

RECEIVED
APR 06 1989

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of:

POLK COUNTY HIGHWAY DEPARTMENT
AND LIME QUARRY EMPLOYEES,
LOCAL 774-A, POLK COUNTY COURTHOUSE
EMPLOYEES LOCAL 774-B, AND
POLK COUNTY DEPARTMENT OF
SOCIAL SERVICES EMPLOYEES,
LOCAL 774-C, (POLK COUNTY
JOINT COUNCIL, LOCAL 774),
WISCONSIN COUNCIL 40, AFSCME,
AFL-CIO

Cases 44, 45 and 46
Nos. 40037, 40038,
40039
INT/ARB-4754, 4755
and 4756
Decision Nos. 25632-A
25633 and 25634-A
-A

Sherwood Malamud
Arbitrator

To Initiate Arbitration
Between Said Petitioner
and

POLK COUNTY HIGHWAY DEPARTMENT,
COURTHOUSE AND DEPARTMENT OF
SOCIAL SERVICES

APPEARANCES:

James A. Ellingson, Staff Representative, Wisconsin Council 40, P. O. Box 62, Rice Lake, Wisconsin 54868, assisted on the presentation at the hearing and authored the original and reply briefs, and, David Ahrens, Research Analyst, made the presentation at the hearing on behalf of the Union.

Mulcahy & Wherry, S.C., Attorney at Law, by Kathryn J. Prenn, 715 S. Barstow Street, P. O. Box 1030, Eau Claire, Wisconsin 54702-1030, appeared on behalf of the Municipal Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On October 20, 1988, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator to issue a final and binding award pursuant to Sec. 111.70(4)(cm)6.c., Wis. Stats., in an interest arbitration dispute between Polk County Highway Department and Lime Quarry Employees, Local 774-A, Polk County Courthouse Employees Local 774-B, and Polk County Department of Social Services Employees Local 774-C (Polk County Joint Council Local 774), Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter the Union, and Polk

County Highway Department, Courthouse and Department of Social Services, hereinafter the County or the Employer. At the outset of the hearing held on November 29, 1988, the parties agreed to permit the Arbitrator to attempt to mediate the dispute. Such attempt was unsuccessful. The hearing proceeded on the above date, at which time the parties presented documentary evidence and testimony. The parties submitted additional documentary evidence by December 12, 1988. Briefs and reply briefs were received by the Arbitrator by February 2, 1989. Based upon a review of the evidence, testimony and arguments submitted and upon the application of the criteria set forth in Sec. 111.70(4)(cm)7.a-j, Wis. Stats., to the issues in dispute herein, the Arbitrator renders the following Award.

Background:

Polk County is located in northwestern Wisconsin. The County's western border is on the Wisconsin-Minnesota state line. The three locals representing employees in the highway, courthouse and social services department, as well as Local 774-D representing employees in Polk County Golden Age Manor comprise the Polk County Joint Council Local 774. Pursuant to a letter of agreement, Local 774-D of the Joint Council and the Employer entered into a three year agreement covering represented employees of Golden Age Manor. They agreed to a wage freeze in 1987 and a formula for the calculation of wages for 1988 and 1989 based upon an increase in the reimbursement formula from the State of Wisconsin to the Golden Age Manor Nursing Home. In that letter of agreement, Local 774-D and the Employer agreed to a "me too" clause with regard to the health insurance issue; these employees would receive the same health insurance benefit negotiated by any other AFSCME local with this Employer.

The collective bargaining representatives of the Nurses employed by the County and the representative of law enforcement personnel employed in the Sheriff's Department negotiated a "me too" provision concerning the health insurance issue. These two separate collective bargaining representatives of the nurses and law enforcement personnel agreed that the scope of the health insurance benefit and the level of contribution to be made by the Employer on behalf of these employees for the 1988-89 calendar years would be governed by the settlement achieved by the Employer with the Union -- the three locals 774-A, B and C. The decision on the health insurance, in this case, will determine the level of contribution provided by this Employer to all represented employees of the County.

In addition, the Employer and the Union stipulated that the Award issued in this matter shall bind and be included in the collective bargaining agreement between Polk County and the three certified units in the Highway Department, Courthouse and Department of Social Services representing a total of 95.58 full-

time equivalent employees. Accordingly, the parties agreed that a single arbitrator should hear and determine the dispute over the health insurance and wage issues.

