BEFORE THE ARBITRATOR

In the Matter of the Interest
Arbitration of a Dispute Between

WISCONSIN PROFESSIONAL POLICE ASSOCIATION/CIVILIAN EMPLOYEE RELATIONS DIVISION

Case 203
and No. 68637 INT/ARB-11319
Decision No. 32738-A

MONROE COUNTY

Appearances:

Mr. Richard Terry, Executive Director, RWT Strategies, LLC, 6111 Rivercrest Drive, McFarland, Wisconsin 53558, appearing on behalf of the Association.

Mr. Ken Kittleson, Director, Monroe County Personnel Department, 14345 Co Hwy B, Room 3, Sparta, Wisconsin 54656-4509, appearing on behalf of the County.

ARBITRATION AWARD

By Order dated June 9, 2009, the Wisconsin Employment Relations Commission, herein "WERC," appointed Dennis P. McGilligan as the Arbitrator "to issue a final and binding award, pursuant to Section 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act," to resolve the impasse between the above-captioned parties "by selecting either the total final offer of Wisconsin Professional Police Association/Civilian Employee Relations Division or the total final offer of Monroe County."

A hearing was held in Sparta, Wisconsin, on August 6, 2009. The hearing was not transcribed. The parties completed their briefing schedule on September 11, 2009.

After consideration of the entire record and the arguments made by the parties, the Arbitrator makes and renders his decision and Award.

BACKGROUND

Facts Leading to the Instant Dispute

Wisconsin Professional Police Association/Civilian Employee Relations Division, herein "Association," represents for collective bargaining purposes a unit of dispatch employees of Monroe County, herein "County" or "Employer." The unit consists of all regular full-time and regular part-time dispatch personnel in the employ of the County Communications Center, but

expressly excludes clerical personnel and managerial, supervisory, confidential and executive employees.

The Association filed an interest arbitration petition on February 6, 2009, with the WERC. The WERC appointed Stuart D. Levitan, a member of its staff, to conduct an investigation which he completed and then closed on or about May 4, 2009. On June 9, 2009, the WERC issued an Order appointing the undersigned to serve as Arbitrator.

The parties have agreed on all issues for a successor agreement for the term of January 1, 2009 through December 31, 2010, except the following: the addition of a second (new) step after seven years effective 7/1/09, wages in 2010, increased health insurance deductibles effective 1/1/10 and whether the deductibles will be included/listed in the agreement.

Recent Bargaining History

There are six other bargaining units in the County. They include Monroe County Courthouse Employees Local 138, AFSCME, AFL-CIO; Monroe County Highway Employees Local Union No. 2470, WCCME #40, AFSCME, AFL-CIO; Monroe County Human Services Employees Clerical and Para-Professional Employees Local 2470-A, AFSCME, AFL-CIO; Monroe County Human Services Department Professional Employees Local 2470-A, AFSCME, AFL-CIO; Rolling Hills Union, Local 1947, WCCME #40, AFSCME, AFL-CIO and Wisconsin Professional Police Association/Law Enforcement Employee Relations Division/Monroe County Professional Police Association. There also are non-represented employees.

The dispatchers' union is the "lone holdout" among the County's seven bargaining units to reach an agreement for 2009. Six of the County's seven bargaining units settled voluntarily for one-year agreements for 2009 with an internal settlement pattern of a 2% wage increase across the board ("ATB") effective January 1, 2009; an increase in the health insurance deductible from $100 single/$200 family to $250 single/$500 family effective March 1, 2009 and an additional half-day holiday to supplement the half-day already provided on Christmas Eve. The dispatchers' union was offered the same package for 2009 but declined, choosing instead to file for arbitration.

FINAL OFFERS

In their final offers, hereby incorporated by reference into this decision, the parties agreed and disagreed as follows:

WAGES: EFFECTIVE 1/1/2009

ASSOCIATION	COUNTY
2% ATB Effective 7/1/09 add a second (new) step after seven years.	2% ATB

Probation: $16.64 to $16.97 Step: $17.99 to $18.35 New Step: $18.72	Probation: $16.64 to $16.97 Step: $17.99 to $18.35

WAGES: EFFECTIVE 1/1/2010

2% ATB	1% ATB

INSURANCE: EFFECTIVE 3/1/2009

Increase deductible from $100/$200 to $250/$500 (represent in collective bargaining agreement)	Increase deductible from $100/$200 to $250/$500 (do not represent in collective bargaining agreement)

INSURANCE: EFFECTIVE 1/1/2010

	Increase deductible from $250/$500 to $350/$700 (do not represent in collective bargaining agreement)

STATUTORY CRITERIA

In deciding the issues presented, Section 111.70(4)(cm)7, Stats., requires the Arbitrator to consider the following factors:

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

e. 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.

f. 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 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 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.

