

BEFORE THE ARBITRATOR

In the Matter of the Petition of

LINCOLN COUNTY HIGHWAY EMPLOYEES
UNION, LOCAL 332-A, AFSCME, WISCONSIN
COUNCIL 40, AFL-CIO

and

LINCOLN COUNTY

Case 267
No. 69504
INT/ARB-11478
Decision No. 33061-A

Appearances:

Mr. John Spiegelhoff, Staff Representative, AFSCME Wisconsin Council 40, 1105 E. 9th Street, Merrill, WI 54452, appearing on behalf the Union.

Mr. Dean R. Dietrich, Ruder Ware, Attorneys at Law, P.O. Box 8050, Wausau, WI 54402-8050, appearing on behalf of the County.

ARBITRATION AWARD

Lincoln County Highway Employees Union Local 332, hereinafter referred to as the Union, and Lincoln County, hereinafter referred to as the County or Employer, met to reach an agreement on a new collective bargaining contract. Failing to reach agreement the Union filed a petition with the Wisconsin Employment Relations Commission (WERC) to initiate arbitration pursuant to Section 111.70(4)(cm)(6), of the Wisconsin Statutes. After an investigation and receipt of Final Offers, the WERC ordered that the parties proceed to final and binding arbitration. The parties selected the undersigned and the WERC issued an Order appointing the undersigned as the Arbitrator to issue a final and binding award by selecting either of the total Final Offers submitted by the parties during the investigation. A hearing in the matter was conducted on September 20, 2010. The parties presented numerous exhibits and additional evidence. The hearing was not transcribed. The parties submitted initial briefs on November 12, 2010. Reply briefs were received on December 7, 2010, at which time the record was closed.

FINAL OFFERS OF THE PARTIES:

The only disputed issue between the parties is the amount of the employee contribution to the health insurance premium for family coverage in 2011. The following is a summary of the parties' Final Offers:

County: For 2011, the County proposes the employee portion of the health insurance premium for family coverage be raised from \$45 per month to \$55 per month effective January 1, 2011, and increased to \$65 per month effective July 1, 2011.

Union: For 2011, the Union proposes the employee portion of the health insurance premium for family coverage remain at the 2010 rate of \$45 per month.

BACKGROUND:

Lincoln County is located in northern Wisconsin. Local 332-A represents Highway employees who are employed by the County in various job categories. The County also has collective bargaining agreements with the following other units: Deputies, Courthouse, Pinecrest Nursing Home, Social Services Professionals, Social Services Non-Professionals and Developmental Disabilities. As noted above, the only area in dispute is the amount of employee premium contributions toward the family health insurance premium for 2011.

The County has reached voluntary agreements with the Deputies and Courthouse units to increase employee premium contributions for family coverage for 2011 in the amounts contained in the County's final offer. Supervisory staff in the Sheriff's office, who do not have access to interest arbitration, have agreed to the premium contribution increases proposed by the County. Pinecrest Nursing Home employees pay 5% of the family health insurance premium. The Pinecrest Nursing Home health insurance plan contains differences from the other County health insurance plan. The Social Services Professionals, Social Services Non-Professionals and Development Disabilities staff had not settled at the time of the hearing.

The County maintains a self-funded health insurance program which is administered by a third party administrator. The 2010 premium for the family plan was \$1359 per month. Employees contributed \$45 per month towards the family premium cost. At the time of the hearing, the premium costs for 2011 were not known. During the first eight months of 2010, the

health insurance fund balance decreased by approximately \$970,000. The 2010 fund balance decline was projected to increase to \$1,200,000.

Lincoln County has been significantly affected by the economic recession. Lincoln County has lost a large number of manufacturing jobs and the unemployment rate is the sixth highest in Wisconsin.

POSITIONS OF THE PARTIES:

Union:

The Union argues that the County lacks a compelling need for increased employee premium sharing in 2011. In 2004, the parties made changes to the health insurance plan which resulted in dramatic cost savings. Since these modifications were implemented, Lincoln County has experienced below average costs for its health insurance program. From 2002 to 2010, the County only realized a 22.6% increase for the family plan. Other external comparables have experienced far greater increases. It is also important to note that Lincoln County Highway employees pay higher deductibles and coinsurance than in comparable counties. This additional insurance exposure has helped keep premium levels lower. In 2010 the Union along with the other bargaining units agreed to increase the employee family plan premium contribution to \$45 per month. Citing arbitral authority, the Union points to the need for the County to show clear and convincing evidence of a need for a change. Neither of these elements is present in the current case. Given the lower cost for family insurance, the County cannot demonstrate a compelling need to increase the employee premium share contained in their final offer.

