STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of LABOR ASSOCIATION OF WISCONSIN, INC. To Initiate Arbitration Between Said Petitioner and FOREST COUNTY (COURTHOUSE)	Case 53 No. 41401 INT/ARB-5094 Decision No. 26013-A

Appearances:

Mr. Patrick J. Coraggio, Labor Consultant, Labor Association of Wisconsin, Inc., appearing on behalf of the Association.

Mr. Lawrence R. Heath, Attorney at Law, appearing on behalf of the County.

ARBITRATION AWARD:

On June 6, 1989, the undersigned was appointed by the Wisconsin Employment Relations Commission as Arbitrator in the above entitled matter, pursuant to Section 111.70 (4) (cm) 6. and 7. of the Municipal Employment Relations Act, in the matter of a dispute existing between Labor Association of Wisconsin, Inc., referred to herein as the Association, and Forest County, referred to herein as the Employer or the County. On August 23, 1989, the undersigned conducted mediation proceedings with the parties, which resulted in settlement of the disputed items between the parties. The settlement mediated on August 23, 1989, was embodied in a Consent Award issued by this Arbitrator dated August 30, 1989, which in paragraph 7 of the Consent Award read:

> The language of Article XVII, Insurance, will remain unchanged from the predecessor Collective Bargaining Agreement, except that where the premium amounts for health insurance are set forth, the premium amounts shall be changed to $242.74 for family coverage and $97.39 for single coverage. Additionally, the provision will contain the following added language: The parties agree to continue to negotiate over the County's health insurance proposal contained in its final offer of May 4, 1989, and if they are unable to reach agreement and impasse over these negotiations occurs by November 9, 1989, this Arbi-

trator will retain jurisdiction over that issue and will resume hearing on November 16, 1989, to determine whether the County's offer or the Union's offer on health insurance will become part of the Agreement.

The parties failed to reach agreement in their negotiations over the health insurance issue, and hearing in this matter was resumed by the undersigned at Crandon, Wisconsin, on November 16, 1989, pursuant to the retention of jurisdiction as stated at paragraph 7 of the Consent Award of August 30, 1989. The parties were present at hearing on November 16, 1989, and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were not transcribed, however, briefs and reply briefs were filed in the matter. Final briefs were exchanged by the Arbitrator on March 13, 1990.

THE ISSUE:

FINAL OFFER OF THE UNION:

The Union proposes a continuation of the health insurance terms contained in the predecessor Agreement as modified by paragraph 7 of the Consent Award of August 30, 1989, as it relates to premium contribution by the Employer.

FINAL OFFER OF THE COUNTY:

The County proposes the following with respect to health insurance:

> Beginning with calendar year 1990, the County would implement a health insurance plan equal to or better than the plan known as the Care Share Plan offered by WPS which would be based upon a $200.00 deductible (to a maximum of 3 per family but in no event more than a total of $600.00 outlay per family). Further, for calendar year 1990 the County would implement a plan equal to or better than the plan offered by WPS known as Compare Hospital Review. Further, for calendar year 1990, the County would pay up to the dollar amounts for the monthly family premium and up to the dollar amounts for the monthly single premium with the same to be inserted into the contract in the form of a letter which would be provided by the County to the Union after the County has been informed by the insurance carrier of the said monthly premiums for the insurance coverage in effect in 1990. Subject to a negotiated or arbitrated successor agreement for 1991 and beyond, the County would not be liable for the payment of any monetary increases in the said monthly premiums for insurance coverage in effect after December 31, 1990. The County would, from time-to-time, have the right to change the insurance carrier if it elects to do so, providing the benefits are equal or better than the health insurance plans for the respective periods referred to above.

DISCUSSION:

Wis. Stats. 111.70 (4) (cm) 7. direct the Arbitrator to give weight to the factors found at subsections a through j in making any decision under the arbitration procedures authorized in that paragraph. The undersigned, therefore, will review the evidence adduced at hearing and consider the arguments of the parties in light of that statutory criteria.

