ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between MONROE COUNTY, WISCONSIN (Highway Department) And LOCAL 2470, WISCONSIN COUNCIL 40, AFSCME, AFL-CIO	WERC Case 171 No. 64442 INT/ARB-10378 Decision No. 31382-A

Impartial Arbitrator

William W. Petrie
217 South Seventh Street #5
Post Office Box 320
Waterford, Wisconsin, 53185-0320

Hearing Held

September 2, 2005
Sparta, Wisconsin

Appearances

For the Employer
Mr. Ken Kittleson
Personnel Director
MONROE COUNTY
14345 County Highway B, Room 3
Sparta, WI 54656-4509

For the Association
Mr. Daniel R. Pfeifer
Staff Representative
WISCONSIN COUNCIL 40
AFSCME, AFL-CIO
18990 Ibsen Road
Sparta, WI 54656-3755

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Monroe County Highway Department and Local 2470, Wisconsin Council 40, AFSCME, AFL-CIO, with the matter in dispute the terms of a two year renewal labor agreement spanning January 1, 2005, through December 31, 2006. After their preliminary negotiations had failed to result in full agreement, the Union filed a request with the Wisconsin Employment Relations Commission on January 31, 2005. Following investigation by a member of its staff, the Commission, issued certain *findings of fact, conclusions of law, certification of results of investigation and an order requiring arbitration*, on June 28, 2005, and on July 12, 2005, it referenced the selection of the parties and issued an order appointing the undersigned to hear and decide the matter.

A hearing took place in Sparta, Wisconsin on September 2, 2005, at which time both parties received full opportunities to hear and decide the matter, and each thereafter closed with the submission of a post-hearing brief.

THE FINAL OFFERS OF THE PARTIES

In their respective final offers, hereby incorporated by reference into this decision, the parties propose as follows.[1]

(1) On <u>May 9, 2005</u>, the County published a final offer providing in principal part as follows:

(a) Two 2% across-the-board wage increases effective 10/1/05 and 1/1/06;

(b) Maintenance of the status quo on health insurance in 2005, and the addition of $250/single and $500/family deductibles to the health insurance coverage effective 1/1/06.

(2) On <u>June 1, 2005</u>, the Union published a final offer providing in principal part as follows:

(a) Two 2% across-the-board wage increases effective 1/1/05 and 1/1/06;

(b) Continuation of memorandums of agreement currently in effect;

(c) Contract provisions to be retroactive to 1/1/05, including fair share/dues deduction.

(d) All provisions not addressed in the Union's final offer to

[1] Both final offers proposed the same contract duration, and the addition of the same new contract language to comprise <u>Article 5, Section 4</u> in the renewal agreement.

remain as provided in the parties' 2003-2004 collective bargaining agreement.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm) of the Wisconsin Statutes directs the Arbitrator to utilize the following criteria in arriving at a decision and rendering an award:

"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 legislature to administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

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

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

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

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

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

e. Comparisons 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.

f. Comparisons 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 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 hearing.

j. Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

THE POSITION OF THE COUNTY

In support of the contention that its final offer is the more appropriate of the two before the undersigned in these proceedings, the County emphasized the following principal considerations and arguments.

(1) It preliminarily noted as follows:

(a) The parties agree to the following *primary external comparables*: Buffalo, Crawford, Jackson, Juneau, La Crosse, Pepin, Richland, Sauk, Trempealeau, Vernon and Wood Counties.

(i) The same long established comparables also apply to other AFSCME-represented Monroe County bargaining units, including Human Services employees, Courthouse employees, and Rolling Hills Nursing Home employees.

(ii) Other applicable comparables include the City of Sparta and the City of Tomah.

(b) Applicable arbitration awards establishing the comparables are contained in County Exhibit #1.[2]

(2) From the County's perspective, the primary issues in this proceeding include the following: *State limitations on expenditures*; the *ability of the County to meet its financial obligations*; the *interests and welfare of the County taxpayers*; *wages*; and *health insurance*.

(a) It urges as follows in connection with consideration of *the Greatest Weight Criterion*, and consideration of *State Limitations on Expenditures*.

(i) That Governor Doyle's action on July 25, 2005, in signing a state budget which freezes property taxes, clearly falls within the scope of the greatest weight criterion.

(ii) The Union will undoubtedly urge that the County's new construction increase in equalized value of 3.84% will provide significant money for wage and benefit increases.

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[2] Referring to the decisions of *Arbitrator Sherwood Malamud* in Local 2470, AFSCME, AFL-CIO -and- Monroe County, Decision No. 28452-A (11/30/95), and *Arbitrator Raymond E. McAlpin* in AFSCME Council 40, Local 1270 -and- Monroe County, Decision No. 29586-A (October 28, 1999).

- Actually, the county levy increase of 15% in 2005, resulted in tax bill increases of 12%.[3]
- A cap of 3.84% severely restricts the Employer in various respects: it is housing prisoners out of the county because its jail is inadequate, and needs to be replaced; and fuel and other business expenses, beside employee costs, have continued to rise.[4]
- The County's 2006 budget will not be completed until after its brief is submitted, but reductions will be required to remain within the parameters of the tax freeze.

(iii) Pursuant to the above, it urges that the Governor's tax freeze carries *the greatest weight* in these proceedings, and for this reason alone the arbitrator should find in favor of the County's final offer.

(b) It urges as follows in connection with *the ability of the County to meet its financial obligations*.

(i) Monroe County spent much of 2004 in financial turmoil, at one point borrowing money just to meet its operating expenses.[5]

(ii) In order to make it through the year, the Highway Department laid off 26 employees for the month of October, and all departments were required to cut their budgets to reach an additional $200,000 in reductions to make it through the year.[6]

(iii) By the end of the year the County Treasurer had one $500,000 certificate of deposit in the General Fund, versus the County Auditor's recommendation of an absolute minimum of $2.4 million in this fund.[7]

(iv) While the County is not making an *inability to pay* argument, it has demonstrated a *difficulty to pay argument*, which is entitled to considerable arbitral weight in the final offer selection process.[8]

(c) It urges as follows in connection with *consideration of the Interest and Welfare of the County Taxpayers*.

