ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	)	
Between	)	
ST. CROIX COUNTY HEALTH CARE CENTER	)	WERC Case 210 No. 65315 INT/ARB-10569 Decision No. 31703-A
And	)	
LOCAL 2721, WISCONSIN COUNCIL 40 AFSCME, AFL-CIO	)	

Impartial Arbitrator

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Hearing Held

December 18, 2006
New Richmond, Wisconsin

Appearances

For the Employer	WELD RILEY PRENN & RICCI, S.C. By Stephen L. Weld, Esq. 3624 Oakwood Hills Parkway Post Office Box 1030 Eau Claire, WI 54702-1030
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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the St. Croix County Health Care Center and AFSCME Local Union 2721, with the matter in dispute the terms of the two year renewal labor agreement between the parties, covering January 1, 2006 through and including December 31, 2007, in a bargaining unit of health care employees at the County's Health Care Center.

After failure of the parties to reach full agreement in the negotiations process, the County on November 14, 2005, filed a petition with the WERC seeking arbitration of their impasse. After investigation by a member of its staff, the Commission issued Findings of Fact, Conclusions of Law, Certification of the Results of Investigation and an Order Requiring Arbitration on June 7, 2006. On July 6, 2006, following the selection of the parties, it issued an order appointing the undersigned to hear and decide the matter.

A hearing took place in New Richmond, Wisconsin, on December 18, 2006, at which both parties received full opportunities to present evidence and argument in support of their respective positions, and reserved the right to close with the submission of post-hearing briefs and reply briefs. Timely post-hearing briefs were received and distributed to the parties by the undersigned, the Union thereafter submitted a reply brief, the Employer waived its right to submit on April 20, 2007, at which time the record was closed.

The Final Offers of the Parties

The primary disagreement between the parties is the Employer's proposal for no wage increase during calendar year 2006, and two separate increases during calendar year 2007, versus the Union's proposal for two increases within both 2006 and 2007.

(1) The *County's final offer*, dated May 6, 2006, proposes, in material part as follows:

"2. Effective January 1, 2007 a 2% wage increase, over the January 1, 2005 rates.

3. Effective July 1, 2007 a 1% wage rate increase, over the January 1, 2007 rates."

(2) The *Union's final offer*, dated May 18, 2006, proposes, in material part as follows:

"4. Increase all wages by 2% 1/1/06, 1% 7/1/06, 2% 1/1/07 and 1%

7/1/07"

The Statutory Arbitral Criteria

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

"7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

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

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

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

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

d. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

e. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

f. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost-of-living.

h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration hearing.

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

POSITION OF THE EMPLOYER

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

(1) That the identity of the primary external comparables in this proceeding should be established as follows.

(a) In a prior arbitration award involving the County's Human Services Professionals, Arbitrator Imes concluded that the counties previously used in a wage study for its non-union employees in 1999, were appropriate comparables.[1] These previously identified comparables with county owned nursing homes are: Calumet, Columbia, Dodge, Jefferson, Manitowoc, Marathon, Outagamie, Ozaukee, Portage, Sauk, Walworth, Washington and Wood.[2]

(b) Both parties have agreed to add to the above comparables, the contiguous counties of Dunn and Polk.

(c) The County also proposes to add LaCrosse and Fond du Lac Counties, both of which have been found comparable to St. Croix County by Arbitrator Yaffe in a 1981 arbitration involving the County's Social Services bargaining unit.

(i) Both LaCrosse County, with a population of 110,128, and Fond du Lac County, with a population of 100,180, fit within the population range of comparable counties previously selected by Arbitrator Imes (*i.e.*, from 45,168 in Calumet County to 170,680 in Outagamie County); St. Croix County has a population of 75,686.[3]

[1] Referring to the contents of Employer Exhibit #26 and Union Exhibits #4B-#4C.

[2] Referring to the contents of Employer Exhibit #28.

[3] Referring to the contents of Employer Exhibit #30.

(ii) LaCrosse County with an equalized value of $6,422,072,400, and Fond du Lac County with an equalized value of $5,742,077,800, rank just below St. Croix County's $7,217,833,200.[4] The growth rates in equalized values for LaCrosse and Fond du Lac Counties are also within growth range of the Imes' comparables.[5]

(iii) Fond du Lac and LaCrosse Counties' 2004 per capita income at $31,366 and $29,637, respectively, are close to St. Croix County's at $32,760.[6]

(2) The County's wage proposal reflects its need to curb continuing operating losses at the nursing home.

(a) The nursing home had a $750,000 deficit at the end of 2000, and, beginning in 2001, the County applied $250,000 per year from its general operating fund to the nursing home budget, hoping to erase the $750,000 deficit by the end of 2003.[7]

(i) The nursing home's operating losses, however, continued to grow, reaching $1,508,686 in 2004, and $1,596,662 in 2005.

(ii) With no wage increase in 2006, the County reports a net operational deficit of $1,096,839 for the first ten months of 2006.

(b) Since 2001, the County has applied and will budget tax money to cover the following nursing home's actual and anticipated deficits.[8]

Year	Tax Levy Applied to Nursing Home	% of Total Levy Applied to Nursing Home
2001	$ 535,631	4.34%
2002	$1,532,965	10.11%
2003	$1,035,467	5.86%
2004	$1,101,398	6.02%
2005	$1,017,504	4.94%
2006	$1,309,742	6.46% (estimated)
2007	$1,268,603	5.89% (estimated)

(c) The County continues to transfer monies from its general operating fund to cover annual deficits. Because the vast majority of residents in the home are covered by Medicare and Medicaid, whose reimbursements do not cover the actual cost of care, the operating deficits will continue.

(3) The County is working to reduce the deficits in the nursing home.

(a) The County's attempt to reduce the operating loss in the

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[4] Referring to the contents of Employer Exhibit #31.

[5] Referring to the contents of Employer Exhibit #32.

[6] Referring to the contents of Employer Exhibit #34.

[7] Referring to the contents of Employer Exhibit #18.

[8] Referring to the contents of Employer Exhibit #19.

nursing home is not limited to an employee wage freeze in 2006; it hired a consultant, Wipfli, to make recommendations on how these operations can become more efficient.

(b) At the end of 2005, Wipfli provided a report containing cost savings recommendations.[9]

(i) It replaced the previous nursing home administrator with a contracted employee, Bill Van Offeren, who is committed to implementing the Wipfli recommendations designed to make the operations more efficient.

(ii) The recommended elimination of three positions, in addition to modification of the mix of RNS, LPNs and CNAs, has improved efficiency and resulted in approximately $300,000 in savings in 2006.

