

**STATE OF WISCONSIN
BEFORE THE ARBITRATOR**

**In the Matter of the Arbitration of
a Dispute Between**

**Buffalo County Human Services
Clerical and Paraprofessional
Employees, Local 1625-A, AFSCME,
AFL-CIO**

and

Buffalo County

**Case 73
No. 64273
INT/ARB-10337
Dec. No. 31484-A**

Appearances

Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of Local 1625 – A, 18990 Ibsen Road, Sparta, WI 54656-3755.

Richard J. Ricci, Attorney-at-Law, Weld, Riley, Prenz & Ricci, S.C., 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, WI 54702-1030, on behalf of Buffalo County.

ARBITRATION AWARD

Local 1625 – A, AFSCME, AFL-CIO, hereinafter referred to as “Union” and Buffalo County, hereinafter also referred to as “County” or “Employer,” selected the undersigned to issue a final and binding award pursuant to Wis. Stats. 111.70(4)(cm)6 of the Municipal Employment Relations Act contained in said Statutes. A hearing was conducted in Alma, Wisconsin on January 11, 2006. The hearing was not transcribed. The parties mailed briefs, the last of which was received on February 13, 2006, and reply briefs the last of which was received on March 14, 2006.

Based on Wis. Stats. 111.70(4)(cm)7, the arguments of the parties, and the entire record herein, I issue the following award.

BACKGROUND

Buffalo County, a quasi-municipal corporation of the State of Wisconsin and AFSCME Local 1625-A, representing the Buffalo County Human Services Clerical and Paraprofessional Employees, are parties to a collective bargaining agreement that expired on December 31, 2004.

Buffalo County is located in western Wisconsin, approximately midway way on the state's north-south axis. Its tall, wooded hills stretch upward from the eastern banks of the Mississippi River, and are reputed to hold escaped domestic hogs gone feral over the years. The county seat is Alma, a picturesque riverside community.

AFSCME Local 1625-A is one of four AFSCME locals that represent four separate bargaining units of Buffalo County employees. This Clerical and Paraprofessional unit is relatively small, containing 11 members, all employed in the County's Human Services Department.

Following a mutual exchange of initial proposals and one negotiating session, the Union filed a petition alleging the parties were deadlocked and requesting interest arbitration. Wisconsin Employment Relations Commissioner Paul Gordon conducted the statutorily required investigation of the alleged deadlock. The investigation included mediation.

Although the parties are in agreement as to certain items to be included in the successor agreement, mediation efforts failed to produce agreement on an entire agreement. Thus, several items remain in issue between the parties, on which the parties continue to be at impasse.

At the close of the investigation and mediation by Commissioner Gordon, the parties selected A. Henry Hempe to arbitrate the dispute, who conducted a hearing on January 11, 2006. The parties agreed to submit briefs, reserving the right to submit reply briefs. Each party opted to submit a reply brief, the last of which was received by the arbitrator on March 13, 2006.

FINAL OFFERS OF THE PARTIES

Union:

The Final Offer of the Union is annexed hereto as Exhibit A and incorporated by this reference as if fully set forth herein.

County:

The County's Final Offer is annexed hereto as Exhibit B and incorporated by this reference as if fully set forth herein.

Stipulations:

The Final Offers of each party contain identical wage proposals, identical wage retroactivity proposals, and identical proposals for the term of the contract. In addition, the parties reached a stipulation on one further matter. That stipulation is annexed hereto as Exhibit C and incorporated by this reference as if fully set forth herein.

Summary of Differences:

The Union proposes two items:

- 1) Adjust the wages of the Benefit Specialist position by raising it from a pay grade F to a pay grade G.
- 2) Redate the Addendum contained in the 2003-04 Agreement from “for 2003-2004 only” to “for 2005-2006 only.”

The Union is not in agreement with any of the County’s proposals relating to employee health insurance, and proposes *status quo* for matters concerning employee health insurance.

The County proposes four changes relating to employee health insurance:

Change health insurance plan as follows effective with the second full month following date of arbitration award:

- 1) Revise Employee contribution for the single plan from 0% to 15%.
- 2) Revise the annual up-front deductible from \$100 single/\$200 family to that of \$250 single/\$500 family.
- 3) Install a medical office co-pay of \$15.00 per visit.
- 4) Revise the drug co-pay from \$5.00 generic/\$10 brand name to that of \$10.00 generic/\$20.00 brand name; also, limit prescriptions to 34-day from present 90-day fill amount.

RELEVANT STATUTORY PROVISIONS

Pursuant to the provisions of Wis. Stats. 111.70(4)(cm)6.d., the arbitrator is required to adopt without further modification the final offer of one of the parties on all disputed issues hat are submitted.

In reaching a decision, the undersigned is further required by Wis. Stats. 111.70(4)(cm)7, 7g., and 7r. of the Municipal Employment Relations Act to consider and apply the following criteria to the evidence and arguments of the parties.

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

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

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in generally in public employment in the same community and in comparable communities.
- f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services commonly known as the cost of living.
- h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceeding.
- 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.

COMPARABILITY POOL

The parties agree to the comparability pool to be utilized. That pool consists of the following counties: Clark, Dunn, Jackson, Monroe, Pepin, Pierce, and Trempealeau. The pool was established in 2000 by Arbitrator Richard Tyson, *Dec. No. 29667-A*.

POSITIONS OF THE PARTIES

Union:

County Wages Put County in Catch-up Position

The Union begins by noting that although wages are not at issue, the wages of the benchmark Economic Support position (Union Exhibit 12) and the wages of the other Buffalo County positions (Union Exhibit 24) are behind the wages of the comparable counties. This, says the Union, puts Buffalo County in a “catch-up” position. The Union, adds that the wage increases being granted in Buffalo County are comparable to those being granted in the comparable counties and within Buffalo County.

Equity Adjustment for Benefit Specialist

Although, in general, the wage increase is not in issue, one particular wage item remains is in issue. The Union asserts that the wages of the Benefits Specialist in Buffalo County are far behind those of his colleagues in not only the comparable counties, but also the wages of other Buffalo County Human Services positions. The Union proposes an “equity adjustment” for the Buffalo County Benefit Specialist consisting of an advance from Pay Grade F to Pay Grade G.

The Union submits evidence (Union Exhibit 14) demonstrating that the wages of the Buffalo County Benefits Specialist lag considerably behind those of his counterparts in each of the other comparable counties. The Union notes County Exhibit 57 shows the same disparity, but contains more information.

The Union is critical of the County costing this item against the Union’s package, arguing that if the upgrade is appropriate as an equity item, it should not be costed against the package, for doing so unfairly penalizes the other bargaining unit employees for correction of an inequity. The Union analogizes this to costing equity adjustments when making comparisons to the CPI, which the Union also feels is inappropriate.

The Union believes that this issue clearly favors selection of the Union’s Final Offer.

Addendum Providing Benefits for Reduced Time Employees

The Union is also concerned about what it believes to be the County’s tacit proposal to eliminate the current contract’s Addendum. The addendum provides that a full-time employee temporarily reduced to part time will continue to accrue benefits on a full-time basis. The Union points out that the addendum has been in effect since 1984.

In the Union’s opinion, the elimination of this clause requires a *quid pro quo*, just like other items in the contract, and cites Arbitrator Petri to this effect (*Town of Beloit, No. 30220-A*).

Finally, the Union explains that the clerical-paraprofessional bargaining unit and the Human Services Professional Unit are combined into one local, namely Local 1625-A. The Human Services Professional contract continues the addendum through 2006. This being the case, the Union argues, this issue also supports the Union's Final Offer.

Health Insurance

This brings the Union to the health insurance issue. The Union contends that neither the internal nor external comparables support the changes proposed by the County for this bargaining unit, and argues that health insurance must be compared "as a whole."

Beginning with the internal units, the Union explains that the other three Buffalo County employee AFSCME bargaining units have 2-year contracts that will not expire until December 31, 2006. These contracts do not include the insurance changes the County proposes for the clericals-paraprofessionals. The Union equates the County's efforts to trying to get the tail to wag the dog.

The Union believes the proper time for the County to address its desire to modify the health insurance terms would be with all AFSCME units at the same time.

The Union finds noteworthy the County's proposal for premium contributions for singles go from 0% to 15%, because there are no single plan participants in the paraprofessional unit. The Union acknowledges that Pepin County is the only county comparable that has no premium for a single coverage plan, but urges the health insurance issue be compared as a whole.

Citing Union Exhibit 17, the Union believes Buffalo County is at the bottom of the external comparables as far as its required percentage family coverage contribution of 20%. With its new proposal for single coverage contribution, the Union asserts that the County would also be at the bottom of the county comparables in this category. The Union argues that if the County wanted a premium contribution for single plan coverage it should have offered a *quid pro quo*.

The Union is also critical of the County's proposed increase in deductibles. The County is proposing moving from \$100 single/ \$200 family to \$250 single/\$500 family, with office visit co-pay of \$15. The County compares this to the other comparable counties:

- Clark – Deductibles - \$200-\$600; office visits – 0.
- Dunn – Deductibles - \$200-\$600; office visits – 0.
- Jackson – Deductibles – \$100-\$300; office visits 0 (all AFSCME units)
- Monroe – Deductibles – Deductibles – 0; office visits – \$30.
- Pepin (State HMO) – Deductibles – 0; office visits – 0.
- Pierce – Deductibles – PPO - \$75/\$150; office visits -- \$10 – HMO – 0.
- Trempealeau – (State HMO) – Deductibles – 0; office visits – 0.

