

**STATE OF WISCONSIN**

**Before the Interest Arbitrator**

**In the Matter of the Petition**

**of  
International Brotherhood of Teamsters  
Local 75**

**For Final and Binding  
Arbitration Involving  
Corrections Employees  
In the Employ of  
Brown County**

**Case 703  
No. 64113 MIA-10293  
Dec. No. 31565-A**

**Raymond E. McAlpin  
Arbitrator**

**APPEARANCES**

**For the Union:                   Andrea Hoeschen, Attorney  
  Michael Williquette, Business Agent**

**For the City:                     Thomas Godar, Attorney  
  Michael Kwaterski, Human Resources Director**

**PROCEEDINGS**

**On January 17, 2006 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.77 (4) (b) of the Municipal Employment Relations Act, to resolve an impasse existing between International Brotherhood of Teamsters Local 75, hereinafter referred to as the Association, and Brown County, hereinafter referred to as the Employer.**

The hearing was held on May 5, 2006 in Green Bay, Wisconsin. The Parties did not request mediation services and the hearing proceeded. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on June 30, 2006 subsequent to receiving the final reply briefs.

ISSUES

The following are the issues still in dispute between the Union and the City:

<u>UNION</u>	<u>CITY</u>
Wages 1-1-04 Per Union progression	1.9%
1-1-05 Per Union progression	2.8%
12-31-05 3.0%	Status Quo
Add Dental Associates choice to dental plan	Status Quo
Status Quo	7.5% Health Insurance contribution

STATUTORY CRITERIA

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 legislative or administrative office,

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

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

**111.70(4)(cm) 7r:**

- 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 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 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 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 arbitrations proceedings.

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

### **UNION POSITION**

**The following represents the arguments and contentions made on behalf of the Union:**

**This interest arbitration involves correctional employees in Brown County responsible for more than 700 inmates currently. Brown County jailers are not sworn. These proceedings come under the criteria set forth in Section 111.70(4)(cm) of the applicable statute. The Union would note that factors given the greatest weight and greater weight are not applicable in this matter. Based on the criteria listed under 7r A through J, the Union's offer would be selected as the more reasonable and equitable. The County has proposed an increase in employee health insurance costs which is unreasonable without a quid pro quo. The Union provided numerous citations to this effect.**

The County takes the approach that increasing health insurance costs are so devastating that no quid pro quo is necessary. However, arbitrators have found that changes in employee health insurance costs must meet the same standard as any other change in the status quo. The employees' contribution to the health insurance premium increases every time the premium goes up, e.g. in 2004 the PPO family plan contribution would go up 35%.

The Employer has largely ignored comparables in justifying this increase. It relies mainly on national trends which are mostly based on the service and retail sectors. Brown County employee benefits should not be judged by the standard of WalMart. The County's regional data is of minimal relevance as it is arbitrarily based on the clients of the County's insurance consulting firm which does not include any of the comparables. Local data are likewise too arbitrary to be relevant. The potential pool is a random selection of large employers in the Green Bay area. The only criterion for being included in the resulting chart was that the employer responded to the consultant's inquiry.

The record shows that the comparables do not support the County's offer. The County is not the only municipality seeking to increase employee premium sharing, however, it is the only one among the comparables unwilling to pay for it. Most of the comparables have been able to move their employees to premium sharing in excess of 5%. The comparables did not get there, however, by offering 1.9% and 2.8% wage increases. Any recent increases in premium sharing have been accompanied by one year lifts of at least 3.25% or a lesser increase combined with an increase in longevity pay. The only exception

would be Sheboygan which added a 5% premium sharing in 2004 with only a 3% wage increase but capped the employee contribution for family coverage at \$49.16. This is approximately what Brown County employees would contribute, however, the County is only offering a 1.8% wage increase for 2004.

Increased premium sharing is not a necessity. It is the County that sets the rates for the monthly premiums. The Union does not dispute that a premium increase may have been necessary for the health of the fund, but the County has failed to explain why it decided upon that particular increase for 2005 since the fund has a small surplus. In addition, there is still a variety of untapped cost savings through a preventative program and cost utilization.