POSITIONS OF THE PARTIES

The parties filed thoughtful and well-reasoned briefs. The parties' positions, arguments and cases cited are not reproduced in detail; instead they are summarized below. The parties' main arguments are discussed below in the **DISCUSSION** section of the Award.

Association's Position

The Association argues it has made an effort to slow the erosion of wages of the dispatch bargaining unit when compared to wages of those performing similar duties in comparable communities by carefully constructing its final offer so as to increase wages while moderating the actual cost to the County. The Association submits that its final offer is strongly supported by the external comparables, by the interests and welfare of the public and by a "total package" analysis of each offer. In contrast, the Association maintains that the County's final wage offer is inadequate and does not provide the lift necessary to abate the erosion.

The Association rejects the County's position that the pattern among the internal bargaining units is more important and should be controlling. Instead, the Association asserts that the external comparables are controlling. The Association adds that there is no "internal pattern" for 2010, particularly for insurance deductibles.

The Association opines its final offer more closely resembles what the parties should have agreed to in a voluntary settlement had both parties used the agreed-upon counties' settlements to gauge their offers. (Emphasis in the Original).

The Association also argues the addition of a step addresses a demonstrated problem and it has given the County a significant quid pro quo for the new step in the form of an increase in the deductibles that results in real cost savings to the County.

The Association further argues that its final offer is favored when measured against the cost of living.

In addition, the Association argues that the County has failed to meet its burden for changing the *status quo* on the insurance deductibles for 2010.

Finally, the Association argues that the County's refusal to put the insurance deductibles in the collective bargaining agreement is a fatal flaw which makes its offer unacceptable under any circumstances.

For all the above reasons, the Association respectfully requests that its final offer be selected by the Arbitrator for incorporation into a 2009-2010 collective bargaining agreement.

County's Position

The County argues that because neither party made strong arguments concerning the "greatest weight" and the "greater weight" factors, the greatest weight should be accorded those

factors which properly fall into the category of "[o]ther factors considered" under Section 111.70(4)(cm)7r. Stats.

The County next argues the internal settlement pattern supports its final offer. The County notes the dispatchers' union is the "lone holdout" for 2009 among its seven bargaining units.

The County adds it should not have a new longevity plan (a new step after seven years) imposed upon it through arbitration because in 2003 the County and the Association voluntarily agreed to have the County buy out its longevity provision and the County has invested over $35,000 toward its elimination.

The County also argues that its final offer is more reasonable when compared to the external comparables. In this regard, the County submits that the Association's final offer results in a 4.1% wage increase for over half of the unit, which is not supported by either the internal settlement pattern or the external comparables increases.

The County further argues that the private sector external wage comparisons favor its position.

In addition, the County contends that both final offers fit within the cost of living criteria.

Moreover, the County opines that its total package is more reasonable since the Association's final offer exceeds the cost of the County's by $2,000 in 2009 and $11,000 in 2010.

Finally, the County asserts there is no basis for including the specifics of health insurance plan design components like deductibles in the agreement as requested by the Association. In support thereof, the County points out that it has never included such specifics in the dispatchers' agreement, it is not included in any of the other six agreements reached by the County and its other bargaining units and the Association has offered no quid pro quo for their proposed change in the status quo.

The County adds that it has included a modest increase in the deductible in 2010 to counteract the anticipated 10% increase in medical inflation, a change similar to what it will be proposing in upcoming bargaining sessions with the remaining six bargaining units.

For all the forgoing reasons, the County believes its offer is more reasonable and should be selected.

DISCUSSION

At the outset, the Arbitrator notes that the only issues in dispute are wages, including the new step and the general wage increase for 2010, deductibles for 2010 and health insurance language. The most significant issue is wages. Whichever party prevails on this issue will be determined to have the most reasonable offer.

Neither party has made strong arguments concerning the "greatest weight" and the "greater weight" factors. In fact, the Association didn't argue these factors at all and the County submits that because neither party is overly concerned about these factors, the greatest weight should be accorded those factors which properly fall into the category of "[o]ther factors considered" under Section 111.70(4)(cm)7r. Stats. Consequently, these criteria will not be given weight in determining the reasonableness of the parties' final offers.