But the Union criticizes Buffalo County's Final Offer that proposes both deductibles and office visit co-pays, arguing this is comparable to only the Pierce County PPO. The Union contends that Pepin, Pierce and Trempealeau Counties have neither a deductible nor office co-pays. The Union continues that Clark, Dunn and Jackson have deductibles, but no office-visit co-pay, Monroe has no deductible but does have \$30 office visit co-pays. The Union concludes with the observation that Buffalo County's Final Offer would put the paraprofessionals at the bottom of the list of external comparables.

None of the proposed health insurance changes apply to the other three AFSCME units of Buffalo County employee, and the County is offering no *quid pro quo*.

To the Union, the most onerous change the County proposes is what the Union describes as the County's change in its bargaining position. The Union perceived the County's original proposal in negotiations as providing the clericals-paraprofessional bargaining unit members with reduced benefits, but charging them the same cost as the members of the other three Buffalo County AFSCME units whose benefits stayed the same – i.e. the clericals and paraprofessionals would be paying more for less. Then, at some point after the Union petitioned for interest arbitration, the County produced a *reduced* premium rate for the *reduced* benefit plan.

Consumer Price Index

The Union next focuses on the CPI, and refers to Union Exhibits 25 & 26. Union Exhibit 25 is a copy of a U.S. Department of Labor, Bureau of Labor Statistics report on the Consumer Price Index showing a cost of living increase of 3.4% from December 2003 to December 2004 for Midwest, nonmetropolitan (less than 50,000). Union Exhibit 26 from the same source shows a cost of living increase of 3.5% from November 2004 to November 2005 the following year for the same area.

The Union believes the data supports its position, and additionally argues that the cost of living should be compared to the wage increase and not the total package costs, and cites the decisions of several distinguished arbitrators whose decisions appear to reflect that view.

Greatest and Greater Statutory Factors

The Union discusses the "Greatest" and "Greater" factor criteria [Wis. Stats. 111.70(4)(cm)7. & 7g.] The Union anticipates that the County may claim to have financial problems. But the Union submits several exhibits that purport to show that the County has an allowable operating levy rate of 7.10, which is at 90.56% of its allowable levy¹, a total county sales tax revenue increase from 2003 to 2004 of 11.32%², a per capita income 2005 of \$29,083 (which slightly exceeds Pierce and Jackson Counties and exceeds the other comparable counties by approximately \$4,000 to \$7,000)³, a January 1,

¹ Union Exhibit 2.

² Union Exhibit 3.

³ Union Exhibit 4

2003 population of 13,975⁴ and a January 1, 2004 population of 14,033.⁵ (Only Pepin County is smaller.) The County ranks 23rd in the state for growth in equalized value, and lists a 2005 equalized value of \$819,781,800.⁶ Of the comparable counties, only Pepin shows a lesser equalized value at \$434,259,400. Dunn and Monroe Counties lead the comparables in this area with 2005 equalized valuations of over \$2 million.⁷ In 2004, the County ended with an average unemployment rate of 4.3%, which ranked it 22nd statewide.⁸

The Union believes the costs of the Union's Final Offer and that of the County are not significantly different, provided the cost of the proposed equity increase for the Benefit Specialist is deducted. The Union also notes that only 8% of the entire Human Services budget is paid through the Buffalo County tax levy with the remaining 92% paid through State and Federal sources.

Finally, the Union points out that Buffalo County Administrator Bruce Cornish testified at the interest arbitration hearing that the County would be able to meet its 2006 budget under either Final Offer.

Criticism of "Cast Forward" Costing

The Union is critical of the County's costing mechanism, the "cast forward" method, manifested in County Exhibits 5 – 15.

The Union accurately describes the method as assuming all of the employees that are employed at the end of the previous labor agreement will continue to be employed through the successor agreement. The Union argues that the "actual" cost of a successor agreement can be considerably less than a projected "cast forward" cost, pointing out that 1) wages for new employees hired to fill retirement or quit vacancies are usually less than the wages of the employee being replaced, and 2) the "cast forward method does not credit the bargaining unit for savings generated by a position not being filled, but instead charges the bargaining unit for employees no longer working.

Moreover, the Union does not believe that step increases should be included when comparing wage levels and wage increases, and cites arbitral authority in support of this contention.

Based on the record as a whole and "the circumstance brought to light in the Union's brief and reply brief," the Union asserts that its Final Offer is the more reasonable on each of the three open issues.

⁴ Union Exhibit 5.

⁵ Union Exhibit 6.

⁶ Union Exhibit 8.

⁷ Union Exhibit 8.

⁸ Union Exhibit 7.

County:

Greatest Weight Factor

The County believes the “Greatest Weight” criteria [Wis. Stats. 111.70(4)(cm)7.] supports adoption of the County’s Final Offer. The County notes that its revenue is severely limited by the Governor’s freeze on property tax levies. The County explains that the Governor’s 2005-07 Budget Bill provides that counties may increase their respective tax levies for 2006 by only 2% if the local rate of new growth is less than 2%. It cites Employer’s Exhibit 54 as showing that Buffalo County’s net new construction growth from 2004 to 2005 was only 1.867%, which means it can increase its 2006 tax levy by only 2%.

A tax levy of only 2%, the County continues, produces only \$104,472 in new tax revenue in 2006. The County estimates that this falls about \$13,000 short of the amount needed to cover 2006 wage increases and associated FICA and WRS contribution (based on a 2.75% wage increase for all represented employees, and 3% for elected officials. Moreover, the County foresees increased health insurance costs in 2006, and calculates it will need an additional \$13,281 for health insurance cost increases alone in 2006 in addition to an additional \$11,722 for the wage increases for the paraprofessional bargaining unit. The County asserts that the additional cost for health insurance under the Union’s Final Offer is \$17,453 in 2006.

The County has a self-insured health insurance plan in place for its employees. The County points out that its cost of providing health insurance has absorbed an increasingly larger percentage of County tax levy dollars. In 1999 it constituted 17% of the County’s tax levy; by 2005 it amounted to 20% of the County’s tax levy in that year. From 1995 to 2006, the County has increased health insurance premiums by over 176% for single coverage and 144% for family coverage. In dollar terms, over the same 11-year span, family coverage premiums increased from \$589.66/month to \$1440.76/month. Premiums increased by 10% in 2004 and another 15% in 2005. Single coverage premiums increased another 31.86% for 2006; family coverage premiums increased another 16.49% for the same year.

With only a 2% levy increase permitted in 2006, the County anticipates that its cost of providing health insurance that year will considerably exceed 20% of its tax dollars. The County explains that the health insurance cost increase in 2006 is higher, under the Union Final Offer, because without any changes in deductible and co-pays, the premiums are higher. The County says the reason for the lower cost increase under its Final Offer because the County’s proposed changes reflect a premium reduction effective (at the earliest) in July 2006.

The County notes that its proposed health insurance changes will result in lower premiums for the remaining months of 2006, and not only lower the County’s cost of providing insurance, but will also lower the employee contribution toward family coverage by \$20.10 per month.

The County costs the increases in its Final Offer for the 11-person clericals-paraprofessional bargaining unit for wages and benefits at \$27,759, a 5.74% increase in 2006 and contrasts it to the \$32,153 or 6.62% increase in 2006 under the Union Final Offer.

The County does not deny the Union argument that the additional moneys required by either Final Offer does not impact the County's estimated available \$104,573 revenue increase in 2006 because the majority of HHSD Department funding emanates from State and Federal sources, with only 8% coming from County tax dollars. However, the County points out that the amount of tax dollars needed to cover HHSD expenditures is increasing, due at least partially to the fact that the fund balance (used until 2003 to balance the budget) eroded to a negative \$682,775 by November 2005. The County's Exhibit 43 also shows a significant decline in State/Federal funding between the \$3.65 million received in 2000 and the \$3.2 to \$3.3 million received in subsequent years, except for 2004. In 2005, State and Federal funding assistance grew to \$ 3.7 million, but plummeted to \$3.2 million the following year, which required a record county tax levy infusion of \$450,460.

County Administrator Cornish attributes the reason for the increased HHSD costs to an increase in mandated services, which the Administrator has every reason to believe will continue to increase.

The County notes the 2% maximum allowable increase the County is allowed in 2006 follows two years of levy increases of 5.2% and 5.5% for 2004 and 2005, respectively (also the maximum levy increases permitted. Even with the larger levy increases, the County points out, it still found it necessary to reduce or eliminate positions and programs listed on County Exhibits 40-41.

Thus, the County summarizes, the imposition of the levy increase has already resulted in numerous cuts, the most recent affecting the work hours of all County employees in 2006, after another wage freeze for nonrepresented personnel.

The cost of providing employee health insurance continues to absorb an increasingly larger percent of the County's tax levy, the County adds, asserting that this is a case where the arbitrator must give primary consideration to the "greatest weight" factor. That factor, according to the County, favors the County's offer.