The parties are not in agreement as to what constitutes the comparable counties for the purpose of comparing health insurance coverages in those counties with the coverages as proposed by the parties in this dispute. The Employer proposes that the comparisons be made with the counties of Florence, Langlade, Oconto, Oneida and Vilas. The Association proposes these same counties of Florence, Langlade, Oconto, Oneida and Vilas, but also includes Marinette County as well. The County bases its position on the fact that in two prior arbitration awards Arbitrators have not included Marinette County, and on the demographic data contained in its Exhibit Nos. 5 through 13. The Association argues in support of the inclusion of Marinette County as a comparable based on demographic materials contained within the aforementioned County exhibits, and also argues that Marinette County was not included in the two prior arbitration decisions involving Forest County and the Deputy Sheriff's Association of Forest County for reasons not present here. In a 1984 decision by Arbitrator Chapman, the Association argues that Chapman excluded Marinette County simply because there was no evidence put in that record to make a determination as to whether it was or was not a comparable community. In the arbitration decision of 1985 involving the Sheriff's Department Association, Arbitrator Imes did not include Marinette County, and the Association argues that that conclusion was reached because neither the Employer nor the Association proposed it as a comparable in those proceedings.

A review of all of the evidence satisfies the undersigned that Marinette County should be included among the comparables. It is a contiguous county, it has rural characteristics, it has few population centers, and its population differential is not so significant so as to exclude it as a comparable. Furthermore, the very inclusion of Marinette County among DILHR's statistics set forth in County Exhibit Nos. 10 and 11 support the conclusion that Marinette County should be included as a comparable county. County Exhibit No. 10 establishes that more Forest County residents commute to jobs in Marinette County than commute to jobs in any other surrounding county, and it also shows that there are 9 residents of Marinette County who commute to Forest County for employment. Thus, there is persuasive evidence which satisfies the undersigned that the labor market includes the areas of Forest and Marinette County, as well as the other counties proposed by both parties as comparables.

In arriving at the foregoing conclusion that Marinette County should be included as a comparable County, the Arbitrator has considered the considerable arbitral authority holding that established comparables should not be expanded once they are established. Here, however, the comparables were established in two prior arbitrations

where in the first arbitration decided by Arbitrator Chapman there was insufficient evidence to establish the comparability of Marinette County, and in the second arbitration decided by Arbitrator Imes, neither party proposed that Marinette County should be included as a comparable. Because the evidence supports the inclusion of Marinette County, and because Marinette County had not been excluded as a comparable in prior arbitrations by reason of demographic differences; it is appropriate to include Marinette County here, even though it has not been used as a comparable in past proceedings involving Forest County.

Having established the comparables, we will now look to the comparisons of insurance coverages among the comparable communities as compared to the final offers of the parties. The coverage which has been in place provides for a deductible amount on major medical of $50 for single coverage and $150 for family coverage. The Employer proposes that the deductible be $200 single and $600 family for all coverages across the board, and not just for major medical. County Exhibit No. 23 establishes that Vilas County provides for the same deductibles as proposed by the Employer in its final offer. Oneida County provides for a deductible of $500 single and $1000 family across the board for all coverages, with $250 of each deductible reimbursed at the end of the year. Langlade County provides for a deductible of $100 and $300 applicable to major medical only. Florence and Oconto Counties provide for a deductible of $50 single and $150 family applied to major medical only. Association Exhibit No. 14 establishes that Marinette County provides for a deductible of $100 and $300, however, the exhibit is not clear as to whether that deductible is applicable for all coverages or only for major medical. Only 2 of the 6 comparable counties provide for deductibles as large or larger than that proposed by the County, and for deductibles to be applicable across the board rather than just to major medical. The data with respect to Marinette County is imprecise in that it is not clear whether the deductibles apply across the board or to major medical, and for that reason, the data with respect to Marinette County is unpersuasive. Three of the remaining comparable counties, however, apply the deductible only to major medical, and the deductible amounts in 2 of those 3 counties are the same as the deductible amounts which the Union proposes be continued. Langlade County has a higher deductible for major medical only, but it is only half the amount of the across the board deductible proposed by the Employer here. It follows from all of the foregoing that the comparison of insurance coverages as it applies to deductibles favors the continuation of the coverages presently in force as proposed by the Union.