In the next section of this Award, the Arbitrator summarizes the two issues in dispute. Then, the statutory criteria are set forth under which the Arbitrator is to select the single final offer of either the Union or the Employer for inclusion in the successor agreement for calendar years 1988 and 1989.

In the Discussion section the Arbitrator summarizes the salient arguments of the parties in the course of his analysis of each criterion and in determining whether that particular criterion supports the final offer of the Union or the Employer. This mode of analysis is applied to each of the two issues, health insurance and wages. The Award concludes with the section in which the Arbitrator states the reasons for his selection of the final offer of the Union or the Employer for inclusion in a successor agreement.

SUMMARY OF THE ISSUES IN DISPUTE

Both the Employer and the Union offers provide for a two year agreement which would be in effect from January 1, 1988 through December 31, 1989. The proposals of both parties for calendar year 1988 are identical. Both propose to retain the language of Article XXII - Health Insurance in the 1987 agreement. Under that provision the Employer contributes 90% of the cost of the premium for family coverage and 100% of the cost of premium for single coverage.

For 1988, both the Employer and the Union propose a 3% across-the-board wage increase. The dispute between these parties centers about the terms for 1989, the second year of the Agreement. They disagree as to the level of the Employer contribution for health insurance family coverage for 1989 and the wage increase to be paid in 1989 to employees in these three units.

Health Insurance:

The Employer proposes the following language to replace the first sentence in Section 22.01 of the expired agreement, as follows:

Effective January 1, 1989, the County's contribution toward the family health insurance premium for eligible employees shall be a flat amount, expressed in dollars, equal to the County's 1988 contribution plus any increase in the family health insurance premium, up to five percent (5%). If the family health insurance premium increases more than five percent (5%), the

increase above five percent (5%) shall be equally split between the parties.

Employer Exhibits 8, 9 and 10 and Union Exhibit Q reflect a common understanding of the Employer's proposal. They each calculate that the Employer contribution under its proposal for 1989 would increase from \$220.75 per month in 1988 to \$244.24 per month in 1989. In its original brief, the Union suggests an alternative calculation which conflicts with the calculation identified in its Exhibit Q. The Arbitrator gives no weight to the calculation proffered in the Union's brief as to the amount of the Employer's contribution towards health insurance. At the hearing, the Union provided no indication that its calculation and that of the Employer as reflected in their exhibits were in error.

The Union proposes to retain the status quo by retaining the language of Section 22.01 as it appears in the expired agreement. Under the Union's proposal, the Employer would contribute 90% \$252.00 per month of the \$280.00 premium for family coverage health insurance and the employee share would be \$28.00 per month for such coverage. Under the Union proposal, the Employer would contribute an additional amount of \$7.76/month towards the premium for family coverage.

In addition, the Employer proposal represents a change in approach in the manner in which increases in health insurance premiums are to be funded. Under the Employer proposal, should health insurance premiums continue to increase at a rate above 5%, the size of the Employer contribution as a percentage of the total premium cost is likely to decline. (This is dependent upon the rate of increase of the cost of premiums.) In addition, should there be a hiatus in bargaining, the Employer would be obligated to pay the flat dollar amount, unless and until the parties negotiated a different sum for the Employer contribution.

Wages:

The Employer proposes to increase the 1988 wage rates by 3.25%, across-the-board.

The Union proposes to increase wage rates by 3.5%, across-the-board.

The Costing of Each Proposal:

The total dollar difference between the parties over the three units and the 95.58 FTE is \$10,966 or approximately \$114.73 per employee for 1989. Of that total difference for calendar year 1989, \$93.12 is attributable to the health insurance dispute and \$21.21 to the wage dispute.

The calculation of the total cost impact of both the Union and the Employer proposals have a slightly different impact on each of the units. In the Highway Department, the County offer generates a 3.9% increase in total compensation and the Union's offer generates a 4.4% increase. In the Courthouse unit, the total compensation increase is 4% under the County proposal, and it is 4.5% under the Union proposal. In the Social Services unit, the increase in total compensation is 3.9% under the County offer, and 4.3% under the Union offer. The total percentage increase over all three units in total compensation is 3.9% under the Employer offer and it is 4.4% under the Union proposal. Of the 95.58 full-time equivalents in the three bargaining units, 62 take family coverage, 23 take single coverage, the balance take no coverage. It is noteworthy that even under the County offer, insurance costs for all employees increase a total of \$9,774 for 1989. Under the Union offer that increase in the Employer's share of the health insurance premium over the entire unit for 1989 is \$12,568.

