BEFORE THE ARBITRATOR

In the Matter of the Joint Petitions to Initiate Interest Arbitration Between DOOR COUNTY and DOOR COUNTY HIGHWAY EMPLOYEES LOCAL 1648, AFSCME, AFL-CIO and DOOR COUNTY COURTHOUS EMPLOYEES LOCAL 1648, AFSCME, AFL-CIO and DOOR COUNTY SOCIAL SERVICES EMPLOYEES LOCAL 1648, AFSCME, AFL-CIO and DOOR COUNTY EMERGENCY SERVICES EMPLOYEES, LOCAL 1658, AFSCME, AFL-CIO	Case 151 No. 64572 INT/ARB-10410 Decision No. 31693 [-A] Case 152 No. 64573 INT/ARB-10411 Decision No. 31694[-A] Case 153 No. 64574 INT/ARB-10412 Decision No. 31692 [-A] Case 154 No. 64575 INT/ARB-10413 Decision No. 31691 [-A]

Appearances:

Mr. Neil Rainford, Staff Representative, Council 40, AFSCME, on behalf of the Union.
Mr. Grant P. Thomas, Corporation Counsel, on behalf of the County.

ARBITRATION AWARD

The above-captioned parties, herein "Union" and "County," selected the undersigned to issue a final and binding award pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act, herein "MERA," and a jointly agreed-to Voluntary Impasse

Procedure. A hearing was held in Sturgeon Bay, Wisconsin, on September 1, 2006. The hearing was not transcribed and the parties subsequently filed briefs that were received by November 1, 2006.

But for the items listed below, the parties have agreed to the terms of successor agreements for all four bargaining units which run from December 19, 2004 – December 31, 2006.

Based upon the entire record and the arguments of the parties, I issue the following Award.

BACKGROUND

The Union represents for collective bargaining purposes four separate bargaining units consisting of Courthouse employees, Highway Department employees, Social Service employees, and Emergency Services personnel employed by the County. The parties engaged in negotiations for four successor collective bargaining agreements to replace the four prior agreements which expired on December 18, 2004, and the County on February 28, 2005, petitioned the Wisconsin Employment Relations Commission, herein "WERC," for interest arbitration. The WERC appointed Marshall L. Gratz to serve as an investigator and to conduct an investigation pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act, herein "MERA." The investigation was closed on May 10, 2006, and the parties subsequently agreed to a voluntary impasse procedure pursuant to Section 111.70(4)(cm)5 of MERA.

But for the matters listed below, the parties have agreed to all terms for the successor agreements which run from December 19, 2004 – December 31, 2006.

FINAL OFFERS

The Union's Final Offers are as follows:

1. The Union's health insurance proposals for all four bargaining units state in pertinent part:

. . .

7) Health Insurance Proposals (effective the first of the month (or as soon as administratively possible thereafter) following mutual ratification or receipt of an arbitrator's decision. (In the event of a mid-year implementation, employee major medical and prescription drug payments which satisfied the deductible of the existing base major indemnity health insurance plan will be applied to the deductible and prescription drug annual caps of the EBC-Health EOS PPO Plan. Likewise, wellness benefits used by employees through the existing plan will reduce the wellness benefits available under the new plan.)

a. Eliminate the existing base major indemnity plan;

b. Replace with current EBC-Health EOS PPO Plan (Sheriff's Dept. PPO Plan) as detailed below for all current employees (-19.25%);

c. UCR out of network 85th percentile (1.0%);

d. Out of Network Co-Insurance 90% up to $1,500 single $3,000 family annual (-1.0%);

e. Wellness Benefit/Routine Physical/ Exams/Mammograms Immunizations and Injections– In network- $10 co-pay 100% to $500. Benefit limited to age-appropriate tests as determined by treating physician and consistent with the existing benefit schedule. (-.25%);

f. Office Visit- $10 in or out of network (-.5%);

g. Increase the lifetime maximum to $2m (+1%);

h. Health Risk Assessment (RA) (1.5%);

Participation in the health risk assessment program will be voluntary. The Employer will contribute to the employee's Section 125 Plan $100.00 annually per adult health plan participant to a maximum of two adult plan participants provided the employee or the employee and their covered spouse complete an approved Health Risk Assessment (HRA) (-1.5%). The Section 125 Plan shall include the grace period (provided for in IRS Notice 205-42 and 205-61) as soon as administratively feasible.

Participation requires completing the questionnaire and submitting to the blood test.

HRA's will be offered during normal working hours and may be completed on work time without reduction in pay or benefits. No additional pay or benefits shall be offered to those who are unavailable on the date(s) the assessment is offered and who complete the assessment at a different time;

i. Ambulance services provided by the Door County Emergency Services Department to employees and dependents covered under the County's health plan shall not be subject to out of network co-payment or UCR charges;

j. Modify Current two tier $5 generic $10 brand drug card co-payment to three tier $5 generic $20 brand formulary $35 brand non-formulary. Include Mail Order Program (90 day supply of medication) available for two co-payments (instead of three co-payments). Prescription drugs will be subject to Mandatory Generic Medication Substitution as detailed in County's Final offer (-1%);

k. The following table depicts the above described changes to the PPO plan (No Change means there is no change from the existing EBC-Health EOS PPO Plan):

CURRENT PPO PLAN	**PROPOSAL**
PPO Network/Multiplan	No Change
Deductible: $100/$200	No Change
In-network coinsurance 100%	No Change
Out of pocket In network $100/$200	No Change
Out of network co-insurance – 80%	90%
Out of network out of pocket $600/$1200, deductible included	$1500 single $3000 family deductible included
UCR Out of Network – 90th percentile	85th percentile
No Health Risk Assessment (HRA) / Wellness program	HRA/Wellness – See Above
Office visit – In network - $5 Out of Network - $25	$10.00 In Network/ Out Network
Wellness Benefit/Routine Physical/Exams/mammograms Immunizations and Injections - $5 co-pay 100% to $300	$10 co-pay 100% to $500 for complete physical and only age appropriate tests
Lifetime Maximum $1,000,000	$2,000,000 +1%
Rx Plan: $5/$10 co-pay with annual cap at $100/$200	$5/$10/$35 No Change to Annual Cap of $100/$200 Mail order two co-pays
Mandatory Generic Medication Substitution	Yes

2. The Union's Final Offer for the Courthouse bargaining unit states in pertinent part:

. . .

