STATE OF WISCONSIN
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BUFFALO COUNTYJACKSON COUNTY
COURTHOUSE EMPLOYEES
AFSCME, LOCAL 1625-B
AFL-CIO

And

Case 79
No. 66869 INT/ARB-10925
Dec. No. 32181-A

BUFFALO COUNTY
(Court House Employees)

Appearances:

For the Union: Daniel R. Pfeifer
Staff Representative

For the Employer: Mindy K. Dale, Esq.
Weld, Riley, Prenn & Ricci

DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the Wisconsin Employment Relations Commission. A hearing was held on November 19, 2007 in Alma, Wisconsin. The parties were given the full opportunity to present evidence and testimony. At the close of the hearing, the parties elected to file Briefs and Reply Briefs. The Arbitrator has reviewed the testimony of the witnesses at the hearing, the exhibits and the briefs of the parties in reaching his decision.

BACKGROUND

Buffalo County is located in Northwest Wisconsin. One of the Bargaining Units consists of the employees that work in the Courthouse. The employees in that Unit are represented by AFSCME, Local 1625-B. In addition to this bargaining unit, there are four other bargaining units in the County. The Human Services Paraprofessionals, Human Services Professionals, Highway Department and Law Enforcement employees each comprise bargaining units. All units are represented by AFSCME, except Law Enforcement. They are represented by the WPPA.

The parties resolved most of the issues in their negotiations. The proposals of the Parties on the outstanding issues are:

Wages

Union	1.5% increase	1/01/07
	1.5% increase	9/01/07
	2.0% increase	1/01/08
	.25% increase	7/01/08
County	2.0% increase	1/01/07
	2.0% increase	1/01/08

Overtime

Union Add: to Article VII, Section 1
"Overtime shall be awarded to the most senior employee available in the Department

County No change in current contract

The parties also made proposals that would change the sick leave and health insurance contract provisions. Under the proposals, sick leave payout is increased from 2/3 to 100% of accumulated leave at retirement or death. The deductible and co-pay for prescription drugs is also increased, as well as the percentage of the total premium to be paid for single coverage. The proposals from both parties on this issue are identical and will be incorporated into the Award.

DISCUSSION

The Statute requires an interest arbitrator to consider several factors in rendering a decision. As is always the case, not every factor is relevant in any particular proceeding. The Arbitrator shall only address those issues that he feels are relevant here or that need explanation given the arguments of the parties.

GREATEST WEIGHT

The Statute requires the Arbitrator to 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 on expenditures that may be made or revenues that be collected by a municipal employer." The County maintains that this factor favors its proposal.

Position of the County

Offering more than a 2% wage increase is beyond the County's financial ability given the restrictions imposed by the legislature on what it can collect. The legislature has since 1993 placed a limitation on levy increases. The County may only increase levies by 2% or the total rate of growth, whichever is greater. New construction has only grown by 1.89% in the last two years. Levies have thus increased by only the 2% allowed over that period. The 2% wage increase is consistent with the 2% increase in the levy.

The Union's proposal would disproportionately take a larger percentage of the allowable increase for this unit. These employees represent only 11% of the total workforce. This percentage increase is on top of built in increases under the current contract based on length of service. Because of these types of increases,

the County has already had to reduce the hours of the employees and not fill vacancies to cover the deficiency. The County has done its best to reduce costs. Some of those reductions have raised concerns about its ability to provide needed services. While the County is able to increase revenue by 3.86% in 2008 under the law, there are other expenditures that are totally overdue, such as an upgrade in the computer system of the Courthouse. The increased revenue raised needs to be used for these types of expenses. In addition, despite the changes in health insurance coverage that have been agreed upon, premium rates have still risen even with these changes. Premium increases will still take up over 60% of the additional revenue from the one time 3.8% increase in revenue. The budget is already stretched to the limit. The levy limits have "played a significant role in the County's ability to operate in a fiscally sound manner." This factor favors the County.