The Employer asserts that one quarter of 1% of its offer is a quid pro quo for its proposal to change the manner in which increases in health insurance premiums are funded.

STATUTORY CRITERIA

The criteria to be used to resolve this dispute are listed in Sec. 111.70(4)(cm)7, Wis. Stats., as follows:

7. Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
 - e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
 - f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private

employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost-of-living.

h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

DISCUSSION

Introduction:

Health insurance is the principal issue in this dispute. Within the confines of this two year agreement, the health insurance issue has the largest financial impact. The Employer proposal for 1989 results in a percentage reduction of its share of the contribution towards the family coverage premium from 90% to slightly more than 87% of that premium. Should the increase in premium for family coverage continue at the 14.6% level of 1989, the Employer percentage of contribution will continue to decrease. The statement of the Employer contribution as a flat dollar amount will impact upon the parties should they be unable to achieve an agreement by the expiration date of this or any future agreement. These economic and philosophical differences far outweigh the one quarter of 1% in wages for 1989 which separates the final offers of the parties.

a., b. Lawful Authority of the Municipal Employer and Stipulations of the Parties

No argument was presented by either party with regard to these two criteria. Neither criterion serves to distinguish between the final offers of the parties.

c. The Interests and Welfare of the Public

The Employer argument on this criterion addresses its total financial package, both health insurance and wages. The Arbitrator fully addresses those arguments in this subsection of the Award. However, any conclusion reached here is carried

forward and noted in the analysis of the wage issue below.

The Employer argues that it has made a substantial tax effort. Its levy has increased by 15.62% over the period from 1986 to 1988. It is one of few counties which has imposed a sales tax. The purpose of the sales tax is to provide for property tax relief. Its purpose is not to fund excessive wage demands, the Employer argues and cites the opinion of Arbitrator Rice in his award in Jackson County, (24531-A) 10/87 in support of this argument. The Employer notes that the County maintains a reserve for delinquent taxes which approximates \$3.5 million. The Union notes that the amount of the tax delinquencies totals approximately \$1.5 million. The effect of the drought on area farmers is the County's most poignant argument. Approximately 70% of the land in the County is dedicated to agricultural use. Polk County has suffered through two consecutive years of severe drought. Normal rainfall for the County is approximately 32 inches. In 1987, it had 19.3 inches of precipitation, and by November 1988 it had 22.7 inches of precipitation. The County suffered losses of 74% of its corn crop and 60% of its hay crop. These losses are mirrored in the other crops produced in this county.

The County documented the impact of the drought through newspaper articles. This Arbitrator would have preferred if the documentation of the impact of the drought were established through the testimony of the County Agricultural Agent who is often quoted in the newspaper articles or through data published by the Wisconsin Department of Agriculture or other official sources. Although the Union introduced evidence concerning the legislative programs passed to assist the farmers through the drought, there is little doubt in this Arbitrator's mind as to the impact of the drought on the agricultural economy of this agricultural county.

The Employer proposal on health insurance could have a long-term impact on the funding and payment of health insurance premiums. Should those premiums increase at a rate substantially above 5%, the Employer's share as a percentage of the total premium paid will continue to decline. The data presented by the Employer with regard to the decline in the number of farms in Polk County and the increase in the average size of each remaining farm, when viewed together with the increase in the percentage of tax levy, would tend to indicate the need for caution and flexibility, in the County's funding of employee wages and fringe benefits. The Employer's proposal would tend to moderate the increase in fixed costs for an important fringe benefit, health insurance. Although total equalized value declined from 1985 to 1987, that trend reversed in 1988 with an increase in total equalized value. The above data substantiates the need, in the short term, for the Employer to have the ability to moderate the increase of its fixed costs especially in the

fringe benefit area. Health insurance is a principal fringe benefit. This criterion supports the Employer offer.

d., e., f. Comparability

The parties disagree as to the identity of the municipal employers to which this County is comparable for purposes of comparison of the wages, hours and conditions of employment of employees employed in similar classifications. The Union suggests five comparable counties: Barron, Burnett, Dunn, Pierce and St. Croix. The Employer suggests eight counties are comparable to Polk. They are: Barron, Burnett, Chippewa, Dunn, Rusk, St. Croix, Sawyer and Washburn. This dispute directly relates to employees in a wide variety of classifications. Normally, the Arbitrator finds that the labor market area for blue collar, custodial and clerical employees is narrower and more limited than the labor market area for professional employees. This dispute concerns custodial and clerical employee classifications and employees in professional classifications. This is the first occasion that these parties have proceeded to arbitration. There is no evidence in this record that the parties have identified a comparability grouping.

