BEFORE THE ARBITRATOR

Irving Brotslaw

In the Matter of Interest Arbitration	)	
	)	
Between	)	
	)	Case 173 No. 64444
Professional Employees Local	)	INT/ARB-10380
	)	Decision No. 31374-A
and	)	
	)	
Monroe County	)	

APPEARANCES:

FOR THE COUNTY:

Mr. Ken Kittleson
Personnel Director
Monroe County

FOR THE UNION

Mr. Dan Pfeifer
Staff Representative
District Council CIO

I. BACKGROUND

The instant case involves a dispute between Monroe County, a municipal employer hereinafter referred to as the "County," and Local 2470, AFSCME, AFL-CIO, a labor organization which represents both Human Services Professional Employees and Human Services Para-Professional and Clerical Employees employed by Monroe County (hereinafter referred to as the "Union"), over the terms and conditions of a new collective bargaining agreement to replace the one which expired December 31, 2004.

Monroe County exchanged contract proposals with its various bargaining groups on August 23, 2004. The County and the Union representing Human Services employees met on October 14 and October 25, 2004 in an effort to negotiate a 2005-2006 collective bargaining agreement. The parties were unable to agree on the terms and conditions of a new agreement, with several issues being unresolved. On January 28, 2005 the Union filed for interest arbitration with the Wisconsin Employment Relations Commission (hereinafter referred to as the "Commission"). Mr. David Shaw, representing the Commission, met with the representatives of the County and the Union on April 18,

2005, to attempt to mediate the dispute, but was unsuccessful, and subsequently declared that an impasse existed on June 17, 2005.

The undersigned was selected by the parties to arbitrate the matter by means of a letter to him dated July 8, 2005. A hearing was held at the Monroe County Courthouse, in Sparta, Wisconsin on August 16, 2005. The hearing began at 10:00 a..m., and concluded at 12:45 p.m. The parties were represented by Mr. Dan Pfeiffer, Staff Representative, District Council 40, AFSCME, AFL-CIO, and by Mr. Ken Kittleson, Personnel Director, Monroe County. The parties submitted evidence and presented testimony in support of their respective final offers prior to arbitration. At the hearing, the

arbitrator was informed that the parties had agreed that he was authorized to render a single decision which would be applicable to both of the bargaining units referred to above. The parties also agreed that Pepin, Buffalo, Trempealeau, Jackson, Wood, LaCrosse, Adams, Juneau, Vernon, Sauk, Richland and Crawford Counties were the appropriate comparables for the purpose of the instant interest arbitration case.

At the hearing, the County presented 21 exhibits, hereinafter referred to as "ER Ex," which, among other things, described the County's (somewhat precarious, in its opinion) financial status and the limitations placed on its ability to raise additional tax revenue by Governor Doyle's budget; wage comparisons with the comparable counties and with private sector employees; and information about the County's health insurance costs, including the rate at which its premiums have increased since 1980. Subsequent to the hearing, the County submitted a memorandum from Dennis Hubbard, Monroe County Board Chairman dated September 17, 2005, addressed "To whom It May Concern," expressing concerns about the County's financial status. The memorandum was entered into the record as ER Ex 22.

The Union submitted a total of 37 exhibits at the hearing, hereinafter referred to as "UN Ex," which dealt with economic data about the County, including tax revenue, demographic information, wage increases negotiated between the Union and the comparable counties, and final offers of the Union and Monroe County with respect to its other bargaining units, all of which are similar to the ones described below. The Union also submitted a total of 23 collective bargaining agreements it had negotiated with the comparable counties, none of which were identified as exhibits. After the hearing, the Union submitted three additional exhibits identified as "UN Exs" 38, 39 and 40, as follows:

No. 38. 2005 equalized value by County, net new construction, % change over prior years

No. 39. Tentative agreement between Union and Juneau County (wage increases and changes in the health insurance plan)

No. 40. Operating levy for 2004 (6.27, 87.49% of allowable levy)

There was no transcript taken at the hearing. Post-hearing briefs were submitted by both the County and the Union, reference to which will hereinafter be identified as "ER Br" and "UN Br," respectively, under cover of letters from the parties dated September 22 and 23, 2005. The Union submitted a post-hearing brief, in the form of a letter from Dan Pfeifer dated October 10, 2005, reference to which will hereinafter identified as "UN Reply Br." In a letter dated October 6, 2005, the County informed the arbitrator that it would not be submitting a reply brief. Following a telephone

call from the arbitrator to Mr. Pfeifer requesting clarification of a section of the Union's amended final offer (regarding on-call time under Article 22 of the collective bargaining agreement), and a telephone call to Mr. Kittleson informing him of the communication, the arbitrator received letters and e-mails dated October 27, 2005 from the parties regarding this matter: the Union claiming that the inclusion of Item No. 1 in its (amended) final offer simply formalized a memorandum of agreement dated May 27, 2005, and the County claiming that an agreement on this matter had not been consumated. It argued that the insertion of Item No. 1 in its final offer represented an attempt by the Union to "perform major surgery on the body of the collective bargaining agreement during the arbitration process," and warned that "anyone who tries to replace entire pages of the collective

bargaining agreement through arbitration attempts it at their own peril." The record was closed with the receipt of the above-referenced communications from the parties.