(iii) Mr. Van Offeren testified that while the County will never be able to cover all operating losses due to Medicaid reimbursement rates not covering the cost of care, the nursing home can be operated more efficiently: he explained that Wipfli's #1 recommendation, reduction from 72 to 50 beds, had not been implemented because of the impact on existing residents; he further testified that the nursing home's wages and benefits are far above the State's average and are, therefore, not fully reimbursed.

(4) Tax levy limits in 2006 and 2007 make it especially difficult to sustain continued operating losses in the nursing home.

(a) In 2006 and 2007 the State implemented new limits on tax levies.

(i) Counties could increase their tax levy dollars only to the extent of new construction growth.

(ii) St. Croix County's net new construction growth for 2005, which determined the maximum allowable increase in the levy for the 2006 operating budget, was 6.64%.[10] It did, in fact, levy the maximum allowable increase for 2006.

(iii) The County's new construction growth declined in 2006, resulting it its ability to increase its operating levy by only 4.794% for 2007.

(iv) The County was able to increase its total property tax levy by $1,387,156 in 2006, and by $1,258,329 in 2007.[11]

- With $1,309,742 (94% of the 2006 increase) applied to the nursing home deficit, the County's revenue increase for all other expenses, including debt service obligations,

[9] Referring to the contents of Employer Exhibit #15-A.

[10] Referring to the contents of either Employer Exhibit #21 or Union Exhibit #5c.

[11] Referring to the contents of Employer Exhibit #20.

amounts to only $77,414 in 2006.[12]

[12] Referring to the contents of Employer Exhibit #

- Pursuant to the above, the County was able to stay within its levy limit "...only because supervisors agreed to borrow about $530,000 for three capital projects, and to use $542,834 from the sales tax fund and $529,899 of unspent money from the general fund to offset expenses.[13]

(b) The 2007 budget situation is even more dire.

(i) It is able to increase its revenue by only $1,258,329, while $1,268,603 will be needed to cover the operating deficit in the nursing home.[14]

(ii) Budget cuts were thus necessary: after three days of hearings and $2.4 million being chopped from 2007 budget requests, the County Finance Committee, close to finalizing the budget, learned that health insurance costs would increase $351,358 more than previously anticipated, and it thus again elected to tap the county sales tax fund to cover this unanticipated cost.[15]

(c) The County's property tax levies increased dramatically between 2000 and 2005, an increase of 62.81% over five years, the largest increase among the external comparables.[16]

(i) Total property taxes, comprised of school district, city, county, VTAE, etc., also increased by over 62%.

(ii) Taxes on residential housing account for about 80% of the County's property tax base.[17]

- The affected homeowners have made it clear that they are feeling the pain.

- The County Board has attempted to heed the call of taxpayers by making significant budget cuts, tapping into sales tax receipts, borrowing monies, and working to reduce the operating losses in the nursing home.

- A one-year freeze on wage rates in the nursing home, for both union and non-union employees, represents one way to reduce its operating losses.

(5) Employee wages compare favorably to those in comparable county homes, despite the proposed wage freeze.

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[13] Referring to the contents of Employer Exhibit #21.

[14] Referring to the contents of Employer Exhibits #23 & #23.

[15] Referring to the contents of Employer Exhibit #24.

[16] Referring to the contents of Employer Exhibit #38.

[17] Referring to the contents of Employer Exhibit #25.

(a) The County surveyed all privately owned nursing homes within the five-county geographic areas of Barron, Dunn, Pierce, Polk and St. Croix Counties.[18]

(b) When the wages of nursing home employees are compared to other similar employees in the public sector, St. Croix County health care center employees rank fairly high, and when compared to local private sector employees performing similar work, they clearly exceed the local labor market.[19]

(c) In the above connection it is remarkable that Ozaukee and Washington Counties, with the highest per capita incomes, and the highest priced homes among the comparables, pay lower wages than St. Croix County.[20]

(d) While the Union will argue that St. Croix County's wealth and its proximity to the large Minneapolis-St. Paul metropolitan area should make it a wage leader; the same can be said for Ozaukee and Washington Counties' proximity to and/or inclusion in the Milwaukee metropolitan area.[21]

(e) Arbitrators have consistently recognized that it is the actual wage rates paid to employees rather than the percentage increases received, which is the most pertinent criterion.[22]

(f) A comparison of actual wage levels among the county nursing homes demonstrates that the 2006 wages provided in the Employer's offer maintain above average wage levels.

(6) The County's proposed 2006 wage rates exceed those of the local private sector.

(a) The County surveyed all privately-owned nursing homes within the five-county area of Barron, Dunn, Pierce, Polk and St. Croix Counties, with responses from twelve privately owned and two municipally owned homes, which provided the following items of information.[23]

(i) Barron Riverside Manor in Barron County, United Pioneer Home in Polk County and Spring Valley HCC in Pierce County, all froze wages in 2006.

(ii) Employees at Glenhaven in St. Croix County received wage increases ranging from zero to 2%.

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[18] Referring to the contents of Employer Exhibits #45 & #46.

[19] Referring to the contents of Employer Exhibits #38-#42, containing comparisons of wages paid to those employed as LPNs (Licensed Practical Nurses), Housekeepers, Laundry Workers and Cooks.

[20] Referring to the contents of Employer Exhibits #34, #35 & #38-#42.

[21] Referring to the contents of Employer Exhibit #27.

[22] Referring to the following decisions: *Arbitrator Gil Vernon* in Douglas County (Nurses), Dec. No. 26687-A (7/91); *Arbitrator Frank Zeidler* in City of Platteville, Dec. No. 27911-A (7/94); and *Arbitrator Howard Bellman* in Monona Grove School District, Dec. No. 28423-A (2/96).

[23] Referring to the contents of Employer Exhibit #43.

(iii) Employees at United Pioneer Home and Spring Valley HCC are experiencing a second year of frozen wages in 2007.

(b) The wage rate data for individual classifications among the comparables, provide the following items of information:[24]

(i) The Employer proposed $14.01 wage rate for CNAs is exceeded by only three local employers (Knapp Haven, Prescott, and Spring Valley HCC).

(ii) The Employer proposed $19.13 wage rate for LPNs is exceeded only by the $19.34 wage rate paid at the Baldwin Care Center.

(iii) The Employer proposed $12.48 wage rate for Food Service Workers, Housekeepers and Laundry classifications, is exceeded only by Prescott Nursing & Rehab.