The Employer notes in its brief that the comparables it suggests have been recognized by several Arbitrators as the appropriate comparables in Barron County: Barron County Public Health Agency, (17479-A) 3/80, Kerkman; (20826-A) 1/84, Krinsky; (22466-A) 7/85, Rice; Barron County Highway Department, (18597-A) 2/82, Imes; Barron County Sheriff's Organization, (24420) 9/87, R. J. Miller.

This Arbitrator finds that because one county is included in a list of comparables for a second county, it does not follow that the one is comparable to any county found in the list of comparables for the second County. The counties listed as comparables to Barron all include Polk County. However, Barron is contiguous to Rusk County. Rusk is not contiguous to Polk. Rusk and Polk may not be primary comparables. To further support this analysis this Arbitrator found that Arbitrator Haferbecker in Pierce County (Dept. of Human Services) (18683-A) 8/81, included Polk County as a comparable for Pierce County.

Upon review of the data submitted with regard to the population, total equalized value and geographic contiguity to Polk County, this Arbitrator finds it appropriate to identify a primary group and secondary group of comparables. The primary group comprises counties contiguous to Polk County or counties which are similar in size in terms of population and total equalized value. They are Barron, Burnett, Dunn, Pierce and St. Croix Counties. The secondary group to permit a broader market on which to evaluate the professional classifications of employees include the much smaller counties of Rusk, Sawyer and

Washburn, as well as, the much larger county of Chippewa.

There are no settlements for 1989 among the comparables for the employee groups, custodial, clerical and professional social worker classifications at issue here. Barron County settled with its law enforcement personnel for 1989 as did Rusk County. In the 1989 agreement between Barron County and the collective bargaining representative for law enforcement personnel, there was an agreement to switch health insurance plans; Barron County's contribution was stated in a flat dollar amount providing approximately an 82% contribution towards family premiums and the deductible was raised to two \$150 deductibles. Obviously, a pattern of settlement for 1989 may not be ascertained from this limited data. No information was provided with regard to health insurance premium increases among the comparables for 1989 which would permit an evaluation and comparison of the total premium costs in Polk County as compared to the total premium cost for family coverage health insurance among comparables.

There is a complete record with regard to the level of premium paid for family coverage for health insurance in Polk County as compared to such payments by comparable employers for calendar year 1988. The premium for 1988 did not increase from 1987 in Polk County. However, that level of total premium, \$245.28, is fully \$35 above the average of the primary comparables and \$38 above both the primary and secondary comparables and the level of premium for health insurance family coverage among those employers.

The Employer monthly contribution for family coverage is \$220.75. That contribution is at least \$14/month higher than the comparable employer making the second highest contribution towards employee family coverage premium. As of 1988, all the insurance plans, both of Polk County and all the comparable counties, provided for co-insurance at 80/20% participation; all provided for deductibles. Dunn and Polk County plans include three deductibles at \$50 each; St. Croix County has a plan with two deductibles at \$50 each. Polk County has three deductibles at \$50 each. There is little evidence as to the specific provisions of the Pierce County health insurance plan. The remaining primary and secondary comparables each provide for three deductibles of \$100 each.

Among the primary comparables only Pierce County contributes 100% for the family coverage. Among the secondary comparables, Chippewa County pays 100% for family coverage. Among the remaining comparables, the level of contribution ranges from 82 to 95%.

Although the above analysis of the comparability criterion is limited to 1988 figures, nonetheless, that data demonstrates that both the total cost of family coverage health insurance and

the County's contribution for that coverage is substantially greater than the cost of such coverage and the level of employer contribution of comparable employers.

Both parties submitted data with regard to the level of insurance premiums and contributions among school districts. For the most part, those municipal employers pay 100% of premium, for family coverage. The level of premium in 1988 ranges from just under \$208 to \$311.74. The level of employer contributions for districts in Polk County, such as Amery and Clear Lake, more closely approximate the level of contributions made by Polk County for health insurance for its employees.

Little evidence was presented with regard to the level of contribution toward health insurance made by private employers in Polk County.