II. ISSUES AND FINAL OFFERS

The County's final offer, dated May 9, 2005 addresses the issues of wages and health insurance, as follows:

> 2005: 2% across-the-board wage increase effective 10/1/05, status quo on health insurance
>
> 2006: 2% across-the-board wage increase effective 1/1/06, add a $250 single/$500 family deductible to the current health insurance coverage effective 1/1/06
>
> Duration: January 1, 2005 through December 31, 2006.

The Union's final offer for Monroe County Professional Human Services Employees, dated June 16, 2005 addresses the issues of wages and contractual matters, as follows:

> 1. Article 22 - On-Call Time - Section 1 - Include the current Memorandum of Agreement regarding the six(6) on-call staff rotation.
>
> 2. Duration - 1/1/05-12/31-06
>
> 3. Wages - 2% ATB effective January 1 for each year of the Agreement.
>
> 4. Memorandums of Agreement:
>
> | | |
> |---|---|
> | Professionals: | Modified Duty - Continue |
> | | Lead Workers (2) - Delete |
> | | Lead Workers (3) - Continue |
> | | Job Share - Children and Family - Delete |
> | | October 17, 2000 - Delete |
> | | November 15, 2000 - Delete |
> | | May 27, 2003 - Continue |
> | | March 12, 2004 - Add as memorandum |
>
> 5. Provisions retroactive to 1/1/05, excluding fair share/dues deduction.

6. All provisions not addressed in the Union's Final Offer to remain as in the 2003-2004 collective bargaining agreement between the parties.

The Union's final offer for Monroe County Clerical and Para-Professional Human Services Employees is identical to the one enumerated above, except there is no reference to on-call time, and Memorandums of Agreement (Issue No. 4) is as follows:

Clericals and Para-Professionals:	Modified Duty - Continue Isensee (3/12/04) - Add as a memorandum Clerical Lead (5/14/01) - Continue October 4, 2004 - Add as a memorandum

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As noted above, the major differences between the parties are (1) the effective date of the 2005 wage increase, and (2) the County's proposal to add a $250 single/$500 family deductible to the health insurance plan. The parties appear to agree that the only dispute with respect to the memorandums of agreement included in the Union's final offer pertains to the inclusion of Item No. 1 (on-call time) in the body of the collective bargaining agreement, and the County's vehement objection to its inclusion via the interest arbitration process. These matters will be discussed below.

III. STATUTORY CRITERIA

The parties have agreed to binding interest arbitration pursuant to Section 111.70(4)(cm)(7), Wis. Stats. The criteria to be utilized by the Arbitrator in rendering the award are set forth in the Statute, as follows;

> 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 give the greatest weight to any state law or directive lawfully issued by a state legislature or administrative officer, body or directive lawfully issued by a state legislator 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 be given 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 arbitrator panel shall also give weight to the following factors:
>
> a. The lawful authority of the municipal employer.
>
> b. Stipulation of the parties.
>
> c. The interests and welfare of the public and 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 generally in public employment in the same community and in comparable communities.
>
> 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 the municipal employees 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.

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 pension, 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. POSITION OF THE COUNTY

"Greatest weight" criteria should apply

The County argues that governor's tax freeze means that the "greatest weight" criteria should apply with respect to the instant interest arbitration case, citing a variety of statistics and arguments relating to what it describes as its precarious financial position, and that "for this reason alone the arbitrator should find in favor of the County's final offer." (ER Br @8). It points out that "a cap of 3.4 percent on spending severely limits the County's ability to meet pressing needs, that the county levy increased 15 percent in 2005, and that county taxpayers are experiencing an increase of 12 percent in their tax bills." (ER Ex 11). As noted earlier, a memorandum from Monroe County Board Chairman Dennis Hubbard, introduced post-hearing as Employer Exhibit 22, describes the County's limited ability to raise additional tax revenue, and the multiplicity of demands on its limited resources.