(iv) The Employer proposed $14.01 wage rate for Cooks, exceeded the wages paid for all cook positions.

(v) Only the County proposed wage rate for the Activity Aides is relatively low, but the County, following its consultant's recommendation, has eliminated the majority of the positions in this classification.[25]

(7) The County's benefit package is complete.

(a) St. Croix County's employees receive an excellent benefit package, the cost of which continues to escalate.

(b) The County's health insurance costs increased over 18% in 2006, and another 8% in 2007; employee compensation rose in 2006, despite the County's proposed wage freeze.

(c) County employees receive benefits which are significantly higher than those in the area; this is particularly true relative to retirement benefits, where it fully funds WRS contributions - equivalent to 9.75% of employee wages in 2006, and 10.15% in 2007.[26]

(8) The interests and welfare of the public criterion favors a one-year freeze in wages.

(a) Section 111.70(4)(cm)7r, Wis. Stat., requires that the Arbitrator consider "the interests and welfare of the public" and the financial ability of the unit of government to meet the costs of the parties' respective final offers.

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[24] Referring to the contents of Employer Exhibit #44.

[25] Referring to the *testimony of Mr. Van Offeren*.

[26] Referring to the contents of Employer Exhibits #6-#8.

(b) The Union will argue that St. Croix can easily afford the additional wage and wage-based benefit costs under the its final offer, approximately $98,734 over the two-year period in dispute.[27]

(c) The County submits that the attempts of the County Finance Committee to balance the 2006 and 2007 budgets within its revenue limitations tells a different story.

(i) Since 2002, over $1 million per year, approximately 6% of the County's total operating levy, has been applied to nursing home operating losses.[28]

(ii) The State's implementation of levy limits in 2006 and 2007, based on its growth in new construction, has hit St. Croix County at a time when nursing home losses of #1.3 million in 2006 and over $1.25 million in 2007 are anticipated.

(iii) The County is taxing to the max.[29]

- The allowable revenue increase is being eaten up by the nursing home's operating losses.
- The allowable levy increase of $1,258,329, is actually less than the anticipated 2007 nursing home loss of $1,268,603.

(iv) The situation has left the County with no option but to explore potential sale, lease or public-private partnership of the nursing home.[30]

- Continuation of the status quo is simply no longer a viable option.
- One could argue that the County's final offer provides a certain measure of job security to the health care center's employees, in that the lower cost of continued operations, the more likely the center will continue those operations.
- The Union's proposed 2006 wage increase will be reflected in 2007 wage rates and in wages every year thereafter, increasing the nursing homes operating deficit even more.
- A wage freeze, and even implementation of all of its consultant's recommendations, will not eliminate the operating deficit; but the continued operating losses in the nursing home must be addressed and reduced if the facility is to remain operational.

In summary and conclusion, the County requests a one-year reprieve in

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[27] Referring to the contents of Employer Exhibit #5.

[28] Referring to the contents of Employer Exhibit #18.

[29] Referring tot he contentions of Employer Exhibit #19.

[30] Referring the contents of Employer Exhibit #17.

wage increases for its nursing home employees on the following bases: operating losses in the nursing home continue to mount, and they have consumed most of the County's allowable revenue increases in 2006 and 2007; the 2006 wage rate proposed by the County exceeds the majority of external public sector comparables as well as the vast majority of area private and municipal nursing home wages; and the County's final offer may provide the employees with more job security as the rising operating losses have become the catalyst for debate on the future of the nursing home. Based upon the foregoing facts, relevant case law and arbitral authority, the County asks that its final offer be selected by the Arbitrator.

POSITION OF THE UNION

In support of the contention that its final offer is the more appropriate of the two before the undersigned in this proceeding, the Union emphasized the following principal considerations and arguments.

(1) The statute requires that the Arbitrator give *greatest weight* to "...any state law or directive lawfully issued by a state legislative or administrative officer, body, or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. ..."

(a) At a time when Wisconsin counties are constrained in their abilities to increase their budgets due to the property tax freeze, St. Croix County fares quite well.

(i) The evidence in the record fails to show that any state imposed expenditure or revenue restriction prohibits it from providing the same wage increase to Health Care Center employees as provided to all other represented employees in the County.

(ii) The evidence does show the impact of the revenue limits on St. Croix and the comparable counties' budgets in 2006 and 2007.[31]

- The 2004-2005 Net New Construction for St. Croix was 6.645, meaning that it was able to increase levy revenue by 6.645 percent for the 2006 budget: this degree of revenue generating ability far exceeds and is unsurpassed by the counties in the Union proposed comparable pool by almost 3%; the next highest was Calumet County at 3.718% for 2006.

- The story for the 2007 St. Croix budget also allows it to generate a greater percentage of revenue than the comparable counties.

[31] Referring to the contents of Union Exhibits #5C & #5D.

- While other Wisconsin Counties had to be content with 2% increases in levy revenue, St. Croix County has been in a position to draw in a healthy amount of revenue and, accordingly, the levy limits have not affected it as much as they have in the rest of the State.

(iii) State imposed restrictions to Counties' operating levy rates, capping them at their 1992 levels, are not restricting the operations of St. Croix County.[32] In 2005 the County's actual operating levy was at 57.57 percent below its allowable level.[33]

(b) In accordance with the above evidence, it submits that the *greatest weight criterion* should not be determinative in this proceeding.

(2) The statute requires that the Arbitrator give *greater weight* to "...economic conditions in the jurisdiction of the municipal employer..."

(a) The economic condition of St. Croix County places it among the wealthiest and fastest growing counties in Wisconsin.

(i) Residents of the County enjoy high and growing income levels, significant property wealth, and falling unemployment rates.[34]

- In 2004 its per capita income was the 8th highest in the State, and 4th highest of the comparable counties.

- In 2003, it was the 3rd highest in the State and the 2nd highest of the comparable counties.

- In 2005, the per capita property value was 14th highest in the State and 5th highest of the comparable counties.

(ii) In accordance with the above, the County enjoys a strong tax base in terms of both income and property wealth, and is able to generate significant revenue through various tax sources, including both sales and property taxes.

(b) The application of the *greater weight criterion* is based upon the conditions of the municipal employer, not the nursing home, which is reflected in the following excerpt from a recent decision involving the Richland County Health Care Center:

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[32] Referring to the contents of Union Exhibit #5F, a copy of Section 59.605, Wis. Stat. which restricts counties in terms of both levy revenue and levy rates.

[33] Referring to the contents of Union Exhibit #5E.

[34] Referring to the contents of Union Exhibits #7A-#7D.

