to which this employer agreed to in the 1970's. The record does not indicate how this change occurred, but employees hired after January 1, 1996, do not have longevity.

[15]See County Reply Brief at pages 13-16.

County	Door	Forest[16]	Langlade	Marinette	Shawano
After ten years	$180	$120-$150	$240	$195	-0-
after twenty years	$360	$240-$300	$360	$345	-0-

There is no argument that the proposal offered by the County exceeds the comparables by a wide margin. There can be no argument that the current longevity program exceeds the comparables by many times. If this was all there was to the case, I would say "County wins" and we would all go home and watch Brown County's professional sports franchise play the hated Bears on TV. But there is more to this case than that.

Status Quo and Quid pro quo

As the County is attempting to change the status quo, the burden is on it to go forward and meet said burden. Arbitrators have formulated such burden in many somewhat similar ways. Let me offer the following articulation of the mover's burden: to show that there is an actual, significant and pressing need for change of the status quo; that the proposed change addresses the need in as limited a manner as possible; that comparables are consistent with and supportive of the proposed change; and that a proper quid pro quo is offered to compensate, at least in part, the party resisting the change.

[16]The first figure is for courthouse and highway and the second for professionals.

In this case, the County made a strenuous effort at hearing and argued vehemently on brief that the County faces an actual and significant problem in terms of the longevity program. The projection of the cost of this program in the future is substantial.[17] And the problem, according to the County, will not go away by itself; indeed, it will only worsen as employees become more senior and their monthly pay rate increases.[18] The problem is complicated by the state imposed revenue caps, the decrease in state and federal funding, and the increased costs of health insurance and energy, as discussed above. For the sake of this decision, I will assume that the County has shown an actual and significant need for change of the status quo.

But in terms of a pressing need, the Unions argue that any such need is in the future and, in a sense, the County agrees. I agree as well – the problem may be actual and significant, but it is not pressing as of today. But the County would argue that it is preparing for the need by including the change slowly, with only those hired after January 1,2005, affected by it. This rings well, but of the three criterion here faced, the "pressing" need is weakest for the County's case. Nonetheless, let's go forward to the second component of the test.

Arbitrators do not like to change previously negotiated and long-held employee benefits, regardless of the proponent, believing such benefits should usually be changed in the same manner in which they came into the contract: by mutual agreement of the parties.

[17]The Union challenges many of the County's cost projections. For the sake of argument, I will assume they are correct.

[18]The Union argues that this is a predictable cost and that, as employees retire and they are replaced by less experienced employees, the cost would decrease. Again, for the sake of argument, I will accept the County's argument on its face.

But the County has framed its offer most conservatively. It is proposing that any employee hired before January 1, 2005, the start of the term of this contract, would continue to receive the longevity benefit in place when he or she was hired.[19] And for those employees who were or will be hired on or after January 1, 2005, the County proposes a longevity program that exceeds such program in all of the external comparables. Thus, no employee hired prior to January 1, 2005, is losing or having a benefit capped that was available to him or her at the time of hire. Even those employees hired after January 1, 2005, who will not have the amazing longevity plan currently in place, will still enjoy a longevity program that is far better than any of the external comparables. Does the County's proposed change address the need in as limited a manner as possible? I believe it does.

In terms of the third component, as noted above, the external comparables strongly, indeed, totally, support the Employer in this matter.[20] But I must note that, as best as can be determined from the record, when the County agree to longevity as a percentage of wages, all of the comparables except Shawano County had longevity stated in dollar amounts.[21] The external comparables favored the County when it first negotiated longevity, yet the County voluntarily agreed in negotiations to provide a percentage benefit rather than a flat rate benefit. And despite the fact that most the comparables were paying longevity as a flat amount, the County agreed to

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[19]"The County is proposing to grandfather the current employees under the current longevity provision. This fact reflects positively on the Employer proposal." Highway at page 21.

[20]As noted above, if I had included Brown County in the comparables, it too would have supported the County's position, though not to the point where it would change the outcome of this decision.

[21]Since then, Shawano County has eliminated longevity for all employees hired after January 1, 1996. It is unclear from the record how this change came about. See Highway at page 17.

increase the percentage rate in the next collective bargaining agreement[22].