On the basis of the above analysis, the Arbitrator concludes that criterion "d." Comparability of Employees in Similar Classifications Employed by Comparable Employers supports the Employer offer. Criterion "e." Comparability with Regard to Other Public Employees generally does not serve to distinguish between the offers of the parties. There is little evidence with regard to criterion "f."; that criterion does not support either offer.

g. Cost of Living

The Arbitrator finds that the index for Non-metro Urban (Area) is the most appropriate index of the Consumer Price Indexes published by the United States Department of Labor to be used as a basis for analysis in this case. That index increased by 2.8% for calendar year 1988 and 3.9% for calendar year 1987. Obviously, the 14.6% increase in health insurance premium for calendar year 1989 is far in excess of the increase in the cost of living experienced in Polk County for both 1987 and 1988 calendar years. The Arbitrator addresses this criterion more extensively, and it has greater weight in the consideration of the wage issue, below.

h. Overall Compensation

As noted in the discussion of the comparability criteria, Polk County contributes a substantially higher sum to provide family health insurance coverage for its employees. In 1988, this level of contribution was approximately \$168 above the contribution of the comparable employer with the second most expensive insurance cost. This criterion is analyzed more fully in the discussion of the wage issue, below.

i. Changes in the Foregoing Circumstances

This criterion is developed more fully in the discussion of the wage issue.

j. Such Other Factors

The Employer attempts to accomplish a significant change in the manner in which the health insurance benefit is funded in calendar year 1989 and in future years, as well. The impact of the Employer's proposal shifts half of the cost of annual increases in health insurance premiums for family coverage which exceed 5% to employees receiving such benefit. In years in which the rate of annual increase in the premium for family coverage is 5% or less, the Employer will absorb the total cost of such increase.

In its brief, the Employer quotes extensively from the recent award issued by Arbitrator Petrie in Mukwonago School District, (25380-A) 12/88. Arbitrator Petrie persuasively argues that in the public sector:

If public sector interest neutrals were precluded from recognizing change or innovation the matter could not be rectified by the parties' in their next negotiations, at which time they had the power to undertake economic action in support of their demands! A union dedicated to avoidance of change in a context where all impasses moved to binding interest arbitration, rather than being open to strikes and lockouts, could forever preclude an employer from achieving change, even where it was desirable or necessary, and/or where the change had achieved substantial acceptance elsewhere.

This Arbitrator agrees. However, in exercising this flexibility, the Arbitrator must do so in accordance with well founded arbitral principles. In the case of changing the status quo, Arbitrators apply a specific test before adopting the proposed change to the status quo.

This Arbitrator in D. C. Everest Area School District, (24678-A) 2/88; Greendale School District, (25499-A) 1/89; and Antigo School District, (Voluntary Impasse Procedure), (25728) 3/89, observed that:

Where Arbitrators are presented with proposals for a significant change to the status quo, they apply the following mode of analysis to determine if the proposed change should be adopted: (1) has the party proposing the change, demonstrated a need for the change; (2) if there has been a demonstration of need, has the party

proposing the change provided a quid pro quo for the proposed change; (3) arbitrators require clear and convincing evidence to establish that 1 and 2 have been met.

The Employer has demonstrated a need for the change to the status quo. Despite the stable premium in calendar years 1987 and 1988, the cost of family health insurance coverage in Polk County is substantially greater than the cost of such coverage among comparable employers. The County's level of contribution is substantially greater in total dollar amount than the dollar amounts expended by comparable employers for such coverage.

This Arbitrator has expressed the view in the Greendale School District and Antigo School District cases, supra, that the most effective approach to moderate the increase in health insurance premium costs is through changes to the scope of the health insurance benefit coverage. Specifically, in the above-cited cases, it was apparent that a change in deductible amounts would have a profound effect on the total cost of premium. Here, the health insurance program already includes elements which normally moderate the increase in premium, such as: two \$50 deductibles and co-insurance. In their stipulation of agreed-upon items, the parties have agreed to permit the Employer to change carriers. The Employer appears to have initiated a self-funded program administered by Employers Health Insurance, a Lincoln National Company.

The Employer claims that it approached bargaining with a proposal to increase the deductibles. However, its final offer does not incorporate such a change. Since self-funding and the additional flexibility available to the Employer through its right to select the carrier are features negotiated into the 1988-89 agreement by the stipulation of the parties, there has been insufficient time to ascertain the impact of these changes.

