In the Matter of the Petition of	Marquette County (Highway) Case 59
MARQUETTE COUNTY (Highway Department)	No. 65460 INT/ARB - 10612
To Initiate Arbitration Between Said Petitioner and	Dec. No. 31735-A
MARQUETTE COUNTY HIGHWAY EMPLOYEES LOCAL 1740, AFSCME, AFL- CIO	

Appearances:

Davis & Kuelthau, s.c., by James R. Macy, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54903-1278, appearing on behalf of Marquette County.

Bill Morberly, Staff Representative, AFSCME Wisconsin District Council 40, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717, appearing on behalf of Marquette County Highway Employees Local 1740, AFSCME, AFL-CIO.

ARBITRATION AWARD

Marquette County and Marquette County Highway Employees Local 1740, hereinafter County or Employer and Union, reached an impasse in their negotiations for the parties' successor agreement to the 2004-2005 collective bargaining agreement. Failing to reach a voluntary settlement, a petition was filed with the Wisconsin Employment Relations Commission requesting the Commission to initiate arbitration pursuant to Section 111.70(4) (cm) 6 of the Municipal Employment Relations Act. Following an investigation conducted in the matter, the Commission, after receiving final offers from the parties, issued an Order that the parties proceed to final and binding arbitration to resolve the impasse in the parties' negotiations.

The Commission submitted a panel of arbitrators to the parties, and from this panel the parties selected the undersigned as Arbitrator to resolve the impasse between the parties and to issue a final and binding award, by selecting either of the total final offers put forward by the parties to the Commission during the course of its investigation. The arbitrator conducted a hearing on November 2, 2006 at Marquette, Wisconsin. During the course of the hearing, the parties were given the opportunity to present evidence and argument; the hearing was not transcribed. Initial post hearing briefs were submitted by the parties. The County submitted a reply brief; the Union waived its right to submit a reply brief. The record closed on January 25, 2007.

OFFERS AND TENTATIVE AGREEMENTS

OFFERS

County

1. Tentative Agreements - Attached

2. Article 18 – Hours of Work – Modify to read as follows:
   A) Hours:
      1. The ~~guaranteed~~ normal hours for regular full-time employees shall be:

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   B) Work Week:
      1. All regular full-time employees shall work a ~~guaranteed~~ normal work week of five (5) days, Monday through Friday.
      2. ~~It is agreed that if an employee has worked fifty (50) hours in any work week, the Employer may at its discretion send said employee home for the remainder of the work day or work week without regard to Paragraphs A-1 and B-1 of this Article.~~ It is understood and agreed that an employee who works in excess of eight (8) hours per day shall receive time and one-half (1 ½) his/her hourly rate for those hours, and all hours on Saturday and Sunday.

Union

1. All Tentative Agreements.

Tentative Agreements

1. Article 10 – Vacations
   Modify the following language: Add one (1) week vacation after 6 months, and change language from five (5) weeks after twenty-seven (27) years to five (5) weeks after twenty-five (25) years of employment.

   A. Each full time employee shall receive one (1) week with pay after six (6) months of employment; one (1) week vacation with pay each year after one (1)

year of employment; two (2) weeks vacation with pay after two (2) years of employment; three (3) weeks vacation with pay after nine (9) years of employment; four (4) weeks vacation with pay after fifteen (15) years of employment; and five (5) weeks vacation with pay after ~~twenty-seven (27)~~ twenty-five (25) years of employment.

1. Article 13 – Leave of Absence
   Add the following language:

   C. Leaves of absences in the event of suspension or revocation of an employee's commercial driver's license (CDL) shall be granted as follows:

   1. If an employee's CDL (including endorsements) is suspended or revoked arising solely from one or more incidents, and an occupational license is not granted, the employee may be granted up to twelve (12) months leave of absence. A leave of absence under this provision shall be unpaid. During the leave of absence, health, dental, and life coverage will be available if the full premiums are paid by the employee in accordance with County Policy.

   2. In the event of a suspension for 60 days or less, the employee shall be permitted to use vacation or sick time in lieu of unpaid leave. In such case the employer shall continue its contribution for health insurance benefits.

