EDWARD B. KRINSKY, ARBITRATOR

In the matter of the Interest Arbitration Between	:	
	:	
Rusk County (Courthouse/Human Services)	:	
	:	
and	:	Case 108
	:	No. 64073 INT/ARB-10285
Local 2003, AFSCME, AFL-CIO	:	Dec. No. 31522-A
	:	

Appearances: Weld, Riley, Prenn & Ricci by Ms. Mindy K. Dale for the County

Mr. Steve Hartmann, Staff Representative Wisconsin Council 40, for the Union

By its Order of December 6, 2005 the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as the arbitrator "to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act," to resolve the impasse between the above-captioned parties "...by selecting either the total final offer of the [Union] or the total final offer of the [County]."

A hearing was held at Ladysmith, Wisconsin on March 1, 2006. No transcript of the proceeding was made. The parties had the opportunity to present evidence, testimony and arguments. The record was completed on May 25, 2006 with the receipt by the arbitrator of the parties' reply briefs.

The parties submitted identical final offers for a 2005-06 Agreement, with the exception of the health insurance plan. Both offers provide a wage increase of 2% effective January 1, 2005; an additional 1% April 1, 2005; an additional 2% January 1, 2006; an additional 1% July 1, 2006.

The Union's final offer maintains the *status quo* with respect to health insurance. The County's final offer is to implement "Benefit Plan 1" which changes the health plan in four respects: (1) Eliminates the *in vitro* fertilization benefit; (2) Eliminates the 80/20 co-pay for prescription drugs and substitutes for it a drug card at $ 10 generic / $20 formulary brand name / $20 non-formulary brand name; (3) Eliminates any out of pocket costs for preventative care services, immunizations, mammograms and pap smears, vision exams, hearing exams and diagnostic radiology and lab services, and (4) Changes to be effective within 30 days after the date of the arbitrator's award.

While seeking to maintain the *status quo* the Union does not challenge the reasonableness of the County's offer with respect to health insurance changes, except that it vigorously opposes the proposed elimination of the *in vitro* fertilization benefit. The Union's position is that the County has offered an inadequate *quid pro quo* for elimination of a long standing, bargained benefit. The County disagrees that *a quid pro quo* is necessary under the circumstances of this

case, but maintains that if a *quid pro quo* is viewed as necessary, what it has offered is sufficient to justify the proposed change.

Even though the issue before the arbitrator is an extremely narrow one, the arbitrator has the obligation to consider the statutory factors, just as would be the case if there were greater differences between the final offers. Several of the factors are not in dispute and will not be discussed further: (a) lawful authority of the Employer; (b) stipulations of the parties; (c) interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement; (h) overall compensation; (i) changes in circumstances during the pendency of the arbitration proceedings. The remaining factors will be discussed below.

The arbitrator must consider the "Factor given greatest weight." This factor states, "...the arbitrator...shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer..."

The County argues that the greatest weight factor favors its offer, since the State passed a budget bill which changed the formula for calculating county revenue limits beginning in 2006. The County argues further in its brief:

> "The new formula established 2005 as the base year and allows counties to increase their operating tax levies by 2% or the county's local rate of growth, whichever is higher. Because Rusk County's growth rate is less than 2%, it is limited to a maximum operating levy increase of 2% each year...this has required the County to apply another large subsidy from the general fund ($ 646,375) to keep the County within its 2% limit for 2006.
>
> Why is this of concern?...At the close of 2005, the general fund stood at $ 2,309,475. Historically, the County has followed the recommendation of its external auditors to maintain a fund balance equal to 90 days of general fund expenses...
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> Based on 2006 budgeted amounts, the general fund balance ideally should be at least $ 2,411,104. Thus the current [general fund] balance is $ 101,629 below the recommended amount. Under the new revenue restrictions, for budget year 2007 the County can only increase its levy by 2% or $ 97,374. Unless the County takes the general fund even further below the recommended amount, this means that the County will need to cut $ 549,001 from the 2007 budget in order to meet the State guidelines.

The Union notes that in 2004 and 2005 the County was below its allowable tax levy, as a result of using funds available from the sales of timber which had been blown down by a tornado. When that money ran out, the Union argues, it should have been predictable that there would need to be a large increase in the tax levy in 2005. The Union thus sees the County's current

financial predicament as being the results of "...poor planning and...not indicative of serious financial problems." The Union notes also that in the current dispute, there is very little cost difference between the parties' final offers. The Union's calculation is that the cost of its offer exceeds the costs of the County's offer by a total of $ 1635 for 2005 and $ 1788 for 2006.