The Union additionally argues that there is no controlling internal pattern to warrant a premium share increase. The County has approximately 335 represented employees who are in seven bargaining units. Only the Deputies and Courthouse employees have agreed to the premium share increases contained in the Final Offer of the County. These two units contain 94 employees and represent only 28% (94 out of 335) of the workforce. The Union identified that Pinecrest Nursing Home employees contribute 5% of the premium and that some plan elements are different than those of the other units. The Union also argued that the 5% premium contribution remained the same for 2011. The other internal units remain unsettled for 2011 thus contributing to the conclusion that there is no controlling internal pattern.

There is no dispute between the parties regarding the comparable pool established previously by Arbitrator Weisberger.¹ The comparable pool consists of the following contiguous counties: Langlade, Marathon, Oneida, Price and Taylor along with the City of Merrill as a secondary comparable.

There are three benchmark positions common to the highway departments in the comparable pool. These positions are patrolmen, heavy equipment operator and mechanic. Lincoln County employees in these benchmark positions are behind the comparables in both wages and benefits. When considering hourly compensation, Lincoln County employees rank sixth in the comparable pool. Patrolmen are \$.77 below the comparable average. Heavy Equipment Operators are \$.51 below the comparable average. Mechanics are \$.71 below the comparable average. When considering total compensation and the comparable averages, Patrolman lag by \$2.83/hour, Heavy Equipment Operators lag by \$2.53/hour and Mechanics lag by \$2.77/hour. In all three of these positions, Lincoln County employees rank last in the comparables.

The Union points out that even if Lincoln County employees contribute less towards premiums they have higher deductibles and out-of-pocket expenses. Also they rank last in total compensation among the external comparables. Further, Lincoln County has the lowest insurance rate among the comparables. Seeking additional premium contributions from the employees is not appropriate. The Union cites arbitral authority supporting the compelling nature of total compensation as a consideration when an employer was seeking insurance changes and also had low insurance costs.² Lincoln County has the financial ability to meet the costs of the Union's Final Offer. Statutory criteria direct the Arbitrator to consider local economic conditions in rendering a decision. The Union argues that the differences in the Final Offers should not be impacted by the local economic conditions. The difference in the final offers is \$5760 for 2011. There is no question that the County has the ability to fund this difference. Also Lincoln County is one of two counties that have experienced a positive change in full property values from 2008 to 2009. Lincoln County has also experienced positive gains

¹ Lincoln County (Highway), Decision No. 29340-A, (9/98).

² North Shore Fire Dept., Decision No. 30481-A, (Bard, 7/03).

in the per capita income of the residents. The adjusted gross income from 2007 to 2008 increased by 9.71% while the comparable median increase was only .55%. The adjusted gross income from 2007 to 2008 increased by 11% over the comparable median.

The Union recognizes the tax limits imposed by the legislature. These limits also impact the other counties in the comparable pool. Lincoln County's per capita tax rate has been near the median in both the short and long-term. Lincoln County has been fiscally responsible and levied taxes similar to the counties in the comparable pool. The Union's Final Offer cost can be met by the County. The greatest weight and greater weight criteria should not be dispositive in this dispute.

The Consumer Price Index supports the final offer of the Union. While the CPI for Midwest Size D (Non-Metropolitan less than 50,000) for most of 2009 was negative, the price of goods and services began to increase in October 2009 through the end of the year. This trend continued into 2010. Many arbitrators have put greater weight on months preceding the expiration of the contract rather than a more extended period. The CPI trend increases support the Union's final offer.

For the reasons identified above the Union urges the Arbitrator to adopt the Union's final offer.

County:

The escalating cost of health insurance is a problem being faced by Lincoln County and other employers throughout the State and the Country. The Union's Final Offer does not provide any increase to the employee contributions for family coverage in 2011. Given rising health insurance costs, the County's financial condition and the decline in the local economic environment, refusing to increase employee contributions toward health insurance is not realistic.

The greatest weight factor requires arbitrators to consider any statutes that limit the ability of the County to increase taxes to fund the selected final offer. 2009 Wisconsin Act 28 was enacted on June 29, 2009. Under this Act counties are not able to increase the tax levy above identified amounts for the 2010 tax levy and the 2011 tax levy. The County has limited funds and is not able to increase property taxes without considering limitations imposed by this statute. The County is severely restricted by these levy limitations and cost controls. The

monthly increase for employees with family plans is minimal and would not significantly impact the employees' quality of life. Also, the Arbitrator must consider the levy limits and the impact on County revenues in deciding which Final Offer to select.