"But in terms of the statutory criteria, especially the criterion that the arbitrator shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the traditional factors, the financial plight of the nursing home is not the dominant financial factor; indeed, the criterion requires the arbitrator to give greater weight to the economic conditions in the jurisdiction of the municipal employer. The municipal employer in this case is not Pine Valley but Richland County.[35]

(c) The record shows an improving labor market, growing income wealth, and high property values in St. Croix County. Given this, the Union urges that the greater weight criterion neither prohibits consideration of the Union's final offer nor supports a wage freeze.

(3) Following consideration of any state imposed limitations on expenditures or revenues and local economic conditions, arbitrators are to consider and give weight to various other factors, including: (a) lawful authority of the employer; (b) stipulations of the parties; (c) interest and welfare of the public and financial ability of the unit of government to pay the costs of the final offer; (d) internal comparisons; (e) external public sector comparisons; (f) external private sector comparisons; (g) cost-of-living; (h) overall compensation; and (i) changes in any of the foregoing circumstances during the pendency of the arbitration proceedings. Since many of these criteria are not germane to this dispute, the Union will address the factors it believes are relevant in this matter.

(4) The *interest and welfare of the public and ability to pay* criterion support the position of the Union.

(a) The ability to pay of St. Croix County rather than the financial condition of the St. Croix County Health Care Center, is material and relevant in connection with applying this criterion.

(b) The financial condition and the ability to pay of St. Croix County is not an issue in this proceeding.

(i) Its equalized value increased by 12.43% in 2005; and its land wealth is 6th highest among the primary intraindustry comparables, and 4th highest in per capita value. This degree and growth of property wealth has allowed it to increase taxes collected while, at the same time, decreasing the county levy rate.[36]

(ii) Evidence indicates that the County enjoys a healthy and growing undesignated fund reserve.

- From 2003 to 2005, it experienced a significant growth of 13.425%.

- In 2003, 2004 and 2005, its reserves as a

[35] Referring to the *decision of Arbitrator Engmann* in Richland County, Dec. No. 31606-A (10/22/06).

[36] Referring to the contents of Union Exhibit #5B.

percentage of expenditures were 30.3%, 30.66% and 32.17%, respectively, which ratios are well above recommended minimums of the GFOA.

(c) The County's Health Care Center is a business operating in a volatile industry.

(i) All Wisconsin counties which operate public nursing homes struggle with operational losses, cuts in federal and state aid, and increased costs in providing care.

(ii) St. Croix County is not an exception to the above struggles, but it is the only county, among the primary intraindustry comparables, which has sought to impose a wage freeze on its employees.

(d) Based upon the financial record in this proceeding it is clear that the County is not faced with *inability to pay*, but rather with *unwillingness to pay*.[37]

(e) Health Care Center employees deserve equal treatment to that afforded other County employees. It is a political decision for the County to operate a nursing home, and, if it elects to do so, it has the responsibility and duty to provide fair and just wage increases just as it has for other County employees.

(f) The interests and welfare of the public is served by having nursing home employees paid at a competitive rate to their peers in comparable communities and to receive treatment equal to that afforded other County employees.

(5) It submits that the primary intraindustry comparables in this matter should be determined as follows.

(a) The parties are in agreement that the primary comparables should consist of those identified by Arbitrator Imes in the County's most recent interest arbitration, in addition to the two contiguous counties which have county nursing homes with union represented employees (*i.e.*, Polk and Dunn Counties.[38]

(b) That the County suggested addition of Fond du Lac and Green Lake Counties to the primary comparables, in reliance upon an earlier County interest arbitration, should be rejected, as it was by Arbitrator Imes, due to changed circumstances, in the matter cited above.[39]

(6) The *wage comparison data* in the record favors the position of the Union.

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[37] Referring to the contents of Employer Exhibits #13 & #18.

[38] Referring to the *decision of Arbitrator Imes* in St. Croix County, Dec. No. 30130-A (6/25/02).

[39] Referring the *decision of Arbitrator Yaffee* in St. Claire County, Dec. No. 18491-A (1981)

(a) The internal settlement patterns between an employer and various other bargaining units is an important consideration in determining the outcome of interest arbitrations.[40]

- Three of the five bargaining units within the County received settlement providing for 2% and 1% split wage increases in both 2006 and 2007, the same wage increases proposed by the Union in this proceedings: the Sheriff's Department settlement provided for a 3% wage increase in 2006, and is not yet settled for 2007.[41]

- The Employer's final offer of a wage freeze in 2006 and a 2% and 1% split wage increases for 2007, differs from and is lower than settlements in the other four internal bargaining units.

- A strong and established internal settlement pattern has existed in St. Croix County, and there is no compelling justification for one of five County bargaining units to receive a wage freeze.

- Negative consequences generally arise from differential treatment of multiple bargaining units within a single municipality.[42]

- Arbitral consideration of the internal comparison criterion clearly favors selection of the final offer of the Union in this proceeding.

(b) Settlement patterns among *the primary intraindustry comparables* is typically the most important of the various arbitral criteria, and it normally takes precedence when it comes into conflict with other arbitral criteria, including ability to pay.[43]

- No other County among the primary intraindustry comparables urged by the Union herein, had a wage freeze in 2006, many had higher 2006 wage increases than herein proposed by the Union, and all which have union represented nursing homes, with the exception of Ozaukee County, had uniform internal wage increases in 2006.[44]

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[40] Referring to the *decision of Arbitrator Gundermann* in Oneida County, Dec. No. 26116-A (3/5/99).

[41] Referring to the contents of Union Exhibit #8.

[42] Referring to the *decision of Arbitrator Vernon* in Sauk County, Dec. No. 26359-B (11/12/90)

[43] Referring to a *decision of the undersigned* in Midstate Technical College, Dec. No. 30800-A (1/3/05).

[44] Referring to the contents of Union Exhibit #10.

- A wage freeze in 2006 will have a negative effect on those in the bargaining unit, with particular reference to the lowest paid members of the unit; the drop in rankings for Housekeepers and Laundry workers would be particularly significant.[45]

- Despite levy limit restrictions and other financial difficulties facing those counties with public nursing homes, all of the primary intraindustry comparables provided wage increases to their health care center employees in 2006. The wage freeze proposed by St. Croix County is both unjustified and unsupported by consideration of the comparables.

- The above settlement pattern among the primary intraindustry comparables clearly favors arbitral selection of the final offer of the Union in this proceeding.