The County argues in rebuttal that when it applied large general fund offsets in 2004 and 2005, "...it did not know that another revenue limit revision was coming down the pike which would establish 2005 as the new tax levy baseline. The County should not be penalized for trying to minimize the tax burden of its constituents," by using general fund dollars rather than increasing the tax levy.

It is clear that the cost difference between the final offers is extremely small, and that adoption by the arbitrator of the Union's final offer would have virtually no impact on the County's financial situation. It remains the case, however, that the Union's offer is the more costly one, and that the County is faced with difficult budgetary decisions unrelated to the present dispute, and the financial situation is caused and / or compounded by the actions of the State legislature in placing a cap on levy limit increases.

Thus, even though the difference in the costs of the final offers in the present dispute is of no consequence, the greatest weight factor favors the Employer as it attempts to keep costs down and reduce the need for further budget cuts.

The arbitrator must consider the "Factor given greater weight." This factor states, "...the arbitrator...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."

The parties are in agreement about which other Counties are to be viewed as comparable to Rusk County: Barron, Chippewa, Price, Sawyer, Taylor and Washburn.

Among the comparables, Rusk has the smallest population, and its population is growing at a slower rate than four of the six comparables. Among the comparables it has the lowest equalized value although the rate of change in equalized value has been at the median of the comparables in recent years. Its population also has the lowest median household income and per capita income. It has the highest unemployment rate. Other measures paint a similar picture.

With few exceptions the Union does not dispute the demographic figures presented by the Company, but argues that the greater weight factor shouldn't apply to this case because of the very slight differences in cost of the parties' final offers, and its view that economic conditions in Rusk County are not significantly worse than what exists in the comparable counties. Commenting on the demographic comparisons with the comparables, the Union argues, "None of this is persuasive of particularly hard times relative to the comparables, much less an inability to pay the paltry difference between the offers of the parties."

As already discussed, the cost differences between the final offers are minimal. The Union is correct in arguing that the County's financial position is not impacted in any significant way by

the Union's final offer, which the Union calculates as costing an additional 0.3% of the County's health insurance costs in each year of the Agreement. The Union argues also that the County has not shown that its financial situation is deteriorating in relationship to the comparable units of government. Nevertheless, the arbitrator is required under the statute to consider and give greater weight to the economic conditions in the jurisdiction of the municipal employer. The economic condition of the County ranks below that of the comparables and the County is facing the necessity of making budget cuts because of the limitations placed on its ability to raise additional revenues. Thus, even though the cost differences in the present dispute are of no consequence, the greater weight factor favors the Employer.

The arbitrator must give weight to factors (d), (e) and (f). Each of these factors involve comparisons of wages, hours and conditions of employment of the employees involved in the dispute with (d) "other employees performing similar services," (e) "other employees generally in public employment in the same community and in comparable communities," and (f) "other employees in private employment in the same community and in comparable communities."

The parties agree that internal comparisons with the other County bargaining units are of great significance in the present dispute. They are not in agreement about how these comparisons should be interpreted, and each party views them as supporting its position.

The County bargains with three other bargaining units in addition to the Courthouse and Human Services employees involved in the present dispute. There is a unit in the Sheriffs Department; a unit in the Highway Department; and a unit of Human Services professional employees.

The County notes also that it has implemented the health insurance benefits which are at issue here for its non-represented employees. The arbitrator does not include the non-represented employees when trying to ascertain whether there is a uniform pattern of benefits which the internal comparable units have accepted, since the County has complete discretion over terms and conditions of employment for non-represented employees. The implementation of the same health benefits for non-represented employees, which resulted in the elimination of the *in vitro* benefit, is significant only as evidence that the County is striving to achieve the same benefits for all of its employees.

It is undisputed that the Human Services professional unit has accepted the health insurance provisions which the County has offered in the current dispute. The County notes that in accepting the County's offer, the professional unit gave up the *in vitro* benefit which is in dispute in the present case. The Union notes correctly that the Human Services professional unit is the smallest of the bargaining units.

With respect to the Highway unit, it is undisputed that there was a provision in their Agreement for a health insurance reopener in 2005, and the County exercised its right to reopen the Agreement. The County proposed the identical plan which is at issue in the current dispute, but the Highway unit did not accept it. The County did not pursue the reopener to mediation or arbitration, thus leaving the issues of health insurance to be resolved in the next round of bargaining.