(i) Monroe County taxpayers were projected to see higher

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[3] Referring to the contents of County Exhibit 11.

[4] Referring to the contents of County Exhibits 11 & 22.

[5] Referring to the contents of County Exhibit 12.

[6] Referring to the contents of County Exhibits 13 & 11.

[7] Referring to the contents of County Exhibits 11 and 9, page 3.

[8] Citing the *decision of Arbitrator June Weisberger* in Kenosha County Correctional Officers, Decision No. 30797-A (11/4/04), wherein she recognized that a *difficulty to pay argument* was now of greater relevance than prior to the statutory addition of *the greatest weight* and *the greater weight* factors.

property taxes in 2005, pursuant to a La Crosse Tribune article dated November 20, 2004, which noted that the County Board had then approved a $12.2 million levy payable in 2005, up 15 % from 2004; that the County tax would thus rise from $6.37 to $6.87 per $1,000 of property value, making the County's part of the tax bill about 12% higher.[9]

(ii) In addition to the 12% tax increase for 2005, additional 2006 tax increases, as yet undetermined in amount, are inevitable.[10]

(iii) Pursuant to the above, the County taxpayer burden is onerous based on 2005 alone, without consideration of the 2006 impact.

(d) It urges as follows in connection with *the wage increase components of the final offers of the parties*.

(i) That the final offers of the parties are nearly identical, with both parties proposing a two percent lift in each of the two calendar years of the renewal agreement.

(ii) The County's basis for its proposed deferral of the 2005 wage increase until October 1, was the fact that there were no health insurance changes in 2005; the additional costs of maintaining the health status quo in 2005, were partially deducted by delaying the effective date of the 2005 pay increase.

(iii) On the basis referenced above, the 2% wage increase for 2006, coincides with the addition of a health insurance deductible in the Employer's final offer; the Union, however, remained recalcitrant regarding health insurance changes and proposed continuation of the status quo ante during the term of the renewal agreement.

(e) It urges as follows in connection with *the health insurance impasse item*.

(i) The County took a firm position in bargaining that health insurance design changes were necessary to moderate the premium increases due to its financial situation.

- It is not asking for an increase in the employee contribution which has remained constant at 13% for the past 16 years, and was at 15-19 percent prior to that time.[11]

- Although the Employee premium has remained constant at 13%, the total premium cost has increased by 276% in the past ten years, and by a whopping 1,289% in the past 25 years.

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[9] Referring to the contents of County Exhibit 11.

[10] Referring to the contents of County Exhibit 22.

[11] Referring to the contents of County Exhibit 21.

- Office visit and emergency room co-payments and prescription drug card co-payments have been negotiated into the County's health insurance plans in recent years, though these steps have not affected utilization rates enough to slow the double digit insurance rate increases.

- Monroe County employees can be admitted into the hospital today, have a $10,000 bill, and pay no out of pocket costs for the services received. Private sector employees do not have such first dollar coverage, and they are outraged that their property tax dollars are funding such coverage for County employees.

(ii) Arbitral selection of the County's final offer would be a small first step toward leveling the health insurance playing field between the private and the public sectors in Monroe County.

(3) It urges as follows relative to the *appropriateness of a quid pro quo*, in connection with its *proposed changes in health insurance.*

(a) The Union will likely trot out the standard by tired quid pro quo arguments regarding health insurance changes, and will likely contend that the County must "buy out" any changes in health insurance design or premium contribution.

(b) Upon review of the 25 year history of health insurance premiums for Monroe County, the Arbitrator will note that premium increases were minimal in the early years, and it was natural that arbitrators at that time looked at the plan design as the status quo for health insurance; had premiums then been increasing rapidly, they could just as easily have determined that such premium cost was the status quo.

(i) Due to chance and happenstance, unions were handed the health insurance status quo and employers were required to pay the increases in premiums, almost 13 fold in the past 25 years in Monroe County, unless they chose to purchase changes from the unions in the form of other wage or benefit increases.

(ii) From a taxpayer's standpoint, the arbitrators frequently took the wrong form in the arbitration road 25 years ago; had they taken the path that health insurance cost was the status quo, public sector insurance packages may have more closely mirrored private sector health insurance coverage today.

(c) Without regard to the above observations, the accepted standards necessary to change the status quo in arbitration include the following determinations: *first*, is there a need for the change?; *second*, does the proposal reasonably address the change?; and, *third*, is there comparable support for the proposal?

(i) In addressing the first of the three requirements, the above referenced, dramatic cost increases in health insurance premiums, *alone* constitute the requisite need for change.[12]

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[12] Citing the decisions of *Arbitrator William Petrie* (the undersigned), in City of Marinette, Decision No. 30872-A (11/27/04), and *Arbitrator James*

(ii) In addressing the second of the three requirements, it submits that its proposal is merely a small step in the right direction, in that it would only reduce the anticipated double digit premium increases in 2006, but 2.5-6.5%.[13]

- The County proposal only begins to address and remedy the problem, it understands that the remedy must be addressed on an incremental basis.
- Unfortunately, double digit increases have expanded the problem geometrically, while the County attempts to resolve the problem incrementally.

(iii) In addressing the third of the three requirements, it notes that Monroe County is the only county among the comparables which does not offer at least one plan with a deductible.[14]

- Arbitral consideration of the primary comparables, therefore, overwhelmingly support the County's proposed addition of a deductible to the health insurance plan.
- Most of the comparables are in the State Plan, in which Gunderson Lutheran is more expensive and Health Tradition less expensive, than what Monroe County is now paying.
- Because Monroe County has 70% in Gunderson Lutheran and 30% in Health Tradition, it is slightly more cost effective to remain independent at the present time, although the County previously proposed joining the State Plan.[15]

(iv) Premium rates for 2005 among the comparables do not vary enough to support the Union's argument to retain the status quo, and premium rates are not yet available for 2006, when the County's modest change would go into effect.

Engmann in City of Onalaska, Decision No. 30550-A (10/10/03).

[13] Referring to the contents of County Exhibit 19.

[14] Referring to the contents of County Exhibit 19 and Union Exhibits 18 & 20.

[15] Referring to the contents of County Exhibit 20.