(c) The *private sector settlement comparisons* also support the position of the Union in this proceeding. Of 12 private nursing homes surveyed, only two report any wage freezes, and even the non-represented private sector nursing homes have granted greater wage increases than proposed by the Employer in this proceeding.[46]

(7) The *cost of living criterion* favors the position of the Union.

(a) Regardless of the index or the economic opinion relied upon there is no support for the proposition that there was a zero increase in the cost of living in 2005.

(b) There is substantial arbitral support for the proposition that so-called total package cost comparisons against increases in the CPI are inappropriate.[47]

(8) In its reply brief, the Union emphasized or reemphasized the following principal considerations and arguments.

(a) That while the County has urged that its wage offer "may" provide a measure of job security and might make more likely the continued operation of the nursing home, it also emphasized that continuing losses at the nursing home need to be addressed even if its wage proposal were selected.

(b) That the County proposed wage freeze might have had greater merit if it were accompanied by an appropriate *quid pro quo*.[48]

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[45] Referring to the contents of Employer Exhibits #40-#41.

[46] Referring to the contents of Employer Exhibit #43.

[47] Referring to the *decision of Arbitrator Yeager* in Whitewater School District, Dec. No. 30740-A (9/10/04).

[48] Citing the *decision of Arbitrator Vernon* in City of Sheboygan, Dec. No. 21723-A (1985).

(c) That the County's economic health is reflected in such considerations as its healthy and growing undesignated fund balance, the size of its levy increases in 2006 and 2007, its equalized value and per capita value, its median income and per capita income, which are relatively high versus the comparables, and its levy rate which has consistently fallen over the past 16 years. It urges that the County has thus failed to show that it is in a more adverse economic situation than the comparables.[49]

In summary and conclusion it principally urges as follows: St. Croix County is one of the wealthiest counties in the State and within the comparables; there are no state imposed limitations on expenditures that would be so restrictive as to cause the County to freeze the wages of the lowest paid employees in the County; all other employees in the County received general wage increases in line with those proposed by the Union in this matter, and none received the settlement proposed by the County; the Union's final offer is strongly supported by intraindustry comparisons and, in fact, is on the low end of the settlement pattern; and all but 2 of the 12 local private sector nursing homes, most of which are non-represented, received general wage increases closer to that proposed by the Union than that proposed by the County. On these bases, it urges that there no valid basis exists under the statutory criteria to allow the Employer to prevail in these proceedings.

FINDINGS AND CONCLUSIONS

As emphasized by the undersigned in the past, Wisconsin interest arbitrators operate as extensions of the collective bargaining process and our primary goal is to attempt to put the parties into the same position they might have reached at the bargaining table, had they been successful. In so doing, interest arbitrators cannot merely apply all of the various statutory criteria in a mechanical manner and arrive at the appropriate solution; to the contrary, the application of and the weight to be assigned to these criteria vary from case-to-case, particularly when, as in the case at hand, so-called *ability to pay* questions are raised during the proceedings.

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[49] Referring to the decisions of *Arbitrator Imes* in Middleton-Cross Plains School District, Dec. No. 24092-A (7/2/87), and *Arbitrator Engmann* in Richland County, Dec. No. 31606-A (9/22/06).

In the case at hand the undersigned will first discuss the long standing and traditional handling by arbitrators of impaired ability to pay cases in the public and private sectors, after which the various other, more specific statutory criteria argued by the parties will be addressed, all remaining statutory criteria will be considered, and a decision and award will be rendered.[50]

The Long Standing and Traditional Arbitral Handling of Impaired Ability to Pay Cases

The traditional primacy of *intraindustry comparisons* over *financial impairment* in private sector wage arbitrations is particularly well described, as follows, by the late Irving Bernstein in his seminal and still authoritative book on the arbitration of wages:

> "a. *Intraindustry comparisons*. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. More important, the weight it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.
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> A corollary of the preeminence of the intraindustry comparison is the superior weight it wins when found in conflict with another standard of wage determination. The balancing of opposing factors, of course, is central in the arbitration function, and most commonly arises in the present context over an employer argument of financial adversity.
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> The Kansas City transit case of 1947 presented a similar problem. The Company had suffered a quarter-century of financial hardship, including several receiverships, and desperately needed new equipment. There was no cash reserve, a fact confirmed by an invitation to the employees to audit the books. The arbitrator, nevertheless, awarded a fifteen-cent wage increase, approximately the amount granted at the two most comparable properties, St. Louis and the Twin Cities.
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> The Wisconsin electric cooperative case of 1950 entailed a related and more challenging issue. The Dairyland Power Cooperative was generally regarded as the bellwether of the rural electrification movement. Its function was to supply power to farmers whose location rendered them unprofitable prospects for the private utilities. 'A significant social purpose was thus served,' the arbitration board observed. 'Not only the farmers, but the economy as a whole benefitted.' Dairyland, however, was inherently a high-cost operation. Widely-spaced consumers required large construction outlays for distribution. More important was the uneven demand of dairy farmers as contrasted with urban customers. The former concentrated the power load in the evening hours, necessitating a plant potential far in excess of

[50] See the *decision of the undersigned* in Monroe County, Wisconsin (Highway Department), Dec. No. 31382-A (12/22/05), pages 15-25, which contains a very similar preliminary discussion relating to the handling of interest arbitrations involving ability-to-pay issues.

what could be used at other times. Finally, Dairyland felt constrained to charge lower rates than its competition to justify itself as a cooperative.

On the other hand, the Electrical Workers insisted upon a comparison with the privately-owned Northern States Power Company. The two operations served the same general area and had similar investments. Employees of both lived in the same communities and had identical jobs. Yet Northern States wage rates were substantially higher. Here the board faced not only a plea of financial difficulty but also the force of a laudable social objective. Despite these considerations, 'the Board believes that Cooperatives can make no valid claim to special wage treatment....Wages, like materials are a cost of doing business and Dairy-land must pay the fair market price.' The award, therefore, narrowed the differential with Northern States."[51]

As discussed by the undersigned in earlier decisions, the challenges in application of *ability to pay* considerations in *public sector interest arbitrations* was presciently addressed by Arbitrator Howard S. Block, in part, as follows:

"**Ability to Pay: The Problem of Priorities**

Nowhere in the public sector is the problem of interest arbitration more critical than in the major urban areas of the nation. Municipal governments are highly dependent, vulnerable public agencies. Their options for making concessions in collective bargaining are at best limited, and are often nullified by social and economic forces which command markets, resources, and political power extending far beyond the city limits. City and county administrations are buffeted by winds of controversy over conflicting claims upon the tax dollar. On the federal level, the ultimate source of tax revenues, the order of priorities between military expenditures and the needs of the cities are a persistent focus of debate. On the state level, the counterclaims over priorities in most states seem to be education over all others.