1) ARTICLE 4 – GRIEVANCE PROCEDURE

. . .

Step 3

. . .

The parties shall alternately strike from this panel until one remains who shall serve as the arbitrator. This panel of five (5) arbitrators shall remain in place until November 15, 2006. Within 45 calendar days after that date, at the request of either party, the parties shall choose a new panel of five (5) arbitrators from the panel of WERC arbitrators by alternating strikes until five names remain. Should any of the panel of five (5) arbitrators leave the employ of the WERC, the parties shall choose from the panel of WERC staff arbitrators by alternating strikes until the appropriate number of replacement panel members exists to replace the departing arbitrator(s).

. . .

ARTICLE 25 – SALARY SCHEDULE AND PAY PLAN

. . .

4) Update and continue all side letters and memoranda of understanding including, but not limited to: Barb Jacquet, Removal of Bargaining Unit Members at Discretion of Elected Official, Reclassification Decision Notification, Health Insurance, Health Insurance Labor-Management Task Force, Dental Insurance.

3. The Union's Final Offer for the Highway Department bargaining unit states in pertinent part:

(NEW ARTICLE) **ARTICLE 31 – COMMERCIAL DRIVER'S LICENSE**

All employees currently classified as Truck Driver will be required to have a "Class A" Commercial Drivers License (CDL) with no "L" restriction and with an "N" endorsement for Tanker. The Employer will pay up to $5.00 toward the cost of the endorsement test fee. Employees posting into the Truck Driver position must have the above mentioned license with no "L" restriction at the time of posting and "N" endorsements within seven (7) days after being awarded the position, or they will not be deemed qualified for the Truck Driver position.

The Employer shall make appropriate equipment available for any operational testing required.

If an employee's Commercial Driver's License is suspended or revoked, the employee shall inform the employer immediately. If the employee's duties require the use of their DCL, the County shall offer the employee available work that does not require a CDL, provided that no employee shall be displaced from his/her posted position to accommodate this offering of work. The employee shall earn the pay of the position or duties they are assigned by management but not more than the rate of their posted position, nor in any event shall the pay be lower than class grade I. Fringe benefits for work performed during periods of CDL suspension shall be prorated according to the hours of work performed in the previous month. In the event that more than one employee is without CDL driving privileges, work shall be offered to the employees in order of seniority.

If the Employer, in its discretion, determines that there is no non-CDL work available, an Employee whose CDL has been suspended or revoked and who has not been granted an occupational license shall be laid off until their CDL is reinstated but not to exceed one (1) year. During this layoff the employee shall be permitted to continue group hospital and life insurance coverage. The premium for such continued coverage shall be paid by the employee prior to the month coverage is to be extended, to the Payroll Office. The Employer shall in turn pay the premium to the insurance carrier(s).

Hazardous Material Endorsement may be required of those positions which are routinely required to perform duties which are required by State of Federal law to maintain a hazardous materials endorsement and a reasonable number of backup positions.

With respect to the initial Hazmat "H" Endorsement added to an employee's commercial drivers license (CDL), the County will reimburse any fees charges or costs imposed (and actually paid by the employee) related to adding the hazmat "H" endorsement. The employee shall be solely responsible for any costs and fees related to any subsequent renewal of the "H" endorsement.

. . .

The County's Final Offers are as follows:

1. The County's health insurance proposals for all four bargaining units state in pertinent part:

. . .

Eliminate current base major-medical plan

Implement PPO Plan currently offered, subject to the following modifications:

Annual Out of Network Co-Insurance

(90%) maximum
$1,500.00 Single,
$3,000.00 Family;
Out of network charges are subject to UCR at the 85th percentile.

Office Co-Pay

$10.00 (in network)
$20.00 (out of network)

Deductible.

$250 – Single
$500 – Family

Health Risk Assessment

In the 2006 IRC Section 125 plan year, the employer will contribute $100.00 annually per adult health plan participant to a maximum of two adult plan participants provided the employee (and their covered spouse):

Complete an approved Health Risk Assessment (HRA); [1]

Mandatory Generic Medical Substitution

In order to establish medical necessity, the prescribing physician must submit a letter to the TAA, which indicates that:

- Patient has experienced, or would be likely to experience, significant adverse effects from the generic medication; or
- The generic medication has resulted in or is likely to result in therapeutic failure; or
- Patient has previously responded to the brand-name medication and changing to the generic medication would incur unacceptable clinical risk, or
- Other specific medically based reason that a generic medication is not appropriate for the patient.

An approved letter of medical necessity is a condition precedent to coverage of a brand name medication-when there is a generic equivalent.

If a letter of medical necessity is neither submitted nor approved, or the patient does not accept use of the general medication, the patient's cost for the brand name medication will be at the copayment level and benefit rate applicable to brand name medications plus the full cost differential between the brand-name actually dispensed and its generic equivalent. In this situation the patient will bear the full cost differential. The cost differential does not apply to the out-of-pocket maximum amount.

Drug Co-Pay

Generic	$5.00
Brand	$20.00
Non-formulary	$35.00

Mail order program (90-day supply of medication) two co-pays (instead of three).

Annual Maximum Out of Pocket: $250 Single; $500 Family

[1] The Courthouse proposal adds: "This benefit expires on 12/31/06."

Life Time Maximum

Increase to $2 million from $1 million

Wellness Physical

Increase limit from $300.00 to $500.00 for complete physical and to include only age appropriate tests.

Ambulance Services

Ambulance services provided by the Door County Emergency Services Department to employees and dependents covered under this health plan shall not be subject to out of network co-payment.

2. The County's Final Offer for the Courthouse bargaining unit states in pertinent part:

. . .

1. **ARTICLE 4 – GRIEVANCE PROCEDURE**
B Grievance Procedure Steps:

Step 3 The following language to replace language in current contract:

. . .

The grievance shall be submitted to arbitration by giving notice in writing to the Employer within thirty (30) days after the written reply of the Administrative Committee. Within five (5) days of such notice, the parties shall choose an arbitrator from the standing panel by alternating strikes. Specifically, the aggrieved party shall strike the first name and thereafter the other party until one arbitrator remains. The aggrieved party shall immediately transmit the identity of the chosen arbitrator to the WERC.