The County's proposed wage offer is substandard on its face. The Parties agreed on the comparables of Fond-du-lac, Manitowoc, Outagamie, and Sheboygan Counties. The Union has also included Winebago County. The County has also included Marathon and Shawano Counties and the Green Bay Correctional Institute. Prior arbitration decisions support the Union's proposed comparables, and a decision involving the Highway Department's Arbitrator Malamud included Winebago County. Neither Party proposed Shawano and Marathon Counties. In an arbitration involving Arbitrator Kerkman, Winebago County was included and neither Party offered Shawano and Marathon Counties. Winebago County is an appropriate comparable even though its jailers are sworn. In this case the difference between sworn and non-sworn is one without significance. Nothing about

**Winebago's facility size, capacity or population sets it apart from Brown County and the pool of comparables.**

**Brown County offered no justification for including the Green Bay Correctional Institute. The County did not even place its Collective Bargaining Agreement into evidence. Marathon County is too distant to be a useful comparable. Shawano County is too small. Its jail has fewer total admissions than any of the other comparables and much fewer violent crime offenses and arrests than any of the comparables. Shawano County has an estimated 2004 population of 41,209. Shawano is a small rural county that has never been used as a comparable with Brown County.**

**Brown County jailers are the cream of the crop in northeastern Wisconsin. They deal with more total admissions, more violent offenses and more arrests than any of the other comparables. Brown County Jail recently agreed to be the site for the Wisconsin Jail Recruit Academy.**

**The unit's wages lag behind those in the comparables justifying catch-up. The Union's offer of 2.9% wage increases in 2004 and 2005 may seem like catch-up but only in comparison to the County's uniquely paltry offer. By normal standards 2.9% wage increases would be considered conservative. The Union's wage offer is more reasonable on its face.**

The County does not dispute that the unit has wages significantly below jailers in other comparables. For 2003 they are below their counterparts in the comparables in every step of the progression. This disparity only grows under the County's offer. This enormous wage disparity justifies the only aspect of the Union's offer that could be considered catch-up, and that is the 3% across-the-board wage increase at the end of the contract term. Even with that extra 3% bump Brown County jailers still have the lowest wages among the comparables. The Union's offer is not catch-up, it is merely backslide prevention. The Union's wage offer would not bring Brown County wages above the wages of any of the comparables. Brown County jailers are content to have lower wages in exchange for their pension but their pension benefits do not justify abysmal wages. The facts are that the County's offer would result in increasing disparity. Its wage offer is less than the percentage increases of any of the comparables. Every other comparable had at least a .8% larger wage increase over the contract term than Brown County.

The cost of living favors the Union's offer. The net effect of increased premium sharing combined with a meager wage increase is that employees would see very little increase in their take-home pay. In fact the County's offer would result in employees losing money after accounting for inflation.

The unit's benefits do not justify the wage disparity. The County in its arguments included the Brown County equivalent of sick leave in its calculation but excluded traditional sick leave benefits enjoyed by employees in all of the comparables. The bargaining unit

agreed to give up sick leave in exchange for more casual days that can be used for any purpose. Employees in other jurisdictions receive sick days which they can use, bank or cash out under various circumstances. The Employer did not include this in its total value of benefits. The benefits of Brown County do not differ significantly from the benefits in the comparables. The only significant difference is pension benefits. Brown County employees participate in a protective pension which gives them the ability to retire earlier than many other public employees. This is why the Brown County jailers were willing to forego any raises when they obtained this benefit in 2003 and are still willing to settle for a wage increase that will leave them with lower wages than jailers in any of the other comparables.

Economic conditions do not justify the County's offer. This offer is merely a vehicle for funding campaign promises. In 2006 the County executive presented a budget which he characterized as a no-tax increase budget. It is the County that determined to reduce tax rates so much as to reduce revenue. The administration's political gain is being funded by public employees and people who depend on depend services. The equalized value has increased by almost 11% since 2003, but revenues have declined by almost 5% during that same period.

Economic conditions of Brown County are the same or better than conditions in the comparables. Brown County enjoys a high per capita income, about the same unemployment rate, the greatest increase in property values and the second lowest tax rate.

