ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	)	
Between	)	
WASHINGTON COUNTY (Highway Department)	)	Case 161 No. 67069 INT/ARB-10959
And	)	Decision No. 32304-A
TEAMSTERS LOCAL UNION 200	)	

Impartial Arbitrator

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Hearing Held

West Bend, Wisconsin
April 28, 2008

Appearances

For the Employer

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BACKGROUND OF THE CASE

This is a statutory interest arbitration between the Washington County Highway Department and Teamsters "General" Local 200, with the matter in dispute the terms of a two year renewal labor agreement covering July 1, 2007 through June 30, 2009.

During the course of their preliminary negotiations the parties reached agreement on various changes to be incorporated into the renewal labor agreement, including *wage increases*, *changes in Group Health Insurance*, *improved vacations*, *increased life insurance*, *higher reimbursement levels for safety apparel and equipment*, and *extension of various side letters of agreement into the new agreement*. Certain language changes proposed by the Union, however, remained in dispute.

After their failure to achieve a full renewal agreement the County, on June 27, 2007, filed a petition with the Wisconsin Employment Relations Commission requesting the initiation of final and binding arbitration, pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. After the completion of a preliminary investigation by a member of its staff, the Commission on January 2, 2008, issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitration. Pursuant to selection of the parties the Commission appointed the undersigned to hear and decide the matter, a hearing took place in West Bend, Wisconsin on April 28, 2008, at which time both parties received full opportunities to present evidence and argument in support of their respective positions, each thereafter closed with the submission of a post-hearing brief, and the record was closed by the undersigned effective June 3, 2008.

THE FINAL OFFERS OF THE PARTIES

The only issue before the undersigned consists of selection or rejection of the following described changes to Article VI, proposed by the Union.

(1) *Retention of the first three sentences* contained in Section 6.01, Paragraph 2 of the prior agreement, *deletion of the remaining sentences* in this section of the prior agreement, and *addition of the following sentence*:

> "2. ...During the work week that includes the Independence Day Holiday; all union employees shall receive ten (10) hrs of

holiday pay."

(2) *Modification of and deletions from* Section 6.01, Paragraph 3 of the prior agreement, to read as follows:

"3. During the summer work period, the normal hours of work on the four (4) ten (10) hour workdays will be from 6:00 a.m. to 4:00 p.m., with one (1) twenty (20) minute paid break period."

(3) *Modification of* Section 6.01, Paragraph 4 of the prior agreement, to read as follows:

"4. During the summer work period, work performed outside of the normal work schedules listed in paragraphs 2 and 3 above shall be considered overtime and shall be paid for at the rate of time and one-half (1½), and the provisions contained in the last sentence of Section 6.01 and in the first sentence of Section 6.04(a) will not be applicable during such summer work period."

(4) *Deletion of a portion of* Section 6.01, Paragraph 5 of the prior agreement, to read as follows:

"5. During the summer work period, sick leave shall continue to accrue at the rate of eight (8) hours of sick leave for each month of employment to a maximum of 720 hours. However, use of a day of sick leave on a day which is a normal ten (10) hour workday will be charged at ten (10) hours of sick leave."

(5) *Deletion of a portion of the first sentence of* Section 6.01, Paragraph 6 of the prior agreement, to read as follows:

"5. During the summer work period, vacation by the week or by the day will be governed by the regular rules for vacation, provided however, that use of a day of vacation on a day which is a normal (10) hour workday will be charged at ten (10) hours of vacation leave, that at the end of the summer work period any remnant of an eight (8) hour day of vacation, i.e., two (2) hours, four (4) hours or six (6) hours, must all be taken on one (1) day. Only one (1) of the employees working the Thursday, Friday, Tuesday and Wednesday work schedule will be allowed off on a Friday during the summer work period."

(6) *Addition of the following sentence* to Section 6.02 of the prior agreement:

"...There will not be an unpaid lunch break during the summer work schedule."

The Employer is proposing retention of the previous contract language in all of the above referenced areas.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm) of the Wisconsin Statutes directs the Arbitrator to utilize the following criteria in arriving at a decision and rendering an award:

"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 legislature to 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."