Justification for Health Insurance Proposals for Change

The County lists three justifications for its proposed health insurance changes: 1) curbing the escalating premium costs of health insurance, 2) reducing the losses in the County's self-funded health insurance reserve, and 3) attempting to induce employees to become more cost conscious of the health care expenses by placing a higher cost on those persons actually using the benefits.

The County explains that one of its proposals would have single coverage beneficiaries contribute 15% of the single coverage premium. The County emphasizes that since no existing paraprofessional bargaining unit employees have single coverage, this proposal would have no immediate impact on the unit. The County also explains that its proposed increase in deductibles, implementation of an office visit co-pay, and an increase in the prescription drug co-pay for generic drugs, with the co-pay based on a 34-day supply would not be effective until the second full month following the date of the arbitration award, potentially July 2006, at the earliest.

The County acknowledges that the primary motivating factor behind its health insurance proposals is cost. Health insurance premiums have been, in the County's words, "skyrocketing with no end in sight." The County complains that despite the drastically escalated premium increases in both single and family coverages in the past 11-years, the County's insurance reserve fund has continued to lose money since 2002, as shown by County Exhibit 22. Based on the County's claims experience, the fund is now significantly less than the amount recommended by insurance experts as an appropriate balance, the County states.

Along with the erosion of the reserve fund balance, the County's cost of providing health insurance coverage has significantly increased as a percentage of the total annual wages, the County continues. Its Exhibit 32 demonstrates that such percentage has risen from 21.42% of the cost of annual wages paid in 1998 to 30.17% in 2004. In 2006 it is estimated the number will grow to be 36.22% under the County's Final Offer, 37.37%, under the Union's Final Offer.

The County argues that it needs to control and contain its health insurance costs as well as shore up its health insurance reserve fund. It can achieve this goal by increasing actual premiums (which increases the cost to both employer and employee), shift a greater share of the total health care cost to employees who use the benefit, and/or require an employee contribution from all employees (which the County views as promoting a more universal employee interest in curbing increased health insurance costs).

County employees with family coverage currently contribute 20% of the premium cost, and the County claims it is not insensitive to the effect of premium increases on employees. Thus, the County does not view simply increasing its self-funded insurance premiums to replenish the health insurance reserve fund as feasible due to the impact on the employees and the County's budget restraints.

The County describes its approach as two-fold: 1) require a premium contribution from all employees, not just those with family coverage, and 2) increase the "user" costs in the form of increased deductibles and co-pays to those utilizing health care services.

External Comparables

The County believes that requiring an employee health insurance premium contribution from employees is well-accepted by arbitral authority, which it cites. The

County finds no arbitrator that limits acceptance of employee premium contribution to only employees with family coverage. The County believes its Exhibit 61 demonstrates its proposal that employees contribute 15% towards the cost of single coverage premiums is supported by the external comparables.

Internal Comparables

As to the internal comparables, the County notes that its nonrepresented employees currently contribute 15% towards the single coverage premium, and Law Enforcement unit employees hired on or after 1/1/03 contribute 10% toward single health insurance premiums. The County avers that it is seeking the same 15% employee contribution from *all* Law Enforcement employees in the current arbitration proceeding with that unit for a 2005-06 contract.

The County acknowledges that all other represented County employees receive fully paid single insurance in 2006. However, says the County, the remaining three AFSCME represented units – Courthouse, Highway, and Human Services Professionals – have had a settled 2-year contract since early 2004, which preceded the County’s decision to seek a premium contribution from all County employees, including those with only single coverage. Saying its fiscal situation made it almost impossible to wait any longer for cost saving health insurance changes, the County asserts its intention to seek a similar employee contribution for single coverage as it is proposing herein from all represented groups during negotiations for the 2007 contract.

The County asserts that increasing employee costs for health care services is an acceptable means of reducing health care costs. The County cites recognized arbitral authority in agreement. It notes that its insurance consultant has recommended increases in deductibles and co-pays to reduce health insurance costs, and submitted Exhibit 28-A that purports to show estimated savings if the County’s proposals had been implemented in 2005.

Consequently, the County’s Final Offer includes an increase in deductibles, but retains 100% coinsurance for in-network coverage. As a result, the County argues, the only increased cost to employees is an increase in deductibles of \$150 for singles and \$300 for families if they incur expenses to which the deductibles apply.

The County acknowledges its Final Offer also imposes new costs on employees in the form of a \$15 office visit co-pay and an increased prescription drug co-pay for generic drugs from \$5 to \$10 for a 34-day supply. The County justifies this by noting the cost is incurred by users and places a responsibility of them to make choices that not only reduce their personal costs, but can reduce their overall premium costs, as well. The latter argument, the County claims, is validated by the experience reflected in its Exhibit 28-A and its Exhibit 20.

The County rues its lack of success in its past bargaining experiences in negotiating voluntary health insurance coverage changes, the latest in its last round of

collective bargaining with the AFSCME units. The County suggests that this has resulted in the County having four different “plans” with variations in deductibles and co-pays.

The County identifies its internal problem as “flat rejection” by the Union with respect to *any* changes in health insurance. The County firmly believes its Final Offer proposals enjoy strong support from the comparable counties.

Neither does the County believe that *quid pro quos* are required, given the need for health insurance change, particularly when rising health insurance premiums are being addressed. The County submits that the record demonstrates the need to address exorbitant cost of health insurance and the continued erosion of the health insurance fund. Yet, the County charges, the Union continues to reject any health care changes.

In the County’s opinion, “therein lies the unreasonableness of the Union’s Final Offer.”

The County additionally asserts its health insurance proposals better serve the “interests and welfare of the public” than the Union’s *status quo* insurance position.

Cost of Living

The County states that the total package cost of the parties’ respective offers is the most appropriate measure to use in applying inflation indices. Noting that the BLS Handbook of Methods published by the federal Department of Labor considers employer-paid health insurance to be part of the employee’s income, the County cites arbitrators that hold it is the total package increase, not the wage increase, alone, that should be compared to the CPI.

Using a total package analysis, the County makes the following calculations:

CPI-U – 2004	3.3%	
CPI-W – 2004	3.4%	
County Offer – 2005		6.45% total package increase
Union Offer – 2005		6.81% total package increase
CPI-U-2005 (through Nov.)	3.5%	
COI-W-2005 (through Nov.)	3.5%	
County Offer – 2006		5.74 total package increase
Union Offer – 2006		6.62 total package increase

The County attributes the additional total package cost for the first year to the additional cost of the Union’s proposed wage adjustment for the Benefit Specialist.

The larger difference for the following year results from the reduced health insurance premiums that would result from implementation of the County’s health insurance proposals (deductibles and co-pays).

Addendum

Finally, the County believes the Union's proposal that the dates in the Addendum be modified to reflect the new contract term of duration should not be decisive. The County admits it has no objection to the date change and denies it ever made any proposal to eliminate the Addendum language from the contract.

In fact, the County asserts that the past practice of the parties since 1984 arguably requires that the resolution recited in the Addendum remain in effect. The County notes that the dates in the Addendum have not always changed in Agreements dating back to 1984, yet the language remains in the contract.

Finally, the County notes that at hearing the parties agreed that the language in the addendum means that fringe benefits will not be reduced if there are any temporary layoffs. As to that, the only intention the County has reached is that all County employees will have their work hours reduced by 64-hours – which, the County maintains, is not a layoff that would result in reduced fringe benefits.

Union Reply

The Union disputes the County's claim that the "greatest weight" factor favors the County's Final Offer. The Union notes that under the County's costing, the cost difference to the County between the two final offers is only \$4,400, which, when multiplied by the 8% that the County will be responsible for paying is reduced to \$352.

The Union attributes the costing difference between the Final Offers to its proposed "equity adjustment" to the wages of the Benefit Specialist – which the Union does not believe should be costed against the compensation of the other employees.

The Union notes that the County's argument in support of the County's offer is conspicuously devoid of any response to the "equity adjustment" to the wages of the Benefit Specialist, as the Union had proposed. That leads the Union to conclude that the County is conceding the merits of that particular issue.

The Union reiterates the County Administrator's testimony that the County budget could meet under either Final Offer.

The Union argues that cost cannot be the County's motivating factor with respect to its health insurance proposals, because a 15% premium contribution requirement for singles would not impact the current bargaining unit members.

The Union claims to be well aware of the significant increases in industry-wide health insurance costs. It is the timing of the proposed changes that concerns the Union. The Union claims it specifically designed its current Final Offer with a 2005-06 term so that all of the AFSCME contracts would expire on 12/31/006, and the health insurance issue could be taken up with all of the AFSCME units.

The Union also argues that health insurance must be viewed as a whole, and consideration should be given to the fact that the premium contribution required of AFSCME bargaining unit employees, including the paraprofessional unit is 20% for family coverage – the highest in any of the comparable counties.

The Union disagrees that no *quid pro quo* is required. It argues that a *quid pro quo* is particularly required in this case, because this unit is being asked to pay a greater out-of-pocket expense than members of any other AFSCME bargaining unit in the county.