**Internal comparables do not justify the County's offer. No other County unit has accepted the offer that the County made to the Corrections Unit. Only 226 out of 1283 represented employees have accepted and ratified the County's wage offer. There is no internal pattern of settlements.**

**The remaining issues are not determinative. The County's dental proposal is not a determinative issue. The CarePlus Dental Plan has a choice as a no-cost proposal with the likelihood of saving the County money. Employees would be free to make their own choice under the Union's proposal. If the employee did not like CarePlus, the employee could switch back to the traditional plan the following year; and if an employee did not want to leave his/her existing dentist, nothing would change. Likewise, with regard to the Union's proposal to add a minimum of three hours court pay, jailers had this benefit in their contract prior to 2000 when they were in the courthouse unit. The benefit was left out of successor contracts inadvertently. The County did not proffer any reason why this addition to the contract was objectionable. All of the comparables have a similar benefit.**

**The Union also had the opportunity to respond to the Employer's initial brief. Its arguments are as follows:**

**The County's inability to control health care costs does not result in a benefit or value to employees. There is no question that the Employer has had less success in controlling its health insurance premiums than the comparables. This does not mean, however, that it has**

a higher value to its employees. Increases in health costs are unfortunate for the Employer and employee alike. The cost of health insurance is not synonymous with the value or benefit to employees, thus a wage increase that lags behind the comparables cannot be justified simply because of the health insurance increase.

The Union's wage structure proposal and dental proposal do not demand a quid pro quo. Wage rates change with nearly every Collective Bargaining Agreement and do not require a quid pro quo. Likewise, the Union's dental proposal does not add any dental benefits. It simply adds an option of care delivery. There was no showing that adverse selection would occur under this proposal. Even if the County is correct that people who need more care will choose the plan that offers less care, there is no exposure for higher cost to the County since the existing benefit is capped at \$1,000 per year. The purpose for this proposal is to somewhat offset the burden on employees who pay additional for health insurance under either Party's offer. The County offered no explanation as to why its per employee health insurance costs are higher than the comparables. Presumably, if usage rates were abnormally high, the County would have brought that fact to the attention of the Arbitrator. All other factors that could influence costs are within the control of the County.

Brown County's financial climate does not justify its offer. There was no showing that its economy is suffering. Its economic conditions are no worse than those in any of the other comparables.

**There is no internal settlement pattern. Even for those that have settled, the premium sharing takes effect between 6 and 18 months later than it would take effect for corrections employees.**

**As noted above, the Union's comparables are the most reasonable. The County failed to put in the GBCI Collective Bargaining Agreement. Shawano County is not an appropriate comparable.**

**Finally, the benefits in the comparables do not justify the low wages in Brown County. The Brown County employees paid their quid pro quo. The health insurance benefits are very comparable to other like counties.**

**The County's proposed increase in premium sharing requires a quid pro quo. The County did not establish a health insurance crisis. Its fund is currently quite healthy. The employees are already sharing the burden. The Union provided numerous citations calling for a quid pro quo under similar circumstances.**

**Based on the foregoing and the record as a whole, the Arbitrator should select the Union's final offer as the more reasonable and equitable in this matter.**

## EMPLOYER POSITION

The following represents the arguments and contentions made on behalf of the Employer:

The County is facing galloping costs for its health insurance plan. The two-year increased cost to Brown County for the family preferred provider option, which is the most popular plan for correctional officers, is more than \$2.50 an hour. Under the County's offer its two-year increased cost would be over 13%. The fringe benefit to salary ratio for correctional officers has increased from 42% to almost 56%. The health insurance cost increases are the backdrop to the County's proposal and must be weighed by the Arbitrator.

Fiscal pressures on municipal governments demand prudent and careful financial decisions by counties. Against these realities the County's offer is appropriate and reasonable.

Neither Party argued that either offer presents an absolute inability to pay. Both Parties have provided information to the Arbitrator regarding the economic conditions in Brown County and their impact upon the offers made. The Arbitrator must include consideration of the interest and welfare of the public and the financial ability of Brown County to meet the cost of any proposed settlement.

