ARBITRATION OPINION AND AWARD

In the Matter of Arbitration

Between

SHEBOYGAN COUNTY

And

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL UNIONS NO. 2427, 1749, 2481; AMERICAN FEDERATION OF TEACHERS, LOCAL UNION NO. 5011; SHEBOYGAN COUNTY ASSOCIATION OF SOCIAL WORKERS

LX No. 31144 MED/ARB-2169
LXI No. 31190 MED/ARB-2185
LXII No. 31278 MIA-759
LXIII No. 31276 MED/ARB-2200

Decision Nos. 20723-A
20724-A
20725-A
20726-A

Impartial Arbitrator

William W. Petrie
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Hearing Held

Sheboygan County Courthouse
September 16, 1983

Appearances

For the Employer

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between Sheboygan County and Local Unions No. 2427, 1749 and 2481 of the American Federation of State, County and Municipal Employees, AFL-CIO, Local Union No. 5011 of the American Federation of Teachers, AFL-CIO, and the Sheboygan County Association of Social Workers. In issue in the proceedings are the family medical and hospitalization group insurance premium payment practices for certain employees within the following referenced bargaining units: all Sheboygan County Institutions; Sheboygan County Highway Employees; the Sheboygan County Sheriff's Department; the Sheboygan County Department of Social Services; Public Health Nurses and Registered Nurses within the Sheboygan County Nurses Office; and Graduate Nurses, Registered Nurses and Program Coordinators at the Rocky Knoll, Sunny Ridge and Comprehensive Health Care Centers.

The above referenced parties to this proceeding have a local procedure whereby joint triannual group insurance negotiations are undertaken on a basis separate and distinct from other collective negotiations; this separate group insurance bargaining covers matters such as the levels of benefits and the levels of contribution for group insurance premiums.

After preliminary insurance negotiations had failed to result in an agreement, the referenced unions filed a petition with the Wisconsin Employment Relations Commission on March 7, 1983, requesting mediation-arbitration in accordance with the provisions of Section 111.70(4)(cm) of the Municipal Employment Relations Act. After unsuccessful mediation by a member of its staff, the Commission on June 2, 1983, issued the appropriate Findings of Fact, Conclusions of Law, Certification of the Results of Investigation and an Order Requiring Mediation-Arbitration of the matter. On June 21, 1983, the Commission issued an order appointing the undersigned to act as mediator-arbitrator in the dispute.

Preliminary unsuccessful mediation took place between the representatives of the parties and the Mediator-Arbitrator beginning at 10:00 AM on September 16, 1983. Pursuant to the provisions of the Wisconsin Statutes, the Mediator-Arbitrator determined that a reasonable period of mediation had taken place and that it was appropriate to proceed to final and binding arbitration at 12:50 PM on the same date, after which the arbitration hearing took place beginning at 2:00 PM on September 16, 1983. All parties received a full opportunity to present evidence and argument in support of their respective positions at the hearing, after which each closed with the submission of post-hearing briefs. The record was closed by the Arbitrator on October 25, 1983.

THE FINAL OFFERS OF THE PARTIES

The detailed final offers of the parties are incorporated by reference into this decision and award, but the parties are in disagreement in the following described respects:

(1) The Unions propose that the County continue to pay 100% of the monthly premium costs for family health insurance.

(2) The County proposes that it continue to pay 100% of the family health insurance premium costs for the first year of the three year agreement. It proposed that during the second and third years, the Employer would pay up to $156.00 per month toward family health insurance premiums; if the Employee contribution exceeded $30.00 per month, the Employer would pay any amount in excess of $186.00 per month.

THE STATUTES

Despite the fact that one of the above referenced bargaining units consists of law enforcement personnel, the merits of the dispute are appropriately governed by the provisions of Section 111.70(4)(cm) 7 of the Wisconsin Statutes, which direct the Mediator-Arbitrator to 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 and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.
e) The average consumer prices for goods and services, commonly known as the cost-of-living.
f) 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, and continuity and stability of employment, and all other benefits received.
g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
h) 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."

POSITION OF THE COUNTY

In support of its contention that the final offer of the County was the more appropriate of the two offers before the Arbitrator, the Employer emphasized a number of preliminary points prior to detailing specific arguments.

(1) Preliminary points emphasized by the Employer included the following considerations.