The fourth component is that a proper quid pro quo is offered to compensate, at least in part, the party resisting the change. The County offered a quid pro quo to these three units in the 1997-99 arbitrations. None of the arbitrators found it adequate. On Reply Brief the County states:

> Throughout the collective bargaining process (for these contracts), the County made several offers to induce the Union to modify the longevity pay scheme even thou no quid pro quo was required. If offered vacation days. It offered holidays. The Union rejected all offers.[23]

Perhaps the County should have included a quid pro quo in its final offer to see how the arbitrator would respond to it; as it is, there is no quid pro quo offer and nothing to which to respond.

[22]In the 1972-74 contract, the County agreed to a 2% rate, but in the following contract agreed to a 3% rate, the rate it is today.

[23]County Reply Brief at page 11.

In any case, the County now argues that the issue is such that it need not offer a quid pro quo. There are times when a lesser quid pro quo or even no quid pro quo is needed for a change to be made. Such cases include situations of when a contract clause or benefit has caused or will cause a significant problem, unseen at the time of agreement, to one or both parties, or the clause or benefit is so significantly out of line with the comparables as to be an aberration, or the clause or benefit is of such a nature that there is a mutual interest and benefit to changing it because it no longer serves the parties well, but only one party has offered a reasonable resolution. I am not convinced that the Employer has proven that any of these criterion apply to this situation and to the change without a quid pro quo that it is proposing here.[24]

This arbitrator faced a somewhat similar situation in *Racine Wastewater Commission*.[25] That case involved a life-long employer-paid retiree health insurance benefit which the employer was attempting to change to an employer-paid retiree health insurance benefit capped at Medicare eligibility. The current cost was huge and the projected costs were astronomical. In that case, the employer's proposal, as here, offered a reduced benefit that still far exceeded the benefit received by the external comparables, many of which had no retiree health insurance benefit.

There, too, the employer argued that it was not required to offer a quid pro quo. I was not convinced that the employer could secure such a change without a quid pro quo, though I may have been able to be persuaded because of the unique nature of this benefit when compared to the external comparables and because of the present and escalating future cost of the benefit.

But I did not need to be convinced, because the employer nonetheless did offer a quid pro quo: a one percent wage increase above the Union's wage offer in the first year and a one-half percent wage increase above the Union's wage offer in the second year. And the Employer did not limit the quid pro quo only to those future employees whose benefit would be capped, but extended it to current employees, as well, who would benefit from this change for the rest of their work days while retaining the employer-paid life-long retiree health insurance coverage they presently had. As the Union's wage offer was very consistent with the settlements of the internal and external comparables, this was a true quid pro quo, not just an offer that looks higher because the union

[24]The County would argue that its longevity program is "so significantly out of line with the comparables as to be an aberration." Longevity is different from benefits, such as health insurance and vacation days, in that it is directly tied to and a part of the wage rate. For this reason, it should not be viewed in isolation. This will be discussed in more detail below.

[25]Decision No. 31231-A (Engmann, 12/05)

came in low to fight the change.

So I found that the employer in that case had shown an actual, significant and pressing need for a change in the status quo, a need that would grow larger with each passing year; that the employer's proposed change addressed its concern in as limited a manner as possible; that external comparables were consistent with and supportive of the proposed change; and that the Employer had offered a proper quid pro quo for the change.

Such is not the case here. Wage or benefit differentials are an important component of comparability, but they do not automatically require a decision in favor of the party seeing to rectify them in interest arbitration, especially when the differentials are a result of collective bargaining decisions reached by the parties.[26] This is not a case involving health insurance in which the rising costs are almost impossible to predict and which fluctuate widely with costs greatly outpacing the rate of inflation. Here we have longevity, the cost of which is always determined by the same percentage of the monthly wage multiplied by the years of service. Any increase in longevity is directly tied to any increase in wages, a cost much more manageable than health insurance costs.