Further, the parties do not rely on all of the statutory criteria in support of their offers. The criteria not relied upon include the "lawful authority," the "ability to pay" and "changes during pendency" provisions of 7r. a., c. and i. Since said criteria are not addressed by the parties, the Arbitrator, like the parties, finds them to be non-determinative of the issues presented. *Sawyer County, Decision No. 31519-A, p. 6 (Torosian, 9/20/06).*

With respect to the remaining criteria, the stipulations of the parties, the "interests and welfare" of the public, comparison with private sector wages, the "cost-of-living" and "such other factors," provisions of 7r. b., c., f., g. and j., were addressed but clearly they are not as significant as the primary criteria of 7r. d. and e., external and internal comparables. Consequently, except for the "such other factors" provision of 7r. j., the Arbitrator does not find them, individually or collectively, to be very important to the outcome of this case. Their relative significance will, however, be discussed below.

The Arbitrator turns his attention to the issues in dispute.

Wages

The main issue here is the new step proposed by the Association effective 7/1/09. Both parties agree on a 2% ATB wage increase effective 1/1/09. The 2% ATB wage increase means that the probationary step would increase from $16.64 to $16.97 and the next step would increase from $17.99 to $18.35. The new step after seven years would be $18.72.

The Association argues that the external comparables unassailably support its final offer. In this regard, the Association asserts that the evidence demonstrates a wage pattern for 2009 and 2010 among the stipulated comparables (Jackson, Juneau and Vernon Counties) very similar to, but greater than, the Association's final offer. (Emphasis in the Original). As demonstrated in Association Exhibit No. 6b, the comparables' 2009 average increase is 2.5% while the parties' is 2%. For 2010 the comparables' average increase is again 2.5% while the County's offer is 1% and the Association's is 2%. At the end of 2008, the wage differential between the County and the average of the external comparables was -$1.75 at the maximum rate and +$0.01 at the minimum rate. (Association Exhibit No. 6a). By the end of 2010, the wage differential at the maximum rate will increase to -$2.21 under the County's proposal (1% ATB) and -$2.02 under the Association's proposal (2% ATB). Id. When the seven year step is added to the Association's proposal, the differential for 2010 is further reduced to -$1.65. Id. The Association concludes by noting that its final offer only slows the erosion and does so with an offer that is 0.5% less than the voluntary settlements reached among the external comparables.

To its credit, the Association carefully constructed its final offer to increase wages while moderating the actual cost to the County by delaying the effective date of the new step to July 1st of the first year of the agreement. The Association's wage increase for each year of the agreement is 0.5% less than the average of the external comparables' voluntary settlements. Furthermore, with the addition of the seven year step, the differential between the County's maximum wage rate and the comparables' average maximum rate is reduced; in the Association's words the seven year step "slows the erosion." However, the addition of the Association's proposed new step also changes the County's relative standing among its comparables. In 2008, the County was ranked last among the comparables at the maximum rate. Id. In that year the maximum rate for Jackson County was $18.23, for Juneau County $18.12 and for Vernon County $22.87 while the County was last at $17.99. Id. In 2009, with the addition of the new step, the maximum rate of the County would be $18.72, leaping over the maximum rates of both Jackson County at $18.59 and Juneau County at $18.66. Id. Only Vernon County with a maximum rate of $23.44 maintains its lead position. Id. The new step plus an additional 2% ATB wage increase as proposed by the Association provides a similar result in 2010. In 2010 the County's maximum rate would be $19.09, still ahead of Jackson County at $18.96, only slightly behind Juneau County at $19.22 and continuing well behind Vernon County at $24.03.

In addition, the new seven year step results in a 4.1% wage increase for well over half the bargaining unit. (County Exhibit 5). This is not supported by any of the external comparables. (Association Exhibit No. 6b).