Under the greater weight factor the local economic conditions support selection of the County's Final Offer. Lincoln County has been significantly affected by the economic downturn. The County's unemployment rate of nearly 12% is much higher than the County's typical unemployment rate. In July of 2010 Lincoln County had the 6th highest unemployment rate of the 72 Wisconsin counties. The County has also lost 13% of its manufacturing jobs in a one year period. These economic conditions dramatically impact Lincoln County's financial situation. Additionally, data show that private sector employees in Lincoln County pay significantly more of the health insurance premium than County employees. Clearly the local economic conditions support the acceptance of the County's Final Offer.

The County operates a self-funded health insurance program. The County's Health Insurance Fund balance had decreased by \$967,701 in the first eight months of 2010. The 2010 projected shortfall is predicted to rise to \$1,200,000. Maintaining a strong fund balance is crucial to the long-term viability of the health insurance program and impacts the premiums paid by the County and employees. The large fund balance loss in 2010 also supports the selection of the County's Final Offer.

The County argues that internal comparables strongly support the selection of the County's Final Offer. There are six other internal comparable bargaining units: Courthouse, Deputies, Developmental Disabilities, Social Services Nonprofessionals, Professional Social Workers and Sheriffs Supervisors/Lieutenants. All of the units including the Highway unit agreed to raise the family premium contribution to \$45 for 2010. The Courthouse and Deputies bargaining units have settled contracts for 2011 and have agreed to the County's proposal to increase premium contributions for 2011. Pinecrest Nursing Home deviates from this pattern because the employee contribution for family coverage is 5% of the total premium which was \$67.95 for 2010. The Union attempts to mislead the Arbitrator by arguing that Pinecrest Nursing Home employees will not pay increased premium contribution amounts in 2011. Actually because their contribution amount is a percentage of the premium, any increase in the cost of the health insurance results in an increased premium contribution for these employees. If the Union were to prevail in this proceeding, the Highway unit would be the only settled group

not increasing the level of premium contribution. This preferential treatment should not be allowed.

Citing arbitral authority, the County argues that internal comparables are given more weight in the area of fringe benefits particularly health insurance. Arbitrators have recognized that fairness and the impact on morale are significant concerns when employees are not treated the same. While good reasons to deviate from a settlement pattern may exist, the party proposing the deviation is responsible to substantiate the need.

Citing several cases and arbitrators, the County argues that arbitrators have long supported the concept that employees should contribute towards the cost of health insurance. Arbitrators have acknowledged that rapidly rising costs need to be addressed by employers and employees. Further, employee premium contributions have been viewed as a reasonable method of addressing these rising costs.

The County argues that the external comparables support the selection of the County's Final Offer. The parties are in agreement regarding the external comparable pool which was defined by Arbitrator Weisberger in 1998 and identified in the Union's arguments noted above.³

The external comparables support the County's Final Offer. Under the Union's Final Offer employees would pay \$45 towards the premium in 2011. Under the County's Final Offer employees would pay \$55 towards the premium for six months and \$65 towards the premium for the final six months of 2011. County Exhibit 27 shows the following contribution amounts for comparables assuming a 10% increase in health insurance premiums for 2011: Marathon County, \$101.10; Price County, \$198.88; Oneida County, \$90.86; and Taylor County, \$75. Only Langlade County employees would contribute less than what is proposed by Lincoln County's Final Offer.

The County also argues that private sector comparables support the County's final offer. Several major employers in the County require substantial employee contributions towards health insurance premiums for family coverage. Packaging Corp. of America employees contribute 20% (\$332.07) per month. Weinbrenner Shoes employees contribute 30% (\$647.12)

³ Contiguous Counties as primary and City of Merrill as a secondary comparable.

per month. Reindl Printing employees can pay up to 34% (\$470.87) per month. While the County recognizes that private sector comparisons receive less weight, the arbitrator is required to consider private sector comparables when making the decision.

The interests and welfare of the public are best served through the County's Final Offer. The County must treat all employees fairly. This is particularly important as it relates to fringe benefits. It is important for the County to maintain the same contribution levels for all employees. The selection of the Union's Final Offer will impact future bargaining with the remaining unsettled units and affect employee morale. The County argues that rewarding these employees for "holding out" will have an adverse affect on other County employees and negatively impact future voluntary settlements. It is particularly important to consider that other internal comparables who have settled are part of the same AFSCME Local.

It is important to consider that prior contribution levels were extremely low. The changes proposed by the County remain below the averages of internal and external comparables. The cost of health insurance has continued to rise substantially. It is not unreasonable to expect employees to contribute towards this rising cost. The employees have protection from large premium increases because dollar amounts are clearly identified.

Based upon the foregoing, the County argues that the Arbitrator should select its final offer.