THE POSITION OF THE COUNTY

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

(1) By way introduction, it described the following areas of agreement and disagreement.

(a) The final offers of the two parties parallel one another on six areas: *wages*; *health insurance benefits*; *vacations*; *life insurance*; *safety apparel and equipment reimbursement*; and *renewal of a side letter on CDL disqualification*. The only matters in dispute, therefore, are two additional items contained in the Union's final offer: *a major change in the summer hours schedule*; and *an increase in holiday pay for Independence Day (July 4th)*.

(b) The parties are in agreement that the *primary external comparables* consist of *Dodge, Fond du Lac, Ozaukee, Sheboygan* and *Waukesha counties*.

(2) Arbitral consideration of the external comparables does not support selection of the final offer of the Union.

(a) It does not support the Union proposed *summer work schedule change*: only two of six comparable counties provide for no lunch period when the summer work schedule is in effect; and, while it appreciates the Union concern for productivity levels at the job site, this does not justify its demand for a change in the summer work schedule.

(b) It does not support the Union proposed *change in holiday pay*: this demand for fewer work hours and more holiday pay for Independence Day, was not accompanied by the requisite quid pro quo; its request for ten hours of holiday pay is also supported by only two of the six comparable counties; and the lack of the parties' bargaining history relative to summer hours and holiday pay detract from the concept of placing any weight on the external comparables. Further, that the County is a leader in the number of paid holidays; that four of the comparable counties provide 10 paid holidays, Washington County provides 11 such holidays, which is exceeded only in Sheboygan County which provides 11½ paid holidays.

(3) The Union has failed to offer the requisite *quid pro quo* in support of its proposed change in the status quo.

(a) It is well-settled in interest arbitration that a party seeking a change in the status quo must provide an appropriate quid pro quo to have that change awarded in the interest arbitration process.

(b) A three prong test is normally utilized in making the above determination: *first*, had the party proposing the change demonstrated a need for such change?; *second*, has the proposing party provided a quid pro quo for the proposed change?; and *third*, has the proposing party demonstrated such criteria by clear and convincing evidence.

(c) It relied upon various published arbitration awards in emphasizing the significance of the Union's failure to

provide a quid pro quo in the case at hand.

(d) That Union testimony that schedule changes during the Independence Day holiday week "*goofs everybody's week up*" and its opinion that the Union proposal would be *cost efficient*, do not demonstrate the need for such change.

(e) That the County retains its management rights, and if it wishes to improve the efficiency of its operations in a way requiring collective bargaining, that such an issue can and must be addressed at the bargaining table rather than through interest arbitration.

(i) The workweek, whether for the entire summer schedule or only during the Independence Day workweek, was agreed upon by the parties at the bargaining table, and changes thereto should also take place at the bargaining table.

(ii) The Union is attempting to gain shortened workdays and more holiday pay, without engaging in give and take collective bargaining.

(4) The final offer of the County provides *fair and competitive wage rates* to its Highway Department employees.

(5) The final offer of the County provides *a fair and competitive benefit package for its Highway Department employees* including: health insurance; paid holidays; paid sick leave; pay for uniforms and protective equipment; long term disability insurance; life insurance; funeral leave; worker's compensation; and WRS retirement contributions.

(6) Arbitral consideration of the *internal comparables* favors selection of its final offer.

(a) The County has six bargaining units in addition to a large group of non-represented employees.

(b) Maintenance of internal uniformity of benefits to the extent possible, is an important consideration.

(7) Arbitral consideration of the *cost of living* is neutral, given the parties' agreement on 3% per year wage increases during the term of the renewal agreement.

In summary and conclusion, the County submits that its final offer is the more reasonable based upon the following considerations: *first*, the Union is proposing two changes in the status quo without demonstrating any need for such change other than employee desire to leave work earlier and to be paid more for the Independence Day Holiday; *second*, the Union has not offered the requisite *quid pro quo* in support of its proposed changes; *third*, the Union has not established that a majority of primary external comparables enjoy the benefits proposed by it; *fourth*, there is no bargaining history showing what concessions may have been agreed upon by the external comparables to obtain either of the benefits demanded by the Union in this proceeding; and, *fifth*,

labor peace among other Washington County employees is best served by maintenance of the internal status quo. On the basis of all of the above, it urges that its final offer is the more appropriate of the two final offers, and it asks that it be selected and ordered implemented by the parties.