The County and the Union differ over the significance of what occurred in 2005. The Union argues that the failure of the County to pursue the matter to mediation or arbitration is evidence that, "apparently, the County did not believe the change to Benefit Plan 1 was very important." The County rejects the Union's characterization that the matter was not important. The County notes that "...the highway employees had a different contract duration (2004-05) than all of the County's other units (2005-06)...The parties did not reach agreement on the 2005 insurance reopener and, with negotiations looming on 2005-06 agreements with all of its other bargaining units, the County elected to address health insurance issues with the highway unit in the 2006-07 round of bargaining..."

In assessing whether there is, or is not, now an internal pattern of health insurance benefits, the arbitrator does not attach any special significance to the fact that there was no agreement reached in the Highway reopener in 2005.

In bargaining for a 2006-2007 Agreement in the Highway Department, the County has made the same health insurance offer which is at issue in the current dispute. That matter is now in interest arbitration.

The remaining unit is the Sheriffs unit. The Union notes correctly that at least since 1994 the Sheriffs unit has had a different health insurance plan from the other units, and that there was no *in vitro* benefit. The Union argues that the Sheriffs had, and still have, "a vastly more generous drug and alcohol provision." In the present round of bargaining, the Sheriffs were offered and accepted some, but not all, of the Benefit Plan 1 provisions being offered to the other bargaining units. As the Union characterizes it, the Sheriffs traded a $ 300 family maximum deductible for a reduction of $ 600 in maximum out of pocket drugs, and kept their high end drug and alcohol benefit. In the Union's view, this " is a far better deal than the offer [made to the Courthouse unit]." The County characterizes its offer to the Sheriffs as the same health insurance benefits offered to everyone else, except for the mental health benefits which the Sheriffs retain. The County characterizes this as a "minor variation" and emphasizes that acceptance by the Sheriffs of the other health insurance benefits represents "significant strides toward health insurance uniformity."

The County argues that there is an internal pattern, since the health insurance benefits offered to the Union in this dispute have been accepted by the two units which have reached settlements, and have been implemented as well for the non-represented employees. Only the two units which are in arbitration, both of which are represented by AFSCME, have not accepted these benefits. The Union argues that there is no pattern, nor will there be "under a County offer in which one (1) unit [Sheriffs] will not only have a different plan design, but also a different premium dollar cost." The Sheriffs did not agree to all of Benefit Plan 1, which has been offered to the Union in this case, and they got to keep "their very generous drug and alcohol benefit in addition."

The arbitrator appreciates the County's goal of trying to achieve uniform health insurance benefits for all of its employees, and if it prevails in the present dispute, it will have taken another step towards that goal. However, at the present time only two of its four represented units have reached agreements, and those two units do not have the same health insurance

benefits. Under these circumstances, the arbitrator does not view what exists as a uniform pattern which should compel acceptance of the County's final offer. That said, there is also no compelling evidence in the internal comparables for support of the Union's final offer, since it would retain some health insurance benefits which have been given up by both of the settled units in accepting the new arrangements, and would maintain in effect the *in vitro* benefit which neither of those units has, and one of the units has just given up the *in vitro* benefit as part of its settlement. The only other unit with *in vitro* benefits is the Highway unit which has not yet reached a settlement.

With respect to the external comparables, the Union emphasizes that the issue at the heart of the present case is the "elimination of the *in vitro* benefit and what if anything is an appropriate *quid pro quo* for the change." This being so, it argues, there is no "...compelling information in these comparables that describes the core issue in dispute..."

The County views the external comparables as completely supportive of its final offer, as none of them provide *in vitro* or any other infertility treatment benefits, with the exception of an optional benefit in a non-PPO plan in Chippewa County. The County notes also that among the comparables, all have flat tiered drug cards, which are included in its final offer, but not in the Union's final offer. The comparables also have free, or low cost wellness benefits, which the County has included in its final offer, but which are not in the Union's final offer.

The Union argues that while it is true that the external comparables do not have *in vitro* benefits, that was the case also when the benefit was bargained for this unit initially, and in the subsequent years as well.

In the arbitrator's opinion, the external comparables support the County's final offer.

With respect to private sector comparables, the County introduced evidence in the form of results of a survey which it conducted among private sector employers in Rusk County. None of the respondents included *in vitro* or any other type of infertility treatment in their benefits. Also, most of the respondents have flat dollar drug cards, and with equal or higher co-pays in comparison to what the County is offering.

In the arbitrator's opinion, the private sector comparisons favor the County's final offer.