Union Reply Brief

The Union strongly disputes the County's contention that a controlling internal settlement pattern exists. The Union does agree with the general statement that internal comparables should be given great weight in interest arbitration proceedings. The Union reiterates that only two internal units representing only 28% of the represented workforce have agreed to the premium share changes sought by the County. The Sheriff Supervisors/Lieutenants group should not be considered as a comparable because their wages and conditions of employment do not reflect the collective bargaining process. Further this group does not have access to interest arbitration. The Union also questions the County's omission of Pinecrest Nursing Home as a comparable. This exclusion in part is based upon the County's assertion that an administrative body negotiates contracts not the County. Based upon

arbitral guidance, it is clear that the County is the actual employer not the nursing home. Also the Union argues that Pinecrest Nursing Home has been considered an internal comparable in prior interest arbitration cases. The exclusion may also occur because the health insurance plan available for Pinecrest Nursing Home employees is different than other staff. In comparing the plans Highway employees have higher out of pocket cost exposure. While this is accurate, it is not a reason to exclude this unit from the internal comparable pool. The largest group of employees work at Pinecrest Nursing Home and have a contract for 2011. Pinecrest Nursing Home employees continue to pay 5% of the premium not the contribution amounts proposed by the County in this case.

Proposing these changes to the unsettled units does not rise to the level of agreements that can support an internal comparable pattern. Additionally the Union cites Marathon County, Dec. No. 29519-A, 10/99, in which Arbitrator Torosian concluded that an internal comparable pattern had not been established even though settlements had occurred with four represented units and three non-represented units because 77% of the employees had not voluntarily settled. The Union argues that the Arbitrator Torosian's rationale applies in the current case. The Union reasserts that 72% of the represented employees have not agreed to the premium share change.

Additionally the Union argues that the County has not demonstrated that a health insurance problem exists. The County has low health insurance costs when compared to other employers. The timing of this proposal is questionable.

The arbitration citations provided by the County are misleading and can be distinguished on several levels. Also the County's proposal represents cost shifting and does nothing to contain health insurance costs. The Highway employees have the most out-of-pocket costs when compared to the comparable pool. Employees should not be penalized with increased premium share contributions when the health insurance costs are relatively low. Several arbitrators have stated that shifting cost does nothing to contain rising health insurance expenses. Further, arbitrators have generally not favored premium contribution increases as a means to address rising health insurance costs. Arbitrator Vernon in Chippewa County, Dec. No. 27326, 2/93, concluded that cost-sharing was not warranted because of low premium costs, low employer costs and plan design changes. As identified by the Union previously, the County has the lowest employer costs in the external comparable pool. These costs have only risen

22.65% for the family plan over eight years. Also employees pay higher out-of-pocket costs and external comparables.

The Union also argues that the greater and greatest weight criteria are not dispositive in this matter. Under the greatest weight criteria, the County states that the existence of property tax limitations should favor their offer. The County has not provided any specific evidence about how these limitations would negatively impact operations if the Union's Final Offer was selected. Arbitrators have stated that employers need to show in arbitration how these limits affect the reasonableness of the parties' offers. Also the greatest weight criteria are not determinative when there is a minimal costing difference between the two final offers. In the present dispute, the difference between the two offers is \$5760.

Under the greater weight factor, the County focuses on the private sector rather than the public sector which would be more meaningful. The County has not provided evidence that it is experiencing greater difficulties than the comparable pool. Given the financial condition of the County, the greatest and greater weight criteria are not determinative.

The County's insurance costs are relatively low. The comparison with some limited private sector employers is of questionable value and not persuasive. Many arbitrators have identified that there is little comparative value between private sector and public sector employee benefits. The County has also acknowledged in its brief that private sector comparisons do not receive a large amount of weight in interest arbitration.

For the reasons identified in the brief and reply brief, the Final Offer of the Union should be adopted.

County's Reply Brief

The County renews its argument that the recession and difficult economic times require sacrifice and compromises. The rising cost of health insurance affects employers and employees and must be addressed.

The internal pattern of settlements supports the County's Final Offer. There are 143 bargaining unit employees in the Courthouse, Deputies, Sheriff's Supervisors/Lieutenants, Developmental Disabilities, Professional Social Workers and Social Services Nonprofessional unions. 66% (94) of these employees have agreed to the increase in employee contributions

towards family health insurance premiums for 2011. The Courthouse unit has 72 employees and the Deputies bargaining unit has 22 employees. Arbitrators have long recognized the importance of considering an established pattern among internal bargaining units. Failing to honor established patterns can lead to concerns about equitable treatment and a negative effect on morale. It is particularly important that one of these voluntary settlements is with AFSCME.

