ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between OUTAGAMIE COUNTY, WISCONSIN And WISCONSIN PROFESSIONAL POLICE, LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION	WERC Case 278 No. 64059 INT/ARB-10280 Decision No. 31400-A

Impartial Arbitrator

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

Hearing Held

September 21, 2005
Appleton, Wisconsin

Appearances

For the Employer	DAVIS & KUELTHAU, S.C. By James R. Macy, Esq. Post Office Box 1278 Oshkosh, WI 54903
For the Association	WISCONSIN PROFESSIONAL POLICE ASSN. By Thomas W. Bahr Executive Director 340 Coyier Lane Madison, WI 53713

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding involving Outagamie County and the Wisconsin Professional Police Association, Law Enforcement Employee Relations Division, with the matter in dispute the terms of a three year renewal labor agreement, covering January 1, 2005, through and including December 31, 2007, in a bargaining unit consisting of employees of the Sheriff's Department who do not have the power of arrest.

After failure of the parties to reach full agreement in the negotiations process, the Association on October 8, 2004, filed a petition with the WERC seeking arbitration of their impasse. After investigation by a member of its staff, the Commission issued findings of fact, conclusions of law, certification of the results of investigation and an order requiring arbitration on July 15, 2005. On August 1, 2005, following the selection of the parties, it issued an order appointing the undersigned to hear and decide the matter.

A hearing took place before the undersigned in Appleton, Wisconsin, on September 21, 2005, at which time both parties received full opportunities to present evidence and argument in support of their respective positions, and reserved the right to close with the submission of post-hearing briefs and reply briefs. Timely post-hearing briefs were received and distributed to the parties by the undersigned on November 28, 2005, and following notification that the parties had agreed not to file reply briefs, the record was closed effective December 7, 2005.

The Final Offers of the Parties

The parties are at impasse on two items: *first*, the size and timing of three general wage increases to be applicable during the term of the agreement; and, *second*, Employer proposed modifications in the group health insurance to be applicable during the term of the renewal agreement. The two final offers, *hereby incorporated by reference into this decision*, are summarized below.

(1) The *County's final offer*, dated June 21, 2005, proposes as follows:

(a) Three 3.25% increases in hourly wage rates for each classification, effective *January 9, 2005*, *December 25,*

2005, and *January 7, 2007*.

(b) A three-step modification of Section 27.01 of the agreement to provide for the following summarized cost-sharing in the monthly *group hospital/surgical HMO plan premiums*.

(i) Effective *January 1, 2005*, the Employer will contribute 91% and the Employees 9% of the premiums, with the latter not to exceed $50.00 per month for *single coverage*, and $120 per month for *family coverage*.

(ii) Effective *January 1, 2006*, the Employer will contribute 90% and the Employees 10% of the premiums, with the latter not to exceed $55.00 per month for *single coverage*, and $140 per month for *family coverage*.

(iii) Effective *January 1, 2007*, the Employer will contribute 87% and the Employees 13% of the premiums, with the latter not to exceed $85.00 per month for *single coverage*, and $205 per month for *family coverage*.

(2) The *Association's final offer*, dated May 27, 2005, proposes as follows:

(a) Three 3.0% increases in hourly wage rates for each classification, effective January 1, 2005, January 1, 2006, and January 1, 2007, respectively.

(b) By not formally proposing any change in Article 27.01 of the prior agreement, it tacitly proposes continuation of the prior level of cost-sharing of the monthly group hospital/surgical HMO plan premiums, *i.e.*, the Employer paying 95% and the employees 5% of these premiums, with employee contribution not to exceed $25.00 per month for *single coverage* and $55.00 per month for *family coverage*.

The Statutory Arbitral Criteria

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the undersigned to utilize the following criteria in arriving at a decision and rendering an award in these proceedings.

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

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

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or

arbitration panel shall also give weight to the following factors:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

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

d. 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 ASSOCIATION

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

(1) The Employer *can legally meet the Association's final offer*.[1]

(a) No argument had been advanced by either party that the Employer lacks authority to lawfully meet the Association's final offer, and neither the exhibits nor the testimony at the hearing indicate the existence of any such legal

[1] Referring to the contents of Section 111.70(4)(cm)7r.a. of the Wisconsin Statutes.

impediment.

(b) In consideration of the above, that this arbitral criterion should not affect the Arbitrator's decision in these proceeding.

(2) That the *stipulations of the parties* establish that agreement had been reached in their preliminary negotiations on all issues in dispute, with the exception of those contained in their final offers.[2]

(a) In determining which final offer is more reasonable, the Arbitrator must look at all issues previously agreed upon in their preliminary negotiations.[3]

(b) The parties previously agreed upon a *three year renewal agreement* and *clarification of language in the vacation and sick leave provisions*.

(c) Neither *contract duration* nor the "housekeeping" *language clarification* are sufficient to justify significant weight being accorded this arbitral criterion.

(3) The *interests and welfare of the public* will be best served by an award in favor of the Association.[4]

(a) The final offer of the Association best serves the citizens of Outagamie County by recognizing the need to maintain the morale and health of its employees and thereby retaining the best and most qualified employees.

(b) It is obvious that overall working conditions must be desirable and reasonable. While such conditions include tangibles such as fair salary, fringe benefits and steady work, intangible benefits including morale and unit pride are of equal importance.

(c) As emphasized by the following authors, adoption of the prevailing practice of comparable employers and employees serves the interests and welfare of the public.