As further evidence of its shaky financial situation, the County points out that "in order to make it through the year, the Highway Department laid off 26 employees for the month of October, 2004, and by the end of 2004, the Monroe County Treasurer had one lonely $500,000 certificate of deposit left in the general fund, while the County's auditor recommends an absolute minimum of $2.4 million in the general fund." (ER Br@9, ER Ex 11)

The County is not pleading "inability to pay"

The County does not plead "inability to pay", but it cites a litany of budgetary problems in

support of a "difficulty to pay" argument under Wisconsin Statute 111.70(4) (cm) (7r) (c). In support of its argument that Monroe County taxpayers will be adversely affected by a ruling in favor of the Union's final offer, it cites a decision by Arbitrator June Miller Weisberger (Dec. No. 30797-A, Kenosha correctional officers, November 7, 2004) in which she addressed the relative importance of the "greatest weight" and "greater weight" criteria with respect to interest arbitration:

> "While it is true that the County has not made an (in)ability to pay argument and there are several bright spots in the County's financial situation (such as its current low mill rate and additional taxing capacity) and it is also true that the greatest weight factor covers a narrower range of evidence than the County has relied upon under this now salient statutory factor, documented financial problems facing the County are real and must be taken into account, whether they fall under 111.70(cm)(7), 7(g) or (7r). A difficulty to pay argument is now of greater relevance in MERA interest arbitrations than it may have been earlier, due to changes in statutory factors." (ER Br@10)

The wage issue

Wage offers by the County and the Union (2 percent across-the-board in each year of the agreement) are identical, except that under the County's offer, the 2005 increase will not be effective until October 1, 2005, with no retroactivity, which translates into a wage increase of 0.5 percent for 2005. The County justifies a 2005 wage increase lower than the Union's final offer (2 percent across-the-board, effective January 1, 2005) by arguing that "because there were no insurance changes in 2005, therefore the additional costs of remaining with the insurance status quo were partially deducted from the wage increase for the year, delaying the effective date of the 2005 pay increase to October 1." (ER Br@11-12) This represents a prelude to the County's argument in support of what amounts to the major difference between the parties' final offers, e.g., the County's proposal to amend the health insurance plan to include a $250 single/$500 family deductible, versus the Union's proposal to maintain the status quo with respect to health insurance.

The health insurance issue

The County points out that health insurance costs have increased dramatically - a 276 percent increase in the past 10 years, 1,289 percent in past 25 years (ER Ex 21, ER Br@12). It argues that design changes were necessary to moderate the premium increases due to the County's financial situation; that there would be no changes in employee contributions (which now equal 13 percent of premium costs for single and family coverage) or co-pays for office visits; and that while imposition of the deductibles would only reduce anticipated double-digit premium increases in 2006 by 2.5 to 6.5 percent, "they would be a small, first step towards slowing the increase in health insurance costs." (ER Br@12-13). It argues that Monroe County is the only county among the comparables that does not offer at least one plan with a deductible, and that the health insurance coverage enjoyed by Monroe County employees is superior to plans by which private sector employees are covered, e.g., with respect to first-dollar coverage for hospitalization:

> "Private sector employees do not have this first-dollar coverage, and they are also taxpayers who are outraged that their property tax dollars are funding this first-dollar coverage for County employees. Selecting the County's final offer would be a first small step towards leveling the health insurance playing field between the private and public sectors in Monroe County." (ER Br @13)

There is no need for a quid pro quo

The County argues that the need for a quid pro quo does not exist in the case of modest changes in an existing health insurance plan, which may have been the case in previous years, when the rate of increase in health insurance premiums was much lower. It points to what it describes as the accepted standards necessary to change the status quo in an interest arbitration proceeding: whether there is a need for the change; whether the proposal will reasonably address and remedy the problem; and whether there is comparable support for the proposal. (ER Br@15)

With respect the first "prong" of the test, the County argues that "when your health insurance premiums are nearly 13 times what they used to be, there is definitely need for a change. It cites a decision by Arbitrator William Petrie in an interest arbitration case involving the City of Marinette (Dec. No. 30872-A, 11/27/04), where the cost of the City's health insurance premiums had more than doubled between the year preceding the predecessor agreement and the instant proceedings, in which he concluded that "this dramatic increase in health insurance costs constituted an underlying problem for which no significant quid pro quo was required," and a similar case (City of Onalaska (Dec. No. 30550-A, 10/1/03), in which Arbitrator James Engmann ruled that "with limited budgets caused by cutbacks in state aid and decreases in other revenues, a municipal employer can easily show that it has a legitimate problem of paying the increased and skyrocketing cost of health insurance premiums." (ER Br@16)

With regard to the second "prong" of the test, the County concedes that its proposal to add a $250 single/$500 family deductible to the health insurance plan will not go nearly far enough to resolve the problem of escalating premium costs, since they will only reduce the anticipated premium increases by 2.5 to 6.5 percent, but it argues that "it's a small step in the right direction." (ER Br@16-17) Regarding the third "prong," e.g., whether there is comparable support for the proposal, the County argues that it is the only county among the comparables that does not offer at least one plan with a deductible. It cites a decision by Arbitrator Edward Krinsky in a case involving La Crosse County (Dec. No. 30232-A, 9/02) in which he noted that "deductibles and copayments are commonplace in the comparable counties," and that "these are not unusual benefits which the County is seeking for which it should need to offer a special incentive in order to achieve them. Rather, the County is making a reasonable effort to control escalating health costs, and is doing so in

a manner similar to what has been agreed to by employers and unions in comparable counties." (ER Br@18)