- Deductibles and co-pays are commonplace in the comparable counties, and are not so unusual as to justify the need for the County to offer a special incentive to achieve them.[16]

- Arbitral consideration of the primary comparables overwhelmingly support Monroe County's proposal to add a deductible to the health insurance plan.

(4) It urges as follows relative to *application of the Cost-of-Living criterion*, in evaluating the wage components of the two final offers.

(a) The Arbitrator need not spend a lot of time on this factor, as the wage lifts in both final offers are identical, with the only difference the effective date of the increase in the first year.

(b) A review of both parties wage surveys indicate that the bargaining unit employees are well paid, and the County cannot foresee the Union making any argument to the contrary.

(c) The near identical nature of the wage proposals means that the cost-of-living factors loses its significance. The fact that both are below the increases in cost-of-living, is likely due to both parties recognizing the frail financial condition of the County.

(5) It urges as follows relative to the *continued application of memorandums of agreement* impasse item.

(a) The County's final offer is silent in this area, and side agreements without sunset dates would continue and those with sunset dates would cease unless the parties otherwise agree.

(b) Rather than engage in evaluating the Union's final offer in this area, it urges that the undersigned avoid the problem by selecting its final offer, and allowing the side agreements disagreement to remain with the parties to resolve outside of the arbitration arena, and outside of the final offer selection process.

(6) It urges as follows relative to the *significance of total package costs* in the final offer selection process.

(a) The two year total cost of the County proposal is $4,668,567.[17]

(b) The two year total cost of the Union proposal is $4,743,582, $75,015 more than offered by the County.[18]

In summary and conclusion, the County urges the following principal

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[16] Citing the *decision of Arbitrator Edward Krinsky* in La Crosse County, Decision No. 30231-A ((/02).

[17] Referring to the contents of County Exhibit 20.

[18] Referring to the contents of County Exhibit 11.

arguments in support of arbitral selection of its final offer in these proceedings.

(1) The Governor's tax freeze imposes restrictions upon its ability to tax and spend and carry the *greatest weight* in these proceedings. For this reason alone, the Arbitrator should select the County's final offer.

(2) Monroe County has serious financial difficulties, which resulted in layoffs and budget cuts in 2004, and are continuing to the present day. These conditions carry *greater weight* in these proceedings and, when added to the *greatest weight*, justify selection of the final offer of the County.

(3) The Arbitrator should give significant weight to the *interest and welfare of the public and the financial ability to meet the costs of the settlement* criterion, in light of the fact that County taxpayers received a 12% increase in their tax bills for 2005 based upon a County levy that increased 15% (and is capped at 3.84% for 2006).

   (a) The County is not making an *inability to pay* argument, but is urging a *difficulty to pay* argument.

   (b) The County has provided documentation of its financial crisis and of the case law which supports the above argument.

(4) Arbitral consideration of the various comparison criteria and the overall level of compensation criterion, favors selection of the final offer of the County.

   (a) The employees in the bargaining unit are well paid and have generous benefits, as compared to other Monroe County employees, employees in comparable counties, and private sector employees of the west central Wisconsin region.

   (b) County taxpayers should not be required to pay an additional $75,015 for back pay and first dollar hospitalization coverage for this group.

   (c) With a county wide health insurance bill of $3,696,813, the estimated 4.5% to keep the status quo in health insurance would cost the taxpayers an additional $166,357 for 2006; this would alone gobble up over 35% of the limited amount the County can increase its levy in 2006, money needed for more pressing issues referenced by the County Board Chairman.[19]

(5) The County has included the addition of a $250/single and $500/family deductible in the second year of the agreement.

   (a) The County proposal would no longer leave it as the only comparable without at least one plan with a deductible.[20]

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[19] Referring to the contents of <u>County Exhibits 11 & 18</u>, page 2.

[20] Referring to the contents of <u>County Exhibit 19</u>, and <u>Union Exhibits 18 & 20</u>.

(b) A *quid pro quo* is not necessary for the proposed change, due to the tax freeze, the County's financial condition, and the astronomic rise in health insurance costs.[21]

On the basis of full consideration of the arbitration hearing, the exhibits and its brief, it urges selection of its final offer as the more reasonable of the two offers in this proceeding.

POSITION OF THE UNION

In support of the contention that its final offer is the more appropriate of the two before the undersigned in these proceedings, the Union emphasized the following principal considerations and arguments.

(1) That the following *open issues* are before the undersigned in this proceeding.

(a) While the Union believes that the various *Memorandums of Agreement* are not in issue, the County has taken the position that only the memorandums which do not have a sunset date should be carried forward into the next agreement.[22]

(b) The Union finds it troubling that the County's final offer does *not* address *the matter of retroactivity*, except in providing effective dates for wages and health insurance; the Union's final offer does include retroactivity for the remaining provisions of the agreement, including dues deduction/fair share.

(c) The parties have removed from the final offers the two proposals for the addition of Article 5, Section 4 to the new agreement, as they have reached agreement on this item.

(d) It is the position of the Union that there are three main areas of difference in the two final offers.

(i) In the area of *wage increases*, the Union has proposed 2% across the board wage increases effective on January 1, 2005 and on January 1, 2006, while the Employer proposes such 2% increases effective on 10/1/05 and on 1/1/06.

(ii) In the area of *health insurance*, the Union has proposed maintenance of the status quo ante, while the Employer has proposed that health insurance include deductibles of $250/single and $500/family, effective 1/1/06.

(iii) In the area of *dues deduction/fair share*, the Union has proposed retroactivity to 1/1/05; while not specifically written in its final offer, the County stated (at the hearing) that dues deduction/fair share would resume upon the receipt of the arbitral award.

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[21] Referring to the contents of County Exhibit 21.

[22] Referring to the contents of Union Exhibit #11, subsection 4.

(2) In connection with the *wage increase impasse item*, the Union urges as follows.

(a) The wages for the Monroe County employees are generally within the average of the comparables.[23]

(b) The Union is troubled that the County proposed wage increase for 2005 is not effective until October 1, 2005.[24]

(i) The *settled* external comparables, with the exception of Jackson County, are receiving wage increases in excess of 2% for both 2005 and 2006.[25]

(ii) Jackson County employees are receiving 2% increases for 2005, and the parties are negotiating for a 2006 contract.