(a) That all county employees enjoy the same group health insurance coverage, which has allowed the County to provide complete insurance at a very cost-effective rate.

(b) Despite the specific premium costs for employee health insurance, that the County provides what was characterized at the hearing as the "Cadillac" of health plans.

(c) That the County has experienced rapid escalation in the cost of providing health insurance coverage during recent years. That premium costs have grown from $381,000 in 1976 to $1,406,000 in 1982; during the same time frame, that average annual premiums per employee went from $440.00 in 1976 to $1,223.00 in 1982.

(d) That although health insurance premium costs were discussed in the most recent labor contract negotiations, the Employer voluntarily withdrew these issues from the negotiations in favor of separately addressing them in this year's insurance negotiations process.

(e) That the Employer's proposal would have a minimal financial impact upon covered employees, and is favored by considerations of fairness and equity.

(i) That 1983 figures indicate that no premium increase will be needed for 1984, and that projections indicate the need for an approximate 10% increase in premiums for 1985.

(ii) That pursuant to the above projections, covered employees would be required to contribute only $2.00 per month in 1985, toward family plan health insurance premiums.

(iii) That the fairness of the Employer's proposal is also indicated by the fact that it would limit the contribution by any covered employee to a maximum of $30.00 per month.

(f) That health care cost projections indicate that future premium cost increases will approximate twenty-one percent per year, reflecting a five percent increase in utilization and a fifteen to sixteen percent increase attributable to inflation.

That the County has targeted the utilization rate as one area within which to work for cost control; that the State Legislature has also addressed skyrocketing health care costs, through mandating future multiple choice health insurance plans.

(2) In addressing the statutory criteria, the County argued principally as follows:

(a) That no questions were raised with respect to the lawful authority of the County.

(b) That there were no material stipulations of the parties in this proceeding.

(c) That the interest and welfare of the public and ability to pay considerations are not involved to the extent that an inability to tax or an inability to pay are concerned. That dramatic cost increases in health care protection demand caution with regard to future government commitments; accordingly, that considerations of restraint and wisdom dictate that moderation should be the rule in addressing 1985 health care costs.

(d) That public and private sector comparisons favor the selection of the final offer of the Employer.

(i) That current comparisons with comparable counties show that five of sixteen counties require contribution for family coverage, and that an additional seven either provide no coverage to part time employees, or require such part time employees to participate in insurance costs. That 80% of the comparable county employers, therefore, require some measure of employee participation in health care costs.

(ii) That a discernible trend is at hand, whereby major employers are looking into ways to involve their employees in the costs of group insurance programs.

(e) That the cost-of-living criterion is primarily addressed in wages and related fringe benefits negotiations and, therefore, that this factor should be given little or no weight in these proceedings.

(f) That neither party presented comprehensive data, which would justify major reliance upon the overall compensation criterion.

(g) That consideration of changes during the pendency of the proceedings favors the adoption of the final offer of the Employer. That the very favorable current loss ratio of .694 indicates that there is little or no likelihood of an increase in premiums until calendar year 1985.

(h) That other factors for consideration include the lack of any current comparisons for calendar year 1985.

(i) That the fact that a large percentage of employers are currently considering cost sharing approaches

to group insurance justifies the conclusion that such cost sharing will be the rule rather than the exception by 1985.

(ii) That the proposal of the County is not a novel one, and that it should not be required to justify the proposal by any extraordinary evidentiary standard; to the contrary, that eighty percent of the public employers and forty percent of the private sector employers already engage in the practice of employee contribution to group insurance, which really constitutes an existing prevailing practice.

(3) On an overall basis, the Employer emphasized the following goals and arguments.

(a) That County employees need and should have available to them the adequate health insurance protection of the current plan. That cost sharing in premiums frees an employee from monetary concerns and anxiety when health incidents occur, and is a better alternative than co-payment at times of illness. That health care costs to an employee should be reasonable in amount, so that earnings are not eroded by requiring a major part of income to be spent on health care.

(b) That employee participation in cost is a reasonable method of addressing the above considerations, and that this conclusion is borne out in the parties' dental insurance experience. That the Unions' rejection of cost participation in favor of the "no risk" rejection of the option, is a reflection of the availability of this impasse resolution process.

POSITION OF THE UNIONS

In support of their position that the final offer of the Unions was the more appropriate of the two final offers before the Arbitrator, the Unions emphasized the following principal arguments.