The County argues that Arbitrator Krinsky's decision is particularly relevant because La Crosse County is one of Monroe County's comparables, and, accordingly, "the comparables overwhelmingly support Monroe county's proposal to add a deductible to the health insurance plan." (ER Br@18) Wages/cost of living/additional cost of the Union's final offer

As noted above, the final offers of the County and the Union with respect to wage increases for 2005 and 2006 are identical, except for the effective date of the 2005 increase. The County argues that a review of both parties' wage surveys indicates that employees in the unit are well paid, and that the cost-of-living data loses its significance because both final offers are below the cost-of-living data provided at the hearing by both parties, "likely because both parties recognize the frail financial condition of the employer." (ER Br@19)

According to the County, the additional cost of the Union's final offer, e.g., by comparison with the total cost of its final offer equals $66,963 over the two years of the 2005-2006 agreement, of which $$23,527 represents the additional cost of the Union's wage offer, which is retroactive to January 1, 2005. (ER Br@21) It points out that employees of this unit are well paid and have generous benefits as compared to the employees of Monroe County and its comparable counties, and especially in comparison to private sector employees and the West Central Wisconsin region. It argues that "County taxpayers should not be required to pay the additional $66,963 for back pay and first-dollar hospital insurance coverage for this group." (ER Br@23-24)

The memorandums of agreement

The County's final offer is silent regarding the continuation of memorandums of agreement,

a matter which, as noted earlier, is included in the Union's final offer. (ER Ex 3). In its post-hearing brief, the County argues that "side agreements without sunset dates would continue and side agreements with sunset dates would cease unless the parties agreed to continue them outside of the arbitration process." (ER Br@19-20) The County expressed strong opposition to item no. 1 of the Union's final offer for the professional unit, which refers to the current memorandum of agreement regarding the six on-call staff rotation. It claims that the Union is attempting, inappropriately, to interject one of the side agreements into the body of the contract:

> "This proposal extends far beyond simply continuing a side agreement, was not discussed in bargaining, and for this reason is strenuously opposed by the County. Rather than evaluating the final offer stance of the Union regarding each of the side agreements, the County suggests that the Arbitrator sidestep this tangled area entirely by choosing the County's final offer. In doing so, the side agreements become the responsibility of the parties to resolve outside of the arbitration arena, and outside of the final offer arbitration process is where they ostensibly belong." (ER Br@19-20)

In response to his telephone call to Mr. Dan Pfeifer requesting clarification of the inclusion of the memorandums of agreement in the Union's final offer, the arbitrator received, simultaneously, letters from the Union and the County relating to this matter. Mr. Pfeifer took the position that the memorandums of agreement are not at issue in these cases as the only real changes are to delete the outdated memorandums. (Letter from Dan Pfeifer, dated October 27, 2005) Mr. Kittleson strongly disagrees, arguing that if the Union wishes to change the number of on-call social workers in the agreement, they should propose the change in negotiations next fall. As noted above, he argues that that "major language surgery" in the collective bargaining agreement should be accomplished on a voluntary basis. (Letter to arbitrator from Mr. Kittleson, dated October 27, 2005)

In its conclusion, the County argues that the governor's tax freeze imposes restrictions upon its ability to tax and spend, and thus carries the greatest weight in this proceeding; that Monroe County has serious financial difficulties, and that these economic conditions carry greater weight in this proceeding; and that 7r(c) of the statute requires that the arbitrator give weight to the interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement. (ER Br@22-23).

The County acknowledges that although the it is not making an inability to pay argument in this case, due to the inordinately high threshold involved with that assertion, but is making a "difficulty to pay" argument, pointing out that it has provided documentation of the County's financial crisis in addition to case law that supports the County's "difficulty to pay argument." (ER Br@23) It is particularly adamant that it be allowed to make modest changes to the health insurance plan in order to restrain the escalation of premium costs, which represent an increasing problem for the County:

> "With a countywide health insurance bill of $3,696,813, the estimated additional 4.5 percent to keep the status quo in health insurance would cost the taxpayers an additional $166,357 for 2006. This alone gobbles up over 35 percent of the limited amount the county can increase its levy in 2006, money that is need for more pressing issues as addressed by the Monroe County Board Chairman in County exhibit 22." (ER Br@24)

Finally, the County reiterates its claim that changes in the health insurance plan which it has proposed does not require a quid pro quo due to the tax freeze, the County's financial condition, and the astronomic increase in health insurance premium costs documented in County Exhibit 21. (ER Br

@24-25)

V. POSITION OF THE UNION

As noted earlier, the parties agreed that the arbitrator should render one decision for both bargaining units represented by AFSCME Local 2470-A, and that the duration of the contract (for two years) is not at issue. The Union also argues that the memorandums of agreement (included in its final offer) are not at issue, since the County took the position that any memorandums that do not have sunset date should be carried forward. (UN Br@3) It complains that the County's final offers do not address the issue of retroactivity, compared with the Union's final offers which do include retroactivity for the various provisions of the contract, with the exception of dues deduction/fair share.