County Exhibit No. 23 also shows that there are co-pay provisions on an 80%-20% basis which would be continued under the Union proposal and would be eliminated under the County proposal. Exhibit No. 23 shows that Vilas and Langlade Counties have no co-pay provisions, while Florence, Oconto and Oneida Counties do. There is no data on Union Exhibit No. 14 with respect to the co-pay provisions of the coverages in Marinette County. Three of the 5 comparable counties provide co-pay insurance, as does the Union proposal here, and it follows therefrom that the co-pay provision comparisons favor the Association proposal.

A comparison of cost containment provisions is also made in County Exhibit No. 23, and the exhibit shows that the County's offer contains cost containment provisions, and that 3 of the 5 comparable communities (Florence, Langlade and Oneida) have provisions for cost containment in their coverage. Oconto and Vilas Counties do not. Thus, a majority of the comparable counties provide for cost containment provisions. The undersigned has also compared the cost containment of the coverages contained in the plan proposed by the Employer (County Exhibit Nos. 29B and 30) and finds them to be the typical cost containment provisions frequently found in health insurance coverages. Because a majority of the comparables contain cost containment provisions, and because the undersigned has concluded that cost containment provisions proposed by the Employer here are typical; it follows that a comparison of cost containment provisions of the coverages supports the Employer offer in this dispute.

The undersigned has also compared the premium participation and the premium rates among the comparables. Exhibit No. 23 shows that Florence, Langlade and Oconto Counties pay 90% of the premium. Vilas County pays 92% of the premium, and Oneida County pays 100% of the premium. Under both the proposal of the County and the Association all of the dollar amount of the premium will be paid. Thus, there is no differential as to the amount of premium paid, irrespective of which offer is received here. Consequently, the fact that the offers here contain a higher premium participation by the Employer than do the majority of the comparables is unpersuasive.

The undersigned has also compared the amount of premium payment for family coverage, and notes that the cost of the premium for the Union offer is $322.53 per month compared to a cost of $302.15 per month, if the Employer offer is adopted (County Exhibit No. 23). Among the comparables, the amount of premium payments range from $193.28 in Langlade County to a high of $372.94 in Florence County. The ranking of premium payments would place the ranking the same, irrespective of which offer is adopted, because no matter which offer is selected, the monthly premium amounts for family coverage would be third highest behind Florence and Oconto Counties. The undersigned further notes that the premium differential for 1990 for family premium amounts only to a differential of approximately $20 per month for family coverage. Association Exhibit No. 13 establishes that there are presently 14 employes with family coverage. By extending the number with family coverage, times the $20 monthly differential in premiums, the savings to the County, if its offer is adopted, calculates to $280 per month or $3,360 per year. When comparing the monthly total savings in the unit of $280 per month to the increase in family deductibles from $150 to $600, it would appear that the cost savings are not commensurate with the deductible increases.

The Arbitrator has considered the compared features of the proposed plan by the Employer with the coverages in force among the comparable counties. The undersigned has also compared the premium costs and concluded that the premium costs fall within the range of premiums charged in comparable communities. The undersigned has further concluded that the savings in premiums by comparing the

cost of the coverage proposed by the Employer with the cost of the coverage proposed by the Union fails to be a persuasive amount when considering the increased deductibles to be assessed to the employes in the unit. When considering all of the foregoing, the undersigned now concludes that the status quo proposal of the Association is favored, based on this criteria.

We now look to the internal comparables. The record evidence establishes that for 1989 Sheriff's Department employes had the same coverage in force as that in effect in the predecessor Agreement in this unit. The record evidence establishes that in the Highway Department the parties arbitrated over the same differences in health insurance coverages as exist in the instant dispute. The record evidence establishes that for 1990, the Sheriff's Department employes agreed in bargaining to the implementation of WPSC Care Share Plan with deductibles as soon as possible (March 1, 1990). The record evidence also establishes that the Highway Department arbitration decision awarded for the Union, which maintained the predecessor coverage including the deductibles of $50 and $150 for major medical purposes only. Thus, the internal comparables are split, the Sheriff's Department having voluntarily agreed to a proposal for the Care Share Plan offered by the Employer in this dispute, and the Highway Department having been awarded a continuation of the coverages previously in force in that unit and this unit. Because the internal comparables are split, they are unpersuasive. Moreover, since the undersigned has concluded that the external comparables favor a continuation of the predecessor coverages, it follows that when considering all of the comparables, internal and external, they favor the continuation of the status quo. This is particularly so, and the Arbitrator reemphasizes that, in his judgment, the cost savings to the County are not sufficiently substantial so as to warrant the increased deductibles of its proposed plan.