The Union inappropriately attempts to use Pinecrest Nursing Home as a comparable. Arbitrator Vernon in Lincoln County Voluntary Impasse Procedure, Case: 222, No. 63261, Int/Arb-10124, (4/05), noted the bargaining differences with Pinecrest Nursing Home and that these employees have traditionally paid more of their health insurance premiums than other bargaining units. He also noted that the health insurance plan design was different from other County units. In this prior proceeding the Union argued that Pinecrest Nursing Home should not be considered part of the insurance settlement pattern. Obviously the Union's current position is dramatically different in this regard. The differences in the health insurance plans between Pinecrest Nursing Home and other County employees remain. The settlement pattern established by the County should be given great weight by the Arbitrator.

The Union's argument that the health insurance fund has adequate reserves is inaccurate and inappropriate. During 2010 the fund decreased by an average of \$121,000 per month between January to August. This fund is obviously needed to process claims. If the fund depletion continues, the health insurance program viability will be challenged.

The Union's argument that there is no compelling need to increase the employee premium contribution is misguided. The Union identified that the premium had only increased by 22.65% over the last eight years. In 2002 and 2003, the premiums were significantly higher than the external comparable average. In 2004 the County modified the insurance plan which helped reduce the premiums. The lower percentage increase as argued by the Union is a result of beginning at a much higher premium level in 2002 and 2003. It should also be noted that until 2006 employees did not make payments toward the health insurance premiums for family coverage. From 2006 to 2009 employees contributed only \$35 per month towards the family health insurance premiums. Employees are now being asked to contribute \$55 per month effective January 1, 2011, and \$65 per month beginning July 1, 2011, towards premiums. An additional compelling need for the County is to maintain the same premium contribution level

for its employees in 2011. Failing to do so will also have an adverse effect on future voluntary settlements as units would be encouraged to participate in the interest arbitration process.

The Union's argument that Highway employees receive less total compensation than external comparables is flawed. The calculation used by the Union includes vacation, sick leave and other benefits that are specifically related to employee compensation. The calculation of these additional benefits does not take into consideration usage of the benefits or the availability of payment of some benefits such as accrued sick leave at the time of retirement. Arbitrators have treated comparisons of vacation and sick leave as separate benefits which relate more to productivity and to direct compensation. It is more appropriate for the Arbitrator to consider the portion of the insurance premium paid by the employees in Lincoln County and the comparable pool. This information shows that the contribution for County employees is competitive and almost always less than employees in the comparable pool. Union Exhibit 4 shows that Lincoln County employees' total insurance exposure is \$362.74 less than the external comparable average. According to the County if the Arbitrator places weight on the Union argument that employees make 3% less per hour than the comparable average, then it would be important to consider that County employees contribute 30% less than the comparable average for health insurance premiums for family coverage. The total compensation argument put forth by the Union should be discounted.

For the reasons identified in the brief and reply brief, the Final Offer of the County should be adopted.

DISCUSSION:

The criteria to be utilized by the Arbitrator in rendering the Award are set forth in Wis. Stat. § 111.70(4)(cm)(7), as follows:

7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, except for any decision involving a collective bargaining unit consisting of school district employees, 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, except for any decision involving a collective bargaining unit consisting of school district employees, 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 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.

The greatest weight factor requires the arbitrator to consider any statutes that limit the right of the County to increase taxes to fund the appropriate final offer. The County argued that Act 28 limits the County's ability to increase the tax levy for 2010 and 2011. The difference between the two positions is less than \$6000. The record does not show that this minimal amount would adversely impact the financial condition of the County. The record does not contain evidence of specific problems or challenges that would develop should the Union's Final Offer be adopted. There is no evidence of staff reductions, service modifications or spending cutbacks in response to deteriorating economic conditions or Act 28 restrictions. While reducing the premium amount paid by the County would have a positive financial outcome for the Employer, the record does not support a conclusion that implementing the Union's Final Offer would significantly impact the County's ability to comply with Act 28 restrictions. The undersigned concludes that the greatest weight factor does not favor the Final Offer of either party.

The local economic conditions in the jurisdiction of the employer shall be given greater weight by the arbitrator in making the decision. It is undisputed that the Country and State of Wisconsin have experienced a severe recession. Jobs have been lost and revenue to municipalities has been reduced. Unemployment has risen to serious levels and taxpayers are under continuing economic pressure. Lincoln County has been significantly impacted by the economic downturn. During a one-year period the County lost 13% of its manufacturing jobs. Unemployment has risen from a 10-year average of 4% to almost 12%. Lincoln County's unemployment rate was ranked sixth highest of the 72 counties in Wisconsin.

Considering the economic conditions faced in Lincoln County and the taxpayers, it is in the best interest of the Employer, employees and certainly the public to reduce expenditures where possible without corresponding layoffs and service reductions. The Union points out that there is a marginal difference between the Final Offers and local

economic conditions should not be determinative. The undersigned acknowledges these Union arguments and concurs that this factor is not determinative in this dispute. However, the local economic conditions in Lincoln County favor the Employer's Final Offer.