(iii) All of the comparables are receiving 2005 wage increases effective January 1, 2005, and if the County's offer is accepted in these proceedings, its employees will be the only ones not receiving a wage increase on January 1, 2005.

(c) The County granted wage increases of 3% for elected officials for both 2005 and 2006, even though it was claiming financial difficulties in 2004. The Union questions what kind of message this sends to other County employees, and what impact it has upon their morale?[26]

(d) The positions of both parties are identical in all of the County's AFSCME units, while the two Sheriff's Department unions are seeking higher wage increases.[27]

(3) In connection with the *health insurance impasse item*, the Union urges as follows.

(a) The County is proposing to add deductibles to the health insurance on January 1, 2006, in the amounts of $250 for single and $500 for family coverage. Now is not the time for the County to be offering a substandard wage increase, when it is offering absolutely no *quid pro quo* for its proposed change in health insurance.

(b) One cannot look exclusively at comparison of deductibles to get an entire picture relative to insurance coverage.[28]

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[23] Referring to the contents of Union Exhibits 13, 15 and 17.

[24] Citing the decision of *Arbitrator Thomas L. Yeager* in City of Tomah, Decision No. 31083-A, page 19 (2005), wherein he expressed reservations about the lack of retroactivity in the Union's final offer relating to an employee insurance premium contribution.

[25] Referring to the contents of Union Exhibits 14, 16 & 18.

[26] Referring to the contents of Union Exhibit 36.

[27] Referring to the contents of Union Exhibits 23 to 30.

[28] Referring to the contents of Union Exhibits 19-22.

(i) Only Vernon County pays a smaller percentage of premiums than Monroe County for the single plan for 2005, and only Vernon County and Buffalo County pay less for the family plan.[29]

(ii) Monroe County is not out of line with the comparables on deductibles and office co-pays.[30]

(iii) Monroe County employees pay $30 for each office visit which, if applied frequently, can exceed the deductibles of the comparable counties; the office visit co-pay was increased from $10 to $30 in the parties last contract negotiations, at which time the employees' had received a "*quid pro quo*" in the form of dual 2% wage increases in both 2003 and 2004.

(c) In its other briefs the County urged that Monroe County was the only county among the comparables that does not offer at least one plan with a deductible. While true, this statement is misleading in that the comparable counties that participate in the State Plan, which offers a standard plan with a deductible in all of its options; very few employees, however, take the standard plan because it is cost prohibitive.[31]

(i) The vast majority of employees in Juneau, Pepin, Richland, Trempealeau and Vernon counties and in the City of Sparta and the City of Tomah thus pay no deductible; Sauk County has no deductible for its Dean HMO and Dean (Co-pay); Crawford County went to a $500/$1,000 deductible in 2005 but received a significant "*quid pro quo*" in the form of wage increases of 4% for both 2005 and 2006.[32]

(ii) Juneau County will implement a $500/$1000 deductible on 1/1/06, but its employees will receive a substantial "*quid pro quo*" in the form of an additional .35 per hour in addition to a 2.75% across the board wage increase.

(iii) Sauk is the only County, beside Monroe, which has office co-pays.

(d) As previously noted, if the County's final offer is accepted, Monroe County would be the only county with both office visit co-pays and a deductible.

(4) In connection with *the Cost-of-Living criterion*, the Union urges as follows.

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[29] Referring to the contents of Union Exhibit 21.

[30] Referring to the contents of Union Exhibit 22.

[31] Referring to the contents of Union Exhibit 22, which identifies the comparable counties which participate in the State Plan.

[32] Referring to the contents of Union Exhibits 14, 16 & 18.

(a) Evidence submitted by the Union show applicable cost-of-living increases for the years ending in December of 2004 at 3.4%, July of 2005 at 3.9%, and August of 2005 at 5.2%.[33]

(b) Arbitrators in county government cases have generally compared CPI increases to wages.

(c) The County proposed wage increase effective 10/1/05, would generate an actual wage increase of 0.5%.

(d) In accordance with the above, arbitral consideration of the cost-of-living criterion clearly supports the final offer of the Union.

(5) In connection with the *dues deduction/fair share impasse item*, the Union urges as follows.

(a) The Wisconsin Employment Relations Commission has determined that an employer must maintain the "status quo" on wages, hours and conditions of employment during contract hiatus periods with two exceptions: *first*, that employers need not proceed to arbitration on grievances; and, *second*, that employers need not deduct dues/fair share during such period. The dues deduction/fair share item is at issue in this proceeding.

(i) The Union is proposing that the dues deduction/fair share be retroactive to 1/1/05.

(ii) While its final offer does not specifically address retroactivity on this issue, the County indicated at the hearing that the dues deduction/fair share would not be retroactive but, rather, would only be implemented upon receipt of the award.

(b) Monroe County is one of the few public employers in Wisconsin to refuse to deduct dues/fair share during a hiatus period and, accordingly, there are few decisions on the matter.[34]

(i) The Union is at a loss relative to why the County is taking its position in this proceeding, except to prod the Union into settling the contract as cheaply and quickly as possible.

(ii) In fact, the County's action has agitated employees and caused difficulty for the Union in collecting dues and processing the associated paperwork; it has thus affected employee morale and is neither good public policy nor in the "interests and welfare of the public."

(6) In connection with the *Greater Weight and Greatest Weight criteria*, the Union urges as follows.

(a) The County claims that it has had financial problems, and while this may have been true in 2004, it then addressed the

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[33] Referring to the contents of Union Exhibits 34 & 35.

[34] Submitted with its brief is an unedited decision of the Wisconsin Supreme Court in Sauk County v. Wisconsin Employment Relations Commission and AFSCME, Local Union 3148, No. 89-2059, filed on December 9, 1991.

situation through lay-offs, attrition, reductions of hours and budget reductions.

(b) The Union submits that the above financial problems had been caused by the County's depletion of the general fund and a low levy rate.[35]

(i) The County's allowable 2003 levy to generate 2004 numbers is 87.49%. All of the comparable counties except Pepin, Richland, Trempealeau and Wood had higher levy rates with Jackson, Juneau and La Crosse at almost the maximum. All of these counties, however, granted wage increases for 2005, of 2% or above, effective 1/1/05.