**Internal comparisons are particularly important to this arbitration. Arbitrators have found that internal comparables are particularly important where certain fringe benefits can be most efficiently and economically provided and administered when they are uniform for all employees and where multiple bargaining units with a single employer have established a pattern of settlements. Changes in the status quo often receive special attention. In this matter the Union proposes to change the status quo by substantially modifying the wage schedule and by introducing a new dental benefit.**

**The overall value and cost of the County's offer supports the County's proposal. This dispute rests on wage increases for employees for 2004-2005 including the introduction by the Union of a new wage schedule. The change in benefits for one of the two plans which would only affect employees upon selection of the County's offer is a slight increase in premium sharing by the employees in the second year, as opposed to the Union's offer of a new dental plan which is not offered to any other County employees. The total value of wage and benefit increases to be paid to employees over the two years is just short of \$1 million for 138 full-time equivalents in the unit compared to the Union's offer of \$1.2 million, which does not take into account the 3% lift which would be provided to employees on the final day of the contract term under the Union's proposal. The Employer would note that this unit participates in the Wisconsin Employee Trust Fund which results in a protective occupation contribution of up to \$1 per hour typically provided to other municipal employees.**

The financial climate facing Brown County makes the Employer's offer more reasonable. The Union's offer would drive \$1.6 million in new spending over two years for the County. The County's offer would demand a commitment of about \$1.2 million. The 3% kicker at the end of the contract would cost the County 143,000 new dollars without any other 2006 change or increase in insurance costs. The Employer would note that unemployment claims have been climbing in both the City of Green Bay and the County in recent years. There have been notable plant closures and mass layoffs. The County Board and its executive have worked hard to dampen the level of increases that it has to deal with. It is important to note that there has not been one layoff among unit members as a result of the County attempts to demonstrate fiscal discipline. Even given the above, the County has offered a package that amounts to more than a 13% increase as compared to the Union's offer which would demand a 16% increase. Levy limits force the Employer to adopt only modest tax increases.

The internal comparables support Brown County's offer. The County's offer in this matter is consistent with the wages and benefits offered to other Brown County employees. At the time of the hearing 443 employees had settled on this basis including and in addition 231 non-represented employees. The Union's offer is wholly inconsistent with this pattern. The Union stated that its offer represents approximately 3% increases in each of the two years, not to mention the additional 3% at the end of 2005. In calculating the progression through the cells of the new step system proposed by the Union, the County believes that the value is better calculated at 4.3% and 4% in 2004 and 2005, respectively. In either case the

**Union's offer is inconsistent with the wage offer accepted by all of the represented employees who have thus far reached an agreement with the County.**

**The above difference is magnified when taking into account the differences in insurance offers. In cases where there is no increase sharing until January, 2006 there were wage adjustments to compensate for this. Therefore, internal comparables heavily favor the Employer.**

**The County's internal comparables should be the most persuasive in selecting the Employer's offer. The County provided numerous citations in support of this position. Should the Arbitrator accept the Union's offer, those many units which have chosen to voluntarily come to an agreement would receive less than provided through the mechanism of interest arbitration. They would in effect be penalized for the willingness to engage in the collective bargaining process. While there may be special circumstances, the Arbitrator must be very careful before reaching a different conclusion.**

**Regarding external comparables those proposed by the County should be preferred. The Employer would add Shawano County and the Green Bay Correctional Institute to the list of comparables agreed upon. The two additional comparables are geographically consistent with Brown County. GBCI is included for obvious reasons. It is a local public sector employer whose employees perform essentially the same duties. Winnebago County should not be included since that county has sworn deputies in the role of correctional**

officers. Correctional officers are in the same collective bargaining unit with those deputies who participate on patrol. The seniority of patrol and correctional officers is unified.

The County's offer, when compared to other represented employees, maintains and/or enhances the position of the County, both in terms of wages and in terms of the annual value to employees. The Union's exhibits do not take into account the WRS contributions made by Brown County, which are anywhere from \$.70 to \$1 per hour greater than contributions made on behalf of employees in comparable communities. Measuring external comparability using the total wage and benefit package clearly supports the County's offer. The Union's offer would move the employees from fifth place in 2003 to first place in total compensation on January 1, 2005. This is not even including the December 31, 2005 3% increase.