The Association also argues that arbitral precedent decisively supports the idea that arbitrators, to encourage voluntary settlements, must carefully analyze each party's final offer in an attempt to determine which one most closely resembles what the parties would have or should have voluntarily agreed to across the bargaining table especially in light of the external settlements. However, applying that standard herein does not provide support for the Association's position. In 2007, the County's maximum rate was $17.55 which was lower than both Vernon County ($22.15) and Juneau County ($17.59) but very slightly higher than Jackson County ($17.52). (County Exhibit No. 6a). By 2008 the County was last among the comparables. Id. There is no persuasive evidence in the record that the County would have or should have voluntarily agreed in 2009 to a wage increase that would have changed its ranking among the comparables. To the contrary, the County made a wage proposal for 2009 consistent with the settlements reached with all other bargaining units. In addition, the County's offer on ATB wages for both 2009 and 2010 maintained its ranking of last among the comparables which was consistent with its recent bargaining history. Id. The County's offer on wages for 2009 and 2010 makes bargaining sense from both an internal and external point of view.

Based on all of the foregoing, the Arbitrator finds that the external comparables criterion favors the selection of the County's final offer.

The internal comparables strongly support the County's final offer.

In this regard, the Arbitrator notes there is considerable arbitral authority to provide that where a pattern exists among internal comparables, significant weight should be given to the internal pattern.

In *City of Milwaukee, Decision No. 25223-B, pp. 6-7 (9/16/88),* Arbitrator Zel Rice held:

> Forgetting the concept of parity, the mainstream of arbitral opinion is that internal comparables of voluntary settlements should carry heavy weight in arbitration proceedings. . . If the Employer is to maintain labor peace with the many bargaining units with which it negotiates, changes in wages and benefits must have a consistent pattern.

More recently, Arbitrator Thomas Yaeger in *City of Tomah, Decision No. 31083-A (2/18/05)* stated the significance of internal comparisons as follows:

> Fourth, as most arbitrators have concluded, including this one, an employer's ability to negotiate to a successful voluntary agreement with other unions the terms that it proposes in arbitration is a factor to be accorded significant weight, if not controlling weight, absent some unusual circumstance surrounding such an agreement(s) that diminishes it[s] persuasive value. *See pp. 21-20 and the cases cited therein*.

Likewise, Arbitrator Herman Torosian has held internal comparables to be of significant importance. *Sawyer County, supra, p.12.* In *Washington County (Department of Social Services), Decision No. 30459-A, p. 20 (5/7/03),* Arbitrator Torosian explained the issue as follows:

> Generally stated, both employers and employees have the same interest when it comes to internal comparables. Both recognize that consistency among various bargaining units and equitable treatment of employees promotes stability in the collective bargaining process and positively impacts employee morale. It is for said reason that arbitrators favor internal comparables over external comparables where a pattern exists, unless there is good reason to deviate. *p. 21.*

Finally, as pointed out by the County:

> Enhanced weight may be placed on internal comparison, however, in at least two situations: first, where certain fringe benefits, such as group medical insurance coverage, can be most efficiently and economically provided and administered when it is uniform for all employees; and/or, second, where multiple bargaining units with a single employer have established a pattern of settlements which is the most persuasive indication of the settlement the parties would have reached at the bargaining table, had they been able to do so. In the latter connection, relative uniformity of settlements is also conducive to successful ongoing collective bargaining within multiple bargaining units, and an arbitrator should be reluctant

to undermine such uniformity in the absence of persuasive evidence justifying such action. *Outagamie County, Decision No. 31400-A, p. 21 (Petrie, 2/7/06).*

The dispatchers' union is the "lone holdout" among the County's seven bargaining units for 2009. The County reached voluntary one-year settlements for 2009 with all units except dispatch. These units include five represented by AFSCME – courthouse, highway, nursing home, and two at Human Services, as well as the law enforcement unit represented by WPPA/LEER Division. The internal settlement pattern for these agreements included a 2% wage increase effective January 1, 2009, the same as proposed in the County's final offer. None of the internal comparables have a seven year wage step, (County Exhibit No. 7), and the seven year step results in a 4.1% wage increase for much of the bargaining unit, (County Exhibit No. 5), which is not supported by the internal pattern.

Furthermore, what little evidence of bargaining history that is available favors the internal comparison criterion. In this regard the record indicates that since 2005 the dispatch union has settled at or below the police unit represented by WPPA/LEER Division. (Association Exhibit No. 7). As noted above, the police unit settled at 2% for 2009.

The stipulations of the parties also favor the internal comparison criterion since the dispatchers agreed to essentially the same internal settlement pattern as the other bargaining units for 2009. These agreements included deductibles and an additional half-day holiday on Christmas Eve. (County Exhibit No. 4). In addition, the dispatchers and the County agreed to a compensatory time accumulation improvement for 2009. Id. The only substantive issue not agreed to for 2009 is the new wage step.