   3. If the employee does not regain the CDL or obtain an occupational license by end of the twelve (12) months, the employee's employment shall be terminated.

   4. The employee's seniority will continue throughout a leave of absence granted under this provision. The employee will not be allowed to sign for any open position until after his or her return from the leave of absence.

   5. The leave of absence applies to a first offense only.

   6. No more than three (3) employees shall utilize this leave of absence at the same time.

3. Article 23 – Funeral Leave
   Modify the following section:

   A. Each employee shall be granted up to three (3) days paid leave of absence to prepare for and attend the funeral of an immediate family member. Immediate family member shall be defined as father, mother, spouse, children and

stepchildren, grandchildren, brother, sister, father-in-law and mother-in-law of the employee. Each employee shall be granted one (1) day of paid leave of absence to prepare for and attend the funeral of the employee's son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparents, aunt, uncle, niece and nephew.

4. Article 29 – Safety Equipment
   Modify the following language:

Employees may be required to wear safety shoes of a type approved by the Highway Commissioner. The County agrees to pay up to 75% of the cost of one pair of safety shoes per employee not to exceed a total annual payment of $100.00 per employee, to be paid on ~~July 1 of each year~~ either June 1st or December 1st of each year at the employee's choice.

5. Article 30 – Duration
   Modify the section as follows:

This agreement shall be effective as of January 1, ~~2004~~ 2006, and shall remain in full force and effect up to and including December 31, ~~2005~~ 2007, and shall continue in full force and effect from year to year thereafter until such time that either party desiring to open, alter, amend or otherwise change this agreement shall serve written notice upon the other, not later than September 1, ~~2005~~ 2007, or the first day of September of any year thereafter.

6. Wages

January 1, 2006	-	2%
July 1, 2006	-	l.5%
January 1, 2007	-	2%
July 1, 2007	-	1.5%

ISSUE

As may be readily seen from the offers of the parties, there is one issue for decision in this matter to resolve, which final offer will become part of the parties' 2006-2007 labor agreement. The Union offers no change to the agreement other than what is stated in the tentative settlements. The County proposes that the Highway Department employees will no longer have a guaranteed work week of forty hours as set forth in Article 18 (A) 1., which currently guarantees the employees forty hours of work based on their guaranteed daily work hours. The County proposal also eliminates a fifty hour guarantee of work in

that if the employee works over fifty hours in the week, only then, at the discretion of the County, can the employee be sent home.

It is clear from the testimony of the witnesses that because Highway employees often work outside of their regular work hours (snow plowing & road repair), they may start work before their regular start time of 7:00 a.m. and work later than their regular quit time of 3:30 p.m. This can lead to the employees working longer than 8 hours in a day and up to 50 hours in a week before the County can send the employees home. The County proposed to eliminate the 40 and 50 hour guarantees in order to be able to send employees home so that the County will not incur overtime for work over 8 hours in a day as provided in Article 18, Section (B) 2.

POSITIONS OF THE PARTIES

COUNTY:

The County refers to the statutory requirement that under Subsection 7 of Wisconsin Statutes 111.70(4) (cm), arbitrators must give "greatest weight" to any law or directive issued by a state legislative or administrative office that places limitations on expenditures which may be made, or revenues that may be collected by an employer. The County does not argue an inability to pay but rather that the County, through the testimony of its Personnel Director, by law could not increase its revenues by more than 2% in 2006 and 2.58% in 2007. The County submitted by testimony that fixed costs alone, such as health insurance and retirement increases, exceeded the revenue the County was able to raise, requiring the County to eliminate $449,094 from its budget to meet fixed costs.

Under subsection 7g of the aforementioned statute, the arbitrator is required to give "greater weight" to local economic conditions of the County. Through the testimony of its Highway Commissioner, the County argues that the County snow plows for the State and townships within the County and because of the current contract guaranteed work hours language, all that work must be bid out at overtime rates making the County less competitive for this work. By removing the guarantee language, the County submits that it will be more competitive and be able to meet its budget as well as ensure jobs for the employees.