Finally, the Union reasserts its accusation that the County did not act in good faith regarding its bargaining of the health insurance issue. The Union claims that throughout negotiations and the Informal Investigation the County's position was that the clerical-paraprofessional employees would still pay the same health insurance premium contribution as the employees in the other AFSCME bargaining units, even though the members of the unit would have reduced benefits. The Union identifies this as an "extremely untenable position," and alleges that it wasn't until the day of the interest arbitration hearing that the Union learned the County intended to charge the employees of the paraprofessional unit a lesser premium contribution than would be required of the members of the three other AFSCME units.

In conclusion, the Union asserts that the interest and welfare of the public would be promoted by selection of the Union's Final Offer. The Union notes that other arbitrators have found that employee morale is germane to the welfare of the public, and that selection of the County Final Offer would have a negative effect on employee morale.

The Union argues that this case involves a matter of fairness. It is unfair, the Union contends, for the members of this AFSCME to be treated differently from members of the other AFSCME units in Buffalo County as well as for the County to change its position with respect to health insurance premiums between the time of bilateral negotiations to the time of interest arbitration. The welfare of the public, states the Union, is best served when the employees are treated fairly.

County Reply

The County responds to the Union's initial brief by first asserting that the failure to change the dates in the Addendum has no substantive effect. The County contends that it has never proposed and it has never intended to reduce benefits in case of temporary layoffs. Amending the dates has never been an issue of any significance during bargaining, says the County, and accuses the Union of attempting to make it a major issue as a smoke screen. The County reasserts that the dates of the Addendum have not always changed from contract to contract without substantive impact or effect on the meaning or continuation of the addendum. The County characterizes the issue as "much ado about nothing."

The County is adamant in its assertion that the change in 2006 premiums for Plan 3 coverage was not a change in the County's bargaining position. The County explains that well after the certification of final offers in the matter, it elected to implement a \$500/\$1,000 high deductible plan for its non-represented employees for 2006, which justified lower premiums. In conjunction with that change, says the County, it elected to modify premiums for all "plans" based on the differences in deductibles and co-pays to more appropriately represent the cost of varying levels of coverage. The County insists its action was not an attempt to put this one bargaining unit at a disadvantage.

Moreover, the County finds suspect the Union's claim that it had no knowledge of the reduced 2006 premiums until it arrived at the interest arbitration hearing. The County allows that the Union's representative may have been unaware of the County's decision to implement different premium rates for different plan coverage. However, says the County, the Union membership must have been aware of the change when it received its annual notice consisting of a copy of County Exhibit 20 of the 2006 premiums and contributions well before the County implemented payroll deductions for January, 2006, health insurance coverage.

Finally, the County asserts that, contrary to the Union's argument, the external comparables do support office visit co-pay. The County claims the Union erred on p. 10 of its initial brief in claiming that Clark and Dunn Counties have no office visit co-pays. The County's Exhibit 63 shows a Clark County office visit co-pay of \$10. That, says the County, was also in error. The Clark County office visit co-pay for 2006 is \$25, according to a tentative agreement there. County Exhibit 63 also shows a Dunn County office visit co-pay of \$25 in 2005 and \$30 in 2006. With both Clark and Dunn Counties having a \$200/\$600 deductible, the County argues, the \$200/\$500 deductibles and office visit co-pay of \$15 is clearly not out of line. Thus, summarizes the County, contrary to the Union's argument that only Pierce County features both a deductible and office visit co-pay provision, three out of the six external county comparables have both deductibles and office visit co-pays. Finally, the County notes that while Monroe County has no deductible under its HMO plan, its \$30 office visit co-pay is twice the amount proposed in Buffalo County.

Again citing its Exhibit 61, the County urges that the external comparables demonstrate not only legitimate support for both deductibles and office visit co-pays, but movement toward employee premium contribution for single coverage, as well.

DISCUSSION

Introduction

Health insurance continues to be a major problem in labor relations. As policy premiums continue to escalate, many employers continue to hire insurance consultants for advice on how to reduce their insurance costs. Implementation of the advice they may receive is another matter, and it is not uncommon for employees to resist employer-

initiated proposals for health insurance modifications, particularly when the advice includes shifting a portion of the employer costs to the employees. The resistant employee, accustomed to years of employer-generated health insurance, in some cases at no apparent cost to the employee, understandably may perceive the proposed modification as an unjustified employer take-back of a benefit hard-won at the bargaining table.

There can also be an economic basis for employee resistance to health insurance modifications. The employee with a family member or members that require frequent or continuing medical attention along with high cost medical prescriptions may well experience an initial sense of panic when contemplating any changes to the health insurance protection that has guarded the employee and the employee's family from the ravages of ill-health or financial disaster, or both.

For still other employees, change of any sort is difficult to accept, particularly when the *status quo* has worked for them over the years. This is not intended as a critical observation: "If it ain't broke, don't fix it," is an attitude common to most human beings – employees and employers alike, and even arbitrators.

The instant case gives no hint of the bargaining history of health insurance for the clerical-paraprofessional bargaining unit, including the 20% contribution to family coverage premiums. There is no indication of whether the benefit was hard-won or what trade-offs (if any) may have produced it. Perhaps that history has become so obscured by the passage of time that it is difficult to resurrect.

In the long run, escalating health insurance costs for employers will not be solved by locally administered measures that seek to shift a larger share of premium costs to employees or reduce the benefits provided at the employees' expense. Many experts agree that broad scale legislation is required for more permanent, reasonable solutions to what most observers describe as a serious problem that is national in scope. However, locally applied bandages can staunch, temporarily, some of the immediate fiscal bleeding of employers offering health insurance to their employees. Yet, pursuant to the provisions of Wis. Stats. 111.70(4)(cm)7., 7.g., and 7.r., the fairness and reasonableness of these proposed measures to all affected parties continue to be legitimate concerns in the evaluation of the final offers in which context they are proposed.

Thus, the immediate challenge is to find cost control measures that still allow reasonable medical treatment for the covered employees at a cost that is not unreasonably high for them. The factors enumerated in Wis. Stats. 111.70(4)(cm)7, 7.g. and 7.r., offer the only search mechanism available to me.

APPLICATION OF THE STATUTORY FACTORS
“Greatest Weight” Factor

In the instant matter, the record reveals an escalating health insurance problem from which it appears that the Employer, Buffalo County needs some relief. Notwithstanding the assertion of the County Administrator that either offer by the parties can be handled under the County’s budget, it is clear that the budget will be strained in 2006: the County has already cut positions and programs;⁹ even with premium increases the Insurance Reserve Fund is continuing to decline¹⁰ (to a level significantly less than the amount recommended by the County’s insurance consultant); the tax dollars needed to cover HHS D expenditures are increasing (largely due to an increase in mandated services);¹¹ and the County’s cost of providing health insurance continues to absorb an increasingly larger percentage of the County’s tax levy revenues.¹²

But most paramount of the fiscal challenges facing the County is the statutory freeze on the County’s property tax levy, which limits the County to a 2% tax levy increase.¹³ [Wis. Dept. of Revenue statistics indicate that of the comparable counties, Buffalo ranks second from the bottom of the county comparables with a full property value listing of 732,654,600,¹⁴ and a similar ranking in equalized valuation as well.¹⁵] Obviously, the levy limitation forecloses to the County one possible option for county officials to use in 2006.

The County believes this freeze fits the “greatest weight” factor found in Wis. Stats.111.70(4)(cm)7. That subsection reads:

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 which 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.

The Union does not believe the “Greatest Weight” factor should be applied. However, its argument does not reference the 2006 levy limitation under which the

⁹ Employer’s Exhibits 40 & 41.

¹⁰ Employer’s Exhibit 22 & 23.

¹¹ Testimony of County Administrator Bruce Cornish at interest arbitration hearing on 1/11/06.

¹² Employer’s Exhibit 26.

¹³ Employer’s Exhibit 55.

¹⁴ Union Exhibit 6.

¹⁵ Union Exhibit 8.

County will be operating. The Union does point out that the parties are only about \$4400 apart in the costing of their respective final offers (which the Union discounts by 92% to \$352 on the theory that 92% of the County's HHSD budget is provided by State and Federal Sources, not County tax revenues¹⁶). In effect, the Union seems to be arguing that an exception should be made with respect to the application of this factor if there is only a minimal disparity between the costing of the respective final offers.

Although the Union offers no authority for this position, it is an interesting and innovative theory. Certainly, the Union is correct in noting that the costs of the respective offers are relatively close, even without discounting the initial \$4400 figure. But the words of the subsection *do not waive application of the "greatest weight" factor they describe if the costs of the respective offers are close*. On its face, the subsection directs the arbitrator to consider *and give greatest weight* to any state law or lawfully issued directive that either 1) places limitations on expenditures which may be made or 2) revenues that may be collected by a municipal employer, and lists no exceptions.

