STATE OF WISCONSIN
EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration	OPINION & AWARD
Between	Impasse Arbitration
The Wisconsin Council of County and Municipal Employees, Council #40, AFSCME, AFL-CIO, Local 279	WERC Case No. 28446
-and-	Before Mediator-Arbitrator: J. C. Fogelberg
The Burnett County Highway Department, Burnett County	Decision No. 18922-A

Appearances -

For the Union:
David Ahrens, Representative
Richard Rettke, Representative
Lester Anton, Union President
James E. Pardun, Secretary-Treasurer
Harold Larson
Ernest Carpenter
Dennis Aubert

For the County:
William Bidon, Attorney
Eugene Wellman
William Hauman
Carmen Hoepner
James McNally
Keith Lewis

Statement of Jurisdiction -

The Burnett County Highway Department employees represented by AFSCME Local 279, hereinafter referred to as the Union, entered into contract negotiations with Burnett County (Employer) on April 29, 1981 for a new agreement to commence July 1, 1981 for a period of one year. Having been unsuccessful in arriving at an agreement, the Parties petitioned to the WERC on June 23, 1981 seeking the aid of a mediator. That failing, the Union filed the Petition on July 20, 1981 requesting that the Commission initiate the Mediation-Arbitration process pursuant to Sec. 111.70 (4)(cm) 6 of the Municipal Employment Relations Act. Subsequently on July 30th, a member of the Commission's staff conducted an investigation and concluded that the Parties were indeed deadlocked in their efforts to resolve the dispute. When the Parties had submitted their final offers concerning the unresolved issues of wages and health insurance, as well as stipulating to matters agreed upon, the investigation was closed. Thereafter, on August 28, 1981, the Commission certified that all conditions of the Act had been satisfied and ordered the Parties to select a Mediator-Arbitrator within ten days following issuance of the Order. Complying with the Commission's mandate, the Parties met and selected the

undersigned to serve as the Neutral and notice of the appointment was duly made public on September 14, 1981.

The Parties met with the Mediator-Arbitrator on Tuesday, October 20th at the Courthouse in Grantsburg, Wisconsin. Following an unsuccessful attempt to mediate a settlement, the Neutral determined that the matter be moved to binding arbitration for resolution. The Parties thereafter presented arguments and supporting documentary evidence relative to their respective positions. Subsequently, post-hearing briefs were filed and received by the Arbitrator on Tuesday, November 24th. Further correspondence was sent to the Neutral from the Parties, the last of which was dated December 15, 1981.

The Issues -

The following constitutes the certified final positions of the Parties concerning the matters to be resolved:

> Union: That there be an across-the-board increase in wages of 9½% effective July 1, 1981 and that language be added to Article XVIII of the Master Contract to read, "...the employee's contribution to the health insurance premium will not exceed $9.00 a month."[1]
>
> County: That all contract rates for bargaining unit members are to be increased 55¢ an hour effective July 1, 1981 and that the Employer agrees to pay up to $100.00 per month per employee toward the family health insurance premium.

Analysis -

In arriving at what is believed to be a fair and reasonable award under the circumstances, the Arbitrator has given careful consideration to each of the factors enumerated in Section 111.70(4)(cm)(7) of the Act. Particular attention was paid to the following criteria: ability to pay, past practice, comparability both internal and external and the cost of living.

At the hearing the Parties stipulated that for purposes of calculating the relative costs of the final offers on wages, the average weighted hourly rate of all bargaining unit members was $6.76 as of the expiration date of the last Contract. Thus an award of the County's position results in an 8.15% increase to $7.31 an hour while the Union's final demand translates to $7.40 per hour. In support of their final offer the County characterized their financial condition as being "dire" and argues that even though it has increased the departmental appropriations from local taxes by 10.1% (along with a $10,000 improvement in gravel pit revenues) this improvement is more than offset by the concomitant reduction in state aids and other sources of revenue (County Exhibits 4, 5, 8 and 9). In challenging these figures, the Union asserts that realistically there is no issue here regarding the County's ability to fund either position. Citing the per capita value of all taxable general property, the Wisconsin Department of Revenue rates Burnett County among the best in the state - sixth out of a total of 73