The Union objects in its brief to the utilization of the cast-forward method for calculating costs as they include step increases. It cited many cases to support its argument. Those cases reject using that method for internal and external comparisons. The County has not used that method for those purposes, but only to show the total cost of the proposals and the impact of this factor on those costs.

Position of the Union

The County contends that the costs for 2007 are higher under the Union proposal. They are incorrect. The costs are the same. Thus, any argument that this factor favors the County in 2007 is misplaced.

The County chose to lower its tax levy in 2006 from the previous year. The County's allowable levy increase in 2008 is 3.86%. The fund balance is almost $3

million. The County in calculating expenses used the cast-forward method. That method has been found by arbitrators to be inappropriate for calculating costs for employees in this type of unit. The Arbitrator should not use that method here.

The County has argued in its brief that this factor favors its proposal. The County fund balance is sufficient to cover the cost. Furthermore, the total cost difference in the proposals according to the County's own calculations is only $10,000 over the two year period. The 3.8% levy increase in 2008 is more than enough to cover the Union's proposal.

Discussion

The Union objects to the Employer's use of the cast-forward method in its calculations of costs. It cited numerous cases to supports its position. The County notes that the arbitrators in the cases cited by the Union only refused to use this method when a party tried to use them to compare internal and external costs and increases to those of the employer in question. The County here it notes has not used the cast-forward method for that purpose. It has only used it to emphasize the significant role the total increase in cost plays on the Greatest Weight Factor. The Arbitrator agrees with the County.

One of the cases cited by the Union is Waunakee Comm. School District Dec. No. 30305-A. Arbitrator Stern did address the use of the cast-forward method in his Decision, but as the County notes he was discussing the internal and external comparables at the time. Arbitrator Stern stated:

> The question then becomes what is the usual procedure followed by arbitrators when comparing wages and wage increases of employees such as custodians and other municipal employees who are not professional educational employees.

> This Arbitrator finds that almost all arbitrators have excluded the cost of step increases when comparing wage levels and wage increases.

The Union also cites (City of Beloit, Dec. No. 22374-A, 11/14/85, where Arbitrator Malumud stated:

> The Association objects to the inclusion of the increment, i.e., that portion of the salary schedule increase which is determined by the structure of the salary schedule. Such increases are not included in the costing of the salary increases provided to clerical and/or blue collar employees of the District, Brown County or the City of Green Bay. In this Arbitrator's experience, the observation of the Association is correct. Normally, any increases generated by step movement from the hiring step to the maximum rate to be paid to a blue collar or clerical employee is normally not included in the percentage increase costed to these employees. However, there is a reason for the different treatment accorded these different categories of employees. A teacher salary schedule may have 6 salary lanes and 15 steps on each lane. The result is 90 steps or increments which generate additional income over and above the increase in the base which is to be paid "across the board" to all teacher on the schedule. However, the schedules employed for blue collar workers may contain only four or five steps. The maximum may be achievable in two or three years. Most or all of the unit may be at the maximum rate. Philosophically, the maximum rate for a blue collar worker, often is labeled as the rate for the job. Anything which is paid below that rate, is considered to be payment less than the rate for the job. Such consideration is given to an employer in light of the time and expense expended in training and orienting a new employee to the tasks of the job. Such considerations do not enter into the establishment of a teacher salary schedule.

What is important is that this statement was made during the portion of the discussion relating to external comparability. The cast-forward was being used to show how Beloit compared to other communities. It is based on these decisions that the Arbitrator agrees with the Union and the County that for purposes of comparability step increases and the cast-forward method have no place. Since the issue currently under discussion is the Greatest Weight Factor, not comparability, these costs may be considered for that purpose.