Clearly, the levy freeze to which the Employer refers places a limitation on the revenues that Buffalo County may collect in 2006. Absent any valid objection to the lawfulness of the levy limitation, the law requires the arbitrator to include this factor under the circumstance that exist in this matter. Accordingly, I credit the contention of the County that the levy freeze to which Buffalo County is subject is a factor to which the arbitrator must give "greatest weight."¹⁷

Greater Weight Factor

Wis. Stats. 111.70(4)(cm)7g. requires the arbitrator to give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

The County makes no specific argument for application of the "Greater Weight" factor to this dispute. Its exhibits demonstrate that of the comparables counties, Buffalo is the second smallest (only Pepin is smaller), has experienced the least population growth over 5 years(2000 – 2004), showed the lowest increase in equalized value over five years (2000 -- 2004), and in 2004 ranked second last in total property taxes collected.

The Union asserts that its Final Offer in this matter is not significantly different from the settlements the other AFSCME units have already achieved, and again notes that the costs of the County's Final Offer does not significantly differ from that of the Union, "*if one deducts the cost of the equity increase for the Benefit Specialist.*"

The Union adds its observation that the financial condition of Buffalo County is not significantly different than the comparable counties.

¹⁶ Union Exhibit 22.

¹⁷ This factor should not be confused with the "ability to pay" factor listed in Sec/ 111.70(4)(cm)7r.c. to which the arbitrator is required to give "weight."

In general, I agree with the Union's observation, with one significant exception. The exception, of course, is that none of the other comparable counties will be operating under a levy freeze. But having already accorded the freeze a "greatest weight" value, I do not propose to credit it as a "greater" factor as well.

Moreover, this factor has been described as "essentially an inability to pay provision designed to protect the relatively poor employer from being saddled with large economic packages negotiated by wealthy districts."¹⁸ But while Buffalo County is demonstrably *smaller* than all but one of the comparables, I do not perceive it as significantly *poorer*. I perceive the economic conditions in Buffalo County as more or less the same as in the comparable counties. Its *per capita* income is slightly beneath the state average.¹⁹ Its property value has shown only a modest increase,²⁰ as has its equalized value.²¹ The County showed an unemployment rate in 2004 (4.3%)²² slightly below the statewide average (4.9%).²³

Finally, the County acknowledges that it can financially meet either Final Offer.

Lawful Authority of the Municipal Employer

This factor, found in Wis. Stats. 111.70(4)(cm)7r.a, instructs the arbitrator to consider the lawful authority of the municipal employer. No claims are made in this matter that Buffalo County is exceeding its lawful authority with respect to the proposals contained in its Final Offer. The County does contend, and the Union does not dispute, that the County is limited to a tax levy increase of 2% by state statute. [See "Greatest Factor," above.]

Stipulations of the Parties

This factor, Wis. Stats. 111.70(4)(cm)7r.b, requires the arbitrator to consider any stipulations of the parties. The parties have reached a stipulation to modify Article 14, Section 5. The stipulation is annexed hereto as Exhibit C as if fully set forth herein. In addition, the parties have identical provisions in their respective Final Offers as to term or duration of the successor agreement and wages.

The Interest and Welfare of the Public and the Financial Ability of the Unit Government to Meet the Costs of Any Proposed Settlement

This factor instructs the arbitrator to weigh the interest and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement. Wis. Stats. 111.70(4)(cm)7r.c.

¹⁸ *Waunakee Community School District*, Dec. No. 30305-A (Stern, 9/02).

¹⁹ Union Exhibit 4.

²⁰ Union Exhibit 6.

²¹ Union Exhibit 8.

²² Union Exhibit 7.

²³ *Supra*

Both parties claim their respective offers best meet the interest and welfare of the public.

The Union argues the morale of the employees is germane to the welfare of the public, adding that implementation of the County's Final Offer would have a negative effect on employee morale. The Union describes this case as one of fairness, i.e., it is unfair for the paraprofessionals to be treated differently than the other AFSCME units.

The County argues that the public interest is better served by requiring all employees to share in the cost of health insurance. The County also argues that the County had to implement a 64-hour cut in employee annual hours for 2006 due to budget concerns, as well as other reductions. Thus, the County believes its Final Offer is in the public interest.

The County agrees it has the financial ability to meet the costs of any proposed settlement in this matter settlement.

Certainly the interests and welfare of the public are not well served by a disgruntled group of public employees, which deserves some weight under this factor. Neither are the interests nor welfare of the public well served in the short term or long term by conditions that could require further cutbacks in public service than those the County Board has already employed. That also merits weight.

COMPARABLES

The factors to be given weight by the arbitrator include comparing the competing offers with the wages, hours and conditions of employment of other comparable employees, both employed by Buffalo County or outside it, including those in private employment in the same or comparable communities. Wis. Stats. 111.70(4)(cm)7r.d., e., and f.

The parties to this dispute have included data reflecting these comparisons (except for private sector information).

The Union also makes two proposals of its own, unrelated to health insurance. The County's Final Offer contains four proposals for changes, each directly related to the health insurance package it offers its employees. The Union opposes these changes, and urges a continuation of the health insurance *status quo*. I propose to evaluate each proposal against the comparability data provided by the parties.

I begin with the Union's proposals.

Union Proposal # 1: The Union leads off with a proposal for an "equity adjustment" for the Buffalo County Benefits Specialist. The adjustment consists of raising the position from Pay Grade F to Pay Grade G. The County proposes no increase

for this employee beyond the across-the-board raises to which the parties have agreed, and which are applicable to all bargaining unit members.

The County does not give a specific argument against the proposal, but offers indirect opposition by attributing the costing difference between the competing final offers for the first year of the contract to the proposed equity adjustment the Union makes.

With the County's own Exhibit 57 confirming the figures offered by the Union, the substantial disparity between the Buffalo County position and comparable positions in the comparable counties is undeniable. No other figures are submitted by either party comparing the wages for this position and that of other employees performing similar services, except in the comparable counties. No figures with respect to any comparable position in the private sector were submitted.

No explanation for the pay disparity is offered by either party, and it is not clear why this inequity was not resolved when the parties reached agreement as to across-the-board wage increases for bargaining unit members.

I also note the Union objection to costing this adjustment against the Union's package. The Union asserts that costing the item against the package ends up penalizing the other employees in the unit for an inequitable wage condition that deserves to be remedied, and cites Arbitrator Gordon Haferbecker as authority to do otherwise.²⁴

The Union's position as to not costing an item of "equity adjustment" against the Union package is not necessarily illogical. Yet utilizing the accounting legerdemain recommended by Arbitrator Haferbecker does not relieve the County of actually making the payment. Unlike "step increases" embedded in a preceding contract, as an accounting issue even an "equity increase" of this nature represents fresh money from the Employer. In effect, not charging the amount required against the Union's package creates an arbitral accounting fiction with which I am not comfortable.

Based on the uncontested data submitted (by each party), I conclude the external comparables support the Union's proposal as to the pay grade jump for the Buffalo County Benefit Specialist.

Union Proposal # 2: Addendum. The Union's Final Offer also proposes that that the words "for 2003-2004 only" that appear in the addendum of the parties' 2003-2004 Agreement be replaced with "for 2005-2006, only."

The Addendum recites a "County Board Resolution Regarding Fringe Benefits for Reduced-Time Employees." The gist of the resolution asserts:

NOW, THEREFORE, BE IT RESOLVED, that for (date inserted) only, the aforementioned fringe benefits will be made available on a full-time

²⁴ *Menasha Electric and Water*, Dec. No. 16861-A (1/79)

basis to any full-time employee in the above units who will temporarily have his/her hours of employment reduced solely because of budgetary restrictions.”

The Addendum apparently dates back to the 1984 Agreement between the parties. At that time it was limited with the words “for 1984 only.” Since then, the dates have sometimes been updated as successor agreements are reached and sometimes not. But both parties agree that the addendum has remained continuously in effect since 1984.

The addition of a date to the Addendum would normally mean that the addendum’s terms will sunset with the expiration of the agreement in which it is contained, unless specifically renewed in writing by the parties in their successor agreement.

Apparently, in the course of bargaining successor agreements in the following years, the parties sometimes neglected to change the dates, even though the parties were in agreement that the terms of the addendum would continue. Notwithstanding the normal meaning of a “sunset provision” such as this, the Addendum did continue to be reinserted in the successor agreements, dates unchanged, but with the understanding that the terms of the addendum would continue in effect.

As matters now stand, the Final Offer of the County that was duly certified by the Wisconsin Employment Relations Commission following an informal investigation by Commissioner Paul Gordon, does not include any proposal for elimination of the Addendum. In fact, the County’s Final Offer specifically begins, “Except as set forth hereinafter and within the stipulations of the parties, the terms and condition of the 2003-2004 agreement between the parties shall be the terms and conditions of the 2005-2006 agreement.” [See Exhibit B, annexed hereto.] Nowhere does the County “specifically set forth hereinafter” any mention of the Addendum.

This issue would appear to be a *win/win* for the Union, regardless of which Final Offer is selected. If the Union prevails, an updated Addendum will be included in the parties’ labor contract. If the County prevails, based on its duly certified Final Offer an apparently outdated Addendum will appear in the parties’ labor agreement. Its appearance, however, is subject to 1) the oral and written assurances of the County in this proceeding that it has no hostile designs on the Addendum, and 2) the past practice of the parties since 1984 (which the County has helpfully explained in some detail in the initial brief it submitted in this matter). Thus, though apparently outdated, the Addendum may well remain enforceable, justified by a past practice dating back to 1984.