Internal comparability is a very important factor particularly regarding fringe benefits. Internal comparability often has been given great weight and under certain circumstances can be controlling. Regarding health insurance, voluntary settlements play an even more important role. Internal consistency related to this significant fringe benefit is important. Also, deviating from voluntary settlements can send a negative message to those units that have reached agreements, unless strong rationale exists. The Employer has a legitimate interest in insuring that employees are treated fairly. If one unit is treated more positively than another, this will likely have a negative impact on morale. This problem compounds if one unit receives more than what was voluntarily agreed to by another unit. This type of situation will raise credibility concerns and undermine the ability to reach voluntary agreements in the future.

Both parties acknowledge that internal comparables are a very important consideration particularly regarding health insurance and under certain circumstances may become determinative. While this principle is embraced by the parties and endorsed by the undersigned, there are significant differences between the parties regarding the makeup and analysis of the internal comparable pool.

Based upon evidence submitted and revised exhibits, Lincoln County has the following number of employees in the units listed with the 2011 family health insurance premium contributions noted:

Unit		2011 Employee Premium Share Contribution Family Plan
Deputies	22 employees	1/1/11-\$55.00 7/1/11-\$65.00
Courthouse	72 employees	1/1/11-\$55.00 7/1/11-\$65.00
Pinecrest Nursing Home	159 employees	5% of the premium
Social Services Professionals	9 employees	Not settled
Social Services Non-Professionals	18 employees	Not settled
Developmental Disabilities	16 employees	Not settled
Highway	39 employees	Not settled
Total represented employees	* 335	

* It should be noted that the County proposed that 6 Sheriff's Supervisors/Lieutenants employees be included in the analysis. They have been excluded for reasons contained in the discussion.

The Union argues that only the Courthouse and Deputies units have agreed to the County's proposal. The Union indicates that this involves 28% (94/335) of the represented employees. The Union argues that Pinecrest Nursing Home employees should be considered in the pool and emphasizes that they did not agree to the premium share contribution changes proposed by the County in this case. The Union also objects to the inclusion of the Sheriff's Supervisors/Lieutenants employees because they do not have access to interest arbitration and do not negotiate in a normal collective bargaining environment.

The County argues that the Union's analysis is flawed because of the pool used and that actually 66% of the 143 represented employees have agreed to their proposal. The pool relied upon by the County excludes Pinecrest Nursing Home and Highway employees. If the pool included Highway employees, then 53% of the 176 represented employees (94/176) have agreed to the County's proposal. The County has excluded Pinecrest Nursing Home employees from their analysis because of differences in the health insurance plan and bargaining history. In Lincoln County Voluntary Impasse Procedure, Case: 222 No. 63261, INT/ARB – 10124 (4/05), Arbitrator Vernon noted that Pinecrest Nursing Home employees have a health insurance plan that is different from other County units. Based upon plan differences, funding and bargaining history, Arbitrator Vernon opined that Pinecrest Nursing Home has less precedential value than other internal groups.

The County includes six employees from the Sheriff's Supervisors/Lieutenants group in its argument but does not seem to include those numbers in its calculations. The undersigned has commented previously that employees who are either not represented or do not have a traditional bargaining relationship with access to interest arbitration are not an appropriate comparable.⁴ Other arbitrators have also noted that supervisory units are not viable comparables because they do not have a meaningful process to resolve bargaining deadlocks.

Additionally the dispute regarding the comparability of Pinecrest Nursing Home employees is noted.⁵ While aspects of the health insurance program are different, it is clear that Pinecrest Nursing Home employees contribute 5% of the premium for the family plan. The undersigned concludes that it is appropriate to consider the implications of this percentage contribution for this dispute. While the Union argues that Pinecrest Nursing Home did not accept the premium contribution amounts contained in the Employer's Final Offer, there is no evidence to suggest that this was offered to the unit during negotiations. During 2010, the 5% contribution represented \$67.95 which is obviously far greater than the \$45 amount which was agreed to by all other units.⁶ The very nature of the percentage contribution provides for increases when the premiums escalate in 2011. Pinecrest Nursing Home employees will continue to contribute more towards family plan premiums than any other employee group in the County during 2011. While the plans and other factors differ, the dollars generated through premium contributions are easily identified. When looking at the 94 represented employees who have agreed to the County's proposal and considering that the 159 Pinecrest Nursing Home employees who pay 5% of the family premium which exceeds the County's proposal, 75% of the County employees will pay a greater

⁴ Calumet County (Deputy Sheriffs), Dec. No. 32700-A, (9/09).