(i) "In many cases strong reason exists for using the prevailing practice of the same class of employer within the locality or the area for the comparison. Employees are sure to compare their lot with that of other employees doing similar work in the area; it is important that no sense of grievance be thereby created."[5]

---

[2] Referring to the contents of Section 111.70(4)(cm)7r.b. of the Wisconsin Statutes.

[3] Referring to the contents of Association Exhibit #4.

[4] Referring to the contents of Section 111.70(4)(cm)7r.c. of the Wisconsin Statutes.

[5] Citing *Elkouri & Elkouri* How Arbitration Works, Bureau of National Affairs, Third Edition, page 750.

(ii) "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill. ...Arbitrators benefit no less from comparisons. They have the appeal of precedent and...awards based thereupon are apt to satisfy the normal expectations of the parties and appear just to the public."[6]

(d) While the weight to be placed upon which comparables in these proceedings is addressed below, the Association has relied primarily upon comparison data in formulating its final offer.

(4) The Employer has the *financial ability to meet the costs* of the Association's final offer.[7]

(a) At no time during the course of bargaining has the Employer indicated that it lacked the economic resources to fund either of the two final offers.

(b) The Association urges that it is "*unwillingness*" rather than "*inability*" to provide a comparable level of compensation that is in issue in these proceedings.

(i) This Employer "unwillingness" is evidenced by its proposed extraordinary cost-shifting of health insurance premium to the backs of its employees.

(ii) County provided information indicates the differences in total budgetary impact between the two final offers; for years 2005, 2006 and 2007, these differences are only .48%, .03% and .45%, respectively.[8]

(5) *Comparison of the employees* represented by the Association *with the wages, hours and conditions of employment of other employees in public employment performing similar services in comparable communities*, strongly favors arbitral selection of the Association's final offer.[9]

---

[6] Citing Bernstein, Irving, The Arbitration of Wages, University of California Press, Berkeley and Los Angeles (1954), page 54.

[7] Referring to the contents of Section 111.70(4)(cm)7r.c. of the Wisconsin Statutes.

[8] Referring to the contents of County Exhibit #9, pages 2 & 3.

[9] Referring to the contents of Section 111.70(4)(cm)7r.d. of the Wisconsin Statutes.

(a) Both parties agree that the primary intraindustry comparables consist of the following counties: Brown, Calumet, Fond du Lac, Manitowoc, Sheboygan, Waupaca and Winnebago.[10]

(b) Arbitral consideration of the intraindustry comparables in the case at hand, supports selection of the Association's final offer.

(i) The employee health care premium contributions of the primary intraindustry comparables, averages 8.6%.[11] The County has thus failed to demonstrate that arbitral consideration of these comparables supports selection of the health insurance component of its final offer in these proceedings.

(ii) The average top wages paid to correctional officers in comparable counties in 2004, were +/- $0.35 per hour, which would drop to +$0.32 under the County's offer and +$0.26 under the Association's offer.

- While it is true that the Association's wage offer results in a lower average wage in relationship to the comparables, it is fully consistent with maintaining the status quo ante of health insurance premiums.

- Under the Employer's proposal, a correctional officer's increased expenses for insurance premiums, would effectively reduce his 2005 wage increase to a net of 1.55%.[12]

- A comparison of the wage increases for comparable counties against the *net* wage increases proposed by the County, does not support the final offer of the Employer.[13]

(6) Consideration of the average consumer prices for goods and services, commonly known as *the cost of living*, supports arbitral selection of the Association's final offer.[14]

(a) That the settlements among the primary intraindustry comparables already reflect the weight placed upon cost of living considerations by the comparable parties.[15]

---

[10] While the *intraindustry comparisons* terminology derives from its long use in the private sector, the same underlying principles of comparison are applicable 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.

[11] Referring to the contents of County Exhibit #22.

[12] It urges insufficient available wage data to make similar comparisons for 2006 or 2007.

[13] Referring to the contents of County Exhibit #20.

[14] Referring to the contents of Section 111.70(4)(cm)7r.g. of the Wisconsin Statutes.

[15] Citing the *decision of Arbitrator Joseph Kerkman* in Merrill Area Education Association, Dec. No. 17955-A (8/81).

(b) Application of the *cost of living criterion*, when coupled with the standard set in the primary intraindustry wage settlements, suggests that this criterion favors selection of the final offer of the Association.

(c) The Association submits that it has remained cognizant of the current economic climate and comparable settlements, in framing its final offer in a fair and equitable manner.

(7) Consideration of the *overall compensation presently received* by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received, supports arbitral selection of the Association's final offer.[16]

(a) The overall compensation received by employees involved in this procedure, reasonably compares with their external comparables.

(b) No singular benefit to those in the bargaining unit, elevates them to a level which could support a finding that the Association's final offer was unreasonable.

(8) No consideration of *changes in the foregoing circumstances or other factors not confined to the foregoing*, is appropriate in the case at hand.[17]

On the basis of arbitral application of the statutory criteria to the final offers as urged by the Association, it submits that its final offer is more reasonable than that of the County, and asks that it be selected by the Arbitrator in these proceedings.

THE POSITION OF THE COUNTY

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

(1) The appropriate utilization of the statutory criteria in this dispute are as follows.

(a) Neither party has presented evidence regarding application of either the *"the factor given greatest weight"* or *"the factor given greater weight"* and, accordingly, no issues exist with respect to the application of these arbitral criteria.[18]

---

[16] Referring to the contents of Section 111.70(4)(cm)7r.h. of the Wisconsin Statutes.