2. **ARTICLE 6 – SENIORITY**

C. Recall: … Recall shall be limited to eighteen (18) months.

. . .

3. The County's Final Offer for the Highway Department bargaining unit states in pertinent part:

1. **ARTICLE 5 – GRIEVANCE PROCEDURE AND ARBITRATION**

> **Step 4** The following language to replace language in current contract:
>
> Step 4
>
> . . .
>
> The grievance shall be submitted to arbitration by giving notice in writing to the Employer within thirty (30) days after the written reply of the Highway Committee. Within five (5) days of such notice, the parties shall choose an arbitrator from the standing panel by alternating strikes. Specifically, the aggrieved party shall strike the first name and thereafter the other party until one arbitrator remains. The aggrieved party shall immediately transmit the identity of the chosen arbitrator to the WERC.

6. Insert Side Bar letter: To read as follows:

Hazmat "H" Endorsement

With respect to the initial hazmat "H" Endorsement added to an employee's commercial drivers license (CDL), County will reimburse any fees charged or costs imposed by the Wisconsin Employment of Transportation (and actually paid by the employee) related to processing the hazmat "H" endorsement application, conducting the background check, vision screening, the hazardous materials knowledge test, fingerprinting, provision of a valid federal medical card or examination report, and adding the endorsement. Employee is solely responsible for any costs and fees related to any subsequent renewal of the "H" endorsement.

Insert Side Bar Letter: To read as follows:

Commercial Driver's License

An employee will be granted one (1) unpaid leave of absence for up to three (3) months in the event s/he loses their CDL for a CDL disqualifying offense that occurred in a non-CMV under the Motor Carrier Safety Improvement Act (MCSIA). If the employee does not regain his or her

CDL within the three-month period, the employee will be fired. No more than two (2) employees may be afforded this accommodation at any one time.

DISCUSSION

The health insurance issue is common to all four bargaining units and it is the only issue in dispute in the Social Services and Emergency Services bargaining units. The parties have stipulated that the resolution of the health insurance issue is to cover all four bargaining units and that the Final Offers for the Courthouse and Highway Department bargaining units are to be selected without regard to how the health insurance issue is decided.

The parties also have agreed that the statutory criteria set forth in Section 111.70(4)(cm)4 and 7 are to be used in selecting the four Final Offers.

They also have agreed to the following external comparables: Brown County, Kewaunee County, Manitowoc County, Marinette County and Oconto County. As for the internal comparables, four of the County's five bargaining units are involved in this proceeding. The only other unit is the Door County Deputy Sheriff's Association which has agreed to abide by the decision rendered herein on health insurance.

With this in mind, it is now time to address the Final Offers of the parties.

A. The Health Insurance Proposals For All Four Bargaining Units

The differences between the parties' health care proposals are as follows:

	Union Offer	County Offer
1.	Medical Deductibles	Medical Deductibles
	$100 deductible for individual $200 deductible for family	$250 deductible for individual $500 deductible for family

2.	Physician's Office Visit Co-Pays	Physician's Office Visit Co-Pays
	$10 for in network and out-of-network visits	$10 for in network visits $20 for out-of-network visits
3.	Prescription Out-of-Pocket Drug Card Caps	Prescription Out-of-Pocket Drug Card Caps
	$100 for individual $200 for family	$250 for individual $500 for family

The Union's proposal represents the status quo while the County's proposal represents the changes the County wants to make on all three of these items.

The County asserts that its proposal, which is prospective and slated to become effective on January 1, 2007, is "not out of line with the external comparables and matches up better with the external comparables than does the Union's offer"; that its dental benefits are "more generous than any of the external comparables"; that one of the internal comparables – i.e. the Door County Deputy Sheriff's Association – already has a prescription medication card and optional PPO; and that its proposal "mirrors the health benefits enjoyed by its non-represented employees and elected officials." The County adds that it has offered a significant quid pro quo because it has granted a 23¢ an hour wage increase; an increase in the Wellness Benefit from $300 to $500; a health risk assessment payment of $100 each for up to two adults; and an increase in the lifetime medical benefits from $1,000,000 to $2,000,000.

The County argues that the "greatest weight" factor supports its proposal because of Wisconsin's property tax freeze and tax rate limits; that the "greater weight" factor is "inextricably intertwined" with the greatest weight factor because of "relatively poor economic conditions" and ever-increasing health care costs; that the cost-of-living factor supports its proposal because its health insurance costs have "exceeded, by a wide margin, the general rate of

inflation as measured by the CPI"; and that the "Other" factor supports its proposal because it has absorbed most of the increase in health care costs and because employees will not be required to pay higher health care costs until January 1, 2007. The County also claims that "The Union's proposal [regarding medical deductibles] is mired in the dark ages, an unthinking adherence to the status quo . . ." which is "out of step with the comparables . . ." and the goal of encouraging employees to be more cost conscious; that the Union's co-payment proposal for office visits fails to provide for higher payment when employees use out-of-network providers; that the Union's insistence on out-of-pocket caps for prescription drug medications "are a poor cost containment strategy, . . . one that operates to a self-insured employer's detriment"; and that there is no merit to the Union's claim that the County should have selected the State Plan offered to Wisconsin municipalities by the State of Wisconsin rather than keeping its own self-funded insurance plan.

The Union counters that since employees "have made very significant concessions in this bargain already, additional concessions are not unwarranted" and that additional concessions adversely affect the "least well and poorest employees." It claims that the County's demands "are too much all at once"; that the County has offered an insufficient quid pro quo for its "proposed far reaching changes"; that the comparables do not favor the County; that the County's offer ignores "an historic premium share/use penalty trade off"; and that the County's rejection of the State Plan and "demand for greater employee concessions holds employees hostage to the failing self-funded plan."

The Union also asserts that the greatest weight factor "is not relevant to the instant dispute" because the County is in good financial condition as shown by its high bond rating and because the cost of the parties' Final Offers are identical, and that the "greater weight" factor

supports its offer because of the strong local economy. The Union adds that the County is "improperly attempting to change the status quo through arbitration" without offering an adequate quid pro quo, and that the interests and welfare of the public support its proposal because employer attempts throughout the country to shift the higher cost of health insurance to employees "has resulted in the crisis of uninsured that our nation faces."