This is not a case where one party is attempting to change the amount of the benefit while leaving the structure of the benefit in place; in other words, the County is not proposing to decrease the contribution rate to 2%, for example, while maintaining the structure by which longevity is determined. While there would still be the issue that the parties had bargained the current rate, considering the comparables, such a proposal would have given me pause. The county here is not only attempting to lower the cost of the benefit but it is also attempting to change the structure by which the benefit is determined. Perhaps the County would have been in a better position to argue its case if it had sought only a change that decreased the cost without changing the structure. But I will leave that to the parties or future arbitrators to determine.

In addition, since longevity is directly linked to wages and wage increases, it cannot be viewed in isolation. Arbitrator Dichter wrote:

> (T)here is an interrelationship between wages and longevity. When one looks at the total wages paid by the County, including longevity of the comparables, it is apparent that the wages paid by the County are not out of line. Oconto is near the average even with the longevity payments that it presently makes. Thus, comparing longevity alone does not tell the full picture.[27]

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[26] Professional at page 35. See also Langlade County, Decision No. 21806-A (Brotslaw, 3/95).

[27] Highway at page 16.

This is as true today. Table 4 below shows the rankings among the comparables for 19 positions, first with wages only and then with wages and longevity. There is no doubt that Oconto County's employees receive a very competitive wage rate, near the top, averaging a placement of 2.32 for these 19 positions. Including the longevity does increase the County's placement, but not nearly to the level the County would have us believe. Again, for the same 19 positions, the County's rank with longevity is 2.16 out of six comparables.[28]

Table 4: Oconto County's wage rankings among its comparable[29]

Ranking	Wages Only	Including Longevity
1	7	8
2	2	3
3	7	5
4	3	3
5	0	0
6	0	0

So even with a longevity benefit that is vastly superior to the comparables, when it is added to wages, there is very little change in how these employees rank to their comparables. In other words, these employees rank close to second among the six comparables comparing wages only as well as when wages and longevity are combined, but that is not an unreasonable place to rank.

I have empathy in this situation for the County which looks at its longevity program and sees a benefit way out of line with the comparables. At the time of agreeing to the percentage basis for computing longevity, the computations may have been equal; that is, the 2% the County originally agreed to may have equaled the flat dollar amount that the comparables had in their contracts. But dollar amounts need to be changed every contract term to keep up with inflation, and longevity is normally not a big enough issue to bargain hard for or arbitrate over an increase, so they tend to stay the same. But when longevity is stated as a percentage, it automatically rises as wages rise

[28]Seven first place ranking (7 x 1) plus two second place rankings (2 x 2) plus seven third place rankings (7 x 3) and three fourth place rankings (3 x 4) equals 44 points divided by 19 positions equals 2.31. The same calculations were done for the wages plus longevity figues.

[29]See County Reply Brief, pages 21 - 31.

and, over time, the disparity we have in this case takes place. If adding the longevity to the wage rate had placed the County way out in front of its comparables, then the issue would have been a bit closer.[30]

Factor Given Greater Weight

Section 111.70(4)(cm)7g of MERA requires the arbitrator to consider and give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the other factors specified in the statute, other than the Factor Given Greatest Weight.

The County presented evidence that eight large employers had shut down since 2001 with 1000 jobs lost. Yet the Union notes that the County's ranking for median family income improved between 1998 and 2003, that property value rose almost 6% from 2003 to 2004, and that the County operations levied on the proposed 2006 property tax declined. This is not a county that is flush with yachts and country clubs, but it is also not on the brink of bankruptcy. This County is like most with some down sides and some growth areas. So this criterion does not favor either side.

Other Factors Considered

[30]The County argues that the original purposes for including longevity, to attract and retain qualified employees, is no longer needed as the County has many applicants for each opening with very little turn over and, therefore, the original purpose for longevity is no longer valid. But this is isolating longevity from the total package that employees look at in deciding where to seek employment and whether to stay in the current employment position. This argument could be used for any of the benefits that an employer offers.