[17] Referring to the contents of Section 111.70(4)(cm)7r.i. & j. of the Wisconsin Statutes.

[18] Referring to the contents of Section 111.70(4)(cm)7. & 7g. of the Wisconsin Statutes.

(b) The arbitral weight to be accorded the various *"other factors considered"* criteria are as follows.

(i) Neither offer violates the *lawful authority of the Employer*, consideration of *the stipulations of the parties* do not favor either party, and there have been *no apparent relevant changes during the pendency of these proceedings*.[19]

(ii) That only *the remaining arbitral criteria* are applicable in these proceedings.[20]

(2) Certain historical background on health insurance is material and relevant in these proceedings.

(a) The County's health insurance costs are quite significant.

(i) The two HMO plans available, United or Network, have no deductibles for office copays or visits, or hospital stays; the only copays involve drugs and emergency rooms; any applicable deductibles are minimal; and there are no other employee charges, no bills and no paperwork.[21]

(ii) Its *monthly health insurance premiums* from 2000 to 2004 have increased, on average, by close to 20% for the Network plan and 12% for the Touchpoint plan; and its *yearly health insurance costs have more than doubled*, increasing from $4,076,592 in 2000 to a budgeted $8,832,356 in 2005, an increase of 117% over the five year period.[22]

(b) In response to the escalating costs, the Company researched possible health insurance plans to incorporate higher copays, deductibles, and other cost-saving mechanisms, and discussed them during 2005 contract renewal negotiations in all bargaining units, with the single exception of the Corrections/Telecommunicators.[23]

---

[19] Referring to the contents of Section 111.70(4)(cm)7r.a, b, & i. of the Wisconsin Statutes.

[20] Referring to the contents of Section 111.70(4)(cm)7r. c, d, e, f, g, h, & j. of the Wisconsin Statutes.

[21] Referring to the testimony of Mr. Sunstrom at Hearing Transcript, page 20-21.

[22] Referring to the contents of Employer Exhibit #8.

[23] Referring to the *testimony of Mr. Sunstrom* at Hearing Transcript, page 22, and the contents of County Exhibit #27.

(i) At the initial meeting in early September, the Association was informed that insurance cost-saving alternatives and plan design changes would be discussed at a later date.[24]

(ii) When the parties met approximately one month later, the Association informed the County that unit members had spoken on the issue, and that they were not interested in any insurance changes or cost-sharing;

[24] Referring to the *testimony of Mr. Sunstrom* at Hearing Transcript, page 22.

the County indicated that it had some flexibility relative to insurance, but the Association indicated flat out, that it did not have any flexibility on this issue.[25]

(iii) Discussions on health insurance with the other five bargaining units took a different route: all preferred to share in the cost of premiums as opposed to other alternatives suggested by the insurance company; their willingness to thus share in costs led to contract settlements; although the County attempted to discuss similar premium contributions in this bargaining unit, the Association had no room for movement on insurance.[26]

(c) The County has looked at other avenues to reduce costs.

(i) In addition to health insurance changes it acted as follows: *first*, in order to decrease air-conditioning costs, it revised summer office hours; *second*, the 2005 budget plan included a small increase in property owner's tax bills, and relied on holding the health insurance costs to a 9% annual increase by premium sharing by the 270 non-represented employees; *third*, it called upon unions representing approximately 750 County employees to increase their share of health insurance costs; *fourth*, it eliminated 8 full-time positions in 2003, 10 in 2004, and 15 full-time and one-part time positions in 2005.[27]

(ii) The County's has attempted to hold back skyrocketing insurance costs, its offer clearly addresses this issue, but the Association's offer simply ignores the obvious.

(3) The County's final offer provides for *internal consistency*.

(a) Five internal bargaining units have voluntarily agreed to health insurance premium changes.

(i) The Courthouse, Professionals, Brewster and Deputy Units have settled for the same insurance changes proposed in the case at hand; the same settlement has

---

[25] Referring to the *testimony of Mr. Sunstrom* at Hearing Transcript, page 23.

[26] Referring to the *testimony of Mr. Sunstrom* at Hearing Transcript, pages 23-24, and the contents of County Exhibit #27.

[27] Referring to the contents of County Exhibits #26 and #9.

been ratified by the County Board.[28]

[28] Referring to the contents of County Exhibits #10 and #17.

(ii) The bargaining units which have agreed to the health insurance plan modifications proposed by the County, make up 85% of the bargaining unit members in the County.[29]

(iii) The Association's proposal goes against the important need to maintain consistency among internal bargaining units, and should therefore be rejected.[30]

(b) Significant arbitral precedent reveals various reasons supporting the determinative importance of internal comparability.[31]

(c) The internal settlement pattern should not be destroyed by means of an interest arbitration award.

(i) The Association should not be able to use interest arbitration as a tool to break the consistency in the benefits of other organized employees; such a matter should be bargained rather than unilaterally implemented.[32]

(ii) An arbitrator's assignment is to find the settlement that both parties should have arrived at by looking to other bargaining units of the same employer.[33]

(iii) The Association should not benefit from taking its case to arbitration, as to do so sends the wrong message about collective bargaining and the importance of voluntary contract settlements.

(d) The arbitration process should not be used to counteract and undermine bargaining for settlements.

(i) The purpose of interest arbitration is to resolve impasses between parties which they are unable to address without assistance.

(ii) The County must be fiscally responsible, must settle on terms that are equitable to other bargaining units,

---

[29] Referring to the contents of County Exhibit #11.