There was extensive testimony at the hearing regarding the parties' health insurance proposals.

Rae Anne Beaudry, a health insurance broker and consultant employed by Health Care System Consultants, Inc., was hired by the County in 2003 to study its prior health insurance plan. She testified that she was "shocked" that the County then had a base indemnity medical plan because it allowed employees to see whatever doctors they wanted and because it did not provide for any discounting, thereby requiring the County to pay full retail prices for medical services. She also said that that plan had no "consumerism" because it did not require employees to pay more for certain medical services and that that plan was not marketable because it was so generous.

She recommended that the County switch over to a PPO because the County then could obtain "wholesale" prices and save money. She explained that 90% of all County employees currently use network providers under the new PPO and that the current $200 deductible for the plan is "unusually low."

She stated that the current plan's out-of-network deductibles should be higher because higher deductibles discourage out-of-network usage; that low caps and low deductibles are "inconsistent" with consumer driver health care choices; and that the County's Final Offer relating to health insurance provides for a new $500 Wellness benefit. She added that the

County is at "high risk" for having a self-funded plan because there has been "a consistent level of high shock losses," i.e. those over $50,000, and that the Union's offer is "3 steps forwards, 2 steps backwards" because it does not provide for realistic deductibles. She also testified that the State Plan is not better than the County's self-funded plan because self-funded entities entering the State Plan must pay run-off claims; because the County would be charged a surcharge for its past high experience; and that the County would have to pay about 31% more in higher premiums under the State Plan.

On cross-examination, Beaudry testified that both the Union and the County's health insurance proposals call for lower monthly premiums in 2007; that the County's proposal will cost about 13.6% less than the current plan; and that the Union's proposal is about 6.8% less than the current plan as set forth in County Exhibit 22, entitled "Rate Comparison of Current Plans to Management and Union Offers." She added that no one from the State Plan ever told her directly that premiums would be about 31% higher if the County joined the State Plan, and that her company would not be able to negotiate with the State of Wisconsin if the County selected the State Plan.

Gregory L. Bass, who works with Beaudry at Health Care System Consultants, Inc., testified that the cost savings set forth in County Exhibit 22 are not real savings because different groups of employees are involved.

It is within this context that the statutory criteria in Section 111.70(4)(cm)7 of MERA must be considered.

As for that, I find that the "greatest weight" factor does not impact on either parties' proposal because the total economic costs of both parties' overall Final Offers are identical over the course of the December 19, 2004 - December 31, 2006, agreements and because the

differences in the health care proposals - which do not manifest themselves until January 1, 2007 - are too small to be significantly implicated by any state laws or directives regarding the County's spending and taxing powers.

The "greater weight" factor has no impact because the local shipyard has been revitalized and because the local economic conditions can support either offer; because the County's good financial shape can be seen in the recent upgrade to its credit rating; and because former County Administrator Jude Genereaux at the beginning of this year stated that the County is in "grand financial condition" (Union Exhibit 9).

I also find that there is no issue regarding the lawful authority of the municipal employer; that the County has the financial ability to meet the costs of the Union's Final offer; and that the interests and welfare of the public are served by selecting either offer since there is no merit to the Union's claim that the public interest is not served when employers try to pass on some increased health care costs to their employees. I further find that Factor (f) relating to private employment does not favor either party because there is no evidence in the record regarding this issue and that Factor h relating to overall compensation is mixed.

The County argues that the "Other" factor supports the County's health care proposal because employees for the entire duration of the 2004-2006 agreements have been spared from paying the higher insurance costs the County wants to impose effective January 1, 2007, and because the County has picked up all those costs throughout that time. Since such savings have been matched by the savings generated by the Union's concessions described below, I find that this factor does not favor either party.

The County also claims that the cost-of-living factor supports its offer because the growth rate of its "health benefit costs has exceeded, by a wide margin, the general rate of inflation as measured by the CPI." The employees here, however, have agreed to significant health care concessions which already have cost them hundreds, if not thousands, of dollars for new co-pays, new deductibles, prescription drugs, and out-of-network services. Since the record does not reveal just how much more employees are paying for their health insurance because of these concessions, it is impossible to determine whether they are keeping pace with the CPI even when their across-the-board wage increases are considered (County Exhibit 27).

As for internal comparables, none of the County's five bargaining units have agreed to the County's health insurance proposals. The County asserts that its non-represented employees and elected officials "view themselves as being treated fairly" when it comes to health insurance and that that shows its health insurance proposal is reasonable. I find, however, that internal comparability must be determined by only looking at recognized collective bargaining units and that non-represented employees should be disregarded. The issue of internal comparability therefore does not favor either party.

As for the external comparables, the County in 2006 is tied with Oconto County for paying the lowest single premium of 90% and it is tied with Kewaunee County for paying the lowest family premium of 90%. All of the other counties pay a higher percentage of the health insurance premiums (Union Exhibit 10).

The employees here thus pay the highest single and family premiums among these comparables (Union Exhibit 10).

The County points out that its dental benefits are "more generous" than any of the external comparables because it pays 100% of the single and family premiums whereas Kewaunee County pays 100% of the single premium and 50% of the family premium; Oconto County pays 50% of both premiums; Brown County pays 92.5% of both premiums; Manitowoc County pays none of the premiums for six bargaining units and 100% of the premiums for a seventh unit; and Marinette County pays between 95% - 92.5% of the premiums (County Exhibit 9).

The Stipulations of the Parties favor the Union. The Union has agreed to eliminate the base – major indemnity plan, which paid 100% for all hospitalization expenses, in favor of a PPO which now has deductibles and which requires employees to pay in increments up to $1,500 for an individual and up to $3,000 for a family per year for out-of-network medical services. In addition, employees formerly received 100% payment for all prescription drugs whereas they now will pay $5 for generic drugs, $20 for certain brand drugs, and $35 for other formulary drugs. The new plan also provides for 85% payment for usual, customary, and reasonable charges as opposed to 90% for the prior plan; the new plan requires a $10 co-payment for office visits whereas the prior plan did not; and employees formerly had their choice of medical providers, whereas the PPO now restricts who they can see.