Nonetheless, the Arbitrator finds that the disparity in the total premium rate is such that it supports the conclusion that a change in the status quo is necessary. Since the insurance program already incorporates many of the elements which normally serve to moderate the increase in the cost of premium, the range of choices available to the parties is quite narrow. If a fee for service plan is to be maintained, either deductibles must be increased or if the Employer contribution is to moderate, then the level of employee participation must increase. In this case, the employees and the Employer agree that the fee for service plan is to be retained. The parties have rejected the provision of health insurance coverage through an HMO.

The second test for achieving a change in the status quo is the provision for a quid pro quo for that change.

Since there were only two settlements in the record for 1989 and those settlements were in law enforcement units an employee classification not subject to this dispute, (except through the "me too" clause), the Arbitrator has no basis for determining whether the 3.5% proposal of the Union will ultimately prove to be the pattern or whether the pattern of settlement will be at 3%. In any event, the Employer argues that the pattern of settlement for 1989 will be the same as 1988, i.e., 3%. Accordingly, a quarter of 1% has been offered by it as a quid pro quo for its suggested change to the health insurance language.

On the basis of this Arbitrator's calculations, the quarter of 1% set aside as a quid pro quo reimburses two-thirds of the extra contribution which employees would be required to make towards the health insurance premium for calendar year 1989. As noted above, the Employer proposal not only impacts upon 1989 but it also impacts upon future years, as well.

Most significantly, this Employer settled an agreement with its law enforcement personnel by agreeing to a 3.5% wage increase. In that settlement, the Employer specifically identified one-half of 1% as a quid pro quo for the "me too" provision concerning any health insurance proposal at issue here. In other words, this Employer is paying law enforcement personnel a half a percent above what it ultimately believes the pattern of settlement will be among comparable employers to get the collective bargaining representative of these law enforcement employees to agree to be bound by the settlement achieved on the health insurance issue by the AFSCME locals, the Union, in this case. Yet, the Employer offers a quid pro quo which is half of the amount offered to the law enforcement personnel. The Employer offers a quarter of 1% as a quid pro quo, in this case.

The Employer explains its position. It asserts that it reduced the quid pro quo when it observed that its settlement at 3% was above that of the pattern of settlements among comparable employers. In addition, the County had undergone a second year of drought which caused it to embark on a more cautious approach in its final offer.

The settlement pattern among the primary comparables for 1988 was 2.9%. The settlement pattern among both primary and secondary comparable groupings is slightly below that figure. When the split increases for 1988 are taken into account, the year end rate increases among the comparables is slightly over 3%. The Arbitrator concludes from this evidence that the pattern of settlement for 1988 among comparable employers was 3%. Both final offers provide for a 3% increase for 1988. The Employer's proposed increase in its final offer for 1988 is not above the pattern. It is at the exact pattern of settlement for 1988.

With regard to the drought, the Arbitrator has noted above

that this county has undergone two years of devastating drought in 1987 and in 1988. Nonetheless, there is no evidence in this record to indicate that the \$10,996 difference between the parties in this case will have any appreciable impact on the finances of Polk County to the extent that it would justify a quid pro quo to the units which collectively will establish the pattern for this benefit for all employees of this Employer, when this Employer has provided a quid pro quo which is double, in percentage terms rather than dollar amounts, than the amount being paid to employees in a smaller unit of 23 employees.

It is noteworthy, that had the Employer offered the one half of 1% quid pro quo, that sum would provide employees in the Highway Department, Courthouse and Social Services Department with a sum which slightly exceeds the total amount of the cost of health insurance premium, when that premium is averaged out among all employees in each particular unit.

The party proposing the change must meet the two tests of establishing the need and providing a quid pro quo through clear and convincing evidence. Here, the Employer has identified in one unit that the quid pro quo is one half of 1%. Yet, here it offers but one quarter of 1%. Therefore, the Arbitrator concludes that the Employer has failed to meet its burden that its quid pro quo is adequate or justifiable. This statutory criterion supports the Union proposal to retain the status quo.

II. WAGES

a., b. Lawful Authority and Stipulations of the Parties

These factors do not serve to distinguish between the offers of the parties. No argument was provided by either party with regard to these factors.

Interest and Welfare of the Public

In the above Discussion, the Arbitrator has discussed the data introduced into the record demonstrating the effect of the two years of drought on the economy of Polk County. This factor clearly supports a cautious approach towards wage increases. Although the amount in dispute both in dollar and percentage terms is not great, nonetheless, this factor supports the lower offer, that of the Employer.

d., e., f. Comparability

Both parties propose a 3% increase across-the-board for all employee classifications for calendar year 1988. That is precisely the pattern of settlement achieved among all comparables, both primary and secondary. The parties' agreement to a 3% increase for 1988 is at the settlement pattern for that

year.