Another factor which the arbitrator must consider is factor (g), the cost of living. Given the nature of this dispute, and the fact that the cost differences between the offers are so slight, the Union argues that the cost of living factor is not of significance in this matter. The County notes that its final offer meets or exceeds the increase in the cost of living.

The Union is correct that the cost of living factor is not significant in this dispute. It is the case, however, that its offer costs slightly more than the County's offer, and the County's offer meets or exceeds the cost of living. Thus, the cost of living factor favors the County's final offer more so than the Union's.

The arbitrator must also consider factor (j), "such other factors...which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining [and] arbitration..." The parties focus on several other factors which they believe support their final offers.

First is the question of whether there is a need for the County to eliminate a long standing, existing benefit over the objection of the Union, and where its members place a great enough value on its retention to take the issue to arbitration. There is no evidence that this benefit has been abused (it has only been used once in ten years), or that it is a burdensome expense, or that anything about the use of the benefit has been a problem. Thus, just considering the nature of the benefit itself, the County has not put forth any reason to eliminate it. As discussed earlier, and below, the County has reasons to want to eliminate it but they are not centered on the nature of the *in vitro* procedure or its use, or the benefit to those who use it.

As mentioned earlier, the County justifies its position in part on the fact that none of the external comparables have the benefit, and two of the internal units do not have it, including one which has just given it up as part of the most recent settlement. In addition, the County asserts that "...retention of the *in vitr*o benefit has restricted the insurance bids the County has been able to obtain from outside insurance carriers...the mere fact that the County's highway and general plans include *in vitro* fertilization has limited the number of insurance companies who will even respond to bid requests." The Union argues that "there is simply no evidence in the record that the *in vitro* benefit is the cause of the rise of insurance premiums [or that it] is the basis for insurance companies refusing to bid or to bid competitively for Rusk County's business."
The arbitrator has reviewed the evidence presented on this point. It is the case that when the County put its health insurance benefits out for bid, only two insurance companies submitted bids. It is the case that in a 2003 letter to the County, one of the providers which was seeking the County's business wrote the following:

> It should also be noted that several reasons that most carriers do not cover in vitro fertilization include not being medically necessary, an elective procedure and the extreme financial exposure from this procedure. Likewise, the potential result of multiple births with higher risk of complications can adversely affect the group's utilization experience, leaving the group open to large rate renewal increases and/or limiting the number of insurance carriers willing to participate in renewal bidding. In essence, this scenario could drive the renewal rate up and leave the County with no other option than to renew with the same carrier.

That letter aside, there is no evidence that the provider which wrote the letter, or any other provider, failed to submit a bid because *in vitro* benefits were included in the coverage, and there is also no evidence that the bids which the County received were higher as a result of the existence of *in vitro* benefits. Moreover, at the arbitration hearing, the arbitrator asked a representative of the County's present health insurer about the effect of inclusion of *in vitro* benefits on the County's health insurance premiums. He testified that there would be no effect

on the premium; that is, if the plan offered by the County in its final offer were implemented, and in addition the *in vitro* benefit was retained, the premium would not increase as a result.

The County is rightfully concerned about its inability to attract more bids from providers than it has been able to obtain in the recent past, and towards that end it is understandable that it would want to achieve uniformity of benefits, and elimination of any benefits which are not commonly given and which are deemed by providers to be not medically necessary, as in the case of *in vitro* benefits. It is possible, as the County assumes will be the case, that the elimination of the *in vitro* benefit will result in greater interest being shown by providers to bid on the County's insurance, but that is speculation. While these are understandable goals, the arbitrator's review of the evidence presented causes him to conclude that based on the cost of the *in vitro* benefits, or on the effects of its inclusion on insurance bids, there is no compelling need demonstrated at the present time for elimination of the benefit.

Another "other factor" about which the parties disagree is whether, as the Union argues should be the case, a *quid pro quo* is necessary and, if it is, whether what has been offered is adequate and justifies the County's elimination of the *in vitro* benefit. The County argues that it is not necessary for it to give a *quid pro quo*, but if the arbitrator does not agree then, in its view, what it has offered is adequate.

It is undisputed that the *in vitro* benefit was bargained as part of the 1994 Agreement. The Union asserts that it paid, as part of the bargain, to obtain the benefit which was the only new health insurance benefit achieved, and in the bargain the Union agreed to a reduction in the County's share of health insurance premiums from 100% single and 95% family, to 90% for both. The County argues that there is no evidence which establishes what monetary value was put on the *in vitro* benefit by either or both parties during that bargaining. In that bargain, the unit received a 3.5% wage increase, and an additional 8¢ per hour wage increase in exchange for the reduction in premiums. No evidence was presented showing the value which the parties placed on the *in vitro* benefit, or that it was given in return for something specific.