The County acknowledges on p. 8 of its Brief: "Under the Employer's proposal, premium rates will be lower than they are under the base major (indemnity) plan ($114.07 less per month for single and $285.17 less per month family coverage)." The Union's proposal also calls for lowering the premiums in 2004. The County's proposal therefore would lower the

County's insurance rates in 2007 by about 8.6% and the Union's proposal would lower the County's rates in 2007 by about 6.8% if all employees joined the PPO (County Exhibit 22). [2]

The health insurance issue therefore does not involve a union which has turned a blind eye to an employer's ever-increasing health insurance costs and its need to restore financial stability to a health insurance program which had a deficit of $629,054.43 in 2004 and which now has a surplus (County Exhibit 23). It, instead, centers on how much more the County can reasonably ask of its employees in order to further help hold down its health care costs.

In exchange for its proposal, the County is offering a quid pro quo which consists of increasing the lifetime maximum health benefits from $1,000,000 to $2,000,000; increasing the Wellness benefit from $300 to $500; making a health risk assessment payment of $100 each for up to two adults; and offering 23¢ an hour increase to all bargaining unit employees. [3]

The Union maintains that the County's proposed quid pro quo is inadequate because the 23¢ an hour wage increase totals about $478 per employee and that it does not cover the much higher out-of-pocket costs employees must incur in the form of higher co-pays for office visits, higher co-pays for medical services, and higher drug costs. It adds that the County's

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[2] Although Bass contradicted Beaudry's testimony by claiming that the 8.6% and 6.8% reductions were inaccurate, I am satisfied, based upon the totality of the record, that those figures are rough approximations of how much money the County would save under either proposal if all employees joined the PPO and that, moreover, even if everyone did not join the PPO, the County still would experience substantial savings close to those figures.

[3] In support of its claim that its quid pro quo is adequate, the County points to several external comparables where various quid pro quos were exchanged for concessions the employers wanted (County Exhibit 20). Those quid pro quos cannot be given much weight because this case must be decided within a context showing that the employees here already have made substantial concessions, thereby raising the very narrow question – which is unique to the facts of this case – of whether further concessions are warranted.

quid pro quo does not come close to the added $1,500 and $3,000 that some employees will have to pay for going outside the PPO, and that the County's total quid pro quo amounts to $66,976 while the Union has agreed to concessions totaling about $817,337. [4]

The County's proposal calling for higher co-pays for out-of-network office visits is reasonable because, as the County correctly points out, "Use of in-network providers are integral to the discounts a PPO provides," and because: "Having the same co-payment for both in-network and out-of-network providers . . . simply makes no sense." As a result, the very purpose of having a PPO and the lower medical costs it brings are undermined if there is no incentive to use in-network providers over out-of-network providers. However, the external comparables are split on the question of co-pays (County Exhibit 17).

As for the medical deductibles, the external comparables show a mixed picture since some of them have lower deductibles and others have higher deductibles (County Exhibit 17).

The County's drug cap proposal is supported by some of the external comparables which have higher deductibles, but none of them have third tier drug co-payments of $35 and only Manitowoc has a co-payment for brand names as high as the $20 for second tier drugs. The Union therefore correctly points out that "The existence of higher brand co-payments and a stiff third tier drug non-formulary charge of $35 per prescription, means that more employees will

[4] The Union also points to the written statements submitted by various employees who describe how adoption of the County's proposal would adversely affect them financially. The County objects to their consideration on the grounds that that they constitute hearsay; that they are privileged and have not been properly authenticated or waived; and that particular examples are not "logically connected to the issue at hand." Since the resolution of this issue mainly turns upon whether the County has offered a sufficient quid pro quo rather than upon how the County's proposal will affect the individual employees whose experiences may not be representative of other bargaining unit members, I have not considered these statements.

reach the caps in Door County than in the comparable communities so the caps in Door County must be lower to insure the employees . . . are not paying more as a group for drugs than the employees in the comparable communities."

Since the employees herein pay the highest single and family health insurance premiums among the external comparables (Union Exhibit 10), it is necessary to consider all three of these items in a package because of the cumulative effect they will have upon an employee's overall health care costs.

They also must be considered alongside the Union contention that its proposal is superior because the County erred in not switching to the State Plan even though the County's premiums for its self-funded plan increased by about 20% in 2005 and about 31-38% for 2006 (County Exhibit 24). That is why, claims the Union, it in March 2006 proposed switching to the State Plan and why it then offered to pay one-half (1/2) of any surcharges that the County would have to pay if it moved to the State Plan (Union Exhibit 10). The Union asserts that that would have resulted in lower single and family monthly premiums of $321 and $733 respectively (Union Exhibit 10), and that the County rejected the Union's proposal because it wanted certain Union concessions and because it relied upon the advice of its insurance consultants who would have been frozen out of the picture if the State Plan were selected. The Union thus argues that adopting the County's offer will encourage the County and its consultants to continue to "hold the employees hostage to the broken self-funded plan . . ." which the Union states has had a deficit for every year but one since its inception in 1988 (Union Exhibit 23).

The County points out that there is no mention of the State Plan in the Union's Final Offer and claims that it in negotiations "was amenable to, but the Union's rejected, participation in the . . ." State Plan.

The State Plan in 2006 provides for monthly health care premiums of $445.90 for single non-Medicare coverage and $1,111.30 for family non-Medicare coverage for local HMO's (Union Exhibit 10), which are lower than the monthly premiums under the County's PPO. The Union estimates that switching over to the State Plan can save between $61,167 - $1,020,604 annually over time depending upon what surcharge is charged by the State Plan (Union Exhibit 10). Beaudry challenged such estimates by saying that the State Plan would charge about 31% more in premiums and that the County would have to pay run-off claims, i.e. pending claims, if it joined the State Plan.

This record is not clear as to how much money, if any, would be saved by switching to the State Plan. However, since the run-off claims apparently have to be paid by the County at some point, those are not really extra costs. They are only costs that have to be paid now rather than later. In addition, even if the State Plan imposed a 31% surcharge for the first year, half of that would have been picked up by the Union and it is not clear that the County will continue to pay that surcharge in all subsequent years. It therefore is possible that the County over time can save a substantial amount of money by switching to the State Plan.