The Union in its offer has deferred the second increase in 2007 to September 1. Its initial base wage increase on January 1 is 1/2% lower than the County's so the actual cost of the wage increase for the year is the same as the County's. According to the figures of the County the cost differential for 2007 is just over $900, which takes into account the costs associated with the cast-forward method. The total compensation cost to the County for this unit in 2007 was $598,000. Thus the cost differential between the two proposals for 2007 is .15% of the total package. The total budget for 2006 was $15.32 million. Thus, the difference represents .006% of the total budget. The increase in revenue for 2007 was roughly $350,000 and the cost difference in the parties' proposals represents .0035% of that amount. The Law permits a 3.86% increase in 2008. That results in an increase in revenue of $601,683. The total cost differential for the two proposals in 2008 is approximately $9000. That represents 1.5% of the allowable increase. The $35,000 total increase under the Union proposal is 5.8% of the 2008 increase. This work group represents 11% of the total workforce. Giving 5.8% of the increase to 11% of the workforce does not seem out of line.

The Arbitrator finds that looking just at the minimal differential in the two parties' proposals in isolation the argument of the County that the Greatest Weight Factor favors its proposal would appear to be without merit. However, to get the total picture as to whether there is merit to this argument the Arbitrator must also look to see whether the financial picture here as opposed to elsewhere is such that the lower wage proposal is more in keeping with its financial position. The Statute requires the Arbitrator to look at external comparability. While consideration of these other costs that result from the cast-forward method cannot be used in the

comparison, the basic increases can be compared. Is there a financial reason why the County has offered what it has independent of what the others have done? Thus, the Arbitrator cannot fully evaluate the Greatest Weight factor until he has completed a review of the external comparables. That shall be the next step.[1]

External Comparables

The parties agree on which Counties properly make up the appropriate comparables. Clark, Dunn, Jackson, Monroe, Pierce, and Trempealeau Counties comprise the comparables. The chart below shows the percentage wage increases the Counties in 2007 and for those that have settled their agreement for 20008.

County	2007	2008
Clark	1/1 2% 7/1 1%	1/1 2% 7/1 1%
Dunn	1/1 2% 7/1 1%	1/1 3%
Jackson	1/1 2%	Not Settled
Monroe	1/1 2%	1/1 2.5%
Pierce	1/1 2% 7/1 1%	Not Settled
Trempealeau	Wage Freeze	Not Settled
Average	1.91* including Trempealeau 2.3% without Trempealeau	2.67%
Buffalo (County)	1/1 2%	1/1 2%
Buffalo (Union)	1/1 1.5% 9/1 1.5% (2% average)	1/1 2% 7/1 ¼ %

*Uses ½ of 2nd increase to determine average for those Counties with a split increase.

[1] It is somewhat ironic that while discussing the use of the cast-forward method the Arbitrator agreed with the Employer that it could be used on a limited basis, but the viability of the County's argument will ultimately rest on a comparison that takes those cast-forward costs totally out of any consideration.

The County at the end of 2006 ranked 5 of 7 in the wages it paid the Deputy Clerk.[2] That rank would remain unchanged under either party's proposal for 2007. There are insufficient contract settlements for 2008 to judge whether that would change in that year. In real wages, Buffalo County's Deputy Clerks were $1.34 below the average for 2006 including Trempealeau and $1.64 without including that County. For 2007, it would be $1.45 below with Trempealeau and $1.83 below without that County under the Employer's offer. It would be $1.28 or $1.67 behind under the Union's. Using the Deputy Treasurer Classification, their wages are $.19 below the average with Trempealeau or $.25 below without it in 2006. In 2007, the differential would be $.22 or $.35 with and without Trempealeau. Under the Union proposal, those numbers would be $.06 or $.19 respectively. Thus, the differential for this classification increases slightly under the County proposal and decreases under the Union's.[3]

The Union argues that there is a need for these employees to catch up to the wages in the comparables and that the additional money that it seeks will help do that. One of the factors that arbitrators often look at when this type of argument is made is whether this particular bargaining is not faring as well as the employees in the other bargaining units when compared to the other Counties. Is that the case here? The answer is no. The employees in this bargaining unit rank 5 of 7. As shown in Employer Exhibits the benchmark positions in the other units fare no better and some fare worse. The Paraprofessionals rank lower or the same among the comparables. The wage differential from the average also does not deviate