[30] Citing the following arbitral decisions: *Arbitrator Friess* in Pierce County, Dec. No. 28187-A (4/95); *Arbitrator Thomas Yeagar* in City of Tomah, Dec. No. 31083-A (2/05), and City of Marshfield, Dec. No. 30726-A.

[31] Citing the following arbitral decisions: *Arbitrator Herman Torosian* in City of Wausau (Support/Technical), Dec. No. 29533-A (11/99), Rio Community School District (Educational Support Team), Dec. No. 3009-A (10/01), and City of Appleton (Maintenance Divisions), Dec. No. 30668-A (3/04); *Arbitrator William Eich* in City of Green Bay (Police Officers), Dec. No. 31080-A (7/05), and Marquette County (Highway), Dec. No. 31027-A (6/05); *Arbitrator Gil Vernon* in Winnebago County (Bridgetenders), Dec. No. 26494-A (6/91).

[32] Citing the decisions of *Arbitrator Edward Krinsky* in School District of Barron, Dec. No. 16276 (11/78), and *Arbitrator Kay Hutchison* in Rock County, Dec. No. 17729-B (9/80).

[33] Citing the decision of *Arbitrator George Fleischli* in County of Waukesha, Dec. No. 21299 (8/84).

must put its best foot forward, and must look to peaceful negotiations and settlements; it should not be creating a situation where employees are rewarded for refusing to settle voluntarily and taking their chances in interest arbitration.

(iii) Arbitrators should not award more in arbitration than would have been gained in bargaining.[34]

(iv) The preferential treatment sought by the Association does not encourage voluntary settlements. Maintaining labor peace between organized units is critical to the ongoing services offered to County residents, and there is nothing in the record to suggest that the members of this bargaining unit should be treated more favorably than those in the other organized units.

(e) A review of the *health insurance benefits* of the primary intraindustry comparables also supports the County's proposal.[35]

(i) The parties are in full agreement on the identity of these comparables, *i.e.* Brown, Calumet, Fond du Lac, Manitowoc, Sheboygan, Waupaca and Winnebago counties; for the comparables which have reached agreements for 2005 and 2006, the wage increases for the two classifications in question ranged from 1.5% to 4.0%.

(ii) The changes which accompanied the wage settlements are also notable, and clearly reflect employers' attempts to minimize health insurance costs.

- *Sheboygan County employees'* insurance contributions went from 4.7% in 2004, to 7.5% effective 5/1/05, and to 10% in 2006, in addition to increasing the deductibles from $200/$400 to $250/$500 in 2006; they received 2.5% wage increases in 2005 and in 2006.

- *Winnebago County employees*' insurance contributions went from 7.5% to 15% (capped at $160 per month) effective 10/1/06; they received wages increases of approximately 3.17% for 2005 and 3.75% for 2006, when the lifts and effective dates are factored in.

- *Manitowoc County employees'* insurance contributions went from 7.5% in 2004 to 8% in 2005.

(iii) It is important also to understand how the County's insurance plan stacks up against the plans offered by the primary comparable counties.[36]

- The average three-tier drug card cost for employees, excluding Brown County, is approximately $8/$20/$41, which co-pays exceed the costs currently paid by employees in Outagamie County.

---

[34] Citing the decisions of *Arbitrator Neil Gundermann* in Oneida County, Dec. No. 26116-A (3/99), and *Arbitrator Gordon Haferbecker* in Jackson County (Sheriff's Department), Dec. No. 21878 (1/85).

[35] Referring to the contents of County Exhibits #20 and #21.

[36] Referring to the contents of County Exhibit #22.

- Although some counties offer 100% coverage for office visits, most are dependent upon which plan an employee chooses. At Outagamie County, employees are not charged for office visits under either option chosen by them, which the Union proposes to continue. This is not, however, the norm among either the intraindustry comparables or overall comparisons on a national basis.[37]

- The primary intraindustry comparables require employees to pay much more to cover the cost of deductibles and/or co-insurance, neither of which are paid by Outagamie county employees, whose only out-of-pocket charges are for prescription drugs.[38]

(f) The County's wages rank in the upper echelon of the primary intraindustry comparables.

- County Correctional Officer wages rates are higher than the averages of the intraindustry comparables, and only Winnebago County and the Correctional Officer III position at Fond du Lac County, offers higher wages than the County.[39]

- County Telecommunicator wages are similarly above the averages of the intraindustry comparables, and only Brown had higher wages rates for 2003 and 2004.[40]

- The County proposed 3.25% wage increase will continue to provide employees with generous wages rates for 2005, 2006 and 2007.

(g) Internal settlements should carry greater weight than external settlements in the case at hand.

- Many Wisconsin arbitrators have assigned greater weight to internal settlement patterns than to external patterns.[41]

- Although bargaining relative to the other internal bargaining units has resulted in some differences, all five other units have settled for the same insurance changes proposed by the County in these proceedings.[42]

---

[37] Referring to the contents of national survey information and related articles based thereupon, contained in County Exhibit #29.

[38] Referring to the contents of County Exhibits #22.

[39] Referring to the contents of County Exhibits #21, page 1.

[40] Referring to the contents of County Exhibit #21, page 2.

[41] Citing the decisions of *Arbitrator Gil Vernon* in City of Appleton (Police Department), Dec No. 25636-A (4/89), and *Arbitrator Joseph Kerkman* in Douglas County Health Department Employees, Dec. No. 25966-A (11/89).

[42] Referring to the unit by unit differences noted in the contents of County Exhibits #12, #13, #14 and #15.