But, this record is too murky to make a definitive conclusion on that issue and the record also is too murky to determine exactly what happened in negotiations and why the parties could not reach agreement on that issue. What happened there, however, is immaterial because this case only centers on the County's self-funded plan and not the State Plan.

If the only item in dispute here centered on how much employees must pay for out-of-network office visits, the County's proposal would be selected because it is imperative to have higher out-of-network fees to encourage maximum participation in PPO's to help hold down an employer's medical costs.

As for the County's proposals for higher medical deductibles and higher drug caps, I find that they are not unreasonable on their face and that they are supported by some of the external comparables.

But, these items cannot be looked at in isolation. They must be considered within a context showing that the employees here pay higher monthly premiums than any of the external comparables, and that the County will be alone among all the comparables with a third tier drug charge of $35 and that only one of the comparables will join it in having a $20 charge for second tier drugs. In other words, selection of the County's offer will result in the County having either the most expensive, or one of the most expensive, health care plans among the comparables. Indeed, that may happen even if the Union's proposal is accepted.

The County's quid pro quo therefore is insufficient because selection of the County's proposal will only make this situation worse and because the Union already has made very substantial concessions which will result in almost all employees paying hundreds of dollars more for their medical and drug care (with some paying thousands more if they use out-of-network providers), thereby bringing down the County's health care costs by about 6.8% under the Union's proposal according to County Exhibit 22.

I thus conclude that the Union's proposal regarding the medical deductibles and drug caps is more reasonable than the County's proposal. I further conclude that these two items outweigh the County's need for higher out-of-network user fees and that the Union's overall health insurance proposal is, on balance, more reasonable than the County's proposal and that it should be included in all four agreements. [5]

[5] This is true even though the County provides a dental benefit which is more generous than the ones offered by most of the external comparables.

B. The Highway Department Agreement

The main issues here center on what is to happen to Highway Department employees who lose their commercial driver's license ("CDL"), and under what circumstances Highway Department employees must be required to obtain a hazardous materials certification, herein "Haz Mat."

Previously, employees who lost their driver's license while driving their personal vehicles were able to retain their CDL and continue driving for the County. Now, a federal law mandates that employees who lose their driver's license because of certain listed serious offenses lose their CDL for a year or more. The County's proposal states that the County will hold open the job of such employees for up to three months, after which they will be fired if they do not return to work. The County's proposal also provides that the County will be required to only hold open two such vacant positions at a time. The Union's proposal states that the County will have discretion in deciding whether there is alternative work available and that if there is not, the County then must keep open any such jobs for a year.

The parties also disagree over whether the grievance procedure should be changed for this and the Courthouse unit. The County wants to add language stating that the aggrieved party must always strike first in choosing which arbitrator is to be selected from an arbitration panel, and the Union wants to retain the current method which uses a coin flip to determine that question.

The Union claims that the new federal CDL restrictions "hold CDL holders to higher standards in their personal vehicles"; that its proposal strikes a "reasonable compromise" in the face of these new requirements; that the County's "radical" proposal requires termination for "minor non-work offenses"; and that the Union's offer is supported by the external comparables.

The Union also argues that its Haz Mat proposal is aimed at the "legal limits"; that its offer is a "measured response" which is supported by the external comparables; and that the County's proposal is too expansive. It also asserts that the County's offer is problematic "because obtaining a Haz Mat endorsement is time consuming and expensive at $128 when employees are required to renew it; because it is "invasive of personal privacy" and carries the risk that employees may be denied the endorsement; and because not all County employees need this endorsement under federal negotiations. It adds that it is merely trying to maintain the status quo which is why its proposal refers to specific job positions rather than to individual employees.

The County answers that its CDL proposal is more reasonable because it allows up to two employees to take leaves of absence of up to three months if they lose their CDLs; that such a limitation is needed to avoid management's "hardship" of keeping open such positions for a twelve-month period as proposed by the Union; and that its proposal "most closely approximates and is supported by the external comparables." The County adds that if the Union's proposal is selected, "Why would a CDL holder leave their current position for a temporary position with the County?" if he/she must vacate that position when the original holder of the position returns to work within 12 months. It also accuses the Union of "overreaching" for submitting its proposal without offering a quid pro quo and states that the public interest calls for keeping such drivers off the road. The County claims that the Union's Haz Mat proposal is "at best surplusage and at most far too restrictive of the Employer's discretion and flexibility, and altogether unreasonable," and that there is no need for the Union's language.

In this connection, Highway Commissioner John Kolodziej testified that all Highway Department employees except the bridgetender have CDL's; that all employees are required to drive trucks and that if they cannot do so, they "likely" will be terminated; and that no employee

in the last six years has lost his/her CDL. He also said that the new federal law which went into effect in 2006 states that an employee will lose his CDL if he/she is responsible for an accident in a personal vehicle; that the Union's Final Offer could pose a "hardship" because it is "difficult" to hire a temporary replacement for a year as suggested by the Union; and that the County does not know what its personnel needs will be at any given time, thereby requiring the County to maintain a full complement of regular employees. He added that about 12 or so employees under the new federal law must undergo a background security check to keep their Haz Mat certification; that the City will pay the $100 or so needed for the first background check for such certification; and that employees after that will have to pay for it themselves.

Kolodziej stated that one employee previously was transferred from Solid Waste to the Highway Department and that the County accommodated him by not assigning him any driving duties because "we didn't want to lay him off." He added that he wants the discretion to decide which employees need a Haz Mat certification and that the employee who was not laid off did not need a CDL when he worked in Solid Waste and that he therefore represented "very different" circumstances.

Francis Schweiner, a driver for the Kewaunee County Highway Department, testified by telephone that about three employees in addition to himself have Haz Mat licenses and that he did not know the legal requirements regarding that endorsement. Daniel Martin, a driver for the Oconto County Highway Department, also testified by telephone that the Haz Mat endorsement was dropped for his department on February 1, 2006, after federal authorities stated that it was not needed.

Highway Department employee Mike Tess testified that three employees over the years lost their personal driver's licenses after being convicted of drunken driving, but that they

continued driving for the County when they received occupational licenses and that none of them were fired. He also stated that not all highway trucks are sent out at the same time because someone is always working in the yard; that it is not hard to "find work for people"; and that the employee who transferred from Solid Waste did not have a CDL for "more than 3 months."