In addition to the above the contribution rates paid by comparable employees favor the County's position. Most other deductibles show that the County has the lowest deductibles of all plans with a deductible. The County prescription plan is as good as any and better than most. It includes a valuable out-of-pocket maximum of \$1,000. The County has an excellent dental insurance benefit with lower contribution rates than most.

The Union has offered no compelling reason that it should receive catch-up pay in order to justify its unwillingness to increase its insurance contribution or its 10+ % wage demand. While it is true that Brown County's compensation on a dollars per hour basis is not leading the pack, it is not in last position either. It is greater than Shawano County and

**GBCI. It was the correctional officers who sought and received the right to participate in the WRS protective services pension plan which has resulted in a much higher retirement contribution. A review of the Union's proposal shows that the average employee does not receive any catch-up under its proposal. It is only when an employee has 4 or 5 years of service that some catch-up occurs.**

**The Union's attempt to defend its increases is smoke and mirrors. Ninety-four (94) of the employees were at five years or greater seniority at the time of the hearing. Only 42 employees were at less than five years of seniority. Eighty-eight per cent (88%) of the correctional officers will move into the 4-5 year step at the end of 2006. This will have a huge impact on the County's costs. There will be large increases to the County as those in the bargaining unit reach the 5-year step level. Arbitrators have found that this should be given consideration by the Arbitrator, particularly the future cost of the 3% increase proposed at the end of the contract by the Union.**

**The modest change from the Employer paying 95% of the premium to 92.5% beginning January 1, 2005 does not demand a quid pro quo as argued by the Union. The Employer is acting carefully and prudently with the selection of health insurance plans and health insurance plan features in order to bring the best value to Brown County employees consistent with their desire. Brown County is self-insured. It uses a consultant to help manage the plan. The County has introduced a number of changes to enhance this plan. The record shows that Brown County provides rich and expensive benefits compared with**

most employers. In spite of the high cost of the benefits, the County has borne almost all of the cost itself. The correctional officers enjoy a great insurance plan but it comes at a high cost. The proposal that the employees participate in this cost by paying a 7.5% premium is reasonable. Costs have increased dramatically during the critical period of this case with the County bearing the lion's share of these increases. In 2005 the County would pay \$1.88 more per hour, whereas the employee would pay only \$.32 per hour in 2005 alone. When escalating costs of insurance are as significant as those experienced by Brown County, no quid pro quo is necessary to justify a modest increase in employee premium sharing. The County is facing a health care crisis. Arbitrators have found that it is appropriate for employees to share in these dramatic costs.

The Employer would note that, even if a quid pro quo was found necessary, the County has met this challenge by providing a 2.8% increase in the second year of the contract when others not participating in the increased premium share received only 1.9%. A review of the comparable public sector employees shows that virtually all of them increased a percentage of premium sharing in 2004-2005.

The Union has offered no quid pro quo for its very significant changes of adding a new dental plan and a new progression schedule. The County argued that this new dental plan increases administrative burden and creates the possibility of adverse selection for the current very successful dental plan. This plan has been so well managed that there have been no increased premium costs for employees for three years. Dental Associates offers no

promise to maintain its rates. In addition to the above the Union has made significant changes to the entire wage structure and progression offers no justification or quid pro quo. Catch-up is not a necessary part of this contract given the excellent overall wage and benefit structure enjoyed by employees.

The Employer had an opportunity to respond to the Union's initial brief in this matter. The following represents its arguments:

The differences between the offers are simple to describe but are yet profound. The Employer is prepared to provide in excess of \$1.2 million in new spending dedicated to correctional officers. The Union would trump this offer seeking almost \$1.55 million in new spending over the same period with an additional \$187,000 in wage payments alone for 2006 before the Parties come to a single agreement at the bargaining table for a successor agreement.

The Union failed to justify its call for a quid pro quo for a modest change in insurance premium sharing sought by the County. The Employer has borne the greatest part of the burden of the extraordinary health increased costs that have occurred over the last two years.

Cases cited by the Union do not suggest that the modest adjustment in a previously agreed upon premium sharing provision demands a quid pro quo. Many arbitrators have recently concluded that the need for a quid pro quo is reduced or entirely eliminated within the context of the relatively modest changes to health care agreements.