The County next directs its arguments under subsection 7r which requires the arbitrator to take into consideration other factors in making a decision under the aforementioned statute. The County addresses what has become the *quid pro quo* argument for changing the status of an existing contract provision or benefit. Citing applicable case law, the County submits that it has met its burden of showing that there is a need to eliminate the guaranteed language and that it has provided a *quid pro quo* for the proposed change. The County reiterates the testimony of the Highway Commissioner that the County cannot

send employees home even after the main work of snow plowing which starts before their normal shift is done because of the guarantee; thereby incurring needless and costly overtime. The "outdated" language is neither "cost efficient" or "cost effective." This, the County submits, shows the compelling need to change the status quo relative to the guaranteed work hours' provision.

The County submits that its 3.5% lift in wages for 2006 and 2007 was "... part of the trade-off for the guaranteed hours language change." Comparing the wage lift to the wage increases to the other represented employees in the County, the County argues that the evidence establishes that the other bargaining units (police, human services professional, social services non- professionals, and courthouse) received wage lifts of 3%. The County also points out that the Union received much desired CDL language (see above in tentative agreements) for which the County received nothing in return. The County argues that these factors prove that it has offered the required *quid pro quo.*

The County next argues that the evidence establishes that the internal comparables prove that none of the other County bargaining units have language guaranteeing hours of work or overtime. The County argues, citing interest/arbitration case law, that the County's offer should be selected in the interest of maintaining stability in labor relations between the County and its employee bargaining units. The County argues that its offer and the contracts of the other bargaining units take into account the County's unique circumstances; whereas the current guaranteed language does not, and as such, the language should be eliminated to ensure labor peace between the bargaining units and the County and the overall labor relationships in the County.

Both parties essentially agree, based on previous interest/arbitration, on the external comparables that the statue allows the parties to argue to support their positions. The County submits that the evidence is almost 100 % that the external comparables do not have such guarantee language that its offer eliminates in this case. Beyond the agreed to externals, the County submitted evidence that only 6 out of 61 counties provide for some type of guarantee in the work hours language of their labor agreements.

In concluding its argument, the County posits other factors for my consideration. The County submits that employees enjoy working for the County where the average length of service is 20 years, and the approximate number of applications for a job opening is 38. The County submits evidence that it favorably compares with the overall benefits of other Counties. Further, the tentative agreements, the County argues, benefit the Highway employees and should be an enhancement which I need to take into consideration in selecting a final offer.

UNION:

The Union commences its argument by showing that despite the County's position that during bargaining the County made explicit that the wage lift was a *quid pro quo* for the guarantee language change, three Union witnesses deny that this was the case. The Union argues that the testimony of the three Union members that were present during the negotiations proves that at no time did the County "suggest" that their wage proposal was a *quid pro quo* for the elimination of the guaranteed hours work week. Rather, the Union submits, the County focused during negotiations on their perception that the County could not lay-off a single employee without laying-off all employees because of the guaranteed work week language.

The Union next argues that reviewing the internal comparable bargaining units, the 3% received by the Sheriff Department patrol officers is more than the 3.5% lift received by the Highway Department employees. Working through the mathematics of the wage increases between the two departments, a 2% and 1.5% increase for the highway employees and a 3% increase for the Sheriff patrol officers wages, the Union finds and presents that the Sheriff patrol officers actually received $106.20 more than the Highway employees. Therefore, the Union submits that this actuality does not support a *quid pro quo* position by the County.

The Union continues its support for its offer by arguing that the County failed to demonstrate a need for elimination of the guaranteed hours work week. The Union submits that the testimony of the Highway Commissioner gave no specific examples of when he would have sent employees home to avoid the 50 hour guarantee. The Union also submits that the County testimony did not support its assertion that it could not bid competitively as it had no examples of where it had lost business to any private contractors or other public entities.

The Union also argues that the internal comparables, as it relates to the guarantee, are not a "proper gauge" for the guaranteed work week argument as the County bargaining units all perform different types of work. Further, the hours of work for each bargaining unit reflect the work the employees must perform, and none of the other units experience the type of hours that Highway employees often work as when there is snow to plow. Generally, the Union argues, the other bargaining units can anticipate working a forty hour work week, where at certain times of the year this is not possible for the Highway employees.