Moreover, at the interest arbitration hearing, neither the County nor the Union gave any indication or suspicion that layoffs are likely in 2006. Employees will have their total annual hours reduced by 64 hours, but the County indicated unequivocally that this reduction does not constitute a layoff that would result in reduced fringe benefits.

Only the Union submitted a “comparable,” which consisted of its assertion in its initial brief that the labor contract between Buffalo County and the Human Services Professionals contained the same Addendum through 2006. While this single internal comparable supports the Union’s proposal, I do not regard it as decisive. Contracts for other represented Buffalo County employees may or may not contain the same provision, but none were submitted.

In any event, under these anomalous circumstances, I do not regard the Union’s Addendum proposal or the County’s failure to produce a specific Addendum-continuation proposal as a matter amenable to further analysis under the comparability factors or any other statutory factor.

* * *

I turn to the County’s proposals.

County Health Insurance Proposals 1 – 4: The County has made four proposals directly relating to health insurance: 1) install a health insurance premium contribution of 15% for single coverage; 2) increase policy deductible from \$100/\$200 to \$250//\$500; 3) install a medical office co-pay of \$15/visit; 4) revise drug co-pay from \$5 generic/\$10/brand name to \$10 generic/\$20 brand name and limit subscriptions to a 30-day supply. Premium contributions will remain at 20% for family coverage, but due to a decrease in total premiums required with the revisions, the actual dollar premium contributions for family coverage will decrease by \$20.10 per month.²⁵

Internal Comparables. 1) **Single coverage health insurance premium contributions** are not required from the remaining three AFSCME bargaining units. Highway, Courthouse and HHSD Professionals do not contribute to single coverage premiums, but, like the paraprofessionals, do contribute 20% to family coverage premiums. Law enforcement personnel hired before 1/1/03 have the same arrangement. In effect, employees in all four of these units opting for family coverage are partially subsidizing the single coverage health insurance of their fellow workers, even those in the same unit.

Two internal County groups are currently required to contribute to single coverage premiums: law enforcement unit personnel hired after 1/1/03 contribute 10% of the single coverage premium;²⁶ non-represented employees contribute 15% of the single coverage premium.

External Comparables. 1) **Single Coverage Premium Contribution** is required in 6 of the 7 comparable counties. The external comparables²⁷ show only Pepin County does not, but Pepin is in the State Insurance Plan. Clark County requires a 15% single coverage premium contribution, but is under a two-tier system and requires no premium

²⁵ This feature will be given specific attention under the analyses of factors 7.r.i. and 7.r.j., hereinafter.

²⁶ Law enforcement employees hired before 1/1/03 make no premium contribution to single coverage.

²⁷ County Exhibit 63.

contribution from employees hired prior to ratification of the 1998-99 agreement. Premium contributions to single coverage in the remaining comparable counties range from 13% (Monroe County) down to 5% (Dunn). One county (Trempealeau) is at a 10% premium contribution rate for single coverage; another (Pierce) requires 8% contribution; Jackson County is at a 7% contribution rate (except for its law enforcement unit, depending on date of hire). Thus, in general, six of the seven county comparables require single coverage premium contribution at some level and must be regarded as supporting the County's proposal in that regard..

Although Buffalo is requesting a slightly higher single coverage contribution rate than any of the comparables, I do not find 15% premium contribution for single coverage to be appreciably higher than the next highest rate (13%), and in my view is within a reasonable range reflected in the range of comparables. I note both the Monroe (13%) and Trempealeau County (10%) required premium contributions explicitly apply to social services non-professionals. Pierce and Jackson Counties, do as well, but require lesser premium contributions. As with the internal comparisons, external comparisons are somewhat complicated by differences in coverage benefits offered by the comparable counties.

Internal Comparables. 2, 3, & 4. Deductible and co-pay for medical office visits and prescription drugs have been implemented by the County with the County's non-represented employees. The employees in the other three AFSCME represented bargaining groups have the same health insurance coverage (and pay the same premium contribution) as that currently in place for the paraprofessional unit members.

While the example of the non-represented employees may demonstrate that the County is not attempting to discriminate against its organized employees, it is not as persuasive as if the result had been reached through collective bargaining or interest arbitration. I also note the County's expressed intent to seek health insurance coverage changes from the remaining AFSCME groups. That intent, however, is subject to the caveat that that goal has yet to be achieved.

However, the law enforcement law enforcement unit employees hired after 1/1/03 are covered by the \$250/\$500 deductibles and the generic/brand drug co-pay of \$10/\$20, although allowed up to a 90-day supply at one time.

Although there has been some movement in the past by the law enforcement unit on health insurance changes (and the County has implemented its current proposals with its non-represented employees), I perceive the *internal comparables* as slightly favoring the Union's position of *status quo* with respect to changes in the health insurance coverage. The comparison is complicated by the fact that there are some four different health insurance plans in force in the County, with coverage differences. The County's proposal also gains traction due to the \$241.20 annual premium contribution reduction for family coverage (\$20.10 per month) that would apply to each member of the paraprofessional bargaining.

External Comparables. 2, 3, & 4. Deductibles and co-pay for medical office visits and prescription drugs are not uniform in the comparable counties. Clark and Dunn Counties show a \$200/\$600 deductible; Jackson County has \$250/500 deductibles (in network), \$500/\$1000 deductibles for out- of-network and Jackson County’s self-funded health/wellness plan, plus \$100/\$300 deductible for PPO enrollees; Pierce County has a \$200/600 (out-of- network) deductible and no in-network deductible. Monroe, Pepin and Trempealeau Counties have no deductibles.

With respect to office visit co-pay, each comparable county shows a co-pay feature that ranges from \$10 to \$30

Three of the six comparables have both deductibles and office visit co-pay. Although Monroe County has no deductibles, it has a \$30 office visit co-pay.

Each of the county comparables has prescription drug co-pays that are not dissimilar to those proposed by Buffalo County.

It also appears that health insurance changes were made in several of the comparable counties including Clark, Dunn, Jackson, and Monroe, at the same time employees received lower wage increases than the 2.75% agreed to in Buffalo County. The County also notes that Trempealeau and Pepin Counties both participate in the State health insurance plan and do not have the ability to bargain changes in coverage.

Conclusion: The internal comparables on single coverage premium contribution are mixed, but a majority of county employees opting for single coverage appear to have no premium contribution required. At the same time, the strong support this appears to provide to the Union’s proposal to maintain the *status quo*, is abated to some extent in my view by the apparent unfairness of having employees opting for family coverage partially subsidizing the single coverage health insurance of their fellow workers, even in the same bargaining unit.

Comparison as a Whole: Compared as a whole to the external counties, however, I find Buffalo County’s proposed health insurance changes as to single coverage employee premium contribution, deductibles, office visit co-pays and prescription drug co-pays are neither inconsistent nor incompatible with the trends, examples and conditions of employment in the comparable counties.

Quid Pro Quo

The Union objects that the County has offered no *quid pro quo* for the health insurance changes. It accuses the County of wanting only this AFSCME unit to pay more out-of-pocket expense than any of the other three AFSCME bargaining units, and suggests that if ever any circumstances under which a *quid pro quo* is appropriate, this is the case. Actually, the figures indicate that although the Clerical and Paraprofessional unit will be subject to a greater out-of-pocket expense than the other AFSCME unit

members due higher deductibles and co-pays, this will be offset to a greater or lesser degree (depending on use) by a reduction in their family coverage premium contribution.

Yet the *quid pro quo* argument merits discussion in connection with health insurance proposals. With respect to most issues, the doctrine of *quid pro quo* has gained almost universal arbitral acceptance – except in the more recent past with respect to health insurance proposals for change. In recognition of the unique, unprecedented problems created by continually escalating health care costs, including health insurance premiums, arbitral decisions have indicated that in some cases a *quid pro quo* may not be required.

Consistent with this view, Arbitrator Petrie concluded:

“In light of the mutuality of the underlying problem (spiraling costs of providing health care insurance for current employees), 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.”²⁸

The view expressed by Arbitrator Petri was presaged almost a decade earlier by Arbitrator Zel Rice:

“There are instances where a “buy out” of a benefit or a “Quid Pro Quo” for a concession on an item may be necessary. However, such a condition need not need not necessarily occur. Health insurance costs must be considered as merely one economic item that is part of a larger package. Rising health premiums alone alter the status quo and negate any presumption that the prior contract arrangements for paying health costs should carry over to the successor agreement.”²⁹

Today, there can be little question that American employers and American workers are linked together in a health insurance crisis that threatens each of them. Health insurance issues have evolved into *mutual* issues, in which each party has a critical stake, consisting of vital, vested interests, some separate but parallel with the other party’s goals, others quite obviously mutual.

Municipal employers, of course, are concerned with rapidly ascending premium costs, but have an additional, important, continuing interest in a reasonably healthy work force. Employees, also, have obvious, vital interests in the same issue. For them it is one that affects not only the quality of their own personal health care and that of their dependents – in some cases a life or death issue – but may also impact the continued fiscal viability of their employer that in some cases could even affect the employees’ own continued employment.

²⁸ *Village of Fox Point (Public Works)*, Dec. No. 30337-A (Petri, 11/02).