- The Association cannot persuasively argue against changes made for each unit, in that it did not request similar such changes for its own members.[43]

(4) The County's offer exceeds movement in the consumer price index.

(a) Using a cast-forward methodology, the County has provided information relative to the cost of salaries and benefits for each proposal.

(b) It is proposing total package percentage of 3.40% in 2005, 4.53% for 2006 and 4.17% for 2007, against Association proposed increases of 3.88% for 2005, 4.55% for 2006, and 4.62% for 2007 increases.[44]

(c) It submits that both offers provide wage and benefit increases which exceed the 2.7% CPI increase for 2005, and prospective increases for the remaining two years of the agreement.[45]

(d) It submits that the escalation in health insurance costs experienced by the County over the five year period encompassing 2000 through 2005, far exceeds increases in the CPI.[46]

(e) In accordance with the above, it urges that in a time of escalating insurance costs and tight budgets, the County's offer is the more reasonable of the two offers.

(5) The County's offer best reflects the interests of the public.

(a) Since employees have an interest in the amounts paid for health insurance, they should be interested in exploring options to reduce these costs. Bargaining unit members of the five other internal units reflected this situation when they agreed to contribute to the cost of premiums.[47]

(b) There can be no dispute that health insurance costs are creating havoc among all employers' budgets, and many have responded by cutting back benefits, requiring employees to contribute toward premiums, or foregoing coverage.

(c) The County's offer provides employees to be more in tune to health care, and it is simply not in a position to continue paying the full cost of this benefit.

(6) The County's wage offer is consistent with the payroll system.

(a) Only the three implementation dates contained in the wage component of the County's final offer are consistent with

---

[43] Referring to the *testimony of Mr. Sunstrom* at Hearing Transcript, page 29.

[44] Referring to the contents of County Exhibits #5.

[45] Referring to CPI data contained in County Exhibit #18.

[46] Referring to the contents of County Exhibits #5, #8 and #18.

[47] Referring to the contents of various articles, studies and surveys referenced in County Exhibits #28 and #29.

the historic application of the payroll system.

(b) The wage increase implementation dates proposed by the Union are inconsistent with the Company's understanding of the tentative agreements, and conflict with the historical settlements within this bargaining unit.[48]

In summary and conclusion, it submits that the final offer of the County is more reasonable when measured against the statutory criteria, and that it should be selected on the following bases: *first*, the Association has offered no explanation or compelling need to make a significant change in the relationship between the Correctional Officers and Telecommunicators and other organized employees, and arbitration is not the place to break a pattern of internal settlement consistency; *second*, the external comparables support the County's position for employees to pay toward the increasing costs of health insurance; *third*, the County's proposal on health insurance works prospectively in maintaining health care costs and keeping an employee's investment in such maintenance; *fourth*, wage rates paid by the County are higher than the majority of those paid by similar municipalities for the job classifications which fall under this contract; *fifth*, both wage offers exceed the CPI indices; and, *sixth*, the effective date of the wage increases under the County's offer is consistent with the payroll system.

FINDINGS AND CONCLUSIONS

Prior to specifically applying the statutory arbitral criteria to the record and selecting the most appropriate final offer, the undersigned will first offer some brief preliminarily observations about the normal application of various of the statutory interest arbitral criteria.

It is first noted that, except to the extent specifically provided in the statutes, or as arbitrally recognized on case-by-case bases, the arbitral statutory criteria are not prioritized in order of relative importance.

(a) The Wisconsin statutes specifically provide for "*factor given greatest weight*" and/or "*factor given greater weight*" criteria, which must be accorded such weight by arbitrators when they are applicable.[49]

---

[48] Referring to the *testimony of Mr. Sunstrom* at Hearing Transcript, pages 24-25.

[49] See Section 111.70(4)(cm)7. & 7g. of the Wisconsin Statutes.

(b) An arbitrator has no authority to reach a decision and render an award, the implementation of which would exceed *the lawful authority* of the municipal employer.[50]

(c) The so-called *ability to pay* criterion, can *alone* be determinative of the outcome of an interest arbitration proceeding, but *only* if the involved unit of government is absolutely bereft of the ability to raise the necessary funds to implement a final offer.[51]

(d) It has been widely and generally recognized by interest arbitrators that *comparisons* are the most frequently cited, the most important, and the most persuasive of the various arbitral criteria, and the most persuasive of these are normally the so-called *intraindustry comparisons*.[52] In certain types of situations, however, *internal comparisons* may clearly command greater weight.

(e) The relative importance of the *cost of living criterion* varies with the state of the national and the Wisconsin economies. During periods of rapid movement in prices it may be one of the most important arbitral criteria, but during periods of price stability, it declines significantly in relative importance.[53]

(f) The *overall compensation received,* including direct wages, levels of fringe benefits, and *stability and continuity of employment* are *relative standards*, and while they may be *initially used to justify the establishment of differential wages*, they generally have *little to do with the application of general wage increases thereafter*.[54]

(g) Arbitral approval of proposed changes in the *negotiated status quo ante* is generally conditioned upon three determinative prerequisites: *first*, that a significant and unanticipated problem exists; *second*, that the proposed change reasonably addresses the underlying problem; and, *third*, that the proposed change is normally, *but not always*, accompanied by an otherwise appropriate *quid pro quo*.[55]

(h) The *bargaining history of parties* is quite frequently a significant consideration in the final offer selection process, either *alone* or when *considered in connection with the application of other arbitral criteria*.