**Data show that, regarding health insurance, there is conclusive demonstration that the correctional officers enjoy a rich and, consequently, expensive benefit package that should be valued appropriately to determine the reasonableness of the County's proposal. The Union would dismiss the national and local statistics provided by the Employer, but what these show are that health care cost increases are a national crisis and impact both private and public sector plans. Brown County's benefit package is the richest mix of any identified by any Party whether using a measure of deductibles, in and out of network co-pays, lifetime maximums or the like. Dental insurance provided by the County is the best of any identified comparables. The costs for these benefits are greater than any other community identified by any Party. The County employees have input in the selection of plans and plan features.**

**Given the very small changes suggested by the County and its health insurance plan, it should be preferred over the Union's proposal. The Employer's request to share at 7.5% of the premium still places the correctional officers at the lowest end of sharing among all of the comparables. There was no showing that any other employees served up some sort of substantial quid pro quo for paying an even lesser share of the health care premiums than does the County. The Employer provided numerous examples. The Employer has worked hard to drive down costs and explore options well before they came to the employees seeking a slighter greater premium sharing.**

**The County has proven that Shawano and Marathon Counties and the GBCI are appropriate comparables. Shawano is closely situated to Brown County and has comparable**

statistics. Marathon County has been identified as a comparable in several interest arbitrations involving the County. GBCI is appropriately included since it relates to employment of other employees performing similar services in the same or comparable communities.

The Union never attempted to justify its increases or deviation from the internal pattern for external comparables. Six separate units have settled for the same offer as made to this unit. More than half of the employees represented in Brown County had already selected a package almost exactly like that offer to the correctional officers. The Union claimed that the external comparables favor its position. To defend its argument it has to use Winebago County which pays \$3 per hour more than any other comparable community. The Union completely ignored the total value of the package offered by the County. By that measure under the County's offer Brown County is in the middle of the pack and its package value exceeds the average value by almost \$2,000 per year per employee. The Employer would note that the Union accepted lower wage increases to get the WRS enhancement.

The inclusion of the value for casual days but leaving out the value for sick leave for comparable communities or short term disability for Brown County is appropriate. It is impossible to value sick days under those circumstances. Casual days provide a real and available benefit to each employee. An additional one week with pay to use as they see fit is appropriate. Given the limitations on the County and the difficulties faced by its citizens, the County's offer is generous and more reasonable. The Employer provided numerous statistics in support of this position.

**The County has stepped forward with a very solid offer to the correctional officers, particularly given the value of the overall package and in light of problems that are facing the Employer, the proposal of the County is appropriate and should be selected.**

### **DISCUSSION AND OPINION**

**The role of an Arbitrator in interest arbitration is substantially different from that in a grievance arbitration. Interest arbitration is a substitute for a test of economic power between the Parties. The Wisconsin legislature determined that it would be in the best interest of the citizens of the State of Wisconsin to substitute interest arbitration for a potential strike involving public employees. In an interest arbitration, the Arbitrator must determine not what the Parties would have agreed to, but what they should have agreed to, and, therefore, it falls to the Arbitrator to determine what is fair and equitable in this circumstance. The statute provides that the Arbitrator must choose the last best offer of one side over the other. The Arbitrator must find for each final offer which side has the most equitable position. We use the term “most equitable” because in some, if not all, of last best offer interest arbitrations, equity does not lie exclusively with one side or the other. The Arbitrator is precluded from fashioning a remedy of his choosing. He must by statute choose that which he finds most equitable under all of the circumstances of the case. The Arbitrator must base his decision on the combination of 11 factors contained within the Wisconsin revised statute (and reproduced above). It is these factors that will drive the Arbitrator’s decision in this matter.**

Prior to analyzing each open issue, the Arbitrator would like to briefly mention the concept of status quo in interest arbitration. When one side or another wishes to deviate from the status quo of the collective bargaining agreement, the proponent of that change must fully justify its position, provide strong reasons, and a proven need. It is an extra burden of proof placed on those who wish to significantly change the collective bargaining relationship. In the absence of such showing, the party desiring the change must show that there is a quid pro quo or that other groups comparable to the group in question were able to achieve this provision without the quid pro quo. In addition to the above, the Party requesting change must prove that there is a need for the change and that the proposed language meets the identified need without posing an undue hardship on the other Party or has provided a quid pro quo, as noted above. In addition to the statutory criteria, it is this concept of status quo that will also guide this Arbitrator when analyzing the respective positions.