²⁹ *Walworth County Handicapped Children’s Education Board*, Dec. No. 27422-A (Rice, 5/93).

As an admittedly imperfect analogy, if my next-door neighbor's house is on fire, though I still need water for myself, I will not insist on a *quid pro quo* before allowing the use of my hose and my water supply to assist in fighting the fire. It is not just a question of human charity: clearly, it is in my own enlightened self-interest to help so the fire will not spread to my house. Should that disaster occur, both my neighbor and I would have become homeless while quibbling over a *quid pro quo*.

Given the critical, *mutual* nature of the health insurance problem in Buffalo County that, if unresolved, portends dire future consequences for each party, responsible, fair proposals for change that address the problem, offer a reasonable prospect of success, are compatible with conditions of employment in the external comparables as well as the mutual needs and interests of the parties do not necessarily require a *quid pro quo*.

As one venerable arbitrator has expressed it, “. . . where comparables indicate that a change may be in order, the concept of a *quid pro quo* does not prevail.”³⁰

Finally, this is not to suggest that the doctrine of *quid pro quos* is no longer useful. The doctrine has a continued, essential utility as an interest arbitral means of controlling unreasonable demands for take-backs of contractual benefits.

However, with a health insurance history in Buffalo County that includes escalating single and family coverage premium increases in the past 11-years of 176% and 144%, respectively, and a shrinking health insurance reserve fund almost three-quarters of a million dollars less than the recommended level, it is not unreasonable for the County to look to its comparable, neighboring counties for helpful examples in health insurance cost savings and to its employees for help.

Add to this picture the 2006 tax levy limit under which Buffalo County is laboring and the reductions that its County Board has already enacted (including a 64-hour work-year reduction), the need to exchange *quid pro quos* for reasonable, responsible cost control modifications that address the problem, offer a reasonable prospect of success,³¹ and are compatible with trends in comparable counties is considerably reduced, if not eliminated. Thus, the absence of a *quid pro quo* in this instance is not detrimental to the County's health insurance proposals.

Consumer Price Index

Chapter 111.70(4)(cm) 7r.g. requires the arbitrator to give weight to the “average consumer prices for goods and services commonly known as the cost of living.

³⁰ Arbitrator Frank Zeidler, *Cornell School District (Food Service)*, Dec. No. 27292-B (11/92)

³¹ In 2005, Buffalo County implemented health insurance changes for the non-represented employees. The changes consisted of increased deductibles (to \$250/\$500), increasing prescription drug co-pay to \$10/generic/\$20/brand name, and instituting a \$15 office visit co-pay – the same changes the County now proposes for this bargaining unit, resulted in premium reductions of approximately \$100/month for family coverage and \$50/month for single coverage, based on recommended actuarial figures and usage. [Testimony at interest arbitration hearing on Jan. 11, 2006 of County Administrator Bruce Cornell, Buffalo County Administrator.]

The parties agree, and I concur, that the appropriate basis for comparing CPI changes with contract proposals is the prior one-year experience. Thus, in this case that would be 2004 (for analysis of 2005 contract proposals) and 2005 (for analysis of 2006 contract proposals).

However, as the parties' respective briefs reveal, there is a split in arbitral authority as to whether the appropriate comparison is to be made with the total package proposed by the respective parties or just the wage increases, standing alone.

Wages have been already settled by these parties with a 3% ATB increase for 2005 and 2.75% ATB increase for 2006. The parties also report a 3.3 CPI-U increase and 3.4 CPI-W for 2004, and a 3.5 CPI (U & W) increase for 2005. [CPI-U is listed in the National Consumer Price Index and means All Urban Consumers; CPI -W is also listed in the National Consumer Price Index and means All Urban Wage Earners and Clerical Workers.] The National Consumer Price Index measures the increases in all goods and services, including medical expenses.

Identical CPI-W figures are listed in the Department of Labor's Bureau of Statistical Standards. This publication, as well, considers employer paid health insurance to be an item included as a part of employee income.

The County asserts that its total package proposal generates a 6.45% increase for 2005 and a 5.74% increase for 2006. It reports the Union's total package proposal for 2005 generates a 6.81% increase for 2005 and a 6.62% increase for 2006.

The County's analysis uses the cast forward method and includes step-increases.

The Union attacks the cast forward method as not properly crediting bargaining units with potential savings and opposes the inclusion of step-increases in a percent-increase analysis. The Union does not, however, suggest an alternate process to use. Nor does it provide alternate percentage increase figures.

The "cast forward" method is a generally accepted accounting technique employed almost universally in municipal labor relations in this state. It isn't perfect by any means, and can reflect distortions. But until both union and employer parties can agree to a method that better reflects "actual" costs, widespread use of the "cast forward" method will probably continue.

I also take the point the Union makes through its objection to the inclusion of "step increases" already contained in the labor agreement in making CPI comparisons. As other arbitrators have noted, a step increase already included in the prior labor contract does not represent new money. In the instant case, however, it appears that the County included step increases in its comparisons of *both* the County and the Union final offers with the Consumer Price Index figures. Presumably, if the inclusion of the steps represents a distortion, both packages would appear to be equally skewed. Again, the

Union has not submitted an alternate CPI comparison. In its absence I have only the County's comparison to review.

The County's total package assessment of the cost of its own Final Offer and subsequent comparison with the cost of the Union's is a "total package" assessment that includes medical insurance costs. This method of costing is regarded by many arbitrators as appropriate – indeed preferred.

Arbitrator June Miller Weisberger found:

"The County is correct that relevant cost of living figures favor its final offer . . . because the appropriate comparisons must be made with the total costs of the parties' offers, not merely the wage increase percentages, standing alone."³²

Arbitrator Steven Briggs reached a similar conclusion:

"The CPI includes as one of its components the cost of medical services. Since a significant portion of the total package cost in this case also stems from medical insurance costs, it is appropriate to compare the parties' total package increases against the CPI increase."³³

The only cost-of-living figures submitted in this matter showed a higher cost in both contract years if the Union's Final Offer were to be implemented instead of the County's. The cost-of-living factor thus favors the County's proposal.

OVERALL COMPENSATION . . .

Sec. 111.70(4)(cm)7r.j directs the arbitrator to review the overall compensation received by the municipal employee, including wages and benefits. I have been provided with a copy of the 2003-04 labor agreement between the parties and find nothing unusual in it. Although the Union complains that the County wages are behind those in comparable counties and Buffalo County is in a "catch-up" position, the Union acknowledges that agreement between the parties has been reached with respect to wages for 2005-06 in the successor contract.

CHANGES IN ANY OF THE FOREGOING CIRCUMSTANCES . . .

This statutory factor inquires into "changes in any of the circumstances during the pendency of the arbitration proceeding." Wis. Stats. 111.70(4)(cm)7r.i.

This factor is simply an acknowledgement that collective bargaining and labor relations are dynamic activities, in which changes are not necessarily unusual.

³² *Manitowoc County (Highway)*, Dec. No. 19942 (5/83).

³³ *Luxemburg-Casco School District*, Dec. No. 27168-A (8/92).

The Union complains of what it describes as a change caused by the County's failure to bargain its health insurance proposals in good faith. Specifically, the Union accuses the County of changing its bargaining position by *reducing the premiums for Plan 3 (proposed coverage) to an amount less than the premiums for Plan 2 (existing coverage)*. According to the Union, the "change" occurred sometime between the Informal Investigation (of Impasse) and the commencement of the interest arbitration hearing.

Elaborating on its accusation, the Union alleges that during bargaining and at the Informal Investigation it had been led to believe that if the County-proposed insurance changes were implemented, the Clerical and Paraprofessional bargaining unit would be required to make the same (family coverage) premium contribution as the other AFSCME units, but receive reduced coverage benefits.

But with what the Union charges is a new premium structure in place, the premiums for both single and family coverage have been reduced, with attendant reductions in premium contributions from employees. Under the new structure, due to the reduction in the amount of the entire premium, although the premium contribution percentage remained the same, the actual amount contributed was able to be reduced to a level *less* than that being paid by the members of the other AFSCME units.

The Union contends that this "change" has placed the Union at a disadvantage in this proceeding.

The County denies that the reduction in 2006 Plan 3 premiums was a change in its bargaining position. The County explains "it simply elected, well after certification of final offers of this dispute, to implement a \$500/\$1000 high deductible for its non-represented employees for 2006 which justified lower premiums."

The County is also skeptical of the Union's claim that it had no notice of the reduced 2006 premiums for Plan 3 until it arrived at the interest arbitration hearing. The County acknowledges that the Union representative may have been unaware of the County's decision to implement different premium rates for different plan coverage. But, says the County, Union membership was aware of the change when it received its annual notice (included in this record as Employer Exhibit 20) of the 2006 premiums and contributions well before the County implemented payroll deductions for January 2006 health insurance coverage.

The frustration expressed by the clearly irked Union representative is understandable. On the one hand, the Union does not object to what appears to be an advantageous financial development for the paraprofessionals; on the other hand, the Union feels stripped without warning of a potent argument against the County's health insurance proposal for the paraprofessionals.