(Union Exhibit 11). Moreover, according to the Union, the question of financial ability in this instance is moot as the County has stipulated that they are in a position to fund either their own or the Union's final offer should it be awarded. On balance, the Arbitrator would concur with the Union's position in this regard. While the ability of a particular governmental unit to fund an increase in salary and other monetary benefits certainly cannot be overlooked, in this particular dispute this factor does not appear to be pivotal. Though the Employer has raised the matter of the financial condition of the County and attempted to paint a bleak economic picture, the evidence submitted does not, in the opinion of the Arbitrator, adequately substantiate the claim. Principally, two factors are deemed critical: a) the relatively sparse evidence in the record concerning the County's finances — the two exhibits dealing directly with this subject do not adequately demonstrate that this governmental unit is in a poor financial position; and b) the undisputed fact that the County has stipulated that they will be able to fund the Union's position should it be awarded.

Concerning the relatively important factor of comparability, it is not surprising to find that both sides have selected other counties in the area that tend to favor their respective positions. The Union claims that districts immediately surrounding Burnett County are the most reasonable for purposes of comparison. These include Washburn, Barron, Douglas and Polk. The Employer, on the other hand, has chosen the counties of Sawyer, Washburn and Rusk for purposes of primary comparability, arguing their similarity to Burnett in terms of "benchmark factors."

In challenging the reasonableness of the other's groupings, both sides make convincing arguments. Local 279 maintains that the selection of Sawyer and Rusk counties by the Employer for reflection purposes is "self serving," is inconsistent with the past practice of the Parties and is lacking in rationale. Conversely, the Employer has presented data to demonstrate the "vast differences" between Burnett and the majority of the contiguous counties relied upon by the Union for comparison purposes. Specifically, the Administration cites population, equalized valuation, local tax levies and transportation aids as being grossly disparate between Burnett and the counties relied upon by Local 279. Significant here, is the agreement of the Parties regarding the relevance of Washburn County - a district of similar size and composition adjoinging Burnett County to the east. Supportive data submitted by both sides clearly indicate that Washburn and Burnett are relatively close in terms of population, number of employees in the bargaining unit, benchmark wage rates and other relevant factors. Additionally, the Arbitrator would agree with the County that Sawyer, though not contiguous to Burnett, can reasonably be cited for comparison purposes. Factors such as general tax levies, equalized valuation and per capita (adjusted gross income) are sufficiently identical as to warrant the use of this district for comparison purposes. Indeed the Local would not seem to take issue with this conclusion as they state in their post-hearing brief, "Though lower wage rates are paid in Sawyer County...the Union, in interest of past practice, and consistency, argues for their inclusion."[2]

Examining both Union Exhibit 4 and County's 10, it would seem that in terms of the benchmark wage rates (i.e., patrolman, heavy equipment operator and foreman) Burnett County has enjoyed a relatively favorable position vis-a-vis the two comparable counties. This assessment is severely clouded, however, by the expiration date of the Burnett Agreement. Of all the counties cited in the record, Burnett is the only governmental district whose contract does not follow the calendar year. While other counties contracts convene on January 1st, the first day of the Burnett Agreement is July 1st. Thus the task of making any meaningful comparisons in terms of percentage adjustments in wages (or insurance for that matter) becomes effectively impossible. Depending upon the point of view taken, the Burnett Agreement is either six months ahead or behind other cited contracts. For example, recently Washburn County settled for the 1982 contract year with a 7.25% increase in wages on January 1st and another 2.25% adjustment on July 1st. Effectively, this amounts to a "roll-up" increase of 9.66% over the term of the contract. To use this adjustment for comparison purposes in the instant dispute however would, in the opinion of the Arbitrator, be a disservice to the Parties. At what point do the two contracts coincide? On January 1, 1982 the average wage in Washburn County would be $7.12½ as compared to either $7.33 (County) or $7.43 (Union). Such a comparison is incomplete however. While the averages cited for Burnett are for the entire contract year, the Washburn figure reflects only a portion of the total increase agreed to (another 2.25% is to be added on July 1, 1982). Thus not only are the contract commencement and expiration dates distinct from Burnett's in the comparable counties, the problem is further obfuscated by the fact that the increase adjustments are split into six month increments. The resulting disparity between the Burnett Agreement and the balance of the counties cited by the Parties essentially creates a "leapfrog" effect. Based upon the evidence submitted into the record the Arbitrator must conclude that reliable comparisons cannot be made in this instance (notwithstanding the relative similarities of Burnett, Washburn and Sawyer Counties cited earlier) as to do so could quite possibly set an unwanted precedent. Having made this assessment, the examiner is necessarily left with the remaining criteria upon which to base the Award.