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...When an employer in private industry argues inability to pay, he implies that if his labor costs are forced above a tolerable level, he will liquidate his holdings and reinvest his capital in another enterprise affording him a more acceptable rate of return. In short, he will go out of business. We have witnessed the same economic forces at work in the past--when federal and state minimum wages were enacted and subsequently raised, large numbers of marginal enterprises closed their doors.

One other example will illustrate why ability to pay is seldom controlling in the private sector. Some 20 years ago, there were 175 retail hand bakeries in Long Beach, Calif., and its environs. Gradually their numbers dwindled as these bakeries were forced to the wall by competition from frozen pastries and ready-mixed type of powders sold in the supermarkets. Each year or two the survivors met with the Bakers'

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[51] See Bernstein, Irving, The Arbitration of Wages, University of California Press, Berkeley and Los Angeles (1954), pages 56, 57-59; citing therein the decisions of *Arbitral Chairman Clarence M. Updegraff* in Kansas City Public Service Co. -and- Amalgamated Street Railway Employees, 9 LA 149 (1947); and *Board of Arbitrators Frederick P. Mett, Robben W. Fleming and Corliss E. Bostwick* (appointed by the WERC), in Dairyland Power Cooperative, 14 LA 737 (1950).

Union to renegotiate wages and other cost items. The union's demands were modest, but firm. They remained impervious to the depressed conditions of the industry. As the local union president put it, 'What would be the point of forgoing a wage increase: Next year they won't be any better off, or the year after. We can't keep them in business. They've got to solve that themselves. In the meantime, for as long as the jobs last, we're going to maintain a decent wage.' It is only necessary to add that arbitral findings in the private sector disclose a substantial concurrence with the reasoning expounded by this representative. In the relatively few instances in which inability to pay has been given significant weight, it has usually been relied upon to justify some postponement of wage adjustments called for by the labor market but not to deny them permanently.

Unlike private management, an assertion by government of inability to pay will rarely be a prelude to closing its doors. For government to go out of business is not a very realistic alternative Even curtailment or elimination of government services because of a budgetary squeeze is often more than offset by the necessity of providing additional benefits to meet growing social problems, or by the assumption of new government services such as interurban transit systems that private enterprise can no longer operate at a profit. The point is that operating decisions of the private sector are economic in nature, rooted in the profit motive. Identical decisions in a public enterprise are political; that is, economic factors are often dominated by political considerations. ...

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At any rate, whatever the complexities presented by the ability-to-pay argument on state and federal levels, it is on the local level that the problem is most resistant to solution. ...How does an arbitration panel respond to a municipal government that says, 'We just don't have the money'?

Pioneering decisions of interest neutrals have assigned no greater weight to such an assertion than they have to an inability-to-pay position of private management. An arbitration panel constituted under Michigan's Public Act 312 rejected an argument by the City of Detroit which would have precluded the panel from awarding money because of an asserted inability to pay. What would be the point of an arbitration, the panel asks in effect, if its function were simply to rubber-stamp the city's position that it had no money for salary increases? What employer could resist a claim of inability to pay if such claim would become, as a matter of course, the basis of a binding arbitration award that would relieve it of the grinding pressures of arduous negotiations? While the panel considered the city's argument on this point, it was not a controlling conclusion.

Inability to pay may often be the result of an unwillingness to bell the cat by raising local taxes or reassessing property to make more funds available. ...

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A parting comment on the matter of priorities. Although I have tended to dwell on inability to pay as a form of conflict over priorities in spending, I would not want to leave the impression that a local or state government cannot, in a very real and practical sense, be dead broke." [52]

The above described principles, including the normal distinction between

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[52] See Arbitration and the Public Interest, *Proceedings of the 24th Annual Meeting of the National Academy of Arbitrators*, Bureau of National Affairs, Inc., 1971, pages 169-170, 171 and 178. (footnotes omitted)

actual *inability to pay* versus *unwillingness to pay*, are also elaborated upon in the following excerpts from the most recent edition of the authoritative book originally authored by Elkouri and Elkouri:

> "In the public sector, with the necessity of continuing to provide adequate public service as a given, 'going out of business' is not an option, and an employer's *inability* to pay can be the decisive factor in a wage award notwithstanding that comparable employers in the area have agreed to higher wage scales. ...
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> In granting a wage increase to police officers to bring them generally in line with police in other communities, an arbitration board recognized the financial problems of the city resulting from temporarily reduced property valuations during an urban redevelopment program, but the board stated that a police officer should be treated as a skilled employee whose wages reflect the caliber of the work expected from such employees. The Board declared that 'it cannot accept the conclusion that the Police Department must continue to suffer until the redevelopment program is completed.' However, the board did give definite weight to the city's budget limitations by denying a request for improved vacation benefits, additional insurance, a shift differential, and a cost-of-living escalator clause. In another case involving police officers and firefighters, an arbitrator awarded a 6 percent wage increase (which he recognized as the prevailing pattern in private industry) despite the city's financial problems. He limited the increase to this figure, though a larger increase was deserved, in order to keep the city within the statutory taxing limit and in light of the impact of the award on the wages of other city employees.
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> In some cases, neutrals have expressly asserted an obligation of public employers to make added efforts to obtain additional funds to finance improved terms of employment found to be justified. In one case, the neutral refused to excuse a public employer from its obligation to pay certain automatic increases that the employer had voluntarily contracted to pay, the neutral ordering the employer to 'take all required steps to provide the funds necessary to implement his award in favor of the employees.'
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> Finally, where one city submitted information regarding its revenues and expenditures to support its claim of inability to pay an otherwise justified wage increase, the arbitrator responded that the 'information is interesting, but is not really relevant to the issues,' and explained:
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> > The *price of labor* must be viewed like any other commodity which needs to be purchased. If a new truck is needed, the City does not plead poverty and ask to buy the truck for 25% of its established price. It can shop various dealers and makes of trucks to get the best possible buy. But in the end the City either pays the asked price or gets along without a new truck.[53]

The above described principles normally governing arbitral handling of *ability to pay* issues in statutory interest arbitration, has been addressed by

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[53] See Ruben, Allan Miles, Editor in Chief, *Elkouri & Elkouri* HOW ARBITRATION WORKS, Bureau of National Affairs, Sixth Edition - 2003, pages 1433-1436. (The last case cited above was the decision of *Arbitrator Stanley Block* in City of Quincy, Illinois, 81 LA 352, 353 & 356 (1982), and involved a so-called "home rule" city with substantial authority to raise funds. The remaining citations are omitted.)