The Arbitrator has reviewed the sampling of employee classifications in each of the three units and the data with regard to the levels of salaries paid to employees in such classifications in comparable units. The Arbitrator finds that the level of salaries paid in Polk County is either slightly below or slightly above the average of the primary comparables among these samplings. There is little difference between the level of salaries paid in Polk County to these samplings of employee classifications and the level of salaries paid at the average among the comparables. This data establishes that there is no basis for either the Union or the Employer to argue that the level of salaries in Polk County is at variance with the average to the extent that an adjustment one way or the other is necessary.

With regard to calendar year 1989, there are no settlements among comparable employers in units covering clerical, highway, custodial or professional social worker employee classifications. Certainly, the difference between the parties is sufficient for them to litigate in an interest arbitration proceeding. However, based upon the data available, it is impossible for this Arbitrator to distinguish between the offers of the parties and to determine which is more appropriate, the 3% plus one quarter of 1% quid pro quo offered by the Employer or the 3.5% proposal of the Union. Accordingly, the Arbitrator concludes that the comparability criteria do not serve to distinguish between the final offers of the parties.

g. Cost of Living

Polk County is not in the statistical sampling area of the Bureau of Labor Statistics for the Minneapolis index. Accordingly, this Arbitrator has not used that index as a basis for establishing the cost of living in Polk County. Rather, the Non-metro Urban (Area) Index is the appropriate index to be used in this case. The cost of living increase for the entire calendar year 1988 under that index is 2.8%. Arbitrators in interest disputes look at the increase in the cost of living for the year preceding the effective date of a new agreement or a year in which the parties cannot agree as to the level of increases to identify the cost of living increase (decrease) to be applied in the analysis of this criterion. Furthermore, when applying the cost of living to the economic proposals of the parties, this Arbitrator applies this factor to the total compensation costs inclusive of all benefits and rollups in applying the cost of living. Since the increase in the cost of living was 2.8% for calendar year 1988 and the total cost of the Employer's proposal is between 3.9 and 4% and the Union's is between 4.3 and 4.5%, the Arbitrator concludes that the Employer proposal more closely approximates the increase in the cost of living.

Overall Compensation

The Arbitrator has noted above that the dollar level consumed in providing health insurance coverage is greater in Polk County than among comparable employers.

The Employer argues that its longevity program is the richest among the comparables. Two of the primary comparables, Barron and Burnett Counties, do not provide a longevity program. However, the balance of the primary and secondary comparables do provide a longevity program. The longevity program in Polk County is equal to and provides the same benefit as the most beneficial of any of the longevity programs. However, the dollars generated by the longevity program is not sufficiently at variance with the longevity programs of the three primary comparables and the four secondary comparables so as to impact upon the ultimate decision in this case.

i. Changes in Any of the Foregoing Circumstances

The only change which has occurred during the pendency of this proceeding is in the data published in the Consumer Price Index in the most recent months prior to the issuance of this decision. The Index in February and March for Non-metro Areas has increased four-tenths of 1% in each month from the preceding index. This may indicate the beginning of a significant change in the cost of living for 1989. However, the Arbitrator observes that there are many economists who are paid much greater sums of money to render guesses as to the rate of increase in the cost of living during calendar year 1989. They do so on the basis of much better data than is available to this Arbitrator. Accordingly, this Arbitrator accords the observation with regard to the two month increase in the Consumer Price Index the weight that it is due, i.e., no weight at all.

j. Such Other Factors

This factor was fully discussed above, with regard to the application of this criterion to the health insurance issue.

SELECTION OF THE FINAL OFFER

The application of the criteria to the two issues in dispute, yields the following. On the health insurance issue, the criteria the Interest and Welfare of the Public, Comparability, Overall Compensation all favor the Employer proposal. The criterion Such Other Factors, however, strongly supports the proposal to retain the status quo. It should be clear from the analysis set forth under the criterion Such Other Factors on the health insurance issue that this Arbitrator would have selected the Employer's proposal for inclusion in the successor 1988-89

agreement, but for its decision to offer a smaller quid pro quo in support of its proposed change. The Employer's explanation for its proposed quid pro quo did not withstand analysis. These three AFSCME units, even without the Golden Age Manor unit, are substantially larger than the law enforcement unit.¹ Yet, the Employer would have this Arbitrator establish the level of contribution towards health insurance premiums through the Joint Council, here, through an offer of a smaller quid pro quo than offered in a smaller unit. The Employer's bargaining posture is unexplained, at least to this Arbitrator's satisfaction. In light of the posture of this case, the adoption of the Employer's offer could only have serious detrimental effects on the parties' future bargaining.