[2] The Arbitrator is using the maximum wage in all wage comparisons here.
[3] There are several other classifications in the bargaining unit, but using these two is sufficient for these purposes.

considerably from this bargaining unit's differential. The Professionals in Human Services are in the same situation for some and are even lower for others. The Law Enforcement employees in patrol also rank 5 of 7 and their wage is $1.45 under the average. That is just about where these employees are situated. The Highway employees come out even worse. They are at the bottom in rank, although the average wage was only $1.42 below the average.[4] From these figures, it is clear that the need for catch-up in this Unit does not exist. The County is in line comparatively speaking in this Unit with where it is in the other Units.

There is no question that on average the wage proposal of the County is at the low end of the spectrum, excluding Trempealeau and that under the Union proposal it is close to the average. The total lift under the Union proposal is the same as that given in 3 of the other 6 Counties, although the cost is less for 2007 given the timing of the increases. The County's proposal is the same as that offered in two of the other 6 Counties, and better than a thirds' increase. On the surface, these facts would favor the Union's proposal.

The question then is whether there is a reason why the County offer is below the average. Answering this question necessarily gets the Arbitrator back to the Greatest Weight Argument of the County. It believes the facts and figures show that there is a financial reason that was created by State Law that explains why it has made the offer that it has.

The Arbitrator finds Exhibits 44 and 47 to be most revealing when analyzing this argument. Exhibit 47 shows the percentage increases in tax levy in each of the comparable Counties and in this County. Only Clark and Buffalo were limited to a

[4] 2007 wages were used for these comparisons.

2% increase in tax levy in 2007. The average increase in levy in 2006 was 3.41% and for 05 and 06 was 6.57%. The increase in Buffalo was 2% each of those years for a two-year total of 4%. Exhibit 44 puts Buffalo at the bottom in both total taxes collected and in percentage change in tax revenues for 2006.

The Arbitrator has put forth numerous figures in this Decision. He finds that out of all them, the County is correct that the most significant is that not one of the comparables was limited by law to the minimum raise in levy. Some were able to raise them significantly higher and some only slightly higher, but all were over the 2% minimum. While this County, as all Counties can increase the levy by 3.8% in 2008 there is no reason to believe that this is anything but a one-time benefit. There is also no reason to believe that the County's financial situation versus the comparables will get better in the future. Its new construction as shown in Exhibit 48 remains at the bottom. Any additional increase to the base wage during the term of this contract as would be true in the Union offer will increase total costs in the future. While the Arbitrator is dealing only with this contract the financial situation that has existed in the past must be used as a guide for the future. History does repeat itself.

Health Insurance Changes

The earlier discussion looked simply at the wage proposals of the two parties. There is another issue that was discussed and resolved by the parties during negotiations that had direct cost implications to both the employees and the County. The Union concessions in the area of health care shifted some of the cost burden to the employees. The changes will result in greater out of pocket costs to employees. The co-pay on premiums for single coverage goes from 100% paid by

the County to 85%. It stays at 80% for family coverage. The deductible goes from $100/$200 to $500/$1000. Office co-pay goes from $0 to $15. Drug costs increase as well. For generic drugs, the co-pay is raised from $5 to $10 and the supply is decreased from 90 days to 34 days.

The Union argues that what it has agreed to do places it in a most unfavorable position versus the external comparables and that fact should be considered by the Arbitrator when weighing the wage proposals. In evaluating this argument, it should be noted at the outset that when benefits are being discussed, such as health insurance coverage, internal comparables have always been given greater weight. Where wages are concerned, externals can be key, but for benefits, it more often internal comparability that is critical. Having so stated, it is still important to review what the other Counties do when it comes to health insurance. Is this County so out of line that greater wages are needed to compensate?