The Association counters that the interest and welfare of the public are best served when public safety has well-trained and fairly treated employees. The Arbitrator agrees. However, it is difficult to argue persuasively that the dispatchers are not being treated fairly when they are being offered the same ATB wage increase for 2009 that all other bargaining units in the County agreed to and when that offer is supported by the external comparables. In addition, the Association offered no persuasive evidence that its wage proposal and new step would result in better trained dispatchers.

The Association further argues that the cost of living supports its proposal. In this regard, the Association correctly notes that one way to measure the cost of living is by reviewing the Consumer Price Index ("CPI"). (Emphasis in the Original). A review of wage settlements, as an addition to the CPI, is warranted when measuring the cost of living. *City of Franklin, Decision No. 19569-A, p.5 (Imes, 11/18/82).* The Association introduced evidence that from 2007 to 2008 the CPI increased 3.66%. (Association Exhibit No. 8). Certainly, the Association's final offer of 2% plus a new step amounting to a 4.1% increase for most of the bargaining unit is closer to the cost of living when measured by the CPI than the County's offer of 2% for 2009. However, as noted above, the external wage comparison favors the County's position so the 7r. g. criterion "cost of living" does not favor either party's offer.

In addition, the Association asserts that the overall compensation criterion of 7r. h. supports its position because the relatively small difference in the total packages of the two

parties for a two year agreement (less than $13,000.00) is not overly burdensome and demonstrates that the dispatchers' disparate wage rate differential can be moderated at a minimal cost to the County. The Association also claims that the dispatchers' low wages compared to its comparables have resulted in excessive turnover of employees thus adversely affecting "the continuity and stability" portion of 7r. h.

The record, however, does not support the Association's position. In this regard, the Association claims that the County has experienced a turnover of seventeen (17) employees in the dispatch bargaining unit of thirteen (13) in the last five years due to the County's low pay scale. (Association Exhibit No. 6i). However, that exhibit includes part-time on-call non-union employees. The County's current seniority roster indicates that only six new dispatchers have been hired in the last seven years. (County Exhibit No. 5). This averages out to less than one new dispatcher per year which isn't a high turnover rate by any measure.

It is true that the relatively small difference in the total packages of the two parties could provide some support for the Association's position. However, the record indicates that the overall compensation received by the dispatchers is comparable to that received by the comparables. (Association Exhibit Nos. 6c-6h). There also is no persuasive evidence in the record that the overall compensation received by the dispatchers is significantly different from that received by the other bargaining units in the County. (County Exhibit No. 9). Consequently, based on the forgoing, the Arbitrator finds that this criterion does not support the Association's final offer.

Finally, the Association argues that not only does the addition of a step address a demonstrated problem related to the comparables and turnover but that the Association has given the County a significant quid pro quo for the new step in the form of an increase in the deductibles that results in real cost savings to the County. However, turnover is not excessive and the County's final offer is supported by both the external and internal comparables. In addition, there is no evidence in the record regarding why the other bargaining units agreed to the same increase in deductibles. Presumably, they did so in return for a 2% ATB wage increase and/or an additional half-holiday on Christmas Eve. They did not receive an additional step as requested by the Association. Therefore, the Arbitrator rejects this argument by the Association.

A question remains as to the impact of the 7r. j. criterion. The County argues that the Association's attempt to reinstate longevity through a seven year wage step after voluntarily eliminating it and receiving $35,891 in longevity buyout payments over the past six years is reason enough to reject the Association's final offer. The Arbitrator agrees that this is a strong factor favoring the County's final offer.

The Arbitrator reaches this conclusion for the following reasons.

Article 4, Section 2 of the agreement contains the following:

> In exchange for the elimination of longevity language, the County will pay an additional forty-five cents ($.45) per hour to employees with 10 or more years of seniority on January 1, 2003; an additional twenty-five cents ($.25) per hour to

employees with at least two but less than 10 years of service on January 1, 2003; and no additional payments to employees with less than two years of seniority on January 1, 2003, and for all employees hired thereafter. This section replaces the longevity clause effective May 11, 2003. (County Exhibit No. 1).

The seniority roster from 2003 indicates that 10 of the 14 unit members benefited from the longevity buyout language above. (County Exhibit No. 5). The County entered into the longevity buyout agreement with the expectation that it would initially be expensive, but savings would accrue over time due to attrition and the County would benefit long-term from its initial investment. The same longevity buyout language was voluntarily negotiated in the police agreement in 2003 and that agreement has the same pay structure as the dispatchers' agreement, with a hire rate and a one-year step. (County Exhibit No. 9).