The lawful authority of the employer and the stipulation of the parties are not in dispute in these cases. The parties spoke to but did not argue the criterion regarding the interests and welfare of the public, so this criterion does not favor either party. The financial ability of the County to meet the costs of the proposal is not at issue. As noted above, the County is not arguing it is financially unable to pay but that it wishes to avert a costly benefit crisis that looms in the future. In terms of the comparables, the wage and longevity package offered these employees is in the top two of the six comparable counties. The internal comparables are not really an issue as these units make up a majority of the represented employees of the County. In terms of comparing the wages of these employees with those in the private sector, the County argues that employers in Oconto County often complain that they cannot compete with the County's wages. Not much in the way of hard evidence is offered to support this assertion.[31] The Consumer Price Index was not argued by the parties and, therefore, does not impact this decision. Finally, the overall compensation of these employees does not support the County's proposal.

Deja Vu Factor

Some things do not change. If the previous round of arbitrations teaches us anything, it teaches us that arbitrators are most hesitant to change a benefit previously bargained for the parties. Arbitrator Dichter wrote of it in this way:

[31]It is interesting to note that the County uses data from Green Bay and Brown County to support its argument here, even though the County argued vehemently that Brown County is not comparable and this arbitrator agreed.

> The County is now asking this arbitrator to change the bargain it made when it first agreed to longevity. It is generally well settled that changes are best made at the bargaining table rather than in interest arbitration. . .Normally, only in unusual circumstances will an arbitrator do what the parties have not voluntarily agreed to do at the table. Something unforseen must arise that establishes a need that did not previously exist.[32]

Arbitrator Krinsky agreed:

> While the County is correct that the existing longevity benefits are costly and much more generous than those paid by the comparables, the fact remains that those arrangements were bargained and then made more generous through subsequent bargaining. The arbitrator does not believe that a bargained program which has been in existence for many years . . . should be ended through arbitration unless there is an immediate need to do so.[33]

Arbitrator Brotslaw summarized not only his case but these case as well as follows:

> Finally, the arbitrator must decide whether Oconto County's longevity pay plan, which is clearly superior to those offered by the comparables, compels a decision in favor of the County. If the Union was asking for the 3% longevity pay provision as part of its final offer in a case which had proceeded to interest arbitration, this arbitrator's response almost certainly would have been negative. But implementation of a new benefit is materially different from the modification of an existing benefit.(The arbitrator) concludes that . . . the parties are free to negotiate wage or benefit provisions which are superior or inferior to those paid by the comparables, e.g., that while comparability is an important criterion in interest arbitration, it does not compel an interest arbitrator to amend a long-standing benefit simply because it is better than ones offered by the comparables. The minimum conditions for such an "exchange" would be a showing of need, and/or an offer of a quid pro quo in the form of equivalent value.[34]

On the other side, the Union argues that implementation of a two-tiered structure for employees in their labor agreement is damaging to the relationship of employees doing essentially the same work but receiving significantly different compensation. any dual system will have a negative impact on employee. Arbitrator Krinsky spoke to that issue in the 1997-99 arbitrations as follows:

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[32]Highway at pages 17-18.

[33]Courthouse at page 11.

[34]Professional at pages 39-40.

> The arbitrator is not persuaded that friction and jealousy will be a significant problem in a two-tier arrangement for longevity benefits. Of greater concern to the arbitrator is that implementation of a two-tier system, if brought about through selection of the County's final offer, would be imposed through arbitration. A system which represents a marked change in benefits or their structure ought to come about through collective bargaining, not imposition by an arbitrator, whenever possible.[35]

Conclusion

To paraphrase the arbitrators from the previous round of arbitrations, the County is correct that the current longevity program is costly and vastly superior to the comparables' longevity programs, but the fact remains that the County bargained for and then made more generous through subsequent bargaining the very program the County is now trying to change. This arbitrator does not believe that a bargained benefit which has been in existence for many years should be ended through arbitration unless there is an immediate need to do so and there is an offer of an appropriate quid pro quo. That is not the case here.

Both parties but especially the County offered other arguments, all of which have been reviewed and found wanting.

For these reasons, based upon the foregoing discussion, the Arbitrator issues the following

AWARD

> That the final offer of the Union shall be incorporated into the collective bargaining agreement between the parties for the 2005-06 term.

Dated at Madison, Wisconsin, this 7th day of September 2006.

By _____
James W. Engmann, Arbitrator

[35] Courthouse at pages 8-9.