The average premium for single employees for the other six Counties is $595.[5] For this bargaining unit in 2007 it was $649. The Employer pays on average 90%. This unit would now pay the highest percentage of the premium of all the comparables for single coverage, except Clark and only 2% more than Monroe.[6] Using the 2007 rate, the employee choosing single coverage would have paid under the new proposal $104 versus an average of $60 in the comparables. This is an expense until now that the employees did not have to pay at all. To them, any wage increase is offset by the $104 per month they now have to pay.

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[5] Where there was more than one rate, an average was used.
[6] The single premium in 2007 in Clark was $14 more than here and in Monroe it was approximately $100 less using the average of the plans.

The average premium for family coverage was $1453. The premium for these employees' family coverage was $1416. In 2008, as in the years prior, 80% of that is paid by the employees. The average among the comparables is 90%. The next highest percentage paid by employees was in Clark where it was 85% and in Monroe where it was 87%. All of the others were 90% or above. That means in the comparables the average cost to the employee was $145 and for these employees it would have been $280. If this were a new expense as it was for single coverage that would indeed be a major consideration. The problem is this is not something new. In the prior contract employees were also paying 80%. For those seeking family coverage, the amount of premiums being paid by the employee is unchanged. The concessions had no impact on them regarding premiums. Therefore, there is no justification to grant them an increase of more than they would otherwise be entitled to get since they gave nothing up in this contract regarding premiums.

The Union also claims that the deductibles and office co-pay is higher in this County than in the others. The County disagrees. The average office co-pay is $17.50 versus $15 here. Only Pierce and Trempealeau had lower co-pays. The new $250 deductible is the highest among all the comparables for single employees. The $500 family deductible was less than the $600 for Clark and Dunn and more than the others. The $10 co-pay for generic drugs is the lowest with the exception of Trempealeau. The Arbitrator in reviewing the above does not find the differences in the office co-pay and deductibles to be a significant factor. How much it will cost an employee depends upon usage. Most of the employee will likely not feel the change as they will not get to the maximum. Furthermore, the change in cashable

sick leave upon retirement more than offsets any additional costs resulting from higher deductibles.

It is clear for the four employees who elect to have single coverage they now pay something they did not pay previously, although what they are paying is far less than what employees with family coverage are paying.[7] For the majority of employees, the impact of the changes is minimal. Overall, though these employees pay as great or greater share of the costs than elsewhere, the changes from 2007 to 2008 have not increased that significantly for the majority of the bargaining unit.

Summary

If the Arbitrator looked only at the percentage increases and insurance costs for the external comparables and compared them with the parties' offers external comparability would tilt slightly towards the Union. When that comparison adds the financial well-being of this County versus the other Counties into the equation, the scale tips the other way. This is true even when factoring in the employee's insurance concessions in this contract. Since the tilt is in the direction of the County on the very issue covered by the Greatest Weight Factor, the Arbitrator by law must give considerable weight to this finding.

Internal Comparables

There are five bargaining units in the County. The Human Services Professionals and the Human Service Non-Professionals comprise two of those units. They each settled for the same raise being offered to this bargaining unit. They got 2% in 2007 and 2008. The Highway employees are also represented by AFSCME. They have not settled their contract for 2007 or 2008. Each party's offer

[7] The number of employees electing for single coverage is obtained from Employer Exhibit 9.

is identical to their proposed here. The Law Enforcement Employees are represented by the WPPA. They also have not settled their agreement. The County offer to the WPPA unit is identical to the offer here. The WPPA is asking for a 2% increase on January 1 of each year and an additional 1% increase on July 1 in both years. The two bargaining units that have settled contain approximately 16% of the fulltime workforce and roughly the same percentage of the workforce when part-time employees are included.[8]

The County contends that there has always been internal consistency in the wage increases given to the bargaining units. In both 2005 and 2006 the raise in all five bargaining units was the same, except an additional $.25 was added to the top wage for Law Enforcement. That uniformity was not present in 2003 and 2004. In 2004 some units got a 3% increase and others got 2.75%. In 2003 some units received a 3% increase on January 1 and some received a 2% increase on January 1 and another 2% on July 1. Though the cost to the County in both cases was the same for that year, the base for the next year was obviously higher for those get a 2%-2% increase.