As described earlier the parties differ solely on the *size and implementation dates of the applicable wage increases* during the life of the renewal labor agreement, and on the *Employer proposed changes in group medical*

---

[50] See Section 111.70(4)(cm)7r.a. of the Wisconsin Statutes.

[51] See Section 111.70(4)(cm)7r.c. of the Wisconsin Statutes.

[52] See Section 111.70(4)(cm)7r.d, e, & f. of the Wisconsin Statutes.

[53] See Section 111.70(4)(cm)7r.g. of the Wisconsin Statutes.

[54] See Section 111.70(4)(cm)7r.h. of the Wisconsin Statutes.

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

insurance. In support of their respective positions, both parties concluded that *various of the statutory criteria had little or no application to the dispute*, and either or both principally limited their arguments to the following factors: the significance of *the various comparison criteria*; the *interests and welfare of the public*; the fact that the County is proposing a *change in the status quo ante*; the significance of their *recent bargaining history*; and the *cost of living criterion*.

The Comparison Criteria

In the above connections the undersigned has frequently noted that *the comparison criteria* are normally the most frequently cited, the most important, and the most persuasive of the various arbitral criteria, and the most persuasive of these comparisons is typically the so-called intraindustry comparison.[56] The reason for this is that the intraindustry comparisons generally involved comparable employers and comparable employees, and their settlements generally comprise the most persuasive evidence of the settlement the contending parties would have reached at the bargaining table, had they been able to do so. Enhanced weight may be placed on internal comparisons, however, in at least two situations: *first*, where certain fringe benefits, such as group medical insurance coverage, can be most efficiently and economically provided and administered when it is uniform for all employees; and/or, *second*, where multiple bargaining units with a single employer have established a pattern of settlements which is the most persuasive indication of the settlement the parties would have reached at the bargaining table, had they been able to do so. In the latter connection, relative uniformity of settlements is also conducive to successful ongoing collective bargaining within multiple bargaining units, and an arbitrator should be reluctant to undermine such uniformity in the absence of persuasive evidence justifying such action.

In the case at hand a precise determination of relative weight is

---

[56] As noted earlier, the *greatest weight*, *the greater weight* and the *ability to pay* criteria may, on *case-by-case bases*, take precedence over other arbitral criteria; none of these *criteria*, however, appear to require such enhanced arbitral weight in these proceedings.

necessary, in that both comparisons clearly favor selection of the final offer of the County in these proceedings.

(1) It is undisputed that the wage increase and the insurance components of the final offer of the County were fully agreed-upon in all five of the County's other bargaining units, after preliminary bargaining about various other possible insurance changes to control the County's spiraling health insurance premiums.[57]

(2) Without unnecessary elaboration, it is also noted that the County proposed health insurance program reasonably compares with *those provided by the intraindustry comparables*, and the wage component of its final offer also provides for above average wage increases versus these comparables.[58]

The Interests and Welfare of the Public Criterion

On the above described bases the undersigned has preliminarily concluded that both the *internal comparables* and the *intraindustry comparables* clearly and persuasively favor the final offer of the County in these proceedings.

In next addressing the *interests and welfare of the public criterion* it is noted that *no inability to pay question exists* in these proceedings. Both parties are correct in recognizing the public benefit of having County employees fairly and adequately compensated, and the concomitant public importance of the County's preservation of its fiscal well being, consistent with its responsibility toward its employees. While both of these considerations are important in the final offer selection process, the undersigned is unable to determine that this criterion significantly favors selection of the final offer of either party in these proceedings.

The Normal Prerequisites for Adopting Proposed Modifications of the Status Quo Ante

As described earlier, the County, as the proponent of significant change in the status quo ante, is normally required to establish three prerequisites: *first*, that a significant and unanticipated problem exists; *second*, that the proposed change reasonably addresses the underlying problem; and, *third*, that the proposed change is normally, *but not always*, accompanied by an otherwise appropriate *quid pro quo*.

Without unnecessary elaboration the undersigned notes that the spiraling

[57] See the contents of County Exhibit #17.

[58] See the contents of County Exhibits #20, #21 and #22.

of health insurance costs must be recognized as meeting the first of the three prerequisites, and the widespread adoption of employee premium contributions must be recognized as one of several possible means of addressing such spiraling costs. Accordingly, the only remaining question in this area is whether the Employer has met the *quid pro quo* requirement, which question has previously been described by the undersigned as follows:

> "In addressing the disagreement of the parties relative to the presence of an adequate *quid pro quo* in the case at hand, the undersigned notes recognition by certain Wisconsin interest arbitrators, including the undersigned, that some types of proposed changes in the *status quo ante* directed toward the resolution of *mutual problems*, may require either none or a substantially reduced *quid pro quo*.
>
> (1) A *reduced quid pro quo* has been required by the undersigned, as follows, in some situations involving medical insurance premium sharing:
>
> 'What next of the disagreement of the parties relative to the sufficiency of the Employer proposed quid pro quos? In this connection, it is noted that *certain long term and unanticipated changes in the underlying character* of previously negotiated practices or benefits *may constitute significant mutual problems of the parties which do not require traditional levels of quid pro quos to justify change*. In the case at hand, the spiraling costs of providing health care insurance for its current employees is a *mutual problem for the Employer and the Association,* and the trend has been ongoing, foreseeable, anticipated, and open to bargaining by the parties during their periodic contract renewal negotiations. In light of the *mutuality of the underlying problem*, the requisite *quid pro quo* would normally be somewhat less than would be required to justify a *traditional arms length proposal to eliminate or to modify negotiated benefits or advantageous contract language*.' [Citing *decisions of the undersigned* in Village of Fox Point, Dec. No. 30337-A (11/7/02) pp. 21-22, and in Mellen School District, Dec. No. 30408-A (3/21/02), pp. 39-40.]
>
> (2) A situation where *no quid pro quo* was required, arose in connection with a proposed future reduction in the period within which a school district would continue to pay full health insurance premiums for early retirees:
>
> 'What, however, of the situation where the costs and/or the substance of a long standing policy or benefit have substantially changed over an extended period of time, to the extent that they no longer reflect the conditions present at their inception? Just as conventionally negotiated labor agreements must evolve and change in response to changing external circumstances which are of mutual concern, Wisconsin interest arbitrators must address similar considerations pursuant to the requirements of Section 111.70(4)(cm)(7)(j) of the Wisconsin Statutes; in such circumstances, the proponent of change must establish that a significant and unanticipated problem exists and that the proposed change reasonably addresses the problem, but it is difficult to conclude that a bargaining quid pro quo should be required to correct a mutual problem which was neither anticipated nor previously bargained about by the