The longevity buyout section listed above was a voluntary agreement in both police and dispatch contracts in 2003 and the County opines that it would be inappropriate for the Arbitrator to reinstate longevity in the form of a seven year step through binding arbitration.

The County estimates that it has invested almost $36, 000 toward elimination of longevity in the dispatchers' contract over the past six years. (County brief, pp. 12-13). Initially, ten dispatchers were eligible for buyout payments, but this number has decreased to four through attrition. (County Exhibit No. 5). The County points out now that it is beginning to see a return on its investment the Association is attempting to reinstate longevity through introduction of a new step which is nothing more than a replacement for longevity.

There is no internal pattern that supports a new seven year step. In this regard, the record indicates that the highway and police units have compensation plans similar to the dispatchers, with a hire rate and a one-year full rate. On the other hand, the courthouse, human services and nursing home units and the non-represented employees have 4.5 or five year compensation plans. (County Exhibit No. 9).

The external comparables also do not support a new step. In this regard, the Arbitrator notes that the comparables have very different pay structures than the County. Jackson County has a ten-year compensation plan, Juneau County has a similar plan and Vernon County has a 30 year compensation plan. (Association Exhibit No. 4). Juneau County has longevity while Jackson and Vernon County agreements include no mention of longevity so longevity is included in the steps; these counties have not negotiated to have longevity payments eliminated, as the County did in 2003. Id.

If the Association's final offer is selected and a longevity step is reinstated after the seventh year, four senior dispatchers would benefit from both longevity buyout payments and the new longevity step. The County argues, and the Arbitrator agrees, the County should not be required to pay twice for longevity for these senior employees.

Based on the foregoing, the Arbitrator finds that the 7r. j. criterion strongly favors the County's final offer. The Association should not be able to gain through binding arbitration that

which it voluntarily gave up at the bargaining table not too long ago in return for a sizeable quid pro quo which is still benefiting its members.

Finally, the Arbitrator notes the County argument that external wage comparisons in the private sector support the County's position on wages as indicated by the Department of Workforce Development wage survey of June 2009. (County Exhibit No. 8). The Arbitrator agrees that this factor provides support for the County's proposed wage rates, but the significance of this factor is minimal.

For the reasons discussed above, particularly the internal and external comparables, and because the County's proposal is consistent with the factors and concepts traditionally taken into account in voluntary collective bargaining, the County's proposal on wages is favored.

Deductibles in 2010

The Association argues that there are clear, well-established concepts on which arbitrators consistently have relied when one party wishes to change the *status quo* through arbitration. The framework of these concepts provides that when one side wishes to modify the *status quo* through interest arbitration, arbitrators traditionally have invoked a four-part analysis, considering: (1) whether there is a demonstrated need for the change; (2) whether the proposal reasonably addresses the need; (3) whether the proposal is supported by the comparables; and (4) the nature of the quid pro quo, if one is offered. *Elkhart Lake-Glenbeulah School District, Decision No. 26491-A, p. 15 (Vernon, 12/24/90)*.

The County, on the other hand, argues that it is proposing a modest increase in the deductibles to counteract the expected 10% increase in medical inflation. The County points out that it will be bargaining with its six other bargaining units this fall for 2010-2011 and will be seeking health insurance concessions from those units due to the continuing spiral of health insurance premium increases. The County opines that selecting the Association's final offer with no change in health insurance for 2010 would set a disastrous precedent for the County's ability to bargain with the other units.

The County offered no proof regarding the expected rate of medical inflation. The County offered no proof regarding its history of escalating health insurance costs or its attempts to address same. The County did not provide any specifics regarding the need for the proposed change. The County also did not indicate what health insurance concessions it would seek from the other units due to the continuing spiral of health insurance premium increases. The County asserts that making no change in health insurance for 2010 would set a disastrous precedent for the County's ability to bargain with the other units. On the other hand, granting an increase in deductibles for 2010 by selecting the County's final offer after all other units agreed to increase deductibles for 2009 certainly will put pressure on the other units to agree to the County's proposed deductibles for 2010. Consequently, the Association's position on insurance deductibles for 2010 is favored.