As for the CDL issue, it is true, as the Union points out, that employees can lose their personal driver's license for a series of "common violations" for "offenses which are completely divorced from that employee's conduct in the work place."

Nevertheless, those offenses have a direct impact upon whether employees remain fit to work when they lose their CDL's. As a result, this issue turns on what that impact will be and what reasonable accommodations the County should make regardless whether it is fair or unfair to lose a CDL because of minor traffic violations.

On this point, Highway Commissioner Kolodziej testified that he cannot hold open such jobs for twelve months because it would be very hard to hire temporary replacements for such extended periods of time and because his department requires a full complement of employees. In addition, the Union's proposal does not limit the number of employees who are to be so protected, whereas the County's proposal only protects up to two such employees at a time.

A look at the external comparables shows that Brown County places such an employee in an "open position that does not require the use of a CDL, seniority permitting" if one is available or, alternatively, that such an employee is put on leave of absence for up to one year if no such work is available. [6] The Kewaunee County Highway Department agreement states that

[6] In so finding, I am relying upon the most recent Brown County Memorandum of Agreement (Union Exhibit 7), rather than County Exhibit 3 which refers to the prior Memorandum.

the employer "shall make a good faith effort to place the employee in another position." A February 2006 side letter to the Manitowoc County Highway Department agreement provides for "up to thirteen (13) months of unpaid leave of absence," or, alternatively, the assignment to other work with the proviso: "The decision of whether or not non-CDL work is available is reserved exclusively to management." A March 29, 2005 side letter to the Shawano County Highway Department agreement provides for placing such an employee "in an open position within the bargaining unit that does not require the use of a CDL, seniority permitting," and adds that if such work is unavailable, he/she should be placed in a non-bargaining unit position "subject to availability of work, as determined by management." The Waupaca Highway Department agreement provides for a twelve month leave of absence for "the first offense only" or, alternatively, "may be scheduled subject to availability of work, as determined by management," (Union Exhibit 7). [7]

That part of the Union's proposal which calls for assigning employees who lose their CDL's to non-driving work "If the Employer in its discretion, determines . . ." that such non-driving work is available is reasonable because it leaves the decision entirely up to management as to whether such work is available and because it is similar to what is found in some of the comparables.

Leaving positions open for a full year if such alternative work is unavailable, however, is another matter. Only Manitowoc County and Waupaca County provide for such long leaves of absence and Waupaca County limits such leaves to first-time offenses, whereas the Union's

[7] There is no reference to CDL's in the agreements for Oconto and Marinette counties.

proposal here has no such limitation. The Union's proposal also has no limit on the number of employees who can be on such extended leaves of absence, thereby making it all the more difficult for the County if a number of employees lose their licenses at the same time.

Absent clear and overwhelming support among the comparables, I conclude that the County's proposal is more reasonable because it is unfair to require the County to hold open an unlimited number of such positions for up to a year when the County needs a full complement of employees and when it may be hard to hire temporary replacements to fill in for employees until their CDL's are restored.

The County's Haz Mat proposal also is more reasonable than the Union's proposal because Kolodziej testified that he needs the flexibility to decide which of his drivers needs a Haz Mat certification and because the Union's proposal calling for such a certification only for "those positions which are routinely required . . ." to carry hazardous materials is fraught with problems because it can open up the question of whether such duties are "routinely required."

There may be a legal question over the need for such a certification since some external comparables do not require it. [8] However, given the need to comply with the federal law [9] and

[8] Oconto and Manitowoc counties do not now require employees to have Haz Mat endorsements, but they may be required to obtain them in the future if necessary. Brown and Kewaunee counties require that endorsement only for employees who work with hazardous materials (Union Exhibit 7).

[9] A June 30, 2005, letter from the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration states that such certifications are needed for a governmental entity when it transports hazardous materials for a "commercial purpose" but they are not needed for "non-commercial purposes," (County Exhibit 6).

the further need to make sure that its drivers are fully capable of transporting hazardous materials, I find that this issue must be resolved on the side of caution and safety and that doubts must be resolved in favor of the County's proposal. [10]

As for selecting arbitrators, the parties traditionally have flipped a coin to determine who will have a first strike pursuant to a side letter which spelled out that procedure. The Union in negotiations proposed to incorporate that understanding in the agreement and a tentative agreement was initially reached on that issue, but the County subsequently rejected it (Union Exhibit 8). The County wants to change that by requiring the aggrieved party to always strike first while the Union wants to retain the status quo.

Calling it "the proverbial tempest in a tea pot," the County asserts that its goal "is to fine tune the language and create substantial conformity between the various bargaining units . . ." as to which party strikes first from an arbitration panel. The Union contends that the status quo is equitable because a coin flip determines the first strike and because it is unfair to always require the Union, which is almost always the aggrieved party, to strike first.

I find that the County has not provided sufficient justification as to why the status quo should be changed and its proposal is therefore rejected for both this and the Courthouse bargaining unit in favor of the Union's proposal which calls for maintaining the status quo.

However, since the proposals concerning the loss of CDL's and Haz Mat certification are far more important than how arbitrators are selected, I conclude that the County's Final Offer is more reasonable and that it should be included in the Highway Department agreement.

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[10] In so finding, I am relying on Kolodziej's representation that only 12 or so drivers are required to have this certification rather than all of them.

C. The Courthouse Agreement

The main issues here center on whether a lapsed Memorandum of Understanding, herein "Memo," which provides for some job security for Judicial Assistants and other employees who are terminated by judges and other elected officials should be carried over to the new Courthouse agreement as proposed by the Union and opposed by the County, and whether the recall rights of all Courthouse bargaining unit members, which are now of unlimited duration, should be reduced to 18 months as proposed by the County and opposed by the Union.

The parties in 2002 agreed to that Memo because the Wisconsin Supreme Court earlier ruled in Barland v. Eau Claire County, 216 Wis.2d. 560 (1998) that circuit court judges can "remove his or her judicial assistant, regardless of the provisions of a collective bargaining agreement," and because assistants so removed had no job rights in the absence of such a Memorandum.

