

BEFORE THE ARBITRATOR

In the Matter of the Final and Binding Interest Arbitration Dispute between

LOCAL 150, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

and

LA CROSSE COUNTY (HILLVIEW HEALTH CARE CENTER)

WERC Case No. 215, INT/ARB-11218
Decision No. 32563-A

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, SC, 1555 N. RiverCenter Dr., Suite 202, Milwaukee, WI 53212, by Marianne Goldstein Robbins, Esq., appearing on behalf of the Union.

Mr. Robert B. Taunt, Personnel Director, La Crosse County, 400 4th St. N., La Crosse, WI 54601, appearing on behalf of the County.

ARBITRATION AWARD

The Union has represented a general bargaining unit of Hillview Health Care Center employees for a number of years. On August 11, 2008, the Union filed a petition with the Wisconsin Employment Relations Commission, requesting arbitration with respect to the replacement for the parties' collective bargaining agreement expiring December 31, 2007. Following mediation by a member of the Commission's staff, the Commission determined by order dated September 17, 2008 that arbitration was required. The undersigned was appointed by Commission order dated October 1, 2008.

A hearing was held in La Crosse, Wisconsin on February 19, 2009, at which time the parties were given full opportunity to present their evidence and arguments. Briefs were filed by both parties, and the record was closed on May 6, 2009.

Statutory Criteria to be Considered by Arbitrator

Section 111.70 (4) (cm) 7

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

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

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

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. 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.

The Employer's Final Offer

1. Article VIII Vacations

8.01.5 After twenty (20) years of employment -- Five (5) weeks of paid vacation

2. Section 10.08: Sick Leave Credits -- housekeeping change -- delete old data references. Add Dental as an option for using sick leave credits. 10.08 increase the sick leave credits on retirement to 60% 1/1/08 -- For anyone retiring after 1/1/08

3. Article 14 Insurance -- modify the section to reflect the new rates:

14.02 Effective the January 2008 premium for February 2008 coverage, the County will contribute up to the total amount set forth below as "Employer Share" to the monthly premium of the County's employee health and dental plans. The employee will bear the cost in excess of the County's contribution for the option selected:

A.	Family Plan	Employer Share	Employee Share
	1. Franciscan/Skemp Deductible PPO	\$1493.30	\$165.92
	2. Gundersen/Lutheran Deductible PPO	\$1493.30	\$165.92
	3. Dental	\$69.77	\$20.80
B.	Single Plan		
	1. Franciscan/Skemp Deductible PPO	\$610.25	\$67.81
	2. Gundersen/Lutheran Deductible PPO	\$610.25	\$67.81
	3. Dental	\$25.65	\$7.22

All employees participating in the group health plan shall comply with those cost containment features set forth in the County employee health benefits plan.

Maintenance Drug co-pay remains at \$20 for a 100 day supply, but must be filled by mail order. Ordering a 90 day supply through a pharmacy will require \$30 co-pay effective 1/1/04. (The balance of the section to remain the same as currently written for 2008.)

In 2009 add:

Effective 1/1/09 a three tier formulary drug plan will be effective. The current \$10 co-pay for Generic shall remain, and there will be a \$25 co-pay for formulary brand drugs and \$45 for non formulary drugs. Mail order will be two co-pays for 90 day supply. (The balance of the section to remain the same.)

In year 2009, the County may offer members of this unit, additional choices for insurance.

4. Article 17: Wages and Classifications --

For those employees on the payroll as of the date of Ratification or Award:

Effective January 1, 2008 -- 2.0% ATB

Effective January 1, 2009 -- 2.0% ATB

Effective July 1, 2009 -- 1.0% ATB

The Union's Final Offer

Article IX Earned Time Off

All employees will be granted earned time (ETO) off in lieu of granting holidays.

**Note change any language in regards to 9.0.1

Article XVII: Wages and Classifications

January 1, 2008 -- Three (3%) percent ATB

January 1, 2009 -- Four (4%) percent ATB

The Employer's Position

The County makes its arguments in order of the statutory criteria. With respect to the "greatest weight" criterion, the County argues that it is severely constrained by the state levy cap because it has the third lowest operating levy per capita in the state, at \$195 per capita compared to the statewide average of \$342, and with a 2007 state levy cap of only an additional 2% allowed. The County also argues that its equalized value growth has been exceptionally low.