As regards the matter of past practice, the evidence indicates that this is the first time since the Parties have been negotiating a working agreement that the mediation-arbitration process has been utilized. In previous years differences were either worked out through direct negotiations or with the aid of a mediator. While the County did not submit any data relevant to past settlements, a calculation of the patrolmen's wage rates (going back to 1979) reveal an approximate adjustment in hourly rates of 9 & 11 percent respectively over the two previous agreements. Not unlike the ability to pay criteria, this factor would tend to favor the Union's final position as their proposed 9½% increase would appear to be more consistent with past settlements.

In seeking an Award in their favor, the County contends that the 55¢ hourly adjustment compares favorably when the prevailing wage rates within the private sector as well as the hourly income of roadmen working for various townships in Burnett County are measured (County Exhibits 6 & 7). Concerning the private sector comparisons, the Employer asserts that of the counties surveyed, the average wage for similar

(benchmark) positions is $6.10 - significantly below the rates currently being paid to all bargaining unit members. This data must necessarily be qualified however as only two of at least six private companies operating in Burnett County were submitted. Moreover, the Union asserts that the employers cited do not engage in similar work (i.e., major road construction) but rather are primarily concerned with private road and driveway contracting. Moreover the Union submitted an exhibit (21) indicating that the mandatory wage rates for employee's of private contractors is significantly higher when engaged in "state work." Additionally, it was demonstrated that the 1981 settlement for courthouse employees (a separate bargaining unit) was an effective 11½% increase in wages. In using this figure for comparison purposes, however, the same difficulty is again encountered as with surrounding counties inasmuch as the courthouse contract runs consistent with the calendar year.

Finally, it is readily discernible that the Parties are polarized concerning the question of which reference is the most accurate gauge of the cost of living. The Union asserts that the standard to be utilized is that contained in the Consumer Price Index. The strength of the CPI, according to the Local, lies in the fact that its base is fixed and therefore constant. An examination of Union Exhibit 12 (the CPI for all urban consumers - seasonally adjusted) reveals a pattern of persistent inflation vascillating between 9 & 13 percent.

Conversely the County asks the Arbitrator to rely upon another index that allows for a "price deflator" for personal consumption expenditures (PCE). This indicator, according to the County and their supporting exhibits, is a more fair and reasonable gauge of the true rise in the cost of living. Particularly the PCE uses the same "market basket" of goods as the CPI, but applies certain "weights" according to actual consumer expenditures. Equally important the PCE discounts the impact of mortgage rates vis-a-vis the cost of buying a house in today's market. It is essentially unrefuted that the members of this bargaining unit are not directly affected by this factor (most of them have owned their own homes in excess of five years). There is every indication that the CPI is on the verge of being revised with this particular item of the cost of living gauge being altered in order that it might offer a more reliable reflection of actual market conditions. On balance therefore, the Arbitrator views the County's arguments in this regard to be the most realistic.