(1) They suggested that no major questions were raised, and/or that no information was introduced into the record relative to various of the statutory criteria, including the following:

(a) the lawful authority of the employer;
(b) the interests and welfare of the public and/or the ability to pay;
(c) cost-of-living considerations;
(d) overall compensation considerations;
(e) changes in the various statutory criteria during the course of the proceedings.

(2) They submitted that various elements involving the application of the comparison criterion favored the position of the Unions, also citing certain elements in the bargaining history of the parties.

(3) In connection with its arguments relating to the comparison criterion, the Unions particularly emphasized the following.

(a) That comparison with Manitowoc, Calumet, Fond du Lac, Washington and Ozaukee Counties favor the adoption by the Arbitrator of the final offer of the Unions; that these counties are located adjacent to Sheboygan County.

(b) That comparison with Brown, Racine, Rock, Winnebago, Outagamie, Kenosha, Marathon, LaCrosse, Fond du Lac, Washington, Manitowoc and Eau Claire Counties favors the adoption of the final offer of the Unions; that these counties have populations ranging from 81,897 to 180,033.

(c) That fourteen of the twenty counties referenced above, pay 100% of the family health insurance premiums, and that the average premium paid by the fourteen average $160.31 per month, a figure $17.18 more than the premium paid by Sheboygan County. Even in looking at the point where an employee contribution for family health insurance premiums would begin, that the comparisons do not support the final offer of the Employer.

(d) That there is no evidence in the record to support any conclusion that Sheboygan County's health insurance premiums will move above comparable rates during 1984-1985. That an examination of premium increases since 1982 and 1983 shows that the Employer's rate of increase is actually below those in comparable communities.

(e) That an examination of the family insurance premium practices of other City and County of Sheboygan employees supports the adoption of the final offer of the Unions.

(f) That ten of seventeen private sector employers in Sheboygan County, including the largest employers in the County, pay 100% of family health insurance premiums; further, that the reported rates paid by these employees average significantly above the rate currently paid by Sheboygan County.

(g) That employees represented by the Lightfoot Federation of Teachers will continue to have all insurance premiums paid by the Employer through at least July 31, 1984.

(4) In connection with the bargaining history criterion, the Unions argued as follows:

(a) That the record shows that the Employer has paid 100% of the health insurance premiums since at least 1974, and that the County is seeking a change in the status quo in the current proceedings.

(b) That interest arbitrators should be reluctant to disturb the status quo, unless the party urging such a position has clearly justified the change; that no persuasive basis has been presented in support of the requested change in the case at hand.

(c) That there is no basis for concluding that the parties would have been able to reach agreement on the Employer's final offer, absent the interest arbitration process; indeed, that the Employer proposal had been rejected and subsequently withdrawn during negotiations in 1982-1983.

FINDINGS AND CONCLUSIONS

During the course of the proceedings, the Impartial Arbitrator has considered each of the various arbitral criteria described in Section 111.70 (4)(cm) 7 of the Wisconsin Statutes. It should be noted, however, that the parties directed their primary attention to the following criteria:

(1) The comparison criterion as referenced in sub-paragraph (d);

(2) The interests and welfare of the public criterion as described in sub-paragraph (c);

(3) Certain changes in circumstances during the pendency of the arbitration process, as described in sub-paragraph (g);

(4) Various other general factors argued to fall within the intended scope of sub-paragraph (h), including the parties' negotiations history and past practices, as well as certain considerations relating to reasonableness and equity.

The Past Practice and Negotiations History Criteria

Although neither past practice nor negotiations history are specifically referenced in the statute, the Arbitrator will merely reference the fact that such factors are frequently used in both bargaining and in impasse proceedings, and they fall well within the general coverage of Section 111.70(4)(cm)7(h) of the Wisconsin Statutes. Indeed, an understanding of the relationship between the final offers of the parties and what they have done in the past, particularly when the past practice is the result of prior negotiated settlements, is basic to any meaningful understanding of the interest arbitration process.

In the above connection, it should be emphasized that interest arbitration is not a substitute for or an alternative to the negotiations process; rather, it is an extension of negotiations, and a process designed to reach the same decision that the parties would have reached in negotiations, had they been successful in arriving at a voluntary agreement. The nature of the process is well described in the following extract from a book by Elkouri and Elkouri: 1./

> "In a similar sense, the function of the 'interest' arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:
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> > 'Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations - they have left to this board to determine what they should by negotiations, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men have agreed to?...To repeat, our endeavor will be to decide the issues, as upon the evidence, we think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining...'." (emphasis supplied)

In a similar vein, the Elkouris also offer the following views, which were also referenced by the parties in their respective briefs.