THE POSITION OF THE UNION

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

(1) By way of introduction it urged arbitral consideration of the following factors.

(a) That the disputed issues involve *relatively little cost*, and the Employer had *not raised an ability to pay argument*.

(b) That the *disputed issues are unique to public works employees* and, therefore, consideration of internal comparables has little relevance.

(c) In the matter at hand, that the most relevant statutory criteria is the "Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services" and the "Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities."

(d) In applying the above criteria, that the Union's final offer should be selected as the more reasonable and equitable.

(2) That the following facts and final offers are material and relevant in this proceeding.

(a) Washington County Road Department employees normally work eight hours a day and five days a week, but in the summer their work schedule changes to ten hours per day and four days per week.

(b) The Department does not want to pay ten hours of holiday pay for July 4 and, accordingly, employees must *either* return to a schedule of five eight hour days, or work two 11-hour days and one 10-hour day, during the holiday week. The County thus proposes no change in this area.

(c) The Union proposes that the summer work schedule remain unchanged during the Independence Day week, and that the employees working the schedule receive ten hours of holiday pay.

(d) The summer work schedule includes a *20 minute paid break* and a *30 minute unpaid break*. As a result of the unpaid 30 minute break, employees are actually at work for 10½ hours each day in the summer; the Union proposes to eliminate the unpaid 30 minute break so that employees can leave work

after ten hours in the summer.

(3) Arbitral consideration of the *external comparables* supports the Union's final offer.

(a) The parties agree that the Roads Departments of Dodge, Fond du Lac, Ozaukee, Sheboygan and Waukesha counties are the *primary external comparables*.

(b) Waukesha County does not deviate from the normal schedule during the summer, and the remaining comparables break evenly in the position of the parties; Fond du Lac and Sheboygan county employees receive 10 hours of holiday pay for Independence Day, while those in Dodge and Ozaukee counties receive 8 hours pay for this holiday.

(c) The majority of the comparables favor the Union offer relative to lunch breaks; only Dodge County has a 30 minute unpaid lunch, while Fond du Lac, Ozaukee and Sheboygan counties have various configurations of paid breaks which provide for their workdays being complete after 10 consecutive hours.

(4) The Union's offer is *fair*, *equitable* and in the *interest of public welfare*.

(a) It is puzzling that a municipal employer would forego the opportunity to buy a little employee good will at the cost of two hours per year.

(b) The Union's proposal would provide employees with a small reward for working long hours during the summer: one day of holiday pay that corresponds with their summer working hours and does not involve schedule changes; and the ability to leave work each day at 4:00 p.m. instead of 4:30 p.m.

(c) The Employer would gain the greater efficiency of keeping employees on a roads project for ten hours at a stretch, would avoid the administrative hassle of changing work schedules for one week out of the summer, and would thus get a fair bargain at a negligible cost.

(d) The Union proposed elimination of a 30 minute unpaid lunch would also benefit the County by eliminating approximately 20 minutes of unproductive time each day spent on moving signs, barricades, and machinery when they leave a worksite.

(i) While the County argued that it could avoid such unproductive time by staggering lunch breaks, it offered no evidence that it currently follows such a practice.

(ii) Presumably use of staggered lunch periods would slow down projects even more than having a single lunch break for everyone.

(e) The net bargain for both sides is that employees get a more enjoyable work schedule and the County gets greater efficiency. The Union's holiday pay proposal will cost $1,761.26 annually, while elimination of the unpaid lunch will save that much every six days through elimination of unproductive tear-down and set-up time.

On the basis of all of the above and consideration of the record as a

whole, it urges that the Union's final offer is more reasonable and equitable than that of the County.