the Wisconsin Legislature in three portions of Section 111.70(4)(cm) of the state statutes:

(1) In subd. 7r.c wherein it provides for arbitral weight to be accorded to "*...the financial ability of the unit of government to meet the costs of any proposed settlement.*

(2) In subd. 7 wherein it mandates that arbitrators give "*the greatest weight*" to "*...any state law or directive lawfully issued by a state legislature or administrative officer, body or agency which places limitations upon expenditures that may be made or revenue that may be collected by a municipal employer.*"

(3) In subd. 7q wherein it mandates that arbitrators give "*greater weight*" to "*...economic conditions in the jurisdiction of the municipal employer than to any other of the factors specified in subd. 7r.*"

Many Wisconsin arbitrators and advocates have recognized that the first of the above three factors, the *ability to pay* criterion, could better be described as the *inability to pay* criterion. This section clearly applies when and if a unit of local government is absolutely bereft of the ability to fund a disputed increase in wages and/or benefits, or "*dead broke*" in the words of Arbitrator Block. In such a circumstance, application of the *ability to pay* criterion takes precedence over any or all of the remaining arbitral criteria and is *alone* determinative of the outcome of such a dispute. Since the County is not alleging *inability to pay* in the case at hand, Subd. 7r.c is not alone entitled to determinative weight in this proceeding.

In next considering the *greatest weight* and the *greater weight* criteria, the undersigned notes that the Employer has urged and presented substantial and persuasive evidence that the continuing substantial losses incurred by it in the operation of the County nursing home have impaired its financial flexibility in various, very important respects; it has not, however, alleged the existence of the statutory prerequisites mandating the application of the *greatest weight* or the *greater weight* criteria to the dispute at hand. It would be difficult for these criteria to justify *selective application of a wage freeze* to only a single bargaining unit of employees working within a single location within the County, in the face of County authorization of normal wage increases for its remaining employees at its remaining locations. Accordingly the undersigned has determined that neither the greatest weight nor the greater weight criteria is entitled to any significant weight in this

proceeding, and that the outcome of the case must turn solely on arbitral consideration and application of the remaining statutory criteria.

In looking to the remaining criteria, it is noted that neither party has advanced significant arguments relating the *lawful authority of the County*, the *stipulations of the parties*, or to *changes in circumstances during the pendency of the arbitration*. Although the undersigned is obligated to consider all of the statutory criteria, no substantial discussion of these arbitral criteria is needed at this point. Without unnecessary elaboration, therefore, it is apparent that the *interests and welfare of the public* (exclusive of ability to pay, as discussed above), the *internal and external wage comparisons*, and the *cost of living criteria,* remain to be arbitrally considered and discussed.

Consideration of the Comparison Criteria

The parties have agreed that all of the comparable counties identified by Arbitrator Imes in 2002, which operate County owned nursing homes, would be recognized as primary intraindustry comparables, with the agreed-upon addition of Dunn and Polk Counties.[54] The Employer has also proposed the further addition of LaCrosse and Fond du Lac Counties, which is opposed by the Union. The inclusion of these two counties would not only be inconsistent with the Imes decision, but there is no evidence in the record of their adoption in bargaining within any of the County's other four bargaining units. When either party proposes additions or subtractions from comparables used in the recent past, it should be supported by persuasive evidence, including the *bargaining history* in other bargaining units in the County. While the Employer produced significant evidence of comparability between LaCrosse, Fond du Lac and St. Croix County, it would be appropriate for it to address the matter of their possible inclusion during its next labor negotiations in all five of its bargaining units.

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[54] The *intraindustry comparisons* terminology derives from its long use in the private sector and, in the case at hand, it refers to *comparisons with employees performing similar services in comparable units of public employment*, as described in Section 111.70(4)(cm)(7r.d) of the Wisconsin Statutes.

It is quite clear from the evidence advanced by both parties that arbitral consideration of the 2006 wage increases within the *primary intraindustry comparables*, supports selection of the final offer of the Union in these proceedings, in that *only* St. Croix County is proposing a 2006 wage freeze for bargaining unit employees in its health care facility.[55]

It is equally clear from the evidence advanced by the parties that arbitral consideration of the *internal comparisons* also supports selection of the final offer of the Union. Not only does the record indicate that three of the other four internal bargaining units settled for the same 2%-1% split wage increases in 2006 and 2007 which are proposed by the Union in this proceeding, but the fifth bargaining unit had a 3% wage increase in 2006. In this connection the undersigned notes that the evidence at the hearing indicated significant uniformity in past negotiated settlements within the County's five bargaining units, and it is also noted that Arbitrator Imes in her St. Croix County interest arbitration decision in 2002, noted that both parties had then agreed that internal comparisons were the most important ones.[56]

While Employer survey results from twelve private and two other municipal nursing homes indicated that three had applied wage freezes in 2006, and a fourth had 2006 wage increases ranging from 0-2% in 2006. All four of these situations, however, involved non-union nursing homes.[57] While all of the remaining ten surveyed employers had applied wage increases in 2006, all of these overall survey results cannot be accorded any significant weight in the final offer selection process in this proceeding.

Consideration of Cost of Living Criterion

In this area the Union is quite correct that all CPI data indicate significant increases in the cost of living during calendar year 2005, which would not be recognized by a zero wage increase during 2006 and, accordingly, arbitral consideration of the cost of living criterion supports selection of

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[55] See the contents of Employer Exhibits #37-#42 and Union Exhibits #9 & #10.

[56] See Union Exhibit #4B at page 4.

[57] See the contents of Employer Exhibits #43, #44 & #46, at pages 3, 6, 11 & 14.

the final offer of the Union in this proceeding.

The Interests and Welfare of the Public Criterion

The Union urged that the health care employees in question deserve equal treatment to that afforded other County employees, and that the interests and welfare of the public are served by having nursing home employees paid at a competitive wage rate, and to have this facility staffed with competent and compassionate employees who care for our elders. The Employer emphasized that its efforts to maintain the nursing home, rather than having to explore potential sale, lease or a public-private partnership of the home could provide a measure of job security to the health care center's employees, which quite obviously would also serve the interests and welfare of the public.

While both parties have presented valid considerations in this area, the undersigned has determined that application of the interests and welfare of the public criterion cannot be assigned significant weight in the final offer selection process in this proceeding.