Arbitrators will often look to Internal Comparables when a clear pattern has been set and a unit is simply the lone holdout. When that occurs, it is not uncommon for an arbitrator to find for the employer, unless there is some unique reason for not doing so, such as a need for catch-up. Arbitrators do so to avoid rewarding the lone holdout for holding out. Absent a pattern, arbitrators look more to the external comparables than the internal ones. While there was a pattern the

[8] The number of employee in 2007 was used to calculate the percentages.

last two years, there was not one the two years before that. More importantly, there is not one here. Only two of the five bargaining units reached agreement. Those two units are the smallest in number of employees of all the units. It cannot be said given that fact that an internal pattern has been set. The Arbitrator finds looking just at wages, that this factor has no bearing on the outcome in the matter.

In looking at internal comparability, the Arbitrator has also looked at the insurance provisions in the agreements of the other units. Is this Union giving up something that no other unit has given up? Again, the answer is no. This unit is not the only one that has made these same changes in health insurance costs. These changes have previously taken place or will take place in all the other bargaining units. Arbitrator Hempe in 2006 included these changes as part of his Award for the Human Service Paraprofessional Bargaining Unit. Arbitrator Grenig did the same in the Law Enforcement Unit.[9] This occurred in 2006. The Human Service Professionals voluntarily accepted the change in 2007. The Highway employees, like with this unit have voluntarily accepted the changes effective in 2008. Thus, the changes here are internally consistent.

The question then becomes what if anything did the County have to give the employees in the other units to obtain these changes? Was there a quid pro quo? The Union contends the greater wages it seeks should be a quid pro quo for the insurance changes since they provide savings to the County in insurance costs. The County disagrees.

[9] Dec. No 3184-A and Dec. No. 31340 respectively.

Both Arbitrators Grenig and Hempe rejected the argument that there was a need for a quid pro quo when they imposed the changes in health insurance. Arbitrator Hempe found "the absence of a quid pro quo was not a detriment to the County offer," Arbitrator Grenig said the additional $.25 offered was sufficient, "if in fact, any quid pro quo was required." The County feels here a quid pro quo is also not necessary.[10]

The change in benefits for Paraprofessionals and Law Enforcement took effect in 2006. In that year, the percentage increases in wages were the same as those received by the units that did not yet change insurance provisions. There was no gain in wages to offset the changes in health coverage for those employees. The Human Service Professionals made the change in coverage in 2007, but agreed to accept the 2% increase offered by the County for that year and the succeeding year, as did the Paraprofessionals. They sought no quid pro quo in wages, because of the changes made in the preceding contract. On the other hand, Law Enforcement has retroactively sought more. They are seeking an even larger wage increase than is being sought in this Unit.

The findings of Arbitrators Grenig and Hempe are important. Arbitrator Hempe clearly found that no wage supplement was needed to gain the changes in insurance co-pays due to the ever increasing costs of health coverage to this and all employers. Arbitrator Grenig similarly found that to be true. This Arbitrator is not bound by those findings. However, given the fact that they involved this same County over the same issue, this Arbitrator must give some deference to their

[10] It argues even if one were that since this Unit has enjoyed the higher benefits for longer than the other units it has already received a quid pro quo. The increase in cashable sick leave on retirement also provides some trade-off for these changes it believes.

findings. If in fact health insurance were an open issue to be decided by this Arbitrator, the Arbitrator would have been hard pressed to find against the County on acceptance of those changes. Uniformity would have been shown and it would have been achieved absent a quid pro quo. Thus, history has shown that the insurance concessions for the employees in this County have not resulted in greater wages being obtained by the units accepting the changes. Consequently, the Arbitrator finds the concessions on health insurance by this Unit do not require the Employer to pay more than it would have otherwise as a trade-off for the changes. Internal Comparability does not then support the Union position.