The Union concludes its argument by stating that by not making clear during contract negotiations that the 3.5% wage lift was a *quid pro quo*, the County did not allow the Union to adequately address the *quid pro quo* issues.

COUNTY REPLY:

The County in its reply brief argues that the testimony of its Personnel Director made clear that the "trade off" for the Highway employees receiving 3.5% was the elimination of the hours guaranteed language in Article 18 of the agreement. Further, a *quid pro quo* is proved by the fact the Highway employees did receive a higher wage lift than any other County represented employees. Responding to the wage analysis, comparing the Highway employees and the Sheriff patrol officers, the County submits that an accurate analysis of the numbers show, that in fact, the Highway employees, over the course of the 2006-2007 agreement, come out ahead of the patrol officers by $104.00. The County further notes that the .5% lift will be permanently in the agreement for future agreements.

The County posits that although the County has not lost any bids to private contractors to date, it cannot wait until that happens and must "ascertain" ways now to keep the current work as well as present competitive bids to other agencies to increase revenues. The County argues that the Union never proposed any alternative that would delete the guarantee provision from the contract and address some of the attendant problems associated with the language.

The County concludes its reply argument by pointing out that the Union cannot ignore the comparables which prove that none of the internal bargaining units have guarantee language and most counties outside of Marquette County do not guarantee hours of work.

DISCUSSION:

The arbitrator shall apply the following statutory criteria established for the evaluation of the parties final offers in deciding which offer to select.

7.
procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislature or administrative officer, body or agency which places limitations on expenditures 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 the factor in the arbitrator's or panel's decision.

7g.
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.
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. Stipulation of the parties.
c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

DISCUSSION

Both parties stated that there was no issue raised that the County could not pay for the wage and benefit increases negotiated and agreed to for a successor labor agreement. The County, however, offered significant testimony under the "greatest weight and greater weight" standards of subsections 7 and 7g. of the statute. The County's Personnel Director Brent Miller testified that because of the constraints of the Wisconsin Legislature as to allowable revenue increases, the County was only able to increase its revenues by 2% in year 2006 and 2.58 % in 2007. Miller testified that even with the allowed revenue increases, the County still needed to delete $449,049 from its budget to meet fixed costs such as retirement and health insurance. Miller's testimony was not challenged by the Union.

Under the "greater weight" standard, which is to take into consideration the economic conditions of the County, Highway Commissioner Sell testified that it is becoming more competitive to maintain snow plowing contracts with the townships for which it plows snow. Sell testified that the State, for which it plows snow, has also reduced the amount it is willing to pay for services. Sell testified that because of the current contract language that guarantees hours of work, all the bids submitted by him must be at the overtime rate; he has no flexibility to work around the work for the County to accomplish the contractual work with other entities. It is true, as the Union argues, that no evidence was offered by the County of contracts actually lost because of the bids submitted by the County. The County responds to this argument that it is trying to prepare for the future and has an obligation to be prepared so that it can maintain its work force of employees. Sell also testified that under the 50 hour guarantee there would have been times that he would have sent the employees home before 50 hours had been worked but again there was no evidence of specifics to support this testimony.

These two factors that I have discussed above are the background to determine if the County, in this case, has offered a *quid pro quo* to the Union for removing the guarantee language from the parties' labor agreement. In other words, the Wisconsin Legislature had a reason to establish these criteria, and they cannot be stated and then just ignored. Several of the criteria under subsection 7r. are not applicable and will not be addressed.

It is clear from the exhibits of both parties that as to the internal comparables (7r. e.), no other bargaining unit of employees in the County has a guarantee of hours of work. The Union concedes this fact but submits that none of the other bargaining units (courthouse, Human Services Professionals, Social Services Support Staff or Sheriff Deputies) have the same type of work schedule. In other words, the aforementioned employees normally work a set schedule of hours or can anticipate in advance if the work schedule needs to be changed. With the Highway employees, they may be called in to plow snow on short notice, and there is no way of determining how long they may have to work. The Union submits this argument to clearly weaken the fact that the internal comparables support the County's position.