⁵ It is important to acknowledge that Pinecrest Nursing Home employees have been considered in the internal comparable pool in three prior Interest Arbitration proceedings. Lincoln County (Courthouse), Dec. No. 28751-A, (Malamud, 2/97). Lincoln County (Highway), Dec. No. 29340-A, (Weisberger, 9/98). Lincoln County (Pinecrest Nursing Home), Dec. No. 32414-A (Yeager, 12/08).

⁶ At a time that the County was seeking increased employee premium contributions for the family plan, it would not make sense for the County to propose a reduction in the amount paid by Pinecrest Nursing Home employees.

amount toward family health insurance premiums during 2011. The internal comparables strongly favor the County's proposal.

The Union argues that there is no compelling need to increase the premium contribution amounts. As noted previously, the County has a self-funded health insurance program. Part of the viability of a self-funded program rests in maintaining an appropriate fund balance in order to pay health insurance claims. The fund balance has decreased by over \$960,000 during the first eight months of 2010. The fund balance decrease was projected to rise to \$1.2 million for all of 2010. If fund balance declines such as those experienced during 2010 continue, the viability of the self-funded program will obviously be undermined. Relieving the County of some health insurance expenses through increased premium contributions is appropriate but will not solve the fund balance problem alone. The parties may chose to consider cost containment strategies such as wellness programs and utilization initiatives in the future.

The Union also argues that Lincoln County has lower health insurance premium costs than other comparable employers. While this is accurate, the expense remains substantial and continues to grow. Numerous arbitrators have commented on the importance of employee participation related to rising healthcare costs. The undersigned notes that the Highway unit along with other County represented employees agreed to plan design changes which assisted in lowering premium costs in 2004. Even with these responsible responses from the represented employees, premiums have continued to rise. A significant portion of the represented employees have voluntarily agreed to increase their family plan premium contributions for 2011 which will help maintain the viability of the health insurance program. The internal comparables, continuing increases in premiums and fund balance concerns strongly favor the County's Offer.⁷

The parties do not dispute the comparable pool established previously by Arbitrator Weisberger.⁸ This comparable pool consists of the following contiguous counties:

⁷ It should be noted that the parties did not argue *quid pro quo* implications. As a result this will not be addressed.

⁸ Lincoln County (Highway), Dec. No. 29340-A, (9/98)

Langlade, Marathon, Oneida, Price, Taylor along with the City of Merrill as a secondary comparable. The undersigned agrees with the appropriateness of this well-established comparable pool.

The Union argues that Lincoln County Highway employees rank sixth in total compensation within the comparable pool. The Union uses three benchmark positions to reinforce this argument. The County argues that the inclusion of some benefits in the Union's total compensation calculation is not appropriate. The County asserts that the Union's calculation does not take into consideration benefit usage or the payout of some benefits upon retirement. The arguments and responses have merit and are noted. It is important to recognize that the parties reached an agreement on all other economic provisions of the contract. The selection of either party's Final Offer will not significantly disadvantage employees or impact this ranking which appears to have existed for a period of time.

The Union argues that the Lincoln County family premium is much less than the other comparables. The Union also argues that from 2002 through 2010 premium costs have only risen 22.65% which is much less than the comparables. Additionally, the Union points out that Lincoln County Highway employees pay higher out of pocket costs than the comparables. The County argues that the premium share paid by Lincoln County Highway employees is much less than employees in the comparable pool. Further, the health insurance cost increases identified are substantial. The undersigned notes that health insurance figures for 2011 were not available at the time of the hearing. Family health insurance comparisons for 2010 reveal the following:⁹

<u>Comparable</u>	<u>Full Premium</u>	<u>Employer Portion</u>	<u>Employee Portion</u>
Langlade	\$ 1450.00	\$ 1450.00	\$ 0.00
Marathon	\$ 1838.26	\$ 1746.35	\$ 91.91
Price	\$ 1808.00	\$ 1627.20	\$ 180.80
Oneida	\$ 1652.00	\$ 1569.40	\$ 82.64
Taylor	\$ 1624.52	\$ 1549.52	\$ 75.00
Lincoln	\$ 1359.00	\$ 1314.00	\$ 45.00

⁹ ER. Ex. 26

Union Exhibit 1 C shows that in 2002 Lincoln County had the highest monthly health insurance premiums of the comparable pool. Also, in 2003 Lincoln County ranked second highest in this category. After the plan design changes were negotiated with the represented employees for 2004, Lincoln County ranked fifth in the comparable pool just slightly ahead of Price County. In 2006 Lincoln County ranked sixth with a premium slightly less than Price County. Lincoln County has maintained this sixth place ranking since that time.