> "Arbitrators may require 'persuasive reason' for the elimination of a clause which has been in past written agreements. Moreover, they sometimes order the formalization of past practices by ordering that they be incorporated into the written agreement."

The reluctance of arbitrators to plow new ground and/or to substitute his or her judgement for that of the parties, is also well described in the following extract from a frequently cited interest arbitration decision by Professor John Flagler: 3./

> "The role of interest arbitration in such a situation must be clearly understood. Arbitration, in essence, is a quasi judicial not a legislative process. This implies the essentiality of objectivity -- the reliance on a set of tested and established guides.
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> In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of the extraordinary pressures which led to the exhaustion or rejection of their traditional remedies.
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> The arbitrator attempts to accomplish this objective by first understanding the nature and character of past agreements

reached in a comparable area of the industry and in the firm. He must then carry forward the spirit and framework of past accomodations into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to either party that which they could not have secured at the bargaining table."

With the above preliminary observations as background, the Impartial Arbitrator must give recognition to the fact that the Employer's obligation to pay one hundred percent of family insurance premiums has been part of the parties' collective agreement dating back at least to 1974. While the Employer proposed and the parties discussed a change in the past practice during their most recent negotiation of the overall collective agreement, no changes were agreed upon at that time. Despite the fact that the Employer apparently abandoned its proposal for a change in the family health insurance premium practices until the current negotiations process, and intended to do so without prejudice to its intention to raise the matter at this time, it must be preliminarily concluded that both the past practice and the negotiations history criteria favor the adoption by the Arbitrator of the final offer of the Unions. Additionally, it must be recognized that the Employer, as the proponent of change in the negotiated status quo, has the burden of presenting very persuasive evidence in support of the proposed change. In the absence of such evidence, the normal approach in the interest arbitration process would be to adopt the offer entailing the continuation of the practices negotiated by the parties in the past.

The Comparison Criterion

Despite the fact that the Legislature did not establish any priority of importance among the various statutory criteria referenced above, it is quite generally accepted and recognized by advocates and neutrals that the comparison criterion is the single most extensively used, and the most significant arbitral criterion, in the resolution of interest disputes. These points are very well described in the following extract from the Elkouris' book: 4./

"Without question the most extensively used standard in 'interest' arbitration is 'prevailing practice'. This standard is applied, with varying degrees of emphasis in most 'interest' cases. In a sense, when this standard is applied the result is that disputes indirectly adopt the end results of the successful collective bargaining of other parties similarly situated. The arbitrator is the agent through whom the outside bargain is indirectly adopted by the parties."

Similar observations to those addressed above were made by Irving Bernstein in his excellent book: 5./

"Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skills.....The employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will be able to recruit in the local labor market....Arbitrators benefit no less from comparisons. They have 'the appeal of precedent and...awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public'."

A mere articulation of the persuasiveness of the comparison criterion does not address the question of which comparisons are to be used and which carry the greatest persuasive value, and each of the parties emphasized those comparisons judged to be of greatest persuasive value to their own positions. In this connection, the parties emphasized comparisons with other Wisconsin Counties, with certain private sector employers in the

same geographic area, and with certain other public sector employers; although the Wisconsin Statutes refer to all three types of comparisons, there is no indication as to which of these comparisons carry the greatest weight in statutory interest arbitration proceedings.

Interest arbitrators have generally recognized the primary importance of intraindustry comparisons, as is described in the following excerpt from Bernstein's book: 6/

> "a. Intraindustry comparisons. The intraindustry comparison is more commonly cited than any other from of comparison, or, for that matter, any other criterion. More important, the weight it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage determinating standards.
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> A corollary of the preeminence of the intraindustry comparison is the superior weight it wins when found in conflict with another standard of wage determination. The balancing of opposing factors, of course, is central to the arbitration function, and most commonly arises in the present context over an employer argument of financial adversity..."