Miscellaneous Remaining Considerations

In considering miscellaneous remaining considerations which fall within the apparent scope of Subd. 7r.j, the undersigned has determined as follows:

(1) While the Employer has correctly argued that arbitrators have consistently recognized that it is the *actual level of wages*, rather than *the percentage increases received*, which is the more pertinent criterion in *comparing wages*, this principle does not provide a persuasive basis for "*comparing*" a wage freeze proposal, consisting of a zero percentage and a zero dollar and cents "*increase*," against any actual wage increases received by other employees.

(2) The Union correctly noted that the Employer proposed wage freeze for 2006, was not accompanied by any appropriate *quid pro quo*, which frequently accompany proposed reductions in wages, hours or terms and conditions of employment, which consideration is entitled to some weight in the final offer selection process in this proceeding.

Summary of Preliminary Conclusions

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

(1) Wisconsin interest arbitrators normally operate as extensions of the collective bargaining process, with a goal of attempting to put the parties into the same position they might have reached at the bargaining table.

(a) They cannot merely apply all of the various statutory criteria in a mechanical manner and arrive at the appropriate solution.

(b) The application of and the weight to be assigned to the statutory criteria varies from case-to-case, particularly when, as in the case at hand, so-called *ability to pay* questions are raised during the proceedings.

(2) It is important to understand the traditional handling by arbitrators of *impaired ability to pay cases* in the public and private sectors, after which the statutory criteria argued by the parties will be considered, and a decision and award rendered.

(a) Comparisons in general, and so-called *intraindustry comparisons* in particular, are the most commonly cited arbitral criterion, and normally receive greater weight when they come into contact with employer claims of *inability to pay* in the private sector, even in the face of valid claims that meeting such comparisons may drive such an employer out of business.

(b) *In the public sector*, going out of business is normally not an option and, accordingly, an employer's actual *inability to pay* can be a decisive factor in a wage dispute even where comparable employers have agreed to higher wage scales.

(c) A distinction must thus be made by interest arbitrators of public sector disputes, between *inability to pay* and *unwillingness to pay*, the second of which category will not normally take precedence over comparisons.

(3) The *ability to pay* situation has been addressed by the Wisconsin Legislature in three portions of Section 111.70(4)(cm)(7) of the statutes: *first*, in Sub.7r.c, which provides for arbitral weight to be accorded to "...the financial ability of the unit of government to meet the costs of any proposed settlement; *second*, Subd. 7, which mandates that arbitrators give "...the greatest weight" to "...any state law or directive lawfully issued by a state legislature or administrative officer, body or agency which placed limitations upon expenditures that may be made or revenue that may be collected by a municipal employer."; and, *third*, in Sub. 7g., which mandates that arbitrator give "greater weight" to *...economic conditions in the jurisdiction of the municipal employer than to any other of the factors specified in sub. 7r.*"

(a) The *first* of the above items clearly applies when and if a unit of local government is absolutely bereft of the ability to fund a disputed increase in wages and/or benefits, in which circumstance it takes precedence over any or all of the remaining statutory criteria, and is *alone* determinative of the outcome of such a dispute. Since the County is not alleging *inability to pay* in the case at hand, this arbitral criterion is entitled to significant weight in this proceeding.

(b) In connection with the *second* and the *third* of the above items, it is noted that the Employer has *not* alleged the existence of the statutory prerequisites for the application of either the *greatest weight* or the *greater weight* criteria to the matter at hand. Rather clearly, it would be difficult if not impossible for these criteria to be interpreted to justify *selective application of a wage freeze* to only a single bargaining unit of employees working

at a single location within the County, in the face of County authorization of normal wage increases for its remaining employees at its remaining locations.

(4) In looking to the remaining criteria, it is noted that neither party has advanced significant arguments relating to the *lawful authority of the County*, the *stipulations of the parties*, or to *changes in circumstances during the pendency of the arbitration*. Without unnecessary elaboration, therefore, it is apparent that the *interests and welfare of the public* (exclusive of ability to pay, as discussed above), the *internal and external wage comparisons*, and the *cost of living criteria,* remain to be arbitrally considered and discussed.

(5) In considering the application of the various comparison criteria, the undersigned has determined as follows.

(a) The *primary intraindustry comparables* should consist of all of the comparable counties identified by Arbitrator Imes in 2002, which operate County owned nursing homes, in addition to the parties' agreed-upon addition of Dunn and Polk Counties.

(b) It is quite clear from the evidence advanced by both parties that arbitral consideration of the 2006 wage increases within the *primary intraindustry comparables*, supports selection of the final offer of the Union in these proceedings, in that *only* St. Croix County is proposing a 2006 wage freeze for bargaining unit employees in its health care facility.

(d) It is equally clear from evidence advanced by the parties that arbitral consideration of the *internal comparison criterion* also supports selection of the final offer of the Union.

(e) While Employer survey results from twelve private and two other municipal nursing homes which are not a part of the primary intraindustry comparison group, indicated that three had applied wage freezes in 2006, and a fourth had 2006 wage increases ranging from 0-2% in 2006, all four of these situations involved non-union nursing homes. While all of the remaining ten surveyed employers applied wage increases during 2006, these overall survey results cannot be accorded any significant weight in the final offer selection process in this proceeding.

(6) Arbitral consideration of the *cost of living criterion* supports selection of the final offer of the Union in this proceeding.

(7) While both parties have emphasized valid considerations in this area, the undersigned has determined that application of the *interests and welfare of the public criterion*, exclusive of its ability to pay component, cannot be assigned significant weight in the final offer selection process in this proceeding

(8) In addressing miscellaneous remaining considerations which fall within the apparent scope of Subd. 7r.j, the undersigned has determined as follows.

(a) While the Employer is correct that arbitrators have consistently recognized that it is the *actual level of wages*, rather than *the percentage increases received*, which is the more pertinent criterion in *comparing wages*, this arbitral preference does not provide a basis for "*comparing*"

a wage freeze proposal, consisting of a zero percentage and a zero dollar and cents "*increase*," against any actual wage increases received by other employees.

(b) The Union argument based upon the fact that the Employer proposed wage freeze for 2006 was not accompanied by any proposed *quid pro quo*, is entitled to limited weight in the final offer selection process in this proceeding.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, including arbitral consideration of all of the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, the Impartial Arbitrator has concluded that the final offer of the Union is clearly the more appropriate of the two final offers before me in this proceeding, and it will be ordered implemented by the parties.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Union is the more appropriate of the two final offers before the Arbitrator in this proceeding.

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

WILLIAM W. PETRIE
Impartial Arbitrator

June 24, 2007