There is also in evidence County Exhibit No. 24 setting forth the types of coverages existing in the private sector in the community. County Exhibit No. 24 establishes that the family deductible at Bemis Manufacturing Co. is $50 per person with a limit of $150. The family deductible at Caswell Wood Specialties is $250. The family deductible at Goodman Forest Industries is $200. The family deductible at Piontek Brothers, Inc. is $400. The family deductible at Crandon Nursing Home is $200. There are no family deductibles in the private sector which are set forth in County Exhibit No. 24 which approach the $600 family deductible proposed by the Employer here. In fact, the $150 deductible as contained in the status quo coverage is closer to the deductibles found in the private sector, based on the foregoing enumerations. It follows from the foregoing that the comparisons of the deductible amounts contained in coverages in the private sector in the community favor and support the continuation of the coverages which existed previously and not the coverages now proposed by the Employer.

The Employer has argued that it has established a quid pro

sufficient to warrant the adoption of its offer on health insurance when it voluntarily agreed to the wage settlement embodied in the Consent Award which was issued on August 30, 1989, by the undersigned. The wage increases total 37.8¢ for 1989 and 39.4¢ for 1990. The wage increases are staggered, with 21¢ becoming effective January 1, 1989; 16.8¢ becoming effective July 1, 1989; 21.9¢ becoming effective January 1, 1990; and 17.5¢ becoming effective July 1, 1990. County Exhibit No. 22 establishes that the wage lift of the wage settlement establishes a lift impact of 5.854% for 1989 and 5.764% for 1990. The annual cost impact for each year is 4.553% for 1989 and 4.48% for 1990. County Exhibit No. 21 establishes that the last offer of the Highway Department Union created a lift impact of 4.027% for 1989 and 4.231% for 1990. The cost impact for each of the years is 3.518% for 1989 in the Highway Department and 3.516% for 1990. Because the Arbitrator awarded for the Union final offer in the Highway Department, the foregoing percentages of increase, both as to cost and to lift, have become actual. Thus, the lift impact in the instant unit is over 1% higher in the instant unit than in the Courthouse unit. A different picture is presented, however, when one considers the cents per hour increase for each year, where in the Highway Department the total cents per hour increase calculates to 33.9¢ per hour increase in 1989 in the Highway Department and 35.3¢ per hour increase for 1990. The 34.9¢ and 35.3¢ per hour awarded in the Highway Department Award is within 3¢ per hour in 1989 and 4¢ per hour in 1990 of the amounts agreed to here, i. e., 37.8¢ and 39.4¢ per hour respectively for each of the two years. Thus, while there appears to be a percentage quid pro quo present here which was not present in the final offers of the parties in the Highway Department, when evaluating the cents per hour increase, that differential narrows. The undersigned concludes therefrom that the additional percentage of increase involved in the instant unit more accurately and typically represents catch up to this unit compared to the Highway Department unit rather than representing a quid pro quo for the revised health insurance which was not present in Highways. From the foregoing, the undersigned concludes that the quid pro quo argument advanced by the Employer here is misplaced.

The undersigned has also considered whether the wage settlement entered into between the Deputy Sheriff's Association and the Sheriff's Department of the Employer, which contained a 3% wage increase effective January 1, 1990, and a 2% wage increase effective July 1, 1990, establishes an equivalent quid pro quo for the adoption of the WPSC health Care Share Plan to the quid pro quo argument advanced by the Employer here. As recited in the preceding paragraph of this Award, the percentage lift in 1990 is 5.76% in the present unit. This compares favorably to the lift of 5% in the Sheriff's Association unit, when considering a percentage amount of increase. There is no showing in this record, however, with respect to the actual cents per hour of increase involved in the Sheriff's Department settlement, and, therefore, that evidence is inconclusive, in the opinion of the undersigned.