FINDINGS AND CONCLUSIONS

This is a highly unusual interest arbitration proceeding, in that the parties fully agree in their final offers on the items which normally constitute the most important impasse items, and they remain in disagreement *only* on the Union proposed modification of the previous contract provisions governing the Independence Day holiday and the summer work schedule.

(1) The Union proposes language changes providing for the following: an increase from eight to ten hours pay for the Independence Day holiday; a mandatory Independence Day workweek of four ten hour days; and cancellation of the daily one-half hour, unpaid lunch period, thus shortening the periods between reporting for work and completing their summer work days from ten and one-half to ten hours each day.

It urges that its position is both *fair and reasonable* and also supported by *arbitral consideration of the primary external comparables*.

(2) The Employer proposes retention of the contract language providing eight hours of holiday pay for Independence Day, with the employees then scheduled for either a four day work week of eight hour days or two eleven hour and one ten hour days, encompassing the paid holiday; it additionally seeks retention of the current contract language which provides for a one-half hour unpaid lunch period.

It urges that *arbitral consideration of the primary external comparables does not support the Union proposed changes* in the summer work schedule and vacation pay areas, submits that *its final offer provides fair and competitive wage rates for its Highway Department employees*, maintains that the *Union requested changes should only take place at the bargaining table rather than in arbitration*, and argues that the Union proposed changes are *neither in response to a significant problem nor supported by the requisite quid pro quo*.

The only arbitral criteria which were significantly addressed by the parties in support of or in opposition to the remaining impasse items in the Union's final offer arise from the *Union proposed changes in the status quo ante* and from *the practices of the five other Wisconsin counties* which the parties agree comprise the primary external comparables.[1]

[1] In this connection two of the arguments advanced by the Employer have been assigned no weight in these proceedings: *first*, while the Employer noted the presence of six other bargaining units and a large group of non-represented employees and urged arbitral consideration of the *internal comparison criterion*, no other such employees are on the summer hours schedule worked by the Highway Department and, accordingly, these comparisons are entitled to no significant weight; and, *second*, its emphasis upon *external*

comparisons with the wages, hours and conditions of employment *already agreed-upon by both parties*, is also entitled to no significant weight in that the final offer selection process relates solely to the Union proposed summer schedule and Independence Day holiday pay changes.

The Significance of the Union Proposed Changes in the Status Quo Ante

As recognized by the undersigned in various prior decisions and awards, Wisconsin interest arbitrators normally operate as extensions of the contract negotiations process, and thus attempt to put the parties into the same position they might have reached at the bargaining table. In the absence of persuasive evidence to the contrary, it is also noted that arbitrators are reluctant to approve modification of parties' previously negotiated wages, hours and terms and conditions of employment.

A long standing and widely recognized principle in *private sector* interest arbitration is arbitral avoidance of giving either party that which they would not have been able to gain at the bargaining table. This principle, however, has not been uniformly applied in public sector interest arbitrations, without arbitral consideration of the parties' *negotiations history* and/or what has evolved and been applied as the *normal quid pro quo requirements*.

When disputed impasse items have been the product of *unilateral action by employers* prior to the existence of collective bargaining relationships, a greater degree of arbitral flexibility has existed in approving proposed changes in the status quo ante. This principle and its underlying bases are well described in the following excerpt from an early but still authoritative treatise by Arbitrator Howard S. Block.

> "One of the most compelling reasons which makes it necessary for neutrals in public sector interest disputes to strike out on their own is the dearth of public bargaining history. The main citadels of union in private industry have a continuity of bargaining history going back at least to the 1930s. Public sector collective bargaining, on the other hand, is still a fledgling growth. In many instances its existence is the result of an unspectacular transition of unaffiliated career organizations responding to competition from AFL-CIO affiliates. As we know, a principal guideline for resolving interest disputes is prevailing industry practice - a guideline expressed with exceptional clarity by one arbitrator as follows:
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> > 'The role of interest arbitration in such a situation must be clearly understood. Arbitration in essence is a quasi-judicial, not a legislative process. This implies the essentiality of objectivity - the reliance on a set of tested and established guides.
> >
> > 'In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of the extraordinary pressures which led to the exhaustion or rejection

of their traditional remedies.