With respect to the "greater weight" factor, the County argues that economic conditions in La Crosse County are demonstrated in a County exhibit (by a university economist) as showing a dramatic rise in foreclosures, while other exhibits demonstrate a loss of equalized value, a deteriorating employment outlook, declining construction and equalized value, and a long list of adverse impacts on individuals and employers in the area. Hillview itself has lost Medicaid revenue every year since 2003, a 31% loss in 2007 alone compared to the previous year. 69.1% of residents of Hillview are Medicare or Medicaid recipients. Final audited losses for Hillview have increased from \$118,432 in 2005, through \$151,644 in 2006, to \$551,210 in 2007. Capital improvements needed are numerous and total more than \$1 million, but at the same time, the County is not mandated to operate Hillview, unlike its other nursing home, Lakeview, whose special needs residents have no place else to go.

The County lays great stress on internal comparisons with other County bargaining units. The County argues that historically, with one exception, in which Hillview received a greater salary increase than Lakeview, Hillview has received the same wage percentage as employees in all other units, including management, and that the County's offer now is the same as made to other bargaining units. The County argues that 89% of County employees have settled wage and benefit issues for 2008, while this bargaining unit is the only one not settled, and all the others accepted the same wage percentage offer and the same three tier drug proposal as offered by the County here. For 2009, 72% of County employees have settled wage and benefit

issues, and the only other bargaining unit still open, the Sheriff's Deputies, have a voluntary tentative agreement on similar terms, reached since the hearing.

The County cites numerous arbitrators as finding strong relevance in internal settlement patterns, on health insurance benefits in particular. As to wage settlements, the County points to evidence that seven other bargaining units and the non-union employees have received the same wage proposal the County proposes here, in percentage terms, and have agreed to it. The County argues that the Union made no mention of "catch up" pay during the negotiations, and offers no compelling justification for breaking with internal settlements. The County notes also that this is the first time that this bargaining unit has exercised its right to interest arbitration, so that existing wages reflect past voluntary agreements.

As to external comparisons, the County notes that there is a settled list of comparable counties established in connection with other bargaining units over many years, consisting of Dodge, Eau Claire, Fond du Lac, Manitowoc, Marathon, Sheboygan, Walworth, Washington, Wood and Monroe counties. The County notes that Manitowoc County sold its health care center in 2008 and Sheboygan County sold its Sunny Ridge nursing home effective in 2009, while a contiguous county, Jackson County, sold its nursing home in 2006. The County calculates that its 2008 offer of 2.0% is better, equal, or within a half per cent of six of eight facilities reported, while the Union's 3.0% wage offer is better, equal, or within a half percent of five of eight facilities reported. On this basis, the County argues that the comparison slightly favors the County. The County notes that seven of the eight nursing homes shown on the Union's comparability exhibit show a three tier drug formulary, as proposed by the County. The County also points to evidence that it is fully able to compete in the marketplace for employees, with 461 applicants for 58 job openings in 2008.

With respect to the Union's "ETO" (earned time off) proposal, the County argues that this is a unique benefit, negotiated in more than 25 years ago for nursing staff, including CNA's who were scheduled for 24/7 shift work, so that those staff who were regularly scheduled for work on holidays and weekends were granted off one day per month, totaling 12 days per year compared to 10 holidays for other staff. The County argues that no other comparable county has this benefit, nor does any other internal bargaining unit — not even the other nursing home of the County, Lakeview. The County argues that the Union has offered no justification for expanding it to all employees. The County argues also that no other contract offered as an exhibit by the Union has 12 holidays, the practical result of the Union's proposal, and only two provide for 11 holidays, with most counties providing 10 (and Wood County providing nine.)

With respect to private sector external comparisons, the County argues that in a marketplace in which Hillview must compete for patients with private nursing homes, the data show that Hillview's private rooms rate is higher than 19 of the 28 homes in the area, a factor driven by Hillview's high costs for staffing. While LPN's are relatively low-paid, this reflects the results of previous bargaining in which the County has offered to raise their rates specifically, an offer rejected by the Union. Other classifications are in relatively high percentiles, while Hillview's fringe benefit costs are far higher than the average. While health insurance makes up a very large percentage of this cost factor, the County stresses that Hillview's pension costs are far higher than any of the private sector homes with which it competes. Specifically, the County calculates that its WRS contribution, at 11%, compares to local nursing home competitors which are contributing between 2% and 4% of wages. Some of these, additionally, are "match" programs in which the employer need not contribute anything if the employee does not. As to

health insurance, the County points to employee contribution levels for both family and single in which Hillview health costs to employees are sharply below other local nursing homes, while at 90/10 the co-pay is equal to the most favorable (to employees) among the private homes. The County argues that there is no known private sector comparable for the ETO benefit sought by the Union.