Turning to the question of health insurance, the record indicates that the current contract with the insurance carrier expires in February (it has been in effect for a period of two years). Under the present agreement, the Emoloyer pays the full amount of the single premium and up to $100.00 per month per employee who elects to be covered under the family plan. The supportive data introduced indicates a slight discrepancy in the total monthly cost of family coverage as it now exists in the County. Employer Exhibits 12 & 13 indicate the amount as being $110.26 per month while the Union maintains that the total is currently $112.00. In any event the County, under the expired Agreement, is responsible for $100.00 of the total or 91%, while the employee pays the balance (9%). For the life of the new Contract, the Union proposes a nine dollar ceiling on the monthly contribution an employee would make with the Employer contributing the difference. The County, on the other hand, seeks

to limit its liability to $100.00 per employee electing to take family coverage.

County Exhibit 13 demonstrates that since 1979 the Employer's contribution has remained constant at $100.00 for family insurance. The premium however, has decreased from a total of $129.00 to $110.26 (or $112.00 depending upon which version is to be credited). Thus employee's share of the family insurance cost dropped significantly with the execution of the insurance agreement in February 1980 from $29.41 per month to $10.26 -- a reduction of some 14%. When the new contract is issued next month, an award of the Union's position would further reduce the employee's share of the cost (using the Local's premium figure of $112.00) by at least 1%. Should the cost of the new health insurance package increase by 20% however (as has been asserted), the bargaining unit member electing family coverage would further reduce his share of the premium to 6% of the total cost should the Union prevail (anticipating a monthly premium of $134.00). Conversely should the 20% increase become a reality and the County's position be awarded here, their $100.00 ceiling on contributions would mean a reduction in their percentage share of the cost of this benefit. Using the $134.00 projection, the Employer would be responsible for approximately 74% of the premium or about 15% less than the current formula. Such a reduction would approximately equal the raise in their proportionate share of the costs that occurred in February of 1980 when the price of insurance coverage dropped.

For comparison purposes, the Employer's Exhibits 12, 14 & 19 indicate that an Award in favor of the County would result in a competitive benefit arrangement in Burnett. That is, the County's $100.00 contribution (91%) would exceed the 83 & 90% formulas currently in practice in Sawyer and Washburn respectively (County Exhibit 12). Similarly, the Employer points to the contribution ceilings now in effect in contracts with the other two Bargaining Units in the County (Exhibit 14) both of which are set at $100.00. Moreover, a review of the Incidental Labor Rates for the state (County Exhibit 20 and Union Exhibit 20) reveal that the overall fringe package benefits paid to the employees in Burnett are among the best in Wisconsin. As was the situation with wages, the value of the comparisons as an aid to resolving this issue is necessarily diminished by the time frame that the Parties have chosen to commence and terminate their annual Agreement. Additionally the problem is further compounded here due to the fact that the contract with the insurance carrier bears no resemblance to the labor agreement in terms of the calendar. While this is not necessarily unusual, it nevertheless complicates the problem even further. As the insurance policy with the County is due for review and (presumably) renewal next month, one-half of the contract year in issue here will be under the existing policy and the remainder in accordance with the new rates. The actual cost of the new plan is purely speculative. The Union contends that a reasonable estimation translates to a 20% increase. There was however, no evidence presented to substantiate this claim. As the Employer states in its post-hearing brief, it is possible that there will be no increase in premium costs when the insurance contract is renewed. Should this become reality, an award of either position would not result in any significant alteration of the current contribution arrangement. Moreover the fact that the Sawyer and Washburn

contracts followed the calendar year, further confuses the issue for relevance purposes. County Exhibit 12 attempts to demonstrate that Washburn County contributes 94.28% toward the family health premium. However this was for the contract term that has since expired. Union Exhibit 17 reveals that with the settlement of the 1982 agreement in Washburn, the amount has been increased to $110.00 (retaining the same 9 to 1 contributory ratio between the Parties).