> 'The arbitrator attempts to accomplish this objective by first understanding the nature and character of past agreements reached in a comparable area of the industry and in the firm. He must then carry forward the spirit and framework of past accommodation into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to *either party* that which they could not have secured at the bargaining table.'

Viewed in the light of the foregoing principles, the public sector neutral, I submit, does not wander in an uncharted field even though he must at times adopt an approach diametrically opposed to that used in the private sector. More often than in the private sector, he must be innovative; he must plow new ground. He cannot function as a lifeless mirror reflecting pre-collective negotiations practices which management may yearn to perpetuate but which are the target of multitudes of public employees in revolt."[2]

Arbitrator Block's observations and conclusions relative to the need for flexibility in public sector interest arbitration are soundly based and have often been followed when interest neutrals were faced with public sector union proposals to change long standing past practices which had been unilaterally established by employers prior to the onset of collective bargaining. The bases for such flexibility largely disappears, however, in mature bargaining relationships when the areas of proposed change have been the product of parties' prior contract negotiations.

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[2] See Block, Howard S., *Criteria in Public Sector Interest Disputes*, Proceedings of the 24th Annual Meeting of the National Academy of Arbitrators, Bureau of National Affairs, Inc., 1971, pages 164-165. Cited therein is *Arbitrator John J. Flagler*, in Des Moines Transit Co., 38 LA 666, 671 (1962).

In the case at hand the Employer has emphasized that the Union is proposing changes in the *negotiated status quo ante*, and has relied upon the fact that such changes are not normally approved by Wisconsin interest arbitrators in the absence of a showing by the proponent of change that *a legitimate problem or problems exist which require attention*, that *the proposed changes reasonably addresses such problems*, and that *an appropriate quid pro quo has been advanced in support of the proposed changes*.[3]

The Union urges that its final offer is *fair*, *equitable* and in the *interest of public welfare*, and witnesses Keith Allenbecker and Bruce Krueger expressed their opinions that the contract provisions it is seeking to change, were *inconvenient to the affected employees* and that selection of its final offer would actually be more *cost effective and efficient*. The Union submits that its final offer would cost only $1,761 annually, and urges that this cost would be more than offset by unspecified savings it attributes to the elimination of the 30 minute unpaid lunch. Such arguments and opinions, however, cannot alone justify arbitral disregard of the negotiated status quo in the final offer selection process. Not only are effectiveness and efficiency considerations contractually reserved for management determination, but after-the-fact employee discontent with previously negotiated contract provisions, *falls well short of constituting the requisite legitimate problem or problems*, and the Union proposed changes were also unaccompanied by the normally required *quid pro quo*. As emphasized by *Arbitrator Flagler* in the above cited case, arbitral subjective approval or disapproval of what has taken place in the past is not necessary, but reliance upon objective standards is required in attempting to duplicate the settlement that the parties could have reached at the bargaining table.

On the above described bases the undersigned has preliminarily determined that arbitral consideration of the parties' *bargaining history* and the failure of the Union to meet the normal *legitimate problem(s) and quid pro quo requirements* clearly favor selection of the final offer of the Employer

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[3] Arbitral considerations of both the parties' *negotiations history* and the *legitimate problem* and *quid pro quo* requirements, fall well within the intended scope of Section 111.70(4)(cm)(7r)(j) of the Wisconsin Statutes.

rather than the Union in this proceeding.

Consideration of the Intraindustry Comparison Criterion

What next of both parties' emphasis and reliance upon arbitral consideration of the *summer scheduling* and the *Independence Day holiday practices* of Dodge, Fond du Lac, Ozaukee, Sheboygan and Waukesha counties, which have historically been recognized by both parties as the primary external comparables? Apart from any statutory prioritization, it is widely recognized by interest arbitrators, advocates and scholars that the *comparison criteria* are normally the most important and the most persuasive of the various arbitral criteria, and that the most persuasive of these is normally the so-called *intraindustry comparison criterion*.[4]

(1) The Employer urges that *neither the summer schedule change nor the Independence Day holiday pay increase* sought by the Union is supported by arbitral consideration of the comparable counties.[5]

(a) It urges that only Dodge County of the five intraindustry comparables has adopted a 30 minute unpaid lunch period during its summer schedule of four ten hours days per week. Fond du Lac County provides a 15 minute paid lunch period, Ozaukee and Sheboygan counties provide no lunch period, and Waukesha County does not utilize a summer schedule.