Finally, before the analysis the Arbitrator would like to discuss the cost of living criterion. This is difficult to apply in this Collective Bargaining context. The weight placed on cost of living varies with the state of the economy and the rate of inflation. Generally, in times of high inflation public sector employees lag the private sector in their economic achievement. Likewise, in periods of time such as we are currently experiencing public sector employees generally do somewhat better not only with respect to the cost of living rate, but also vis-a-vis the private sector. In addition, the movement in the consumer price index is

generally not a true measure of an individual family's cost of living due to the rather rigid nature of the market basket upon which cost of living changes are measured. Therefore, this Arbitrator has joined other arbitrators in finding that cost of living considerations are best measured by the external comparables and wage increases and wage rates among those external comparables. In any event, both sides have agreed that the wage increases for this bargaining unit would exceed the cost of living percentage increases no matter what source.

#### DISCUSSION & OPINION - COMPARABLES

The Parties agreed on four of the comparables in this matter. The Employer has brought forward Shawano, Marathon County and GBCI. The Union for its part has brought forward Winebago County. Additions to the agreed upon comparable lists are not taken lightly. The purpose for lack of deviation from comparables is to provide some consistency and continuity in the collective bargaining process. The Arbitrator notes that Winebago County has been included in previous interest arbitrations involving Brown County, although not in an interest arbitration involving protective occupations. On the basis of this inclusion in previous interest arbitrations and other factors customarily used to determine external comparables, the Arbitrator finds that Winebago County should be included in the comparable group for this bargaining unit. With respect to Marathon and Shawano neither possesses any factors that would cause this Arbitrator to overcome the lack of consistency and continuity referred to above.

**Regarding GBCI the Arbitrator can find no reason to include this group in the bargaining unit comparables. It is not part of County government. Opening this door would leave it open for either Party to argue that other municipal correction facilities should be included in this comparable group. There is nothing contained in the record of this case that would allow this Arbitrator to approve this deviation from the status quo since the Party that brought this forward, the Employer, has not fully justified its position providing strong reasons and a proven need. Therefore, the comparables in this matter will include Fond-du-lac, Manitowoc, Winebago, Outagamie and Sheboygan Counties.**

#### **DISCUSSION & OPINION - MERITS**

**In reviewing the evidence of this case the Arbitrator finds that the factor given greatest weight and the factor given greater weight do not apply to this case since both proposals could be met by the County and the County has not plead an inability to pay.**

**We have here a situation that is all too common in interest arbitration in Wisconsin. The Arbitrator feels that neither side had fully justified its proposal. On the Union's side, it has thrown into the mix what the Arbitrator would consider "ringers" - the optional dental plan and the extra 3% at the end of the contract period. The outside dental plan proposed by the Union is fraught with uncertainty. There was no showing as to how many employees**

would opt for this plan and whether or not there would be an adverse impact on the current plan. There was also no showing that the current dental plan does not provide benefits in keeping with the comparables of this matter. The Arbitrator would also note that this proposal in relation to the other proposals made by the Parties is one that is not nearly as significant as those other proposals.

With respect to the 3% additional increase at the end of the contract period, this Arbitrator has never been impressed by the timing of increases. Both the Employer and the Union are in this for the long haul and ultimately the Employer's costs would be increased by 3% and, in its words, prior to any meaningful negotiations for the contract year of 2006. The only thing that these late type increases do is to give the Employer some short term budget relief during the term of the current contract. With respect to the Employer's proposal, it has asked the employees to shoulder an additional 2.5% of the health care premium costs. In addition it has proposed wage increases that would be certainly considered somewhat low based on comparable settlements.