In reaching the above decision, the Arbitrator finds no merit in the Association's assertion that the County tried to "trap" the Association in interest arbitration by raising the issue

of 2010 deductibles for the first time in its preliminary Final Offer dated March 3, 2009. (County Exhibit No. 10). In this regard, the Association claims, contrary to the County's assertion that the Association should have been aware of the County's intention as a result of its initial bargaining proposal dated September 22, 2008, that a careful review of that proposal demonstrates that the County's proposal was simply for a re-opener on wages and insurance in the second year. (Emphasis in the Original). (County Exhibit No. 11). However, a more careful review of the County's initial proposal to the Association reveals that the County proposed a number of health insurance options for the parties to look at in bargaining including the addition of deductibles. Id. Furthermore, by including a demand for increased deductibles for 2010 in the County's preliminary Final Offer, the County gave the Association every opportunity to reach an agreement on the subject in the investigation/mediation session that followed. The Arbitrator can find nothing in the County's behavior to support a finding that the County bargained in bad faith over this subject. The Arbitrator agrees with the Association that it would have been preferable if the parties could have resolved this issue at the bargaining table. Unfortunately, they did not.

Health Insurance Language

The Association argues that the issue of identifying the terms and conditions of a collective bargaining agreement within the four corners of that agreement resonates to the very core of the entire idea and process of collective bargaining. The Association opines that it is axiomatic that the terms of the collective bargaining agreement be found in the contract. In support thereof, the Association quotes approvingly the following language from Section 111.70(1)(a) Stats.:

> "Collective Bargaining" means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representative of its municipal employees in a collective bargaining unit, to meet and confer at reasonable times, in good faith, with the intention of reaching an agreement, . . . Collective bargaining includes the reduction of any agreement to a written and signed document. (Emphasis in the Original).

However, neither the above language, nor the case law cited by the Association, requires the deductible amounts to be reflected in the parties' agreement. As noted by the County, both final offers include the increase in health insurance deductibles from $100 single/$200 family to $250 single/$500 family effective March 1, 2009. The difference in the final offers for 2009 (and 2010) is that the Association has included the language of the change in the body of the agreement. However, the Association has not established why there is a need to do that. The County has never included the specifics of health insurance plan design components in the agreement. County Exhibit No. 1, the 2007-2008 dispatch agreement, does not mention the $100/$200 deductible or the office visit co-pay, prescription drug co-pay, etc. A review of County Exhibit No. 9 establishes that the deductibles are not included in any of the other six agreements, either. Therefore, the past practice and status quo is to exclude the deductibles from the agreement, and the Association has not offered any evidence to indicate that there are any problems with this approach or any reason to change the status quo. Therefore, the District's final offer is favored on this issue.

Conclusions

The primary issue in this proceeding is wages, particularly the Association's proposal for a new step after 7 years. The Association clearly points out a need to slow erosion of the dispatchers' wages in comparison with the external comparables. However, the Association's proposed step does more than merely slow erosion; it changes the rankings of the comparables. Such an approach is not supported by the comparables. In addition, it goes against a very strong internal pattern of settlement, and ignores bargaining history by essentially negating a 2003 voluntary settlement between the parties on the elimination of longevity. In order to be successful in improving the wages of dispatchers in relation to their counterparts in the comparables the Association either must craft a proposal which does not double dip on longevity payments/buyouts or negate the voluntary settlement entered into by the parties to eliminate longevity or, better still, agree voluntarily at the bargaining table to such wage improvements with the County. The Arbitrator finds no basis in the record for rewarding the Association for being the "lone holdout" in 2009 by selecting the Association's final offer on wages.

The Arbitrator agrees with the Association that the arbitral criteria do not support the County's proposal on increased deductibles in 2010 but disagrees that there is a need to include language in the agreement to reflect the deductibles. In any event, these issues are not determinative of the outcome of this case.

Selection of the Final Offer

Having considered the statutory criteria, the evidence, and arguments presented by the parties, the Arbitrator, based on the above and the record as a whole, and in particular on the internal comparables, external comparables and "such other factors" criteria, concludes that the offer of the County is more reasonable than the offer of the Association, and to that effect the Arbitrator makes and issues the following

AWARD

The County's offer is to be incorporated in the 2009-2010 collective bargaining agreement between the parties, along with those provisions agreed upon during their negotiations, as well as those provisions in their expired agreement that they agreed were to remain unchanged.

Dated at Madison, Wisconsin, this 7th day of October, 2009.

By _____

Dennis P. McGilligan, Arbitrator