The County argues that the CPI should be measured according to the most current available data, which because of the lengthy negotiations means that the full year 2008 data and partial 2009 data are available. The County contends that the rising CPI level which characterized 2007 escalated in early 2008, but then plummeted to negative numbers by December, with early 2009 figures also much lower than 2007. The County argues that its offer is closer to the CPI for 2007 than the Union's, but that it is still more proximate to the CPI compared to the Union's, if 2008 and the first three months of 2009 are included.

As to package costs, the County notes that the increasing cost of health insurance in the County's self-funded plan results in a 5.61% bump in 2008 for this item alone, although the County's plan remains among the least expensive to employees among the comparables. The County calculates its package cost at 7.57% in 2008, compared to the Union's at 8.58%; for 2009, the County package costs 3.64% compared to the Union's package cost of 4.88%. The County argues that these numbers, along with the overall compensation of these employees, take into account a package in which the County's offer includes a far better retirement provision than any of the private sector comparables, far more advantageous health insurance terms to employees, better dental insurance, and the same wage package in percentage terms as received by all other employees of La Crosse County. The County argues that the three tier drug plan is self-evidently reasonable because it has been accepted by all the other unions representing County employees, while similar plans were already in effect in seven out of eight nursing homes run by comparable counties. The County argues that the three Union witnesses who testified initially that they would be severely adversely affected by the three tier drug plan, because of their particular personal or family health issues, do not have nearly as severe cost impacts once the plan is looked at more closely. The first witness, in the County's calculation, would pay an additional \$246 per year per family; the second witness, \$138 per year; and the third witness's family, an additional \$189 per year. These figures, the County argues, are dwarfed by the dollar value of the County's wage offer, so that even the employees picked by the Union as showing the most severe possible effects actually will receive wage increases over the two years which are between four and eight times the size of their additional drug costs. Furthermore, the County argues, in at least one respect an employee with severe drug requirements is actually better off under the three-tier drug plan, as the cost of opting for a non-formulary brand-name drug over the equivalent generic is now capped at \$45, where previously it was uncapped. The County also notes that it has proposed two additional employee benefits, reducing years of service for five weeks of vacation from 22 years to 20 years, to bring Hillview into line with some other bargaining units which already have this benefit, and to increase the payout of accumulated sick leave at retirement from 40% to 60%, again to improve consistency with other bargaining units.

The County further contends that since the Union did not present any case for wage "catch up" during negotiations and its relative pay position with other County nursing homes is the product of voluntary negotiations over many years, it is inappropriate for the Union to claim catch-up now. The County particularly argues this in the context of the "changes during the pendency of the proceeding" factor, in which the most severe national recession in many years has taken

effect while this proceeding was under way. The County argues that as a result, the Union's wage offer and the cost of its overall proposal are still less reasonable in light of today's economic conditions than they would have been if 2007 conditions had continued, and that they are now totally unsupportable. The County requests that its final offer be adopted.

The Union's Position

The Union characterizes this as a dispute involving two major issues, wage increases and the County's proposal to increase the co-pay for formulary and non-formulary drugs, and several minor issues, including the substitution of earned time off in lieu of holidays, and the County's two minor improvements, improving eligibility for five weeks of paid vacation at 20 years instead of 22, and increasing the percentage of sick leave credits towards the payment of health insurance and retirement from 40% to 60% for new retirees.

The Union argues that the "greatest weight" factor is inapplicable to this arbitration, because merely claiming the potential for a budgetary shortfall has been found insufficient without a demonstration that the shortfall would affect the bargaining unit specifically in question. The Union points to the fact that the County's evidence shows that Hillview receives zero tax levy money from the County already, and argues that this implies that the levy limit has no impact on Hillview. But even if the County provided tax revenues for Hillview, the Union argues, there is no evidence that La Crosse is at its levy limit. The Union argues that it would be possible to raise the County's levy limit by almost \$600,000, although the record does not show that this increase would be needed.