(ii) The County is in better shape for 2005, because it increased its levy to 96.39%, and its "coffers have $2.7 million more than last year.[36]

(iii) Fort McCoy generated $779.4 million to the area for 2004; none of the comparable counties, with the possible exception of La Crosse and Wood, had this type of economic impact.[37]

(iv) Monroe County had one of the highest rates of new construction from 2004 to 2005, which allowed it to generate a greater percentage increase in revenue than any of the comparable counties.[38]

(v) Monroe County ranked third of the eleven comparable counties in the percentage increase in sales tax revenue for 2004.[39]

(vi) Delinquent taxes are down and per capita income and property value increases are good in Monroe County, when looking at the comparables.[40]

(7) In connection with *various employer exhibits*, the Union urges as follows.

(a) Citing Employer Exhibit 7, page 218, the County referred to a 2% levy limit. As noted earlier, however, the levy limit for Monroe County is actually 3.48%, based upon new construction.

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[35] Generally referring to the contents of Union Exhibits 2-10 37-39.

[36] Referring to the contents of Union Exhibits 2 & 38.

[37] Referring to the contents of Union Exhibit 37.

[38] Referring to the contents of Union Exhibit 10.

[39] Referring to the contents of Union Exhibit 4.

[40] Referring to the contents of Union Exhibits 6,8 & 38.

(b) Union wage exhibits are more appropriate than the public sector survey data relied upon by the County, since the Union data is taken directly from collective bargaining agreements rather than done by survey.[41]

(c) It questions the relevance/weight to be placed on the contents of Employer Exhibit 16, because it is based upon private sector data and because many of the positions and wage rates listed therein are not in existence in the bargaining unit.

(d) It urges that the contents of Employer Exhibit 20, which was submitted to the Union during bargaining, are not relevant, in that none of the options treated therein are contained in the final offers of either party.

In summary and conclusion, based upon the circumstances brought to light above, the Union urges that its is the more reasonable of the two final offers and asks that it be selected and awarded by the undersigned.

FINDINGS AND CONCLUSIONS

As discussed in greater detail above, the final offers of the two parties differ in three respects.

(1) The *effective date of the 2% across-the-board wage increase to be applied during calendar year 2005*, with the Union urging its implementation on January 1 and the County on October 1, 2005.

(2) The County proposed *addition of $250/single and $500/family deductibles to the employee health insurance coverage*, effective January 1, 2006, versus the Union proposed continuation of the status quo ante in employee health insurance.

(3) The Union proposal that *all memorandums of agreement currently in effect be continued*, that *all contract provisions, including fair share/dues deduction be retroactive to January 1, 2005*, and that *all provisions not addressed in its final offer to remain as provided in the 2003-2004 agreement*; in these connections the County advanced two arguments: *first*, that side agreements without sunset dates would continue, and those with sunset dates would cease unless the parties have specifically agreed otherwise; and, *second*, that the Arbitrator should sidestep this issue entirely by selecting its final offer, which *would leave the side agreements issue for resolution by the parties outside of the final offer interest arbitration process*.

While all three of the above areas of disagreement are important to the parties, it is clear that the outcome of this proceeding principally depends upon arbitral resolution of their disputes relating to *the wage increase* and

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[41] Referring to the contents of Union Exhibits 13-18 and Employer Exhibit 15.

the health insurance impasse items, in which connection they principally disagree relative to the application of the following statutory criteria: the *greatest weight and greater weight factors*; the *interests and welfare of the public and ability to pay* factors; the significance of the *primary external and the internal comparables*; the *cost-of-living criterion*; and such *other factors normally or traditionally taken into consideration* in determination of wages, hours and conditions of employment.

In the above connections, it is clear that the parties are addressing an ongoing and continuing debate in public sector collective bargaining, relating to arbitral handling of disputes primarily involving *the ability and/or willingness to pay by management* versus *union demands for wages and benefits comparable to those provided by the primary intraindustry comparables*.[42]

The traditional primacy of *intraindustry comparisons* over *financial impairment* in private sector wage arbitrations was described as follows by the late Irving Bernstein in his seminal, but still authoritative book on the arbitration of wages:

> "...Since most arbitrators accept the principle that a wage determination requires a balancing of criteria, the basic question becomes: how much weight does financial hardship deserve when measured by other wage standards? In the cases, the other criteria consist almost exclusively of the intraindustry comparison and the cost-of-living.
>
> Most arbitrators incline to give more influence to the intraindustry comparison than to financial hardship, provided that both are of roughly equivalent validity. That is, a tight comparison tends to carry greater weight than a clear showing of distress. If one is not substantiated, of course, the other gains relatively in force. An illustration of the general rule is the Triburo Coach case. The company demonstrated that it operated at a deficit and the union showed that wages were low for transit in the city. 'The inability of the company to pay,' the board held, 'should not prevent the employees from receiving fair compensation for their work. It cannot be a justification for fixing its employees' wages below the lowest wages presently paid for comparable services by comparable employers within this area.' "[43]

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[42] While the *intraindustry comparisons* terminology obviously derives from its long use in the private sector, the same underlying principles of comparison are used in public sector interest impasses; in such applications, the so-called intraindustry comparison groups normally consist of other similar units of employees employed by comparable governmental units.

[43] See Bernstein, Irving, The Arbitration of Wages, University of California Press, Berkeley and Los Angeles (1954), page 83, citing *Arbitral Chair George Frankenthaler* in Triburo Coach Corp., 8 LA 478, 480 (1947).