On the basis of all the above, it is quite clear that the comparison criterion is generally regarded as the most persuasive of the various arbitral criteria found in interest arbitration proceedings. Additionally, it is quite clear that intraindustry comparisons (or comparisons with other Wisconsin Counties in the situation at hand) generally receive the greatest weight of all comparisons encountered in the interest arbitration process.

Intraindustry or Wisconsin county comparisons were summarized by the parties in Exhibit #49 prepared by the Unions, and in Exhibit #67 prepared by the Employer, with the basis for the selection of the various counties either population and/or geographic proximity. An examination of the intraindustry comparison data clearly favors the adoption of the Unions' rather than the Employer's final offer.

(1) In ten of the seventeen counties referenced in Exhibit #49, the employer pays 100% of the family health insurance premiums, and the average monthly premium paid by these employers is significantly above that paid by Sheboygan County.

(2) In ten of the fifteen other counties referenced by the Employer in Exhibit #67, the Employer pays 100% of the family health insurance premiums, and the average monthly premium is also significantly above that paid by Sheboygan County.

(3) The same type of results are apparent when the two referenced exhibits are combined; in this instance, fourteen of the twenty counties pay 100% of the family group health insurance premiums.

What then of the Employer's argument that 80% of comparable counties already require some form of employee participation in health care costs? In this respect, it was citing certain practices reflected in Exhibit #67, which shows that ten of the fifteen employers either offer no insurance for part time employees, and/or offer some form of pro-ration of the costs of such insurance; by adding the part time practice to the minority of employers requiring general contribution for all family health insurance, the Employer arrived at the 80% figure. While this argument is technically accurate, it does not support the argument for which it was advanced, due to the fact that the largest number of employers cited were dealing with part-time rather than full-time employees. By way of reiteration, an examination of the fifteen other counties shows that only five require employee contribution for family health insurance premium costs, while the remaining ten employers pay the full costs of such coverage.

The insurance practices of Sheboygan County private sector employers cited in Exhibit #66 is lacking in detail in certain respects, but it does show that a majority of the employers (nine of seventeen) pay the full premium costs of both employee and family health insurance coverage. In light of the fact that a majority of the cited private sector employers continue to provide full family health insurance coverage at employer cost, it must be preliminarily concluded that these comparisons favor the selection of the final offer of the Unions.

Finally, it should be noted that Exhibits #51 and #52 show the group insurance practices of certain employees of the Cities of Sheboygan, Plymouth and Sheboygan Falls. With the exception of group dental insurance contributions, it should be observed that in a significant majority of the cited employee groups, the Employers continue to pay the full costs of family health insurance premiums.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the adoption of the final offer of the Unions is significantly favored by arbitral consideration of the comparison criterion. Specifically, comparisons with other Wisconsin Counties, those involving large Sheboygan County private employers, and comparisons with the Cities of Sheboygan, Plymouth and Sheboygan Falls clearly favor the position of the Unions in this proceeding. Not only is the Union's final offer clearly indicated by the practices of a current majority of those groups cited above, but there is no concrete indication of any current movement away from the 100% employer payment of family group insurance costs by those employers which have done so in the past.

Finally, the Arbitrator will observe that the data relating to comparisons falls far short of the level of persuasive evidence which would normally be necessary, to justify the adoption of a final offer which would entail modification of the previously negotiated status quo.

The Interests and Welfare of the Public Criterion

While no inability to pay questions were introduced into the record by the parties to these proceedings, various public interest considerations remain. The Employer's desire to effectively control and manage the expenditure of tax dollars is both understandable and commendable, and employee participation in the monthly premium cost of family health insurance is one method of cost reduction and control.

In addressing the merits of the Employer's arguments, it must be emphasized that interest arbitrators will generally go no further back in time than the negotiations leading to the agreement which is currently open for renewal. While consideration of past increases in medical insurance costs which predate the most recent negotiations may furnish valuable background information, this factor cannot appropriately be assigned definitive weight in such proceedings. In the absence of very strong evidence to the contrary, it must be concluded that the parties disposed of all premium increase considerations in their prior negotiations, and there is simply no legitimate basis for, in effect, reconsidering or relitigating the prior negotiations of the parties.

While various public interest considerations would generally favor the adoption of the final offer of the Employer in this matter, this factor cannot be assigned determinative weight in these proceedings, as a persuasive case must be made on the basis of full arbitral consideration of the various statutory criteria.