Cost of Living

Both parties offered information regarding the cost of living increase in 2006 and 2007. The increase in 2006 was 2.4% overall and 1.7% for non-metropolitan cities in the Midwest. The figures offered by the Union for 2007 extended further in the year than the figures offered by the County. The County's figures show an increase of 2.3%. The Union figures include October of 2007. They show an overall increase of 3.7% and a 4.3% increase for non-metropolitan cities.

The County cited several cases to support its argument that the Arbitrator should only look at the increase in COLA the year preceding the new contract. That would mean 2006 would be the reference point and 2007 would not be relevant. While there is logic to that argument, since we are now in 2008 it seems to the Arbitrator that ignoring the information for 2007 or pretending it does not exist would not be realistic. The information is available and the contract will impact the employees in the year just passed. Therefore, the Arbitrator shall consider both years in discussing this criteria.

The parties also disagree as to what increases should be considered when comparing them to the COLA. The Union maintains that only the actual wage increase should be compared to the COLA. The Employer argues that the total package increase, which includes health insurance costs, should be included. Both sides extensively cited cases to support their particular point of view. It is clear from those cases that arbitrators have been on both sides of the fence on this question. For example Arbitrator Friess stated in Vernon County[11]

> Finally, we turn to a consideration of the cost of living criteria. The record evidence establishes that the 1989 cost of living increase for the year ending December, 1989, calculated to 4.6%. The Employer argues that its offer is preferred, because the total cost impact of the Employer package amounts to 5.57 % for 1989 and 4.78 % for 1990. The Employer's reliance on the cost of the package is misplaced. When considering the cost of living criteria, it is the opinion of this Arbitrator that it should be compared to the percentage wage increases and not to the cost of the package. It is the wage increase which insulates employees against the erosion of the dollar caused by inflation, the cost to the Employer does not. Since the Union offer is 4% each year, compared to 2.96 % and 3.25 % for the first and second years respectively in the Employer offer, it follows that the Union offer is closer to the cost of living increases than is that of the Employer. It follows there from that the cost of living criteria supports the Union offer.

Conversely, Arbitrator Malumud said in Necedah Area School Dist[12]

> The Arbitrator uses the total compensation percentage increases rather than wage percentage increases as the basis for measuring the increases provided under the parties' final offers by the Consumer Price Index. The CPI is based on a market basket approach in which a number of items are identified and the increase in those costs are tracked. Most importantly, the increase in medical care and housing as well as food, apparel and transportation are all identified in the increase in the COLA.

Health insurance costs are a major component of the COLA. Increase costs in insurance and medical bills have raised the COLA along with fuel costs. Since the

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[11] Dec. No. 26360-A (1990)
[12] Dec. No. 28259-A (1995)

Employer is providing a large portion of the premium cost, it would be error to ignore this factor when looking at the COLA. Therefore, this Arbitrator agrees with the line of cases that incorporate increases other than wages when comparing them to the COLA. This benefit inures directly to the employee, as the employee does not have to provide that coverage him or herself. However, if the Arbitrator is going to consider increases in health care costs to the Employer for these comparisons, he must also take into consideration the additional cost that is being borne by the employees with the changes that have been agreed upon in health care coverage. The additional percentage in premium for single employees, the increase in deductibles and co-pays must be used to offset some of the increases for the Employer since some of the wage increase must now be used for health care costs.

The Arbitrator is taking a middle road on this argument. Though he agrees that increases that directly benefit the employee by defraying expenses the employee would otherwise pay him or herself should be included in COLA comparisons, he disagrees that other increases that do not directly impact the employee such as increase costs in FICA should be included.[13]

Using the changes in costs for just wages and health insurance shows the following comparison of the offers using the figures from County Exhibit 6.

	County	Union
2007	1.9%	2.1%
2008	4.7%	6%

[13] Though increases in the contribution to the Retirement System benefit the employee, it does not impact his or her out of pocket expenses which is what COLA measures. It shall not be included in the calculation.