As discussed by the undersigned in earlier decisions, the challenges in application of *ability to pay* considerations in public sector interest arbitrations was presciently addressed by Arbitrator Howard S. Block, in part, as follows:

> "**Ability to Pay: The Problem of Priorities**
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> Nowhere in the public sector is the problem of interest arbitration more critical than in the major urban areas of the nation. Municipal governments are highly dependent, vulnerable public agencies. Their options for making concessions in collective bargaining are at best limited, and are often nullified by social and economic forces which command markets, resources, and political power extending far beyond the city limits. City and county administration are buffeted by winds of controversy over conflicting claims upon the tax dollar. On the federal level, the ultimate source of tax revenues, the order of priorities between military expenditures and the needs of the cities are a persistent focus of debate. On the state level, the counterclaims over priorities in most states seem to be education over all others.
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> * * * * *
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> At any rate, whatever the complexities presented by the ability-to-pay argument on state and federal levels, it is on the local level that the problem is most resistant to solution. ...How does an arbitration panel respond to a municipal government that says, 'We just don't have the money'?
>
> Pioneering decisions of interest neutrals have assigned no greater weight to such an assertion than they have to an inability-to-pay position of private management. An arbitration panel constituted under Michigan's Public Act 312 rejected an argument by the City of Detroit which would have precluded the panel from awarding money because of an asserted inability to pay. What would be the point of an arbitration, the panel asks in effect, if its function were simply to rubber-stamp the city's position that it had no money for salary increases? What employer could resist a claim of inability to pay if such claim would become, as a matter of course, the basis of a binding arbitration award that would relieve it of the grinding pressures of arduous negotiations? While the panel considered the city's argument on this point, it was not a controlling conclusion.
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> Inability to pay may often be the result of an unwillingness to bell the cat by raising local taxes or reassessing property to make more funds available. Arnold Zack gives a realistic depiction of the inherent elasticity of management's position in the following comment:
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>> 'It is generally true that the funds can be made available to pay for settlement of an imminent negotiation, although the consequences may well be depletion of needed reserves for unanticipated contingencies, the failure to undertake new planned services such as hiring more teachers, or even the curtailment of existing services, such as elimination of subsidized student activities, to finance the settlement.'
>
> The very fact of this elasticity places an additional burden on public management to hold the line against treasury raids by strong aggressive employee groups, who are able to gain a disproportionate share of available funds at the expense of the weak and the docile. Understandably, management will be prone to assert an inability to pay rather than to antagonize an employee group needlessly by declaring it has the money but will not make one-sided disbursements to accommodate

partisan interests.

> Also, an inability to pay declaration, or at least a restricted ability-to-pay stance, has another useful purpose: that of enabling public management to maintain a bargaining position. The very concept of bargaining carries with it as a logical corollary the necessity for the bargaining teams to limit the extent of information furnished to each other and to justify withholding possible concessions until they can be made at strategic times in order to exact reciprocity from each other. With budgetary information a matter of public record, management often has to overcome this inherent disadvantage by stubbornly refusing to revise allocations or redistributing reserve funds until an acceptable economic package can be agreed upon at the bargaining talks.
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> * * * * *
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> A parting comment on the matter of priorities. Although I have tended to dwell on inability to pay as a form of conflict over priorities in spending, I would not want to leave the impression that a local or state government cannot, in a very real and practical sense, be dead broke." [44]

The distinction between *unwillingness to pay* versus *inability to pay* is also recognized in the following excerpts from the authoritative book originally authored by Elkouri and Elkouri:

> "In the public sector, with the necessity of continuing to provide adequate public service as a given, 'going out of business' is not an option, and an employer's inability to pay can be the decisive factor in a wage award notwithstanding that comparable employers in the area have agreed to higher wage scales. ...
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> * * * * *
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> In granting a wage increase to police officers to bring them generally in line with police in other communities, an arbitration board recognized the financial problems of the city resulting from temporarily reduced property valuations during an urban redevelopment program, but the board stated that a police officer should be treated as a skilled employee whose wages reflect the caliber of the work expected from such employees. The Board declared that 'it cannot accept the conclusion that the Police Department must continue to suffer until the redevelopment program is completed.' However, the board did give definite weight to the city's budget limitations by denying a request for improved vacation benefits, additional insurance, a shift differential, and a cost-of-living escalator clause. In another case involving police officers and firefighters, an arbitrator awarded a 6 percent wage increase (which he recognized as the prevailing pattern in private industry) despite the city's financial problems. He limited the increase to this figure, though a larger increase was deserved, in order to keep the city within the statutory taxing limit and in light of the impact of the award on the wages of other city employees.
>
> In some cases, neutrals have expressly asserted an obligation of public employers to make added efforts to obtain additional funds to finance improved terms of employment found to be justified. In one case, the neutral refused to excuse a public employer from its

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[44] See Arbitration and the Public Interest, *Proceedings of the 24th Annual Meeting of the National Academy of Arbitrators*, Bureau of National Affairs, Inc., 1971, pages 169, 171-172, 178. (footnotes omitted)

obligation to pay certain automatic increases that the employer had voluntarily contracted to pay, the neutral ordering the employer to 'take all required steps to provide the funds necessary to implement his award in favor of the employees.'

Finally, where one city submitted information regarding its revenues and expenditures to support its claim of inability to pay an otherwise justified wage increase, the arbitrator responded that the 'information is interesting, but is not really relevant to the issues,' and explained:

> The *price of labor* must be viewed like any other commodity which needs to be purchased. If a new truck is needed, the City does not plead poverty and ask to buy the truck for 25% of its established price. It can shop various dealers and makes of trucks to get the best possible buy. But in the end the City either pays the asked price or gets along without a new truck.[45]

The above described principles normally governing arbitral handling of ability to pay issues in statutory interest arbitration, has been primarily addressed by the Wisconsin Legislature in three portions of Section 111.70(4)(cm) of the state statutes.

(1) In subd. 7r.c wherein it provides for arbitral weight to be accorded to "*...the financial ability of the unit of government to meet the costs of any proposed settlement.*

(2) In subd. 7 wherein it mandates that arbitrators give "*the greatest weight*" to "*...any state law or directive lawfully issued by a state legislature or administrative officer, body or agency which places limitations upon expenditures that may be made or revenue that may be collected by a municipal employer.*"

(3) In subd. 7g wherein it mandates that arbitrators give "*greater weight*" to "...economic conditions in the jurisdiction of the municipal employer than to any other of the factors specified in subd. 7r."