The Employer for its part also has asked for the Arbitrator to accept items not fully justified. Wages and total package with respect to the external comparables are not supported. The Health Insurance contribution is supported by the internal comparables as they currently exist. The internal comparables do not contain any protective services units to support the wage proposal.

**Based on the statute, however, the Arbitrator is bound by accepting the entire offer of one side or the other which makes this a very difficult situation.**

**We come then to the factors that this Arbitrator must consider in making his decision. Factors A and B do not enter into the mix of this case and, in fact, are not at all determinative. Factor C is the “interest and welfare of the public and the financial ability of the unit of government to meet the cost of any proposed settlements.” While the County did not plead an inability to pay, the evidence in this case shows that, if the Union’s offer was accepted, it would place a significant financial burden on the Employer. This would, undoubtedly, have some impact on the citizens of Brown County. Unions often argue that the opposite of this financial impact would be the inability of the County to attract and keep competent employees. This is an excellent argument, however, there was no showing at the hearing that Brown County is unable to attract and keep competent employees. In fact, what little evidence there was in this area shows just the opposite. The Arbitrator finds, while the above factor is not significantly determinative in this matter, it certainly mitigates in favor of the Employer’s position and must be given some weight in the final decision.**

**Factors D, E and F are certainly the key factors in this matter. With respect to internal and external comparables it was the Employer that claimed that the internal comparables strongly favor its position. It is also true that those bargaining units and non-represented employees that have completed their 2004-2005 settlements do favor the Employer’s position, although the Arbitrator would note that he is never as much impressed**

with percentages as he is with real dollars. The Arbitrator would note that among those settled, protective occupations are not included. In addition, there is no showing how those settled units compared to their external comparables.

Certainly with respect to health care costs and contributions there is a significant consistency within the County's bargaining units at least at this point. The Arbitrator would wonder why Brown County's health care costs are so expensive. Some of this can be attributed to benefit levels. The Arbitrator is well aware of the problems facing employers and unions with respect to health care costs, however, Brown County seems to be plagued with more than its share.

The Union argued that the Employer must present a quid pro quo for any change in the contribution rate toward health care benefits. This is not, however, a situation where the employees have not been making any contribution and for the first time the Employer wants them to contribute toward the health care premium. This is an adjustment in the health care premium and does not require a quid pro quo particularly in light of the internal comparables. However, the additional cost to the employee certainly can be considered when evaluating the wage offer of the Employer.

With respect to the external comparables, wages paid by the Employer without consideration of any fringe benefits place this unit significantly lower than the external comparables. This is somewhat offset by the bargaining unit's choice of the Protective

Occupation Pension Plan which the bargaining unit chose to participate in a few years ago. Given that, the Arbitrator feels that it is appropriate to consider the total wage and fringe benefit package of this group of employees compared to the total wage and benefit package of the comparables. The Union, of course, for its part would only want to compare wages and only wages. The Employer for its part wants to compare wages and certain benefits, but not all benefits. All benefits as part of the overall total economic package of this unit and the external and internal comparables must be considered. The Arbitrator would also note that to a great extent the employees really have no control over the health care costs besieging this Employer.

We come then, finally, to the conclusion of this matter. As noted above, this is a very difficult decision because both sides made excellent arguments on behalf of their respective positions. The Arbitrator can easily find that neither side has convincingly and determinatively proven its respective case, so he is left with which offer comes closest to the statutory criteria. The fatal flaw in the Union's proposal is the additional dental plan, the 3% at the end of the contract wage increase and, to a much lesser extent, changes proposed in the wage schedule. Based on this and this alone, the Arbitrator finds that the Employer's offer is the one that will be selected. The Arbitrator would state for the record that in his opinion this will leave this bargaining unit's wages well behind the external comparables and that this needs to be addressed in the next round of bargaining.

**AWARD**

**On the basis of the foregoing and the record as a whole, and after full consideration of each of the statutory criteria, the undersigned has concluded that the final offer of the Employer is the more reasonable proposal before the Arbitrator and directs that it, along with the stipulations reached in bargaining, constitute the 2004-2005 agreement between the Parties.**

**Signed at Oconomowoc, Wisconsin this day of July 29, 2006.**

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Raymond E. McAlpin, Arbitrator**