The weight of the evidence also supports the County as to external comparables. The majority of the Counties in the State do not have a guarantee of hours of work as demonstrated in County exhibits 15, 16, 17 & 18. Significantly, the language of the majority of primary comparables, secondary comparables and state wide counties do not contain hours of work guarantees or language that prevents the County, in this case, from sending Highway Department employees home until after they have worked 50 hours.

One of the purposes of the interest/arbitration laws was to create labor stability which has been recognized by arbitrators as case law under the Interest/Arbitration Statute has evolved. This is why significant weight is given to internal comparables. While it is true that jobs and work within the County differ between bargaining units, the more working

conditions and labor and employment contract language that guides those working conditions is similar, the more stability will be achieved between the County and its bargaining units and among the employees themselves.

In this case, the main issue in this *quid quo pro* dispute is whether the wage increase offered by the County is an adequate *quid pro quo* for removing the guarantee language from the Highway Department labor agreement. The tentative agreements show that the County offered 2% as of January 1, 2006 and another 1.5% as of July 1, 2006. The same wage increase was offered and accepted in 2007. The County argues that the .5% lift in wages in each year of the agreement is the *quid pro quo* as all other units settled for a straight 3% wage increase for both years of the agreement. The Union offered evidence through three witnesses that the County representatives during the course of the contract negotiations never stated that the additional .5% was a *quid pro quo* for eliminating the guarantee language. Union witness Henke testified that he did not recall any *quid pro quo* language being used by the County during negotiations. Union witness Marquardt testified that he didn't remember that wages were tied to the removal of the guarantee language, and that *quid pro quo* language was never used. Union witness Parafiniuk testified that he had no recollection of the County position on the guarantee language and had no recollection that the County said that the wage increase and guarantee language were linked. This Union testimony was countered by County Personnel Director Miller's testimony that he, in fact, did inform the Union bargaining committee that the wage lift was a *quid pro quo* for removal of the guarantee language. Miller testified that he also used the language that the wage increase was a trade off for the elimination of the guarantee language.

The Union, as stated above, argues that the County's position in this matter should be rejected as it is clear from the Union witnesses that by not using *quid pro quo* language, the County never gave the Union the opportunity to address the County's position. In the case of conflicting testimony, which was creditably given, I need to rely more heavily on the facts in reaching a decision. While both parties arrived at a different figure in computing the amount of dollars resulting from the wage increase to the Sheriff patrol officers at 3% and to the Highway employees at 3.5%, what is significant is that in each year of the proposed 2006-2007 Highway agreement, the Highway employees received an extra .5% that will be built into their wages both in this successor agreement and in agreements in the future. With all other bargaining units settling for 3%, it is hard to imagine that the Union could believe that the County didn't want something for the extra .5% in each year of the agreement.

I have also taken into consideration the other tentative settlements reached by the parties as set forth above as required by subsection 7r. j. It is readily apparent that the employees in the Highway bargaining unit received in addition to the wage increase, improvements in vacations, funeral leave and leaves of absence language in the event an

employee would have his CDL license suspended or revoked. None of the tentative settlements in particular benefit the County.

The parties may be assured that I have reviewed their evidence in its entirety even if not specifically mentioned herein. I also commend the parties for limiting their arguments to the issue at hand. Elimination of guaranteed hours of work language is not insignificant, but in this case, based on all the factors that I have discussed above, particularly the economic circumstances of the County, the internal and external comparables and labor stability and the wage lift, which I believe is a *quid pro quo* along with the other tentative agreements, I find the County's offer to be more reasonable.

AWARD

Based upon the statutory factors listed above and the record established in this proceeding, including the testimony, exhibits and arguments of the parties and for the reasons discussed above, the Arbitrator selects the final offer of the County and directs that it be incorporated into the parties' 2006-2007 collective bargaining agreement.

Dated this 20th day of February, 2007.

Paul A. Hahn, Arbitrator