The Memo states in pertinent part: [11]

MEMORANDUM OF UNDERSTANDING CONCERNING THE REMOVAL OF BARGAINING UNIT MEMBERS AT THE DISCRETION OF AN ELECTED OFFICIAL

County of Door (County) and Door County Courthouse Employees (DCCE) hereby agree as follows:

A. This Memorandum of Understanding is driven by and responsive to an exercise of judicial authority in the removal or appointment of a judicial assistant.

B. This Memorandum of Understanding shall apply only to positions affected by the statutory or common law authority of certain elected officials' powers of appointment and removal.

[11] The Memo grew out of an April 30, 2002, grievance which protested the termination of Judicial Assistant Karin Heldmann, (Union Exhibit 5).

C. A position subject to appointment/removal by an elected official:

1. Continues to be included in the bargaining unit;
2. Is not subject to the bumping or posting provisions of the collective bargaining agreement;
3. Shall not be posted, but if the elected official requests applicants, a notice of such vacancies or new positions and a copy of this agreement shall be posted in the same locations as regular job postings for a minimum of five working days. Unsuccessful applicants for said positions may not grieve the selection process.

D. A bargaining unit member appointed to a position by an elected official are (sic) subject to the provisions of the collective bargaining agreement in all respects except those that conflict with an elected official's powers to appoint and remove.

E. A bargaining unit member appointed to a position by an elected official and subsequently removed by an elected official:

1. May post and will be given preference according to Article 6 Seniority D. Job Posting of the Agreement for vacancies in the bargaining unit for a period of twenty-four months;
2. Has no right to bump;
3. Shall be in "removed" status in lieu of "lay off" status while exercising his or her posting rights and the requirements of Article 6. Seniority B. shall not apply.

F. Bargaining unit members who posted (versus appointed) to a position and are subsequently removed from that position by an elected official, may exercise their rights according to Article 6 Seniority of the Agreement. Temporary employees need not be laid off first and the two week layoff notice requirement is waived for any layoffs directly resulting from such removals.

. . .

The Union maintains that the Memo has served a very useful purpose; that the County "is attempting to alter the status quo by refusing to renew the Memo"; that the County's position is an "incredibly unreasonable" departure from the status quo"; and that the County "has not offered any alternative remedy to the problem." The Union also asserts that the County has not

offered a quid pro quo such as unit-wide seniority in exchange for the County's proposal to limit recall rights to 18 months; that the status quo represents a "time-tested compromise" because the parties "traded narrower departmental lay off provision" for unlimited recall rights a "long time ago"; that the internal and external comparables do not support the County's proposal; and that, "There is no change in circumstances which warrant the change."

The County asserts that "the Memorandum died a natural death and has served its purpose" because current Judicial Assistants now know that "the circuit court judge has the exclusive authority to appoint and remove"; that "no problem exists that needs to be addressed"; and that there is "no rational nexus" between the change the Union is proposing and any "real need." The County also contends that "There is a need to establish a maximum period of time an employee is eligible for recall"; that its proposal to cut off recall rights after 18 months is supported by the internal and external comparables; and that its proposal "reasonably addresses a demonstrated need."

On the recall issue, Administrative Assistant Diane Christenson, who is in the Courthouse unit, testified without contradiction that the Union in 1987 contract negotiations agreed to departmental seniority as part of a trade off for unlimited recall rights.

Her testimony is the key to this recall issue because it shows that the Union in 1987 gave up its claim to unit-wide seniority in exchange for much narrower departmental seniority which carried with it recall rights of unlimited duration because there will be fewer open jobs to be recalled to in a department as opposed to the entire bargaining unit.

In support of its proposal, the County points out that its other four bargaining units all provide for recall which is limited to either 18 or 24 months.

The problem with this claim is that the other units have unit-wide seniority which enable them to be recalled to more jobs throughout the entire bargaining units unlike departmental seniority which severely limits the number of possible jobs that can be opened up to a laid off Courthouse employee. These other internal units thus do not provide exact comparables because they have other language which is noticeably different from what is found here and because the County has not offered unit-wide seniority to Courthouse employees.

The external comparables present a mixed picture: None of them have the kind of departmental seniority found here and Brown County limits recall rights to 18-24 months. Kewaunee County and Manitowoc County have a limitation on layoff and Marinette County and Oconto County do not have any layoff language (Union Exhibit 6).

In this connection, it is well established that the proponent of change of course bears the burden of proving there is a need for change. [12]

Since the County has failed to meet its burden of proving the need for its proposed change, I find that the Union's layoff proposal which calls for maintaining the status quo is more reasonable.

As for the Memo, the County correctly points out that Judicial Assistants now know that they can be summarily fired by judges and that no external comparables have similar language to protect such employees.

However, the Memo is not limited to Judicial Assistants since it also covers employees who work for other elected officials. Furthermore, the County has not shown that the Memo has

[12] See Menomonee Falls School District, Dec. No. 24142-A (Christenson, 1987); Twin Lakes #4 School District, Dec. No. 26592-A (Petrie, 1991); D.C. Everest Area School District, Dec. No. 24678-A (Malamud, 1988).

caused any difficulties in the four years it has been in place. The County therefore has not met its burden of proving there is a sufficient need to change.

In addition, the terms of the Memo are very reasonable by providing a minimum amount of job security in the form of bidding for open positions to those employees who serve at the pleasure of judges and other elected officials and who otherwise have no recourse whatsoever if they are terminated. The Memo therefore represents the minimal amount of work place security that can be extended to these employees.

I find that these latter factors outweigh the lack of external comparables and that the Union's proposal is more reasonable than the County's.

Based upon the above, I therefore conclude that the Union's Final Offer should be included in the Courthouse agreement. [13]

In light of the above, I issue the following

AWARD

1. The tentative agreements agreed to by the parties for each of the four bargaining units are to be included in those collective bargaining agreements.

2. The Union's Final Offer regarding health insurance shall be included in the four collective bargaining agreements which are the subject of this proceeding.

3. The County's Final Offer for the Highway Department shall be included in the Highway Department's collective bargaining agreement.

[13] For the reasons stated above, the Union's proposal for striking arbitrators also is to be included in this agreement.

4. The Union's Final Offer for the Courthouse shall be included in the Courthouse collective bargaining agreement.

Dated at Madison, Wisconsin, this 20th day of December, 2006.

Amedeo Greco /s/
Amedeo Greco, Arbitrator