With respect to the "greater weight" criterion, the Union argues that this factor too is not applicable here, essentially because the economic conditions experienced by and within the County are the same, according to all the evidence, as those experienced by every one of the external comparables. The Union concedes that the unemployment rate has risen, but notes that County Exhibit 21 states that this rate is "still the third lowest among Wisconsin's 12 metro areas", and argues that the foreclosures referred to by the County are actually lower than the rate for the region as a whole. In consequence, the Union argues, the record shows that the County is not actually at an economic disadvantage in comparison to comparable municipal employers, such that the remaining factors should determine the outcome.

The Union notes that the parties agreed on the comparables, for practical purposes, although the County identified a broader base of comparable counties including contiguous counties in an exhibit. These counties, the Union argues, have been rejected in prior arbitrations between the County and another of its unions. But it makes no difference, because the other counties do not have county-operated nursing homes.

With respect to external comparisons on wages, the Union argues that many arbitrators have recognized the primacy of such comparison in preference to other factors, where wages are the issue. The Union argues that the external comparisons support the Union's wage offer because Hillview CNA's (the dominant classification in terms of numbers) earned less than the CNA's in all other comparable communities except one in 2007, calculating that the shortfall in most cases is between \$.50 and two dollars more per hour for a senior-level CNA. The Union points to the County's 2% 2008 proposal as widening this gap, and argues that the Union's 3% offer for 2008 is the same as Fond du Lac County provided, provides the same lift as Washington

and Dodge counties, and provides less lift than the Wood County settlement. The Monroe and Sheboygan settlements, meanwhile, provide either a 2.5% lift or a 2.5% increase, both higher than proposed by the County. The Union argues that its 2008 wage proposal would therefore be supported by the external comparables even if existing wage levels were equal.

For 2009, the Union concedes that its 4% proposal is 1% greater than the comparables which have settled, but argues that the resulting wage rates are still below the three settled comparables. Accordingly, the Union argues, its wage proposal for 2008 and 2009 is better supported than the County's overall.

At the same time, the Union argues, the comparison of private sector employees in the same industry is noteworthy, as most of the private-sector nursing homes in the area pay more in wages, pointing to the CNA wage rate as being at the 28.5 percentile, LPNs as being at the 1st percentile, and maintenance employees at the 14.2 percentile among nursing homes in the area.

As to the internal comparison on wages, the Union focuses on the 6% increase received in 2008 by the County's Administrator, and contends that the County's internal comparison to other bargaining units fails to recognize the effect of the lower wage rates already paid to Hillview employees, such that the same percentage raise generates smaller increases. The Union points to the lowest level full-time worker in the Highway Department as receiving \$20.37 per hour, and to a communicator with 18 months experience receiving \$18.17 in 2008; a jailer with the same experience earns \$20.51, and a janitor in the clerical unit receives \$15.74. These are much higher wages than similarly skilled employees in the Hillview bargaining unit, so that the same percentage increase generates more money. Furthermore, the Union argues, each of several bargaining units which settled received benefits beyond wage increases; the composition of the benefits varied by bargaining unit, but they were not trivial. The Union argues that while the County proposed to increase sick leave credits on retirement and to modify the eligibility date for the fifth week of vacation in the Hillview unit, the majority of settling bargaining units received greater economic improvements in addition to the wage increase.

With respect to the CPI, the Union argues that the County has inappropriately focused on 2007, 2008 and the beginning of 2009, in the face of a general principle accepted by many arbitrators and scholars that the relevant timeframe for consideration of cost of living increases is the change in the index subsequent to the last time the parties went to the bargaining table. The Union therefore focuses on 2006 through 2008, calculating that the Midwest CPI increased 8.8% in total over those three years while the US rate increased 9.9%. The Union argues that the moderation in the cost of living at the end of 2008 and early in 2009 cannot be guaranteed to continue throughout the year, but that if the 2009 cost of living increase is just 2%, the Union's proposal will barely allow employees to be in the same relative position they were at the beginning of 2006, while the County's proposal will place employees significantly below their earning power as of the beginning of 2006. The Union argues alternatively that another way of looking at the CPI is that it is subsumed in the bargaining of comparable units, and that therefore the external comparables, which experienced the same cost-of-living effects, are the best guide to the real impact of the cost of living. This factor also, the Union argues, favors the Union's proposal.