It has long been arbitrally recognized in Wisconsin that the first of the above three factors, the *ability to pay* criterion, might better be characterized as the *inability to pay* criterion. This section refers to situations where a unit of local government is absolutely bereft of the ability to fund a disputed increase in wages and/or benefits, or "*dead broke*" in the words of Arbitrator Block. Under such circumstances, application of the *ability to pay* criterion takes precedence over any or all of the remaining arbitral criteria and is *alone* determinative of the outcome of such a dispute. The County is not, however, alleging *inability to pay* in the case at hand, but

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[45] See Ruben, Allan Miles, Editor in Chief, *Elkouri & Elkouri* HOW ARBITRATION WORKS, Bureau of National Affairs, Sixth Edition - 2003, pages 1433-1436. (footnotes omitted)

rather is relying upon *both the greatest weight* and *the greater weight* criteria in urging arbitral selection of its final offer in these proceedings. By way of contrast with actual *inability to pay*, neither the application of *the greatest weight* nor *the greater weight* criterion, *alone* require arbitral selection of the least costly of two alternative final offers, without consideration of the remaining statutory criteria. In this connection, the application of these criteria was previously discussed and described by the undersigned as follows:

> "If either or both of the above criteria apply to a particular dispute, Wisconsin interest arbitrators must accord them the statutorily described weight. Conversely, if neither of the factors is applicable to a particular dispute, the remaining criteria will carry their normal weight in the arbitral decision making process.
>
> The legislature clearly conditioned application of the *greatest weight criterion*, upon presence of the *requisite limitations on expenditures or revenues*. The *greater weight criterion* apparently applies in at least two ways: *first*, by ensuring that an employer's economic condition is fully considered in the composition of the primary intraindustry comparison group; and, *second*, by ensuring that the economic costs of a settlement are fully considered in relationship to the "...economic conditions in the jurisdiction of the municipal employer." In other words, *like employers should be compared to like employers*, and *undue and disparate economic burdens should not be placed upon an employer significantly and comparatively affected by the requisite limitations*. Application of these criteria, however, do not *alone* require arbitral selection of the least costly of two alternative final offers, without consideration of their reasonableness and the remaining statutory criteria.
>
> Both *the greatest weight* and *the greater weight* criteria are intended to apply to current disputes which involve actual *ongoing impediments*, in the form of legal limits on expenditures or revenues, and/or to *current economic conditions* before an arbitrator or a panel; in other words they do *not* directly apply to *possible* or even to *probable* future situations which may or may not involve such factors."[46]

In arguing the applicability of the greatest weight and the greater weight criteria the parties generally urge as follows:

(1) The County first urges that "The Governor's tax freeze carries the *greatest weight* in this arbitration proceeding, and for this reason alone the arbitrator should find in favor of the county's final offer.", and it additionally submits that its "*difficulty to pay*" situation falls within the scope of the *greater weight* criterion.

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[46] See the *decision of the undersigned* in Random Lake School District (Support Staff), pp. 34-35, Dec. No. 30545 (10/9/03).

(2) The Union urges that while the County had significant financial problems in 2004 it has addressed them through the following actions and conditions: through temporary lay-offs, attrition, and hours and budget reductions; through its levy increase to 96.39% and resulting $2.7 million increase in its "coffers" in 2005; due partially to the impact of Fort McCoy which generated a $779.4 million impact to the area in 2004; due partially to the impact one of the highest rates of new construction (3.84%) which significantly increased its revenue; due partially to its increase in 2004 sales tax revenue, which ranked third among the eleven primary comparables; a reduction in delinquent taxes; and comparatively good increases in per capita income and property values.[47]

On the basis of the evidence of record the undersigned has determined, on the following principal bases, that while the greatest weight and the greater weight criteria apply to the case at hand, neither is *alone* entitled to determinative weight in the final offer selection process.

(1) While the County suffered significant budgetary problems in 2004, it took significant and timely steps to address these problems. While it might then have persuasively proposed in 2% wage increases for 2005 and 2006 with deferred effective date(s) pursuant to the *"greater weight"* factor, this criterion in response to a temporary situation, could not justify future introduction of essentially permanent insurance deductibles in 2006.

(2) While the Governor's action in freezing property taxes fell within the scope of the "*greatest weight*" factor, it impacted on a statewide basis, including all twelve of the counties comprising the agreed-upon intraindustry comparables. It clearly could not *alone* justify individual employers to *opt out* of wage or benefit increases otherwise justified by the application of the remaining statutory arbitral criteria.

It is next noted that the primary external comparables are fully agreed upon by the parties, and consist of the following Counties: Buffalo, Crawford, Jackson, Juneau, La Crosse, Pepin, Richland, Sauk, Trempealeau, Vernon and Wood counties. It will be necessary for the undersigned to consider the significance of the 2005 and 2006 wage increases adopted by these comparables, in addition to their employee medical insurance benefits.

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[47] Citing the contents of Union Exhibits 2-10 and 37-39.

While both parties have proposed 2% wage increases in 2005 and in 2006, the Employer proposed implementation of the first such increase on October 1, 2005, which reduces the actual cash increase per employee to one-half of one percent in 2005. The eleven intraindustry comparables for which wage increase data is available had average 2005 wage increases of slightly over 2.92% and average 2006 wage increases of 3.5% to 3.10%; with the single exception of Richland County, which had a split increase in 2005, the wage increases were effective on January 1 of 2005 and 2006.[48] When the County proposed deferral of the first year increase until October 1, 2005, is added to the disparity between the 2% per year wage lift proposed by both parties and the average increases of the primary intraindustry comparables, it is clear that arbitral consideration of the intraindustry criterion clearly and persuasively favors the wage component of the final offer of the Union rather than that of the County.

It is next noted that the Employer accurately emphasizes the spiraling costs of health insurance which both it and the intraindustry comparables are experiencing, but its cost for such coverage is not significantly different from that experienced by these comparables.[49] While the County emphasizes that it is the only county among the comparables which does not offer at least one plan with a deductible, the Union correctly observes that six of the comparable counties participate in the State Plan which offers a Standard Plan with deductibles, which few employees actually opt for because it is cost prohibitive.[50] Interestingly, the County described its cost based reluctance to participate in the State Plan, as follows:

> "...Most of the County's comparables are in the State plan, in which Gunderson Lutheran is more expensive than what Monroe County is paying now, and Health Tradition is cheaper than what Monroe County is currently paying. Because Monroe County has 70 percent of its employees in Gunderson Lutheran and 30 percent in Health Tradition, it is slightly more cost effective to remain independent at the present time than join

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[48] See the contents of Union Exhibits 13-18, and the less comprehensive data contained in County Exhibit 15.