parties. ...

The parties agreed upon the ten year maximum period of Employer payment of unreduced health care premiums for early retirees in the late 1970s, but the meteoric escalation in the cost of health insurance since that time has exceeded all reasonable expectations, and the immediate prospect for future escalation is also significantly higher than could have been anticipated by either party some twelve or thirteen years ago. In short, the situation represents a significant mutual problem, and it is clearly distinguishable from a situation where one party is merely attempting to change a recently bargained for and/or a stable policy or benefit for its own purposes.'
[Citing the *decision of the undersigned* in Algoma School District, Case 18, No. 46716, INT/ARB-6278 (11/19/92), pg. 25.]

(3) Two decisions in which employer proposed medical insurance changes were determined to require an appropriate *quid pro quo*, indicated in part as follows:

'In applying the above described principles to the situation at hand, it must be recognized that while there have been continuing increases in the cost of medical insurance since the parties earlier negotiations, this trend was ongoing, foreseeable, anticipated and bargained upon by the parties in reaching the predecessor agreement covering January 1, 1998 through December 31, 2000; indeed, the letter of agreement and the medical insurance reopener clauses were the *quid pro quos* for the medical insurance changes then agreed upon by the parties, which the Employer is now seeking to eliminate. While it is entirely proper for the Employer to have continued to pursue this goal in these proceedings, the record falls far short of establishing that its current final offer falls within the category of proposals which need not be accompanied by appropriate quid pro quos.'
[Citing the *decisions of the undersigned* in Town of Beloit, Dec. Nos. 30219-A and 30220-A (4/25/02), pp. 13-14.]"[59]

In applying the above described principles to the case at hand the following factors are determinative:

(1) Those in the bargaining unit have enjoyed excellent health insurance benefits for an extended period of years, with the County's annual insurance costs increasing 117% in the five year period from *$4,076,592 in 2002*, to *$8,832,356 in 2005*.[60]

(2) The above costs increases are far in excess of what might have been anticipated by the parties when the benefit was originally agreed upon.

(3) The Employer reasonably proposed various possible solutions to its spiraling insurance costs, and in the five other bargaining units the parties agreed upon the employee premium contribution levels

[59] See the *decisions of the undersigned* in Omro School District (Aides/Food Service), Dec. No. 31070-A (7/9/05), pages 26-27, and in City of Marinette (Police Patrolmen and Sergeants), Dec. No. 30872-A (11/27/04), pages 15-18.

[60] See the undisputed contents of County Exhibit #8.

contained in its final offer in these proceedings.

(4) The nature and mutuality of the underlying problem, brings the County proposal well within the category of proposed changes which require either a significantly reduced *quid pro quo*, or none at all.

Since the wage increase proposed by the County exceeds the Association's wage proposal, reflecting the agreed-upon increases in the other five bargaining units, it is clear that a somewhat enhanced wage increase had been coupled with the County's insurance proposal. The undersigned has thus determined that the Employer's final offer is fully consistent with the so-called *quid pro quo* requirements.

The Recent Bargaining History of the Parties

There is no dispute that the Union had absolutely refused to consider any possible changes to the previous health insurance program during the parties contract renewal negotiations leading to the underlying impasse.[61] While such a *refusal to bargain over a proposed change* might logically be construed as conclusive evidence that no agreement could have been reached at the bargaining table which included such change and, accordingly, that an arbitrator should not assume the authority to order such change. The distinction between arbitral authority in the public and the private sectors in such situations was presciently described, as follows, by Arbitrator Howard S. Block:

> "...Within a milieu where the right to strike is generally proscribed, arbitration or fact-finding will unavoidably become the rule for the settlement of troublesome interest disputes, and not a seldom-used emergency measure. It seems to me that the expertise which has fashioned workable rights criteria for stabilizing the contractual relationship in the private sector is still present to a sufficient degree and extent for the development of interest criteria that will be ultimately acceptable to the parties in the public sector.
>
> I share the point of view described by Professor Russell Smith, in his analysis of the New York ('Taylor Committee') Report of March 1966: '...that since novel approaches may be required to deal with the unique problems in the public sector, the necessary expertise should be permitted to develop unhampered by any preconceptions associated with the administration of private sector legislation.'
>
> * * * * *
>
> ...As we know, a principal guideline for resolving interest disputes in the private sector is prevailing industry practice--a guideline

[61] See the unchallenged *testimony of Mr. Sunstrom* at Hearing Transcript, pages 22(6)-24(4), 27(23)-29(1) and 29(16-23).