It is the Neutral's considered opinion that the preponderance of the evidence favors the County's position as regards the matter of health insurance. The proposal of the hundred dollar ceiling is consistent with the past practice of the Parties regardless of the fluctuation of the premium costs. Moreover the County's exhibits demonstrate that in terms of actual coverage, the Burnett-AFSCME Agreement is superior. Perhaps most significantly it has been shown that the Incidental Labor Rates, published by the State of Wisconsin (County Exhibit 20 and Union Exhibit 20) rank Burnett's insurance benefits among the highest in the state -- 12.15% vs. 9.58% in Washburn and 5.98% in Sawyer County. Indeed even when compared to the Union's preferred counties, Burnett's benefit plan excels.

Award -

Seldom has this reviewer struggled more with an award. Had the argument raised by the County concerning ability to pay been adequately developed (indeed the stipulation that the Union's position could be funded sharply reduced the urgency of the claim); had the contract term coincided with the calendar year and the balance of the comparable counties (and other internal agreements as well) the decision reached here would perhaps have been less arduous. Nevertheless the Arbitrator by statutory mandate must base his his or her decision upon the evidence presented. To that end, the conclusion reached here is that the Union's position on wages is preferred by a relatively narrow margin. Funding ability, and the percentage increases granted to other bargaining units (both external and internal) for the contract years 1981 and/or 1982 and the past practice of the Parties tend to weigh in favor of the Local's final position. While the CPE index cited by the Employer appears to be the most reasonable measurement, of and by itself the selection of this gauge and its weighted deflationary factors, is insufficient to totally justify an 8.15% base wage increase. As the Union points out in their brief, a comparison of the two indexes over the calendar year 1980 reveals a disparity somewhat less than what the County has contended. Currently the CPE must be viewed as a supplement (albeit an important one) to the CPI.

Unlike the wage issue, the position on insurance clearly favors the Employer's last offer. That the Parties have agreed to hold the County's contribution at $100.00 since 1979 (spanning two contract terms); that the fringe benefit package enjoyed by the members of the Bargaining Unit is one of the best in the state, clearly favors a retention of the $100.00 Employer contribution.

It is obvious that in seeking a "dollar cap" on their respective contribution responsibilities, both sides wish to "hedge their bets" in anticipation of an increase in premiums. However the amount of the increase, if any, is purely speculative. It's impact therefore, is virtually beyond calculation. Both the Union and the County assert that an award of the other's final position regarding this issue will result in an established "fixed" dollar amount that will be next to impossible to amend in subsequent negotiations. It is unfortunate indeed that neither side chose to express their position in terms of percentages. Should the new cost of the benefit vary significantly from the existing rates, the Parties will only be forced to consider amending this particular aspect of their Agreement when the Contract is again bargained.

Were the Neutral allowed the latitude, the Union's position on wages would be awarded along with the County's final offer on insurance. Of course, given the current statutory mandate, this is not possible. Left with the choice of selecting the total final package of either side therefore, the Arbitrator has concluded that on balance the Union's position (by the narrowest of margins) must be preferred. Though the arguments presented by the County relative to the insurance issue were meritorious, they were nevertheless based upon presumptions that (by their own admission) may not come to pass during the term of this Agreement. For the Employer's position to be awarded here, there would necessarily have had to been presentation of documented evidence regarding the reality of an increase in premiums next month. Having found the Union's offer on wages to be the most reasonable under the circumstances, it was necessary to demonstrate that a sharp rise in insurance premiums was truly imminent, and that when coupled with a 9½% wage improvement, the resulting totals would be unreasonable, prohibitive and beyond the Employer's ability to pay. This however, was not adequately demonstrated.

Accordingly, for the reasons set forth above, the Union's position is awarded.

Respectfully submitted this 8th day of January, 1982.

J. C. Fogelberg, Arbitrator

[1] It has been expressly stipulated that this phrase is to be interpreted to include dental insurance.

[2] Though the Union relied to a certain degree on the past practices of the Parties relative to the use of contiguous counties for comparison purposes, the record is void of any evidence that conclusively supports this argument.