Changes in Circumstances During the Arbitration Proceedings

During the course of the hearing, the Employer introduced into the record, data showing that approximately sixty-nine cents of each group medical insurance premium dollar was currently being paid-out in benefits during 1983. This rather favorable claims experience makes it unlikely that there will be any increase in insurance premiums for 1984, and the prospects for 1985 and beyond are difficult to predict.

If the Arbitrator, in looking to the 1983 claims experience figures, could conclude that this represented a trend, it would militate against

the adoption of any change in the parties' negotiated past practice; certainly, the trend toward higher medical costs will continue to be reflected in higher group medical insurance premiums in the future, however, regardless of the partial 1983 figures introduced into the record in these proceedings. Under the circumstances, the partial 1983 claims experience data is simply not the type of change in circumstances which can be assigned major weight in these proceedings.

Fairness and Equity Arguments

Finally, the Arbitrator must consider and address the Employer's general arguments predicated upon perceived fairness and equity considerations, in relationship to its final offer. In this connection, it submitted that the proposal would have only a minimal impact upon the affected employees during the three year term of the insurance agreement, and it emphasized the fact that it was agreeing to pay for premium increases up to a total of $156.00 per month, with a $30.00 per month corridor thereafter, within which the employees would be required to contribute for their monthly family health insurance premium costs. It projected only a $2.00 per month employee contribution for family coverage in 1985, predicated upon its current estimate of claims experience projections for that year.

The Arbitrator must agree that the financial impact upon affected employees for the duration of the current agreement would probably be minimal. Additionally, it might be concluded that employee contribution toward premium costs would be one method of attempting to address the spiraling claims experience in the health care area. When an arbitrator is faced with the need for selecting one of two viable final offers, each of which is supported by certain arbitral criteria, he or she will tend to select the offer which best meets fairness and equity considerations; an arbitrator does not, however, have the right to disregard or to minimize consideration of the various other arbitral criteria, in favor of the adoption of what the Arbitrator may regard as a fair and equitable final offer.

While the Employer's final offer may be appropriately regarded as fair and equitable, at least in the short term, these considerations cannot independently be assigned determinative weight in interest proceedings, without significant support from consideration of other arbitral criteria.

Summary of Preliminary Conclusions

As addressed in greater detail above, the Impartial Arbitrator has reached the following summarized preliminary conclusions:

(1) Consideration of the past practice and/or the negotiations history criteria significantly favor the selection of the final offer of the Unions.

(2) It must be recognized that the proponent of change in the negotiated status quo, has the burden of presenting very persuasive evidence in support of the proposed change.

(3) The comparison criterion is generally regarded as the most significant and persuasive of the various arbitral criteria, with intraindustry comparisons regarded as the most persuasive of the various comparisons.

(4) The selection of the final offer of the Unions is significantly favored by arbitral consideration of the comparison criterion. The Unions' position is favored by consideration of the family health insurance premium practices of comparable Wisconsin Counties, various Sheboygan County private employers, and certain geographically proximate municipal employers.

(5) While various public interest considerations would generally tend to favor the adoption of the final offer of the Employer, these considerations cannot be assigned determinative weight in these proceedings.

(6) Certain changes in circumstances during the course of the arbitration proceedings do not significantly favor the adoption of the final offer of either of the parties.

(7) Certain arguments relating to perceived short term considerations of equity and fairness, cannot independently be assigned determinative weight in these proceedings.

Selection of Final Offer

After a careful consideration of the entire record, including a consideration of all of the statutory criteria, the Impartial Arbitrator has preliminarily concluded that the final offer of the Unions is the more appropriate of the two final offers. This conclusion is particularly indicated by consideration of the comparison criterion and the past practice/negotiations history of the parties.

1./ How Arbitration Works, Bureau of National Affairs, Third Edition 1973, page 54. (footnotes omitted)

2./ Ibid. page 788. (footnotes omitted)

3./ Des Moines Transit Co. 38 LA 666

4./ Ibid. page 746. (footnotes omitted)

5./ The Arbitration of Wages, University of California Press, 1954, page 54. (footnotes omitted)

6./ Ibid. pages 56-57. (footnotes omitted)

AWARD

Based upon a careful consideration of all of the evidence and argument, and pursuant to the various arbitral criteria provided in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Unions is the more appropriate of the two final offers;

(2) Accordingly, the Unions' final offer, herein incorporated by reference into this award, is ordered implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

January 6, 1984