The Union focuses on the County's three tier drug plan with an argument that the County has failed to establish any basis for altering the status quo, where the parties previously had a flat

\$10 co-pay for a 30 day supply of all prescription drugs and the County presented no information demonstrating that it was necessary to increase the co-pay for formulary and non-formulary prescription drugs. The Union argues that there is no evidence in the record as to the portion of the increase in health costs overall (which the Union concedes is significant) represented by drugs, or what savings will result from the prescription program. The County has identified no quid pro quo; its wage proposal is not sufficient to fill that role, as other comparable counties provided the same lift and/or a more generous increase, and there is no evidence that any tiered prescription co-pays were introduced in those counties in 2008 or 2009. The County's proposed sick leave credits increase on retirement and its two-year reduction in the service requirement for a fifth week of vacation cannot constitute a quid pro quo because these benefits hardly impact most of the bargaining unit, who are not of retirement age and do not have 20 years of seniority. Furthermore, the Union contends, the evidence is undisputed that the County never proposed this change during actual negotiations, until the parties reached mediation, and then only through the mediator. The County's claim that it raised the general concept of possible modification to the health benefit plan prior to mediation is and was far too vague to allow the parties to have any opportunity to discuss the proposal face-to-face, so that the Union could learn how the program would work or the County could explore how the program would apply to individual employees. The Union points to a number of arbitration awards in which arbitrators have found it unreasonable for an employer to press to arbitration a proposal it had not raised timely and thoroughly in bargaining. The Union points to the hearing as demonstrating through several witnesses how little information had been disclosed to employees even after that date, such that it was impossible to calculate the impact on employees with serious illness until after the hearing.

The Union points in particular to the testimony of three employees who have significant personal or family illness to contend with as having demonstrated that the Employer's proposal was so poorly thought out and so poorly documented that it took months after the hearing to find out what the actual expense would be to each of them. The Union calculates that the first witness will experience additional costs of \$38.75 a month, amounting to the equivalent of almost a 2% wage reduction; the second witness will experience additional costs of \$15.42 a month; and the third witness will lose \$23.75 a month, equivalent to a wage reduction of 1.1%. The Union concedes that its initial calculations suggested still worse effects, but argues that this is characteristic of the County's failure to think through its proposal and its effects on a timely basis, which militates against the proposal's reasonableness. The Union also argues that even though seven of the external comparables have three-tier drug plans, not one of them charges as much to an employee as the \$45 non-formulary co-pay required under the County's proposal, and only one other County has as high a formulary co-pay as the County's \$25 proposal. Furthermore, the Union argues, several of the counties cap the effect on any individual employee or family at amounts varying from \$250 to \$1000, while the County's proposal is uncapped.

The Union further argues that internal comparisons do not actually support the County's drug co-pay proposal, because two bargaining units have yet to settle for 2009 (Lakeview and the deputy sheriff unit) while at the time the present matter was certified for arbitration, only one unit, the Highway Department unit, had agreed to the County drug co-pay proposal. Even if subsequent settlements are included, the Union argues, the County's proposal has a lesser impact on employees' income in each of those bargaining units, because they make more money in the first place, similarly to the effect of the County's wage proposal. The Union further

argues that each of those units received additional financial benefits offsetting the cost of the County's proposal.

The Union contends that the remaining proposals do not alter the result. The increase in the amount of sick leave credit for retirement health contributions, the Union argues, is a benefit, but has little or no financial impact on current employees, noting also that the County costs this increase at zero in its costing calculations, probably because the credits are already available to employees while they work. Similarly, the Union argues that the cost of the reduction in eligibility date for the fifth week of vacation by two years, costed by the County at .14%, is incurred only if the County decides to replace employees on their vacation, and in any event has less than one-tenth the impact of the drugs proposal on witness 1, and one-fifth the impact on witness 2. At the same time, the Union argues, its proposal to extend earned time off to the remaining employees who do not now receive this benefit is costed at .29%, a minor factor compared to the impact of the County drug proposal on the witnesses heard from. The Union argues that this proposal would in any event provide greater uniformity of benefits within the bargaining unit and provide the County with more flexibility in scheduling employees' time off. For all of these reasons, the Union submits that its proposal is the more reasonable overall.