Strictly speaking, the revised premium schedule was not a change in contract proposals by the County. Those proposals remained the same. What changed was the

anticipated or actual cost of those proposals. While by themselves not of decisive weight, they are both relevant and material to this dispute.

SUCH OTHER FACTORS NOT CONFINED TO THE FOREGOING . . .

The last factor listed requires the arbitrator to consider “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 he public service or in private employment.” Wis. Stats. 111.70(4)(cm)7r.j

Under this factor, I revisit the Union’s claim of County bad faith bargaining.

I have no recollection that health insurance premium costs were discussed in any depth at the interest arbitration hearing. Neither do my notes reflect any complaint or objection raised by the Union in connection thereto.

I have no doubt that the Union representative was unaware of the premium change until he perused the Employer’s exhibits (including Exhibit 20), for his reputation for truthfulness is well known to me. Neither am I persuaded that the County’s bargaining representative engaged in a deliberate attempt to mislead the Union representative during bargaining.

The County assertion that it sent a notice of the new premium structure to all Union members appears to be correct. If not, I have not been so advised.

The Union does not request a remedy from me, and I doubt that in my capacity as arbitrator I have the authority to impose one. I have, however, considered whether this development has unfairly placed the Union at a decisive disadvantage in its bargaining or, for that matter, in this proceeding. Based on the limited information I have of this matter, I have concluded it has not. The Union has not suggested that awareness of the more favorable premium rate would have caused it to seek leave to amend its proposal of *status quo* with respect to health insurance matters, and I find no particular evidence of this.

However, as the Union is aware, under Wis. Stats. 111.70(1)(a), municipal employers have a duty to bargain in good faith with the representative of its municipal employees. Should the Union desire to vent further its irritation with respect to this matter, the Wisconsin Employment Relations Commission is an appropriate venue in which to so do.

SUMMARY

Although there are other issues besides those related to health insurance, I view the County’s health insurance cost containment proposals as the predominant issues in this dispute. Their preeminence is enhanced by the property tax levy limitation, under

which the Buffalo County will be laboring in 2006, to which factor I have ascribed the “greatest weight,” pursuant to Wis, Stats. 111.70(40)(cm) 7.

My assessment of the external county comparables submitted by the parties resulted in my conclusion that overall the County’s health insurance proposals were supported by the trends and examples the county comparables demonstrated, although somewhat mixed. [E.g., Monroe County has no deductible under its HMO Plan, but has 1 \$30 medical office visit co-pay – twice the level proposed by Buffalo County.

This was not the case with respect to the internal comparables offered by the parties. Again, the result was mixed, but the internal comparison initially appeared to offer strong support the Union’s proposal for health insurance *status quo*.

When considered in conjunction with the “greatest weight” I ascribed to the property tax levy limitation, I concluded the County’s cost containment health insurance proposals are more reasonable under the circumstance than requiring the County to stumble through another year of fiscal insecurity without addressing a primary cause of that insecurity.

Given my view that the County and its employees, represented and non-represented alike, are facing a critical, mutual health insurance problem and that the County’s cost containment health insurance proposals are reasonable, responsible, and not incompatible with trends in external comparables, I found the absence of a *quid pro quo* was not a detriment to the County’s offer.

The apparent continued, adamant refusal of the Union to consider any health insurance changes or even offer any suggestions of its own did not enhance the reasonableness of its Final Offer proposals. I understand what may be a tactical preference on the part of the Union to bargain this issue with all four of the AFSCME bargaining units, not just one. But this preference does not outweigh the County’s need to begin to stem its financial bleeding this year, instead of waiting until 2007.

With respect to the Union’s proposal for an “equity pay adjustment” for the Benefits Specialist, I found strong external support from the county comparables, which translates into support for the Union’s Final Offer. However, in my view, this issue, involving only one position, lacks the overall significance to the County, its employees, and its taxpayers that is incident to the health insurance issues.

I view the Addendum issue in a somewhat similar light. Given the County’s apparently sincere denial that it harbors any intent to eliminate the Addendum, it would clearly be preferable for the Addendum to be appropriately updated simply to avoid any confusion. Perhaps the parties can reach a post-award stipulation to this effect. If not, the outdated Addendum will still be included in the successor collective bargaining agreement, as it has since 1984 (in both updated and outdated form).

Based on the figures reflected in the exhibits received into evidence, I also found the County's Final Offer to be closer to the cost-of-living than the Final Offer of the Union. I parenthetically note, however, the Union's proposal for the first year of the contract is costed at only 0.36% more than the County's and that difference is based solely on the Union's proposed "equity adjustment." In the second year the costing difference is greater (0.88%), and apparently due to the County's health insurance proposals to which the Union response was only a proposal for continuation of the *status quo*.

Finally, I considered the Union's complaint that it had been unfairly placed in a disadvantageous position by the County's premium reduction, assessing the complaint under the last two statutory factors listed. No remedy was requested, and none was provided.

I am prohibited from determining this dispute on an issue-by-issue basis. I am required by law to adopt without modification the Final Offer of one of the parties. Based on my consideration and assessment of the issues, my weighing of each of the factors enumerated in Wis. Stats. 111.70(4)(cm) 7., 7g., and 7r. (summarized above), the evidence and testimony submitted and received, the arguments contained in the parties' briefs and reply briefs, and my extended discussion, above, I conclude the Final Offer of Buffalo County is the more reasonable overall of the two final offers submitted by the parties, and direct that it be incorporated into the parties' collective bargaining agreement for the years 2005-2006, along with the Stipulation of the parties (annexed hereto as Exhibit C).

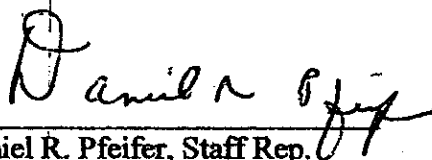
Dated this 16th day of May 2006.

A. Henry Hempe, Arbitrator.

BUFFALO COUNTY HUMAN SERVICES CLERICAL AND PARAPROFESSIONAL EMPLOYEES, LOCAL 1625-A, AFSCME, AFL-CIO

Union's Amended Final Offer

1. Articles 21 & 25 – Duration – 1/1/05-12/31/06.
2. Appendix A – Wages: Effective 1/1/05 – A 3% increase ATB.
 Effective 1/1/06 – A 2.75% increase ATB.
3. Appendix A Wages – Adjustments:
 Benefit Specialist Priefert F to G
4. Addendum – Benefits for Reduced Time Employees – Change “for 2003-2004 only” to “for 2005-2006 only”.
5. Provisions retroactive to 1/1/05.
6. All other provisions not addressed in the Union's Final Offer or the Stipulations to remain as in the 2003-2004 collective bargaining agreement between the parties.



Daniel R. Pfeifer, Staff Rep.
9/7/05

**FINAL OFFER
of the
COUNTY OF BUFFALO
to
BUFFALO COUNTY HUMAN SERVICE EMPLOYEES
(PARAPROFESSIONALS/CLERICALS)
LOCAL 1625-A, AFSCME, AFL-CIO**

For a 2005 - 2006 Agreement

Except as set forth hereinafter and within the stipulations of the parties, the terms and conditions of the 2003-2004 agreement between the parties shall be the terms and conditions of the 2005-2006 agreement.

- 1. **ARTICLE 25 - DURATION** – Change to January 1, 2005, through December 31, 2006. *NID*
- 2. **APPENDIX A - WAGES** *NID*

Increase all wage scales as follows:

Effective 1/1/05 increase all scale amounts 3% ATB.
Effective 1/1/06 increase all scale amounts 2.75% ATB.

- 3. **APPENDIX A - INSURANCE**

Change (U NOT PROPOSING change)

Change health insurance plan as follows effective with the second full month following date of arbitration award:

Revise the Employee contribution for the single plan from 0% to 15%.

Revise the annual up-front deductible from \$100 single/\$200 family to that of \$250 single/\$500 family.

Install a medical office visit copay of \$15.00 per visit.

Revise the drug copay from \$5.00 generic, \$20.00 brand name to that of \$10.00 generic, \$20.00 brand name; and limit prescriptions to 34-day from present 90-day prescription fill amount.

Exhibit
C

STIPULATION

Between the Buffalo County Human Services
Clerical and Para-Professional Employees,
Local 1625-A, AFSCME, AFL-CIO
and
Buffalo County

The parties do hereby stipulate to the following:

1. Article 14, Section 5 – Revise heading to “Insurance and Other Benefits” and add the following:

“Employees shall not accrue other benefits such as sick leave, vacation and holidays during unpaid leaves of absence in excess of fourteen (14) consecutive calendar days.”

2. Article 16, Section 2 – Layoff – Revise as follows:

“In the event of a layoff, the reduction of forces is to be accomplished by: First, layoff of temporary and provisional employees; Second, those full-time and part-time employees with the least amount of seniority, except those with special skills, ...”.

FOR THE UNION

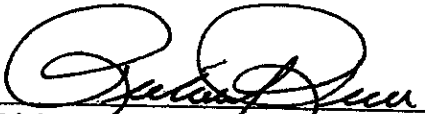


Daniel R. Pfeifer, Staff Representative

9/7/05

Date

FOR THE COUNTY



Richard J. Ricci, Attorney

8/25/05

Date