On the wage issue, the Interest and Welfare of the Public, the Cost of Living and Total Compensation criteria serve to distinguish between the offers of the parties. Those factors support the Employer's proposal.

In light of the fact that the health insurance issue is the primary issue in this case, and because this Employer has failed to establish by clear and convincing evidence that its proposed quid pro quo for the changes proposed is adequate or justified, the Arbitrator adopts the Union's final offer for inclusion in a successor agreement.

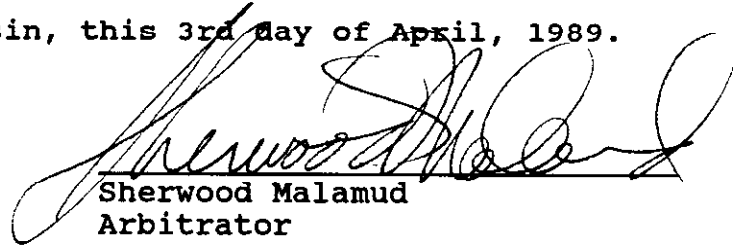
On the basis of the above discussion, the Arbitrator makes the following:

¹The Employer settled an agreement with the Nurses Association for the unit of nurses represented by that collective bargaining representative. The Arbitrator makes no reference to that settlement, in this case. The Employer has demonstrated to the satisfaction of this Arbitrator that there are salary issues unique to that unit which justify the County's entering into a settlement at salary levels which are higher than the salary proposals made here.

AWARD

Based upon the statutory criteria found in Sec. 111.70(4) (cm)7.a-j of the Wisconsin Statutes, the evidence and arguments of the parties and for the reasons discussed above, the Arbitrator selects the final offer of the Union, attached hereto, to be included together with the stipulation of agreed upon items in the Agreement between the County and the Union in effect from January 1, 1988 through December 31, 1989.

Dated at Madison, Wisconsin, this 3rd day of April, 1989.


Sherwood Malamud
Arbitrator

RECEIVED

JUL 26 1988

WISC. JUDICIAL EMPLOYMENT
RELATIONS COMMISSION

Polk County [Highway Department]
Case 44, No. 40037, INT/ARB-4754

Polk County [Courthouse]
Case 45, No. 40038, INT/ARB-4755

Polk County [Department of Social Services]
Case 46, No. 40039, INT/ARB-4756

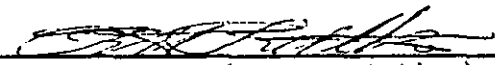
RECEIVED

OCT 21 1988

S. MALAMUD
ARBITRATOR

The following, or the attachment hereto, constitutes our final offer for the purposes of arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal employment Relations Act. A Copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me. further, we XXXX (do not) authorize inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted to the Commission.

07/13/88
(Date)



(Representative)
Richard H. Rettke

On Behalf of: LOCAL 774, A, B, C, AFSCME, AFL-CIO

RECEIVED

FINAL OFFER

OCT 20 1988

[first exchange]

WISCONSIN DEPARTMENT OF EMPLOYMENT
RELA TIONS COMMISSION

POLK COUNTY - JOINT COUNCIL OF UNIONS

LOCAL #774

FOR A 1988-1989 CONTRACT

RECEIVED

OCT 21 1988

S MALAMUD
ARBITRATOR

1. The "STIPULATED AGREEMENTS BETWEEN POLK COUNTY AND POLK COUNTY JOINT COUNCIL, LOCAL #774" shall be a part of the bilateral agreement between the parties for the 1988-1989 period. [see attached]

<p>2. Wages: [*Local 774-A,B,C]</p> <p>Effective 1/1/88 - 3% - across the board</p> <p>Effective 1/1/89 - 3.5% - across the board</p>

*NOTE: The wage rates noted in number 2 above are for the certified units of the Polk County Highway Department & Lime Quarry Employees, Local 774-A, the Polk County Courthouse Employees Local 774-B and the Polk County Department of Social Services Employees Local 774-C. The Polk County Golden Age Manor Employees Local 774-D have settled the wage rates for Local 774-D by stipulation of the parties for contract years 1988 and 1989. [see attached Letter of Agreement]