Discussion

Vacations and Sick Leave Credits:

As the Union points out, the County's proposed minor change to a fifth week of vacation at 20 years instead of 22, and the somewhat larger one of increasing the sick leave pay-out rate from 40% to 60% upon retirement, do not affect most of the bargaining unit any time soon. To the extent that they apparently represent a quid pro quo by the County for its three-tier drug plan, they have one element of logic in their favor -- it is well-known that medical costs, including the likelihood of needing expensive drugs, tend to increase with age. In public sector employment, seniority is a reasonable proxy for age. To an extent, therefore, the apparent quid pro quo is somewhat related to the interests of employees who are statistically more likely to experience higher drug costs as a result of the County's proposal. At the same time, the County's argument that these benefit improvements also represent an effort at consistency with other bargaining units highlights the degree to which some benefits are not, in fact, all that consistent across all bargaining units; indeed, some of the other units which agreed to the three-tier drug proposal were already at the 60% sick leave pay-out level, and moved upwards from there.

Earned Time Off:

The record is devoid of any justification for this proposal. Not only is it unmatched in either the external or internal comparables, but the original logic of the "ETO" provision simply does not apply to employees who do not work on a 24/7 shift cycle. It is therefore best viewed as simply an economic cost, and an unwarranted one.

Three-Tier Drug Proposal:

At first sight, the Union's opposition to this proposal appeared well grounded in the possibility of near-ruinous expense to a small number of employees with very serious personal or family health problems, as testified to by three witnesses at the hearing. This in turn attested to the apparent haste with which the County threw together, at the very end of collective bargaining, the specifics of what had been previously described only in the vaguest terms, and implied that the proposal was poorly thought out.

The County has only itself to blame for the labor involved in its part of the extensive back and forth exchanges since the hearing, necessitated by the Union's pardonable desire to understand exactly what the Employer was proposing and exactly what the effects would be on given employees who are more likely than most to be adversely affected. The exercise, however, revealed that the underlying tables of formulary and non-formulary drugs, and the combined economic impact on even the most adversely affected employees, were not as severe as the Union initially feared. The amounts at stake, simply, are noticeable but not radical impacts on net post-health-costs earnings, for even the small percentage of employees who were showcased as examples. And while the County, as the Union argues, has not drawn a clear line between this proposed change and the overall increasing cost of health insurance, the fact that all of the internal comparables and almost all of the external comparables have the same or similar language goes a significant distance in support of the County's argument that this represents a reasonable, if partial, effort to control health care costs. Assuming that the vacation change and sick leave pay-out change discussed above represent the County's effort at a quid pro quo, the Union has a point in arguing that the value of the quid pro quo is somewhat less than at least some of the varied (and also mostly minor) improvements in benefits offered by the County in other bargaining units, while the impact of the drug cost increases is somewhat larger in a bargaining unit which is relatively low-paid. But the differences are incremental, and the County has a strong argument in favor of consistency of this benefit across all bargaining units. I conclude that the three-tier drug plan is not, on balance, an adverse element in assessing the reasonableness of the County's offer.

Wages:

Many arbitrators have observed that internal comparisons are generally favored over external ones for purposes of fringe benefits, but that for wages, the picture is far less clear. For both years, the internal comparisons unequivocally favor the Employer, as by the time of briefing in the case it appeared that all other bargaining units were settled on percentage terms identical to the County's offer. (Even the management raises put in the record, trumpeted by the Union as 6% increases, appear to reflect something similar to the experience step increases that bargaining unit employees enjoy, plus the same general wage increase offered to the bargaining unit.)

External comparisons are more complex. The Union's argument concerning local private sector competitors to Hillview is sustainable only as long as wages alone are considered; as the County argues, that is misleading as an element of overall earnings in an environment where the County's health and pension benefits greatly improve on those offered by the local private sector nursing homes. The Union has made a better case with respect to public nursing homes operated by comparable counties. Here, it is apparent that for 2008 at least, average wages in key classifications across comparable public nursing homes not only are higher on average than at Hillview, but are augmented by, on average, slightly higher wage increases. The County's 2% offer is the lowest among the comparables. Two are at 3%, with the others in between. The average for 2008 is 2.58% with an average "lift" of 2.92%. To the extent that internal comparisons do not necessarily predominate, when a long history of voluntary agreements consistent with an internal pattern has resulted in a bargaining unit becoming far out of balance with its external comparators, the Union's proposal for 2008 is well within reason.