expressed with exceptional clarity by one arbitrator as follows:

> 'The role of interest arbitration in such a situation must be clearly understood. Arbitration in essence, is a quasi-judicial, not a legislative process. This implies the essentiality of objectivity --the reliance on a set of tested and established guides.
>
> 'In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of the extraordinary pressures which led to the exhaustion or rejection of their traditional remedies.
>
> 'The arbitrator attempts to accomplish this objective by first understanding the nature and character of past agreements reached in a comparable area of the industry and in the firm. He must then carry forward the spirit and framework of past accommodations into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving *either party* that which they could not have secured at the bargaining table.'
>
> Viewed in the light of the foregoing principles, the public sector neutral, I submit, does not wander in an uncharted field even though he must at times adopt an approach diametrically opposite to that used in the private sector. More often than in the private sector, he must be innovative; he must plow new ground. He cannot function as a lifeless mirror reflecting pre-collective negotiations practices which management may yearn to perpetuate but which are the target of multitudes of public employees in revolt."[62]

While Arbitrator Block's treatise was written at a time when public sector unions were becoming established, the underlying principles then espoused by him are equally applicable to both union and management today!

In view of the normal lack of the ability to strike and/or to lock out in support of bargaining proposals involving so-called *mandatory items of bargaining*, neither party should be able to, in effect, preclude arbitral adoption of reasonable and otherwise appropriate proposed changes in wages, hours and terms and conditions of employment, by simply refusing to participate in bargaining over such items. The undersigned, therefore, retains the ability to select the final offer of either party.

While the parties at least inadvertently disagree on the significance of

---

[62] 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 163, 164-165. The quoted comments of *Professor Russell Smith* appear in State and Local Advisory Reports on Public Employment Labor Legislation: A Comparative Analysis, *67 Mich. L. Rev. 891, 899 (1969)*; the cited decision of *Professor John J. Flagler, et. al.*, appear in Des Moines Transit Co., 38 LA 666, 671 (1962).

the different effective dates of their proposed wages increases, with the Employer relying on the previously utilized effective dates of past negotiated wages increases, the undersigned is unable to assign any significant weight to this element of the parties' bargaining history.

On the above described bases the undersigned cannot assign significant weight in these proceedings to either the effective dates of the proposed wage increases, or to the Union's refusal to engage in realistic bargaining over any possible changes in the health insurance coverage provided for in the predecessor agreement.

The Cost of Living Criterion

There is no dispute that recent and anticipated future increases in the appropriate CPI are lower than both the three 3% wage increases proposed by the Union and the $3.25% wage increases proposed by the County.[63] Viewing these figures in isolation would require a conclusion that this criterion thus favored the position of the Union. Realistically, however, this would be unrealistic on two bases: *first*, the apparent fact that the higher wage increase proposals contained in the County's final offer apparently included a moderate quid pro quo for the negotiated changes in health insurance in its other five bargaining units; and, *second*, the total costs of the Union's final offer are higher than those of the County's final offer.

On the above bases the undersigned has concluded that no significant weight can be assigned to the cost-of-living criterion in these proceedings.

Summary of Preliminary Conclusions

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

(1) Neither party has significantly relied upon or addressed the *greatest weight factor*, the *greater weight factor*, the *lawful authority of the employer*, the *stipulations of the parties*, the *overall compensation of the parties*, or the *changes during the pendency of the arbitration hearing* criteria.

(2) The parties differ solely on the *size and implementation dates of the applicable wage increases* during the life of the renewal labor agreement, and on the *Employer proposed changes in group medical insurance*. In support of their respective positions, either or both parties principally limited their arguments to the following:

[63] See the contents of County Exhibits #8 and #18.

the significance of *the various comparison criteria*; the *interests and welfare of the public*; the fact that the County is proposing a *change in the status quo ante*; the significance of their *recent bargaining history*; and the *cost of living criterion*.

(3) In applying *the comparison criteria* the undersigned finds as follows:

(a) It is undisputed that the wage increase and the insurance components of the final offer of the County were fully agreed upon in all five of the County's other bargaining units, after preliminary bargaining about various other possible insurance changes to control the County's spiraling health insurance premiums.

(b) It is also noted that the County proposed health insurance program reasonably compares with *those provided by the intraindustry comparables*, and the wage component of its final offer also provides for above average wage increases versus these comparables.

(c) Precise determination of the relative weight to be applied to the *primary intraindustry comparison criterion* and the *internal comparison criterion* is necessary, in that both comparisons clearly favor selection of the final offer of the County in these proceedings.

(4) Arbitral consideration of *the interests and welfare of the public criterion* does not significantly favor selection of the final offer of either party in these proceedings.

(5) After consideration of the *normal prerequisites for adopting proposed modifications of the status quo ante*, the undersigned has thus determined that the Employer's final offer is fully consistent with the so-called *quid pro quo* requirements.

(6) After consideration of *the recent bargaining history of the parties*, the undersigned cannot assign significant weight to either *the effective dates of the proposed wage increases*, or to *the Union's refusal to engage in realistic bargaining* over any possible changes in the health insurance coverage provided for in the predecessor agreement.

(7) The undersigned has determined that no significant weight can be assigned to *the cost-of-living criterion* in these proceedings.

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, but principally upon the arbitral criteria addressed in detail above, the Impartial Arbitrator has concluded that the final offer of the County 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, it is the decision of the Impartial Arbitrator that:

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

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

WILLIAM W. PETRIE
Impartial Arbitrator

February 7, 2006