The Union notes that there are three main areas of difference in the parties' final offers: that the memorandum covering professional employee on-call time be included in the body of the agreement (the County disagrees, arguing that it remain as a memorandum); the effective date of the 2005 wage increase (the Union proposes January 1, 2005 versus the County's proposed effective date of October 1, 2005); and the Union's proposal to maintain the status quo with respect to health insurance, versus the County's proposal to include $250 single/$500 family deductibles, effective January 1, 2006. (UN Br@3-4)

Memorandum of agreement

The Union requests that the memorandum of agreement governing professional employee on-

call time be placed in the body of the agreement. It argues that this is not an extremely important issue and should not determine the outcome of this instant arbitration case. "Whether this language is placed in the body of the agreement or remains as a memorandum will not change how this issue is handled."

Wages

According to the Union, its exhibits 14 and 15 demonstrate that the wages for the Monroe County Human Services Department are generally within the average of the comparables. (UN Br@6) But it disagrees with the County's argument that its financial position is precarious and must be given 'greatest weight' with regard to the arbitrator's decision, pointing to such positive indicators regarding the County's financial status as a 3.8% increase in new construction activity, an increase of $2.7 million in the County's "coffers", (UN Ex 36), and increases in per capita income, sales tax revenue and property values. (UN Reply Br@1) It argues that the County's wage offer is inferior to that of the comparables, particularly with respect to the effective date of the 2005 wage increase and the lack of retroactivity:

> "The Union takes the position that the comparable wage increases, as set forth in exhibits 14, 16, 32 and 33, should be given great weight. These exhibits show that all of the external comparables (with the exception of Jackson County) are receiving increases in excess of 2% for both 2005 and 2006, if settled. Jackson County is receiving 2% for 2005 and is negotiating for a 2006 contract. All of the comparables are receiving a wage increase effective January 1 of 2005, if settled. If Monroe County's Final Offer is selected, the Monroe County employees would be the only jurisdiction not receiving a wage increase effective January 1, 2005." (UN Br@6)

Health insurance

The Union argues that "this is not the time to implement the deductibles when the County is

offering a substandard wage increase, and absolutely no 'quid pro quo' for the proposed change in health insurance." (UN Br@8) It points out that the County contributes 87% of the premium cost for single and family health insurance coverage, "which places it at the lower end of the comparables as far as percentage contribution to health insurance." (UN Br@8) Its post-hearing brief includes a list of the deductibles and co-pays in the health insurance plans of the comparable counties, which demonstrate that

> "Pepin, Richland, Trempealeau and Vernon Counties have no deductible or office visit co-pay; that Buffalo, Crawford, Jackson, LaCrosse and Wood Counties have a deductible but no office co-pay; and that Monroe and Sauk Counties have no deductible but have office co-pays." UN Br@8-9)

According to the Union, the office visit co-pay was increased from $10 to $30 in the last contract, when employees did receive a quid pro quo of wage increases which totaled 8% in 2003 and 2004. It argues that if the County's final offer is selected, Monroe County employees would be the only employees in all of the comparables to pay both deductibles and office co-pays, and that if the deductible is implemented,

> "an employee could face a liability of $500 per year or $.24 per hour. Factoring in the maximum deductible, for 2006, employees starting at the lower end of the wage schedule could face a reduction in the (sic) in their yearly income and employees at the top of the wage schedule could see a less than 1% increase in yearly income." (UN Br@10)

<u>The cost-of living</u>

The Union refers to its Exhibits 21 and 22, which demonstrate that the cost of living increase for the year ending December of 2004 was 3.4%, and that the increase for the year ending June, 2005 was 3.2% (for Midwest size D), while the County's wage increase for 2005 generates an increase of only 0.5%. The takes the position that arbitrators, in County government cases, have

generally compared the CPI to the increase in wages, and accordingly, "that the increase in the CPI clearly supports the Union's final offer." (UN Br@11)

Response to employer exhibits

The Union questions the relevance/importance of several exhibits introduced into evidence by the County, e.g. the public sector survey (ER Ex 15), arguing that its exhibits (UN Exs 14-16) are the most appropriate because they are taken directly from the collective bargaining agreements rather than done by survey. (UN Br@13) It also questions the relevance/weight of Employer Exhibit 16, entitled "LaCrosse Area Society for Human Resource Management 2005 Compensation Survey," because "it is private section data and many of the positions compared are not those that exist in the Monroe County Department of Human Resources." (UN Br@13) It also questions the relevance of the letter from Monroe County Board chairman Dennis Hubbard (identified as ER Ex 22), arguing that