For 2009, however, there are relatively few settlements in place among the municipal external comparables, and those that exist are much closer to the County's 2%/1% split than to the

Union's 4% proposal. Furthermore, it challenges credulity to believe that future 2009 settlements in this type of employment will be unaffected by the significantly worsened economic situation since the collective bargaining that led to this proceeding. On balance, I conclude that the County's wage offer is more consistent with the external comparables as well as the internal comparables.

The Statute's Weighting:

Several factors have not yet been discussed. The "greatest weight" factor, in the present context, is not a factor, for the reason argued by the Union: where the particular bargaining unit and County operation has not been the beneficiary of any part of the County levy, a weighty burden of proof must attach to the contention that limitations on expenditures "mandated by state law or directive" concerning other aspects of the municipal employer's operations necessarily have anything to do with the operation which was not receiving those expenditures in the first place. The County has made no such showing here.

The "greater weight" factor, meanwhile, also does not support the County's proposal (though it does not favor the Union's either.) Simply put, the extremely adverse economic data in the record is, as the Union argues, adequately demonstrated to be worldwide, not even national or regional, let alone confined to the County of La Crosse. Such evidence as distinguishes La Crosse suggests that it is, at least, no worse off than other counties which constitute its usual external comparables for other purposes.

The lawful authority of the employer, other than as already noted, was not argued, and the stipulations of the parties do not contain anything which would affect the result here. The interests and welfare of the public and financial ability of the County to meet the costs of the new contract favor the County's offer, because the evidence that Hillview has been losing significant and increasing sums of money year by year is unrebutted and the cost differential in the Union's proposal is significant, while there is nothing in either proposal that affects any other aspect of interest to the general public (such as employee retention and recruiting, in which the evidence suggested that other than for LPN wage rates, Hillview remains highly competitive.)

External comparisons favor the County's proposal on the three-tier drug plan. On wages, external comparisons in the public sector slightly favor the Union's proposal for 2008, but favor the Employer's proposal for 2009 by a larger margin. The ETO proposal also favors the County's position on an external-comparison basis. The net effect is that overall, external comparability favors the County's proposal. Internal comparisons unambiguously favor the County's proposal.

Comparison to private sector wages, hours and conditions of employment in similar employment is more relevant than in some other types of bargaining unit, and favors the County's proposal overall, essentially because the three-tier drug plan still leaves the County's overall health package far superior to its private sector competitors, while the combination of better health benefits and pension benefits offsets the somewhat lower wages of Hillview employees. At the same time, the County's proposed wage increases appear to reflect a better match to the local private sector wage increases than does the Union's proposal.

The cost of living index factor favors the Union's proposal for 2007 and early 2008, but the Employer's for late 2008 as well as that part of 2009 which is known. I conclude that this factor,

taken by itself, (i.e. considering the rest of the economic situation under another heading) is neutral.

The overall compensation factor favors the County's proposal, but only slightly, because Hillview employees are below the average of the external municipal comparables in straight wage rates. Their benefits are highly competitive, however, and they also receive a highly competitive overall package compared to the La Crosse area private sector employers in the same industry. The three-tier drug proposal does not reduce the reasonableness of the County's proposal, in this respect primarily because something like it is all but universal among public as well as private comparables.

The "changes.... during the pendency of the arbitration proceedings" factor strongly favors the County's proposal, because the accumulating agreements with other internal bargaining units eventually rendered the Hillview bargaining unit an outlier, but even more because the worsening economic situation made the Union's 4% wage proposal for the second year all but untenable. "Other factors" were not significantly argued.

Summary

What initially appeared to be a badly thought out and, to some employees, potentially harsh three-tier drug policy became far less a matter of concern by the time, weeks after the hearing, that the parties had engaged in a thorough back and forth review of the policy's likely results on actual people. Together with the apparently universal acceptance of the proposal by other bargaining units of the County, this undercut the Union's position on fringe benefits, at the same time as the Union's second year wage proposal appeared more unreasonable even in external-comparison terms than it may have at first, because of the seriously worsened economic situation. The County's proposed vacation change and sick leave pay-out improvement represent a small but credible quid pro quo in view of the now-demonstrated moderate impact of the three-tier drug policy, while the Union's earned time off proposal is completely unjustified on this record. The balance of all factors taken together therefore favors the County's proposal by a significant margin.

AWARD

The final offer of the County shall be included in the 2008-2009 collective bargaining agreement.

Dated at Madison, Wisconsin this 26th day of June, 2009

By _____
Christopher Honeyman, Arbitrator