Anyone who has participated in bargaining knows that there is some cost attributed to a new benefit. However, without such costing information, the arbitrator has no basis for placing a cost on that benefit. The only information relative to that cost is the response of the County's insurance provider, cited above, that at the present time the inclusion of the *in vitro* benefit adds no cost to the County's health insurance premium. This leads the arbitrator to conclude that the value of the benefit in the calculation of insurance premiums is negligible, and that any *quid pro quo* for eliminating the benefit would be small.

The Union's argument for a *quid pro quo*, in addition to the fact that the benefit was a bargained one, is that "this [*in vitro]* is a benefit of great importance to the membership [which] allows families who are unable to conceive children an opportunity to have a family...There are emotional and physical risks and pain attached to this procedure. It is a measure of last resort..." The Union argues that the members of the unit "still believe it to be an important benefit." Thus, in the Union's view, the County should be required to provide a much larger *quid pro quo* than what it has offered. The Union argues further:

> "...the members of AFSCME Local 2003 are quite capable of determining their own self interest. They have made a rational economic decision that the small saving for the individual and group under the County's proposal is in fact overwhelmed by the potential cost of several tens of thousands of dollars to an individual family who may need this benefit in the future..."

With respect to the *quid pro quo* offered by the County, the Union notes that the new drug card arrangement may or may not be beneficial to members depending on whether they are low or high users of drugs, and which drugs are used. Thus, in its view there is no proven savings to the members, and moreover the County didn't offer the new arrangements unless the bargaining unit agreed to give up *in vitro* benefits, which the members did not want to do. With respect to the County's proposed elimination of out of pocket costs for preventive care services, the Union doesn't know the value of this improvement, but doesn't believe that it is sufficiently advantageous to the members to justify their giving up the the *in vitro benefit.*

The County argues, in response, that the *in vitro* benefit has been used just once in 10 years, and eliminating it "will have little, if any, negative economic impact on employees." It views the Union's refusal to give up the *in vitro* benefit as being "... less about maintaining reproductive rights than it is about using an emotionally-charged issue as the basis for not bargaining <u>any</u> changes in health insurance." It argues further, "It is hard to believe that any of the employees who use expensive prescription drugs would have concluded, under a Ôcost benefit analysis,' that retention of the hardly-used *in vitro* outweighs the significant and very real savings that would be generated under the County's proposed drug card." While it is true that some employees may find the new drug plan to be more expensive, it is clear that more employees will benefit from it. In addition, there will likely be greater use of preventive/wellness benefits, which will lead to healthier employees, and beneficial affect on insurance costs.

The County views its wage offer, improved drug co-pays and no-cost wellness benefits as a sufficient *quid pro quo*. Wages are not in dispute in this case, but the County argues that it has offered to this bargaining unit the same wage increases which it has given to its other bargaining units which agreed to those increases voluntarily in exchange for acceptance of the health benefits offered by the County, which benefits are the same as those offered to this bargaining unit. The County argues that its proposal will benefit everyone, while the Union's offer does not, except for a "theoretical, infrequent user of *in vitro* services." The County views its offer as having little or no negative effect on anyone.

The Union acknowledges that the County's wage offer is comparable to what it has offered to its other units, but it notes that this offer is "...lower than any voluntary settlement in the [external] comparability group..."

The arbitrator has concluded, after consideration of the arguments discussed above, that the County's offer constitutes a sufficent *quid pro quo* for the elimination of the *in vitro* benefit. The County's reasons for eliminating it, as well as the improved health insurance benefits which it has offered, are more persuasive, in the arbitrator's opinion, than the Union's arguments for retaining the benefit.

Another factor cited by the County is that the effect of its offer will be a reduction of about 1% in the health insurance premium. While acknowledging that this amount is slight, the County emphasizes that it is still a reduction, and at a time where it is very difficult to achieve reductions in health costs.

The statute requires the arbitrator to select one final offer in its entirety. This is always a difficult decision, since it is usually the case that there is merit to both parties' offers. On balance, and after consideration of the statutory factors, the arbitrator is of the opinion that there is greater justification for implementing the County's final offer than for implementing the Union's final offer.

Based on the above facts and discussion, the arbitrator hereby makes the following AWARD:

The final offer of the County is selected.

Dated this 9th day of June, 2006 at Madison, Wisconsin

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Edward B. Krinsky
Arbitrator