> "this exhibit was just received and it appears to be more argument/testimony than fact. The Union did not have an opportunity for cross-examination for this Exhibit and would request that the arbitrator take this into account when weighing this Exhibit."
> (UN Br@13)

The Union also rebuts the County's argument that it is the only county among the comparables that does not offer at least one plan with a deductible. (ER Br@17) It argues that this is true, but misleading:

> "The comparable counties that participate in the State plan are Crawford, Juneau, Pepin, Richland, Trempealeau, and Vernon. The State plan offers a standard plan with a deductible, in all of its options. Very few employees take the standard plan because it is cost prohibitive. The vast majority of employees in the above counties select one of the HMO) options. The vast majority of employees in the above counties pay no deductible. Sauk County has no deductible for its Dean HMO and Dean Copay). Crawford County did go to a $500/$1000 deductible in 2005 but

> received a significant 'quid pro quo' in the form of wage increases of 4% for both 2005 and 2006." (UN Reply Br@1, UN Exs 14, 16)

VI. DISCUSSION

The final offers of the County and the Union are supported by testimony of the parties at the hearing, and by the exhibits and post-hearing and reply briefs offered into evidence. The major differences, as noted earlier, are wages and health insurance, and the Union's inclusion of several contract issues in its final offer, and the County's opposition based on its argument that interest arbitration is not an appropriate forum for the resolution of these matters.

The County argues that the arbitrator must pay particular attention to the "greatest weight" factor of the statute governing interest arbitration, and provides statistical evidence portraying the County's purportedly precarious financial status. The Union contests this claim, citing evidence of positive economic developments which, according to its analysis, counters the County's claim that its economic plight must be accorded the "greatest weight" in this proceeding. After reviewing the evidence provided to him, the arbitrator must conclude that the County is not affluent, as measured by any of the usual standards such as per capital income, property values, levy limits, etc. But it cannot and does not claim an "inability to pay," as contrasted with its declaration of a "disinclination to pay" based on the other arbitral standards it cites in support of its final offer. Consequently, the arbitrator must address their applicability to the major differences between the parties' final offers, e.g., health insurance, the respective wage offers, and the memorandums of agreement.

1. <u>Health insurance</u>

The County points out that the cost of its health insurance premiums have increased dramatically, reaching $1,352.15 per month in 2005. (ER Ex 21) Increases of this magnitude are a widespread phenomenon, which have become an increasingly contentious issue in labor-management negotiations in both the public and private sectors. It is true that Monroe County employees enjoy a high level of health insurance benefits, and that their share of total premium costs has held steady at 13 percent. On the other hand, employee co-pays for office visits increased from $10 to $30, a not insignificant increase. But as the Union points out, these employees did receive a significant quid pro quo in the prior contract in the form of a higher wage increase in exchange for agreeing to the increased co-pays for office visits. The County argues, with considerable justification, that a deductible in the amount of $250 single/$500 family would be a small "first step' towards containing escalating health insurance costs for the County, reducing its premium costs by an estimated 2.5 to 6.5 percent. At the same time, it would impose a not insubstantial burden on employees, but one that may be inevitable, given trends and developments relating to this matter.

It is a generally accepted maxim of interest arbitration that the party proposing a major change in the status quo is obligated to offer a quid pro quo in exchange for the proposed change. Citing previous arbitration decisions, and the unique character/importance of health insurance as a subject of collective bargaining, particularly with respect to cost, the County argues, with considerable justification, that the need for a quid pro quo when it adopts measures such as deductibles to stem the surge of higher premium costs is no long inviolable. The Union correctly counters that comparability is an equally important principle in interest arbitration . It points out that none of the comparables have both deductibles and office co-pays, and argues that when this fact is viewed in the context of what it describes as the County's "substandard wage offer," its proposal to

maintain the status quo with respect to health insurance should prevail.

2. Wages

As noted earlier, the final offers of the parties with respect to wage increases are identical, with the exception that the County's offer of a 2% increase effective October 1, 2005 (with no retroactivity) translates into an effective wage increase of 0.5% in the first year of the agreement. The County argues that the lower increase is justified by the fact it had to absorb the higher cost of health insurance premiums, while maintaining the status quo. The County cites earlier interest arbitration decisions which appear to support its argument that a quid pro quo is not necessary when (needed) changes in the health insurance plan are instituted. However, the County is not only *not* offering a quid pro quo, which arguably is justifiable, but appears to be exacting a *penalty* in the form of a very small (0.5%) increase for 2005 combined with the addition of health insurance deductibles, effective January 1, 2006.