(b) It urges that only Fond du Lac and Sheboygan counties of the five intraindustry comparables provide ten hours of Independence day holiday pay, with Dodge and Ozaukee Counties continuing to provide hours pay for this holiday.

(c) It also notes that while Dodge, Fond du Lac, Ozaukee and Waukesha counties provide for 10 paid holidays, Washington County provides for 11 paid holidays, exceeded only by Waukesha County which provides 11½ paid holidays.

(2) The Union urges that its final offer is supported by arbitral consideration of the comparable counties.

(a) It notes that Waukesha County does not have a summer schedule, and urges that the comparable Roads Department employees in Fond du Lac and Sheboygan counties receive ten hours of pay for the Independence Day Holiday, while those in Dodge and Ozaukee Counties receive eight hours of such holiday pay, a so-called even split among the comparables.

(b) In connection with the lunch periods, it submits that only

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[4] While the *intraindustry comparison* terminology derives from its long use in the private sector, its application in the public sector normally refers to comparison with similar units of employees employed by comparable governmental units. In the case at hand, the parties are in full agreement with respect to the five Wisconsin counties which are the *primary intraindustry comparables*.

[5] Referring to the contents of Employer Exhibits 9-A and 10-A.

> Dodge County has a 30 minute unpaid lunch, while Fond du Lac, Ozaukee and Sheboygan counties have various configurations of paid breaks, which result in completion of employee workdays after ten hours.

Not only is the intraindustry comparison criterion less persuasive when urged in support of a limited number of relatively limited impasse items, but the evidence of record falls short of establishing that it is entitled to significant weight in this proceeding. The variations among the six counties comprising the *primary intraindustry comparables* in the remaining impasse items are very significant, and the Union elected not to address the fact of the Employer's 11 paid holidays, versus the 10 such holidays provided by four of the primary comparable counties.

Without unnecessary elaboration, the undersigned notes that arbitral consideration of the intraindustry comparison criterion in this case falls far short of justifying arbitral selection of the Union proposed modification of the negotiated status quo ante in this case.

Summary of Preliminary Conclusions

As described in greater detail above, the undersigned has reached the following summarized, principal preliminary conclusions.

(1) The parties fully agree in their final offers on the items which normally constitute the most important impasse items, and they remain in disagreement *only* on the Union proposed modification of the previously negotiated contract provisions governing the Independence Day holiday and the summer work schedule.

(2) The only arbitral criteria significantly addressed by the parties in support of or in opposition to the remaining impasse items in the Union's final offer arise from the *Union proposed changes in the status quo ante* and from *the practices of the five other Wisconsin counties* which the parties agree comprise the primary external comparables.

  (a) In the absence of very persuasive supporting evidence, *interest arbitrators are reluctant to approve modification of parties' previously negotiated wages, hours and terms and conditions of employment*.

  (b) Arbitral consideration of *the parties' bargaining history* and the failure of the Union to meet the normal *legitimate problem(s) and quid pro quo requirements*, clearly favor arbitral selection of the final offer of the Employer.

  (b) Arbitral consideration of the *intraindustry comparison criterion* in the case at hand falls far short of justifying the Union proposed modification of the negotiated status quo ante.

Selection of Final Offer

Based upon a careful review and consideration of the entire record in this proceeding, including all of the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, the undersigned has concluded that the final offer of Washington County is the more appropriate of the two final offers, and it will be ordered implemented by the parties.

AWARD

Based upon a careful consideration of all of the evidence and argument advanced by the parties and all of the arbitral criteria contained 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 Washington County is the more appropriate of the two final offers before the Arbitrator.

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

WILLIAM W. PETRIE
Impartial Arbitrator

August 3, 2008