If premium increases within the comparable pool are analyzed from the time the plan design changes were made in 2004 rather than 2002 as suggested by the Union the following percentage increases are noted:

<u>Comparable</u>	<u>Percentage Increase of Premiums 2004 to 2010</u>
Langlade	20.8%
Marathon	65.3%
Price	84.7%
Oneida	28.6%
Taylor	37.6%
Lincoln	35.9%

The undersigned concludes that the 2004 to 2010 time period is the most relevant because the parties took measures to address the inordinately high health insurance costs in 2004. The percentage increase for Lincoln County is not out of line with those experienced by the comparable pool.

Union Exhibit 2 B shows an historical comparison of monthly employer premium contributions toward family health insurance. When this exhibit is compared to Union Exhibit 1 C, the amount of monthly employee contributions can be determined. In 2004 when the Lincoln County plan design changes occurred, employees in the comparable pool were making the following monthly contributions towards premium compared with the 2010 employee contributions:

<u>Comparable</u>	<u>Employee Contributions 2004</u>	<u>Employee Contributions 2010</u>
Langlade	\$ 0.00	\$ 0.00
Marathon	\$ 55.61	\$ 91.91
Price	\$ 97.90	\$ 180.80
Oneida	\$ 64.21	\$ 82.64
Taylor	\$ 75.00	\$ 75.00
Lincoln	\$ 0.00	\$ 45.00

The reduction in the family health insurance premiums occurred because of the plan design changes which included increased out-of-pocket costs for the represented employees. Out of pocket expenditures will vary based upon usage. Premium sharing is a predictable and regular expense for employees. While it is evident that Lincoln County Highway employees contribute less toward monthly premiums than the comparable pool employees except for Langlade County, the record does not show whether they experience greater overall cost than the comparable pool employees.

In summary, the parties jointly addressed the high premiums experienced by Lincoln County in 2004 through plan design changes. While these changes lowered the premium and reduced the Lincoln County ranking from first to sixth, health insurance costs have continued to rise. Since the plan changes were implemented, the premium percentage increases experienced by Lincoln County were slightly below the comparable pool average. In 2010 the comparable pool paid an average of \$86.07 towards their health insurance premiums while Lincoln County Highway employees paid \$45.00. 2011 health insurance data for the comparable pool was not available. The County's Final Offer which increases the premium share contribution to \$55 per month for the first six months and \$65 per month thereafter is reasonable when compared to the external comparables. The undersigned has taken into account the out-of-pocket costs which may be experienced by Lincoln County Highway employees as well as employees in the external comparable pool. For the reasons identified above, the undersigned concludes that the external comparables slightly favor the County's Final Offer.

The County identified three major private sector employers in the County and health insurance premium contribution amounts for family coverage. Employees at Packaging Corporation of America contribute 20% of the premium or \$332.07 per month. Employees at Weinbrenner Shoes contribute 30% of the monthly premium or \$470.87. Reindl Printing employees pay up to 34% or \$470.87 per month toward health insurance premiums. Obviously these amounts are much greater than the \$55 or \$65 contribution contained in the County's Final Offer. It is not clear whether the employees in the three companies are represented. It is also not clear why only three companies have been selected for this portion of the County's argument. The undersigned takes note of this information but is unable to draw meaningful conclusions.

The Consumer Price Index (CPI) for Midwest Size D (Non-Metropolitan Less than 50,000) was negative for much of 2009.¹⁰ In November of 2009, the CPI began to rise. During the first four months of 2010, the CPI remained in the 3% range but declined in the following three months. The undersigned concludes that the CPI does not favor the offer of either party.

The Arbitrator is also required to consider the interests and welfare of the public as well as the overall compensation received by the employees. The parties have reached agreement on all other economic aspects of the 2010-2011 Contract which implies that the parties consider overall compensation to be at an appropriate level. The cost difference between the parties' Final Offers is less than \$6000. If the Union's Final Offer was selected, the Highway employees would be the only settled represented group not paying an increased amount for the family premium in 2011. This outcome could negatively impact voluntary agreements and labor peace in the future which would not be in the best interest of the public. Increased employee contributions toward the family premium will help the County meet its health insurance responsibilities and be more in step with what is occurring with the comparables and with employers in Lincoln County. The undersigned concludes that the interests and welfare of the public are slightly better served by the County's Final Offer. The undersigned concludes that the overall compensation factor does not favor the Final Offer of either party.

¹⁰ Un.Ex. 12

Based upon the foregoing, the application of the statutory criteria and the record as a whole, the Arbitrator finds the County's Final Offer to be the more reasonable of the two Final Offers.

AWARD

The County's Final Offer along with tentative agreements shall be incorporated into the 2010–2011 collective bargaining agreement between the parties.

Dated at Waunakee, Wisconsin, this 3rd day of February, 2011.

William K. Strycker /s/
William K. Strycker, Arbitrator