This may represent a classic example of the County being "penny wise and pound foolish" with respect to its final offer: understandably, it wants to gain some control over escalating health insurance costs by instituting a $250 single/$500 family deductible. This would represent a small, but *permanent long-term benefit to the County;* but at the same time, it offered a very small wage increase for 2005 which, according to its own calculations (ER Be@21), would provide the County with a *one-time* saving of $23,527, versus an *annual* saving of $19,438 in health insurance costs if the County's final offer is selected.

Contract provisions

A third, and seemingly contentious issue in dispute is the memorandums of agreement included in the Union's final offer. The County's final offer is silent regarding this matter which,

according to its testimony at the hearing and its post-hearing brief, means that "side agreements without sunset dates would continue and side agreements with sunset dates would cease unless the parties agreed to continue them outside of the arbitration process." (ER Be@19-20) It strongly argues that the inclusion of this provision in the Union's final offer is inappropriate. The Union demurs, arguing that this is not a major issue, and that incorporating the on-call provision into the agreement merely confirms existing practice. (UN Be@3, 5) While the issue may not be as critical or as unimportant to the outcome of the instant case as the County and the Union suggest, the lack of clarity with respect to the memorandums of agreement referred to in the Union's final offers, particularly the matter of on-call time for Monroe County Professional Human Services employees, poses a problem for the arbitrator, which is addressed below.

Concluding observations

Both of final offers are defensible, but contain flaws which have already been referred to. In the opinion of the arbitrator, the Union erred by including several contract provisions in its final offer without sufficient explanation or substantiation. The County correctly argues that it would be more appropriate to resolve these issues at the bargaining table. The County, while not claiming an "inability to pay" argument, makes a strong case that its financial position is precarious, and that escalating and already very high health insurance costs support its proposal to include deductibles in the plan. While it argues, with considerable justification, that a quid pro quo may not be necessary with regard to changes in health insurance, a similar argument can be made that there should be a semblance of equity and fairness with respect to the parties' final offers. In this context, the County's wage offer for 2005 appears to be substandard, by comparison with those negotiated by the comparable counties. It presents a novel, but somewhat suspect justification for the small increase by

arguing that, because "there were no health insurance changes in 2005, the additional cost of remaining with the health insurance status quo were deducted for the wage increase for 2005," (ER Be@11-12) an argument which the comparables could make with equal validity, but apparently did not.

Also, the Union presents evidence which demonstrates that, among the comparables, none contain provisions which require *both* office co-pays and deductibles, or that they offer plans which do not require deductibles. (UN Reply Be@1,2) At the same time, the Union's proposal to maintain the status quo with respect to the health insurance plan is somewhat myopic, given current trends and developments with respect to the manner in which employer-sponsored health insurance plans are financed. The apparent need for health insurance cost containment measures calls into question the County's rationale for offering a 0.5% wage increase for 2005, when an increase at least equal to those negotiated by the comparables would have rendered its proposal to add deductibles to its plan all the more credible.

The county argues that state limitations on its expenditures, including Governor Doyle's action on July 25, 2005 signing the state budget that freezes property taxes, clearly falls within the "greatest weight" factor of Section 111.70(4)(cm)(7) of the Wisconsin Statutes. (ER Be@7). While not claiming an *inability to pay*, the County has instead argued in favor of a "difficulty" or "disinclination to pay," citing credible evidence that it has been forced to engage in a number of "belt tightening" measures to remain within the restraints imposed by legislative fiat and political realities. (ER Be@9) Both the Union and the County offered evidence in support of their respective positions regarding the County's financial status which can best be described as anecdotal. This includes the letter from Monroe County Board Chairman Dennis Hubbard, referred to above, in which he claims

that increasing its tax levy by the maximum allowed by state law would produce only $471,000 in additional revenue, and that there are many demands on the County's resources which it must address. The Union argues that "it did not have an opportunity for cross-examination for this Exhibit," and would request that the arbitrator take this into account when weighing this Exhibit." (UN Br@13) The Union, for its part, offers antecdotal evidence in the form of several newspaper articles which demonstrate that the County's financial status is improving: one deals with the positive economic impact of nearby Fort McCoy on the economy of Monroe County (*Sparta Herald,* May 16, 2005, UN Ex 35); the other article refers to a pending murder trial which, incidentally, includes a statement that "county coffers are holding $2.7 million more than they did at this time a year ago." (*Monroe County Democrat,* July 7, 2005, UN Ex 36)

The parties agree that the cost-of-living is not a significant factor in the instant interest arbitration case, and should not influence the arbitrator's decision. Also, it is clear that the wages of Monroe County employees in the two bargaining units involved in this case are "middle of the pack" with respect to those paid to employees in the comparable counties. Accordingly, a "catch-up" argument was not raised, nor is one needed. Similarly, while comparisons with private sector employees introduced by the County (ER Ex 16) are interesting, they are not as relevant to the outcome of the instant case since, as the Union points out, "many of the positions compared are not those that exist in the Monroe County Department of Human Services." (UN Be@13)

The county's argument regarding the need to restrain increases in health insurance costs has been well documented. While interest arbitrators have generally supported the need for a quid pro

quo by the party requesting a substantive change in the status quo, the special character of health

insurance as part of the employment contract increasingly calls this agreement into question. This arbitrator agrees with this conclusion, but he would also argue that the party requesting the change, in this case, Monroe County, has an obligation to consider the impact of the requested change on the overall economic status of its employees in the context of its final offer. This would include the matter of comparability, relating to matters such as the type of health insurance plans offered by the comparable counties, including deductibles and co-pays, and particularly, the wage increases included in their final offers or which have already been negotiated.