It is interesting using this hybrid calculation that the increases appear higher than even the Employer argued. The problem is that, as noted, including health insurance in the mix for cost increase to the Employer means it must also be taken into consideration for the new costs now being incurred by employees. The 13.33% increase in health premiums also imposes an increase in costs to the employee that must be deducted from the above figures. Four employees take single coverage. They will be paying approximately $125 a month they did not pay previously. That would eat up their increase. The increase in cost for family coverage depends upon usage, an unknown factor at this time.

The bottom line is that the increase in 2007 would in net terms be below COLA under the Employer proposal. The net benefit under the Union proposal is the same as the Employer's for 2007, but given the increase in base it is closer to COLA in 2007. For 2008, both proposals, even with the insurance adjustment exceed COLA using this formula. This is true whether the Union's figures are used or the County's although the difference is greater using the County's. Since the increase in 2007 favors the Union and the increase in 2008 favors the County, these years would tend to cancel each other out. While the difference between costs and the COLA is more in 2008 that is the same year the health changes take effect, thus diminishing that difference. On the whole, this Arbitrator finds that this factor favors neither side.

Interests of the Public

The County argues that this factor favors its position. The legal limit on its increases over the years in comparison to other communities makes it difficult to fund the types of increase sought by the Union here. Utilizing the fund balance to

cover recurring expenses is not warranted, and many arbitrators have rejected this approach. The fund balance in the County is not out of line as to what a County this size should be. The Union counters by arguing that the difference in cost between the proposals is not great and that the County can well afford the increase sought by the Union here. It also notes that having a well paid workforce that is paid in line with what others doing similar jobs in other Counties are paid is good for the County. It makes the employees more productive.

As has been stated earlier, this County has not been able to increase revenues to the level that all of the comparable Counties were able to do. From a financial standpoint there is merit to the County's argument. While having a well paid workforce is good for morale, financial considerations necessarily hampers any employer's ability to pay higher wages. While the Union is correct that the cost differential is small, the increase in the base from its offer over the offer of the County must be considered. It must not only pay the increase for the next two years, but for years in the future. On the whole, it is the Arbitrator's conclusion that this factor does favor the County.

OVERTIME

The Union seeks to add a sentence to Article 7, Section 1 that would require the County to award overtime "to the most senior employee available in the Department." It contends that there have been times when non-bargaining unit personnel have worked overtime and other times when less senior employees have been offered overtime work. It is conceded by both sides that the amount of overtime work for this bargaining unit is minimal so the impact of this proposal is

small. The Union further maintains that adding this language to the Agreement should not be a factor in deciding which offer the Arbitrator should accept. It is the wage offer that will be determinative it argues, not this offer.

The County argues that the Union has not met its burden for changing the status quo. No need has been shown. On one occasion, there was an issue and it was resolved. Court trials can extend beyond the normal workday. It would be impractical to remove the Clerk doing the trial and replace that person with senior Clerk at the end of the normal workday. None of the external comparable, it notes have language like that proposed by the Union. The comparables that have language require that overtime be distributed equally. Only about1/2 of the comparables, even have language on the issue.

The County's position is correct. No need has been shown and there is no support among the comparables for this additional language. Of course, the Union is correct that this issue does not carry nearly the weight that the wage issue carries. As the Arbitrator sees it, this is one of those occasions where one side throws in a proposal assuming that its proposal on the major issue will carry the day. That type of proposal is simply a by-product of Last Best Offer Arbitration.

CONCLUSION

The Union has presented strong arguments in favor of its proposal as has the County. The Statute requires the Arbitrator to consider several factors. Two of the factors are to be given more weight than the others. In this case, the factor to be given the greatest weight favors the County. The Arbitrator has found there were simply not enough of the other factors pointing in favor of the Union to overcome

that single factor. Many of the other factors are either not relevant or barely tip the scales in favor of one party or the other. The Arbitrator thus finds that the proposal of the County is preferred.

AWARD

The County proposal together with all tentative agreement is adopted.

Dated: February 15, 2008

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Fredric R. Dichter,
Arbitrator