[49] See the contents of County Exhibits 18-21 and Union Exhibits 17-22.

[50] These six are Crawford, Juneau, Pepin, Richland, Trempealeau and Vernon counties.

the State plan..."[51]

On the above bases it is clear that arbitral consideration of the intraindustry comparison criterion clearly favors both the wage and the health insurance components of the final offer of the Union in these proceedings.

Since none of the County's represented workforce had reached agreement on wages and benefits at the time of these proceedings, no significant weight can be placed on the *internal comparisons*.

In addressing the so-called *cost-of-living criterion*, it is noted that the final offers of both parties are below the level of present and anticipated increases in the applicable increases in the appropriate BLS index. The Employer is undoubtedly correct in inferring that this situation is attributable to both parties recognition of the financial implications flowing from the County's poor financial condition and its necessary remedial steps discussed earlier.

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[51] See the County's Post Hearing Brief at pages 17-18.

On the above bases the undersigned has concluded that while arbitral consideration of the cost-of-living criterion favors the position of the Union rather than the County in these proceedings, when it is considered in conjunction with the parties' recent bargaining history, it is entitled to less than normal weight in the final offer selection process.[52]

It is next noted that the undersigned need not address the presence or absence of a so-called *quid pro quo* in these proceedings because the Employer is, in effect, proposing not only increased costs to employees in the form of deductibles in their health insurance coverage, but is proposing 2005 and 2006 wage increases below those provided by the primary intraindustry comparables, including a deferred effective date of the 2005 wage increase, pursuant to which employees would realize only a dollar increase of one-half of one percent, which might be characterized as a reverse *quid pro quo.*

In consideration of all of the above, it is unnecessary at this point to separately address in detail, the normal and typical Union proposal that all provisions not addressed in its final offer remain as provided in the parties' 2003-2004 collective bargaining agreement.

Summary of Preliminary Conclusions

As addressed in more significant detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions.

(1) The outcome of this proceeding principally depends upon arbitral resolution of the disputes relating to *the wage increase* and *the health insurance* impasse items, in which connection the parties principally disagree relative to the application of the following statutory criteria: the *greatest weight and greater weight factors*; the *interests and welfare of the public and ability to pay* factors; the significance of the *primary external and the internal comparables*; the *cost-of-living criterion*; and such *other factors normally or traditionally taken into consideration* in determination of wages, hours and conditions of employment.

(2) The parties are addressing an ongoing and continuing debate in public sector collective bargaining, relating to arbitral handling of disputes primarily involving *the ability and/or willingness to pay by management* versus *union demands for wages and benefits comparable to those provided by the primary intraindustry comparables*.

[52] The *bargaining history of parties* normally falls well within the scope of Section 111.70(4)(cm)(7r)(j) of the Wisconsin Statutes.

(a) There has been a traditional primacy of so-called *intraindustry comparisons* over *financial impairment* in private sector wage arbitrations.

(b) The above principles governing arbitral handling of ability to pay issues in statutory interest arbitration, has been primarily addressed by the Wisconsin Legislature in three portions of Section 111.70(4)(cm)(7): ***first***, in subd. 7r.c wherein it provides for arbitral weight to be accorded to "*...the financial ability of the unit of government to meet the costs of any proposed settlement*; ***second***, in subd. 7 wherein it mandates that arbitrators give "*the greatest weight*" to "*...any state law or directive lawfully issued by a state legislature or administrative officer, body or agency which places limitations upon expenditures that may be made or revenue that may be collected by a municipal employer.*"; and, ***third***, in subd. 7g wherein it mandates that arbitrators give "*greater weight*" to "...economic conditions in the jurisdiction of the municipal employer than to any other of the factors specified in subd. 7r."

(i) The *first* of the above sections covers situations where a unit of local government is absolutely bereft of the ability to fund a disputed increase in wages and/or benefits, and under such circumstances, this *ability to pay* criterion takes precedence over any or all of the remaining arbitral criteria and is *alone* determinative of the outcome of such a dispute. The County is not alleging *inability to pay* in the case at hand.

(ii) Neither application of the *second* nor the *third* of the above sections, *i.e.*, the *greatest weight* nor the *greater weight* criterion, *alone* require arbitral selection of the least costly of two alternative final offers, without consideration of the remaining statutory criteria.

(3) While the *greatest weight* and the *greater weight* criteria apply to the case at hand, neither is *alone* entitled to determinative weight in the final offer selection process in these proceedings.

(4) The primary external comparables are fully agreed upon by the parties and consist of twelve counties, and *arbitral consideration and application of the intraindustry comparison criterion clearly favors both the wage and the health insurance components of the final offer of the Union in these proceedings*.

(5) Since none of the County's represented workforce had reached agreement on wages and benefits at the time of these proceedings, *no significant weight can be placed on the internal comparison criterion*.

(6) While arbitral *consideration and application of the cost-of-living criterion favors the position of the Union rather than the County*, when it is considered in conjunction with the parties' recent bargaining history, it is entitled to less than normal weight in the final offer selection process.

(7) The undersigned need not address the presence or absence of a so-called *quid pro quo* in these proceedings because the Employer is, in effect, proposing not only increased costs to employees in the form of deductibles in their health insurance coverage, but is proposing 2005 and 2006 wage increases below those provided by the

primary intraindustry comparables, which could be characterized as a reverse quid pro quo.

(8) It is unnecessary at this point to separately address in detail, the *normal and typical Union proposal that all provisions not addressed in its final offer remain as provided in the parties' 2003-2004 collective bargaining agreement*.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, including arbitral consideration of all of the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, the Impartial Arbitrator has concluded that the final offer of the Union is the more appropriate of the two final offers, and it will be ordered implemented by the parties.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Union is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the Union, hereby incorporated by reference into this award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Arbitrator

December 22, 2005