As noted earlier, there is a relatively small dollar *cost difference* between Union's and the County's final offers, e.g., $66,963 over the life of the agreement (ER Br@21). But there are several significant dissimilarities which the arbitrator must consider, which include:

> 1. The difference in the effective dates of wage increases for 2005, e.g., October 1, 2005(County) versus January 1, 2005 (Union);
>
> 2. The County's insistence that it needs some relief from the high cost of its health insurance plan, via the introduction of $250 single/$500 family deductibles, and the Union's insistence on the maintenance of the status quo.
>
> 3. The inclusion in the Union's final offer of a provision to incorporate a memorandum of agreement relating to on-call rotation of social workers into the collective bargaining agreement, a provision which the County claims should be addressed at the bargaining table.

Summation

The final offers submitted by the Union and the County are reasonable; but as noted above, both are flawed. The County emphasizes the "greatest weight" factor, pointing to the financial problems facing the County, and the limitations placed on its ability to raise additional revenue by Governor Doyle's budget. Most significantly, it points to the need to contain the dramatic escalation

of health care costs, which it proposes to initiate by introducing $250 single/$500 family deductibles into the insurance plan for employees represented by AFSCME Local 2470-A. It argues that this change in the existing health insurance plan does not require a quid pro quo on its part, citing the unique character of health insurance as a subject for collective bargaining, and arbitral rulings which support its conclusion.

At the same time, it offers a 2% wage increase for 2005, effective October 1, 2005, without any provision for retroactivity, which translates into an effective wage increase of 0.5% for the first year of a two-year agreement. This appears to be lower than the wage increases negotiated by the comparable counties which have settled their collective bargaining agreements, which, when combined with the introduction of deductibles into the health insurance plan, would doubly penalize the employees affected by the County's final offer. By contrast, an offer of 2% effective January 1, 2005, which would have at least matched those of the comparable counties, probably would not have represented a major challenge to the County's financial viability within the constraints imposed by the "greatest weight" criteria. But it would have strengthened its hand with regard to its proposal to slow the escalation of health insurance premiums by the adoption of deductibles. It vigorously disparages the Union's inclusion of a proposal to incorporate a memorandum of agreement relating to on-call time for social workers into the body of the contract, arguing that interest arbitration is an inappropriate forum for amending the collective bargaining agreement. While this is a defensible argument, the County's dire warnings about the seriousness and the danger of adopting the change proposed by the Union may be an overstatement, since it does not appear that the status quo would be affected substantively.

For its part, the Union argues that the County's financial position is not critical, citing a

number of recent improvements; that its final offer with respect to wage increases matches those of the comparable counties; and that none of the comparable have health insurance plans which contain both co-pays and deductibles. It contends that arbitrators have consistently ruled that a quid pro quo is necessary when a party requests a major change to the status quo with respect to the terms and conditions of employment. According to the Union, the lack of retroactivity with respect to the effective date for the 2005 wage increase, when combined with the introduction of deductibles into the health insurance plan, doubly penalizes its members, and which represents a strong argument in favor of its final offer.

While the Union understandably wants to maintain the status quo with respect to the health insurance plan, escalating premium costs is a circumstance which it, and other unions and employers, will be forced to address in future contract negotiations. As noted earlier, the Union's final offer is flawed by the inclusion of a proposal to include a memorandum of agreement regarding on-call time for social workers in the body of the collective bargaining agreement. While the issue is not as critical as the County suggests, it does represent an error in judgment on the part of the Union, since it appears to be a matter best addressed by the parties at the bargaining table.

As noted above, the arbitrator is required to choose between two final offers which are simultaneously reasonable, but which are somewhat flawed. The award which follows represents the arbitrator's judgment that the Union's final offer, its shortcomings notwithstanding, is the more reasonable of the two final offers.

VI. AWARD

Based on the preceding discussion, taking into consideration the evidence submitted to the arbitrator for his consideration, the arguments cited by the parties, and the equities of the respective positions of the County and the Union discussed above, and applying the statutory criteria set forth at Sec. 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the arbitrator that the final offer of the Union is the more reasonable of the two final offers, and is hereby ordered to be implemented into the 2005-2006 collective bargaining agreement between the parties.

Dated: December 5, 2005

Irving Brotslaw
Arbitrator