The Association has adduced considerable evidence and made

extensive argument with respect to the fact that there were prohibited practice charges brought by the Association against the Employer with respect to the assessment of health insurance premium increases during the hiatus period which existed between the expiration date of the predecessor Agreement and the present Contract. The undersigned makes no findings and arrives at no conclusions with respect thereto. The statutes are clear that in interest arbitration matters allegations of prohibited practice are not the concern of the interest arbitrator. Wis. Stats. 111.70 (4) (cm) 6.e. read as follows: "Arbitration proceedings shall not be interrupted or terminated by reason of any prohibited practice complaint filed by either party at any time." Thus, the statute is clear that prohibited practice complaints have no impact on these proceedings as it relates to the continuation of the arbitration proceedings authorized by this statute. Because the statute provides that prohibited practice complaints are not to interrupt proceedings of this nature, it would seem to follow that the existence of a complaint is irrelevant to these proceedings. Consequently, no further attention is given to the evidence which has been adduced, or the argument advanced with respect thereto.

After considering all of the statutory criteria, all of the evidence in the record, and all of the arguments advanced by the parties, the Arbitrator now concludes that the evidence supports the final offer of the Association, which perpetuates the coverage which had been in place previously. It follows therefrom that the final offer of the Association will be awarded in this dispute.

Therefore, based on the record in its entirety, and the discussion set forth above, after considering statutory criteria and all of the arguments of the parties, the Arbitrator now makes the following:

AWARD

The final offer of the Association, along with the stipulations of the parties as filed with the Wisconsin Employment Relations Commission, and those terms of the predecessor Collective Bargaining Agreement which remain unchanged through the course of bargaining, are to be incorporated into the parties' written Collective Bargaining Agreement for 1989 and 1990.

Dated at Fond du Lac, Wisconsin, this 24th day of May, 1990.

Jos. B. Kerkman,
Arbitrator

JBK:rr

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of LABOR ASSOCIATION OF WISCONSIN, INC. To Initiate Arbitration Between Said Petitioner and FOREST COUNTY (COURTHOUSE)	Case 53 No. 41401 INT/ARB-5094 Decision No. 26013-A

Appearances:

Mr. Patrick J. Coraggio, Labor Consultant, Labor Association of Wisconsin, Inc., appearing on behalf of the Association.
Mr. Lawrence R. Heath, Attorney at Law, appearing on behalf of the County.

ARBITRATION AWARD:

On June 6, 1989, the undersigned was appointed by the Wisconsin Employment Relations Commission as Arbitrator in the above entitled matter, pursuant to Section 111.70 (4) (cm) 6. and 7. of the Municipal Employment Relations Act, in the matter of a dispute existing between Labor Association of Wisconsin, Inc., referred to herein as the Association, and Forest County, referred to herein as the Employer or the County. The proceedings were conducted on August 23, 1989, at Crandon, Wisconsin, at which time the parties were present. Prior to opening hearing, mediation efforts were engaged in, and during the course of said mediation the parties agreed to terms which presently disposes of all issues which had been in dispute between the parties; and the parties having agreed that a Consent Award be issued in the matter; and the undersigned being satisfied with the propriety of the disposition of the issues; and the undersigned being further satisfied that the disposition of the disputed issues conforms to the statutory criteria set forth at Section 111.70 (4) (cm) (7); the Arbitrator now issues the following:

CONSENT AWARD

The terms of the predecessor Collective Bargaining Agreement shall continue unchanged except as follows:

1. The tentative agreements reached by the parties as they had been filed with the Wisconsin Employment Relations Commission.

2. The predecessor Agreement at Article VII, B (Step 1) shall be amended to read in the second and third sentence as follows: The Department Head and the Personnel Administrator shall meet with the grievant and the Association representative(s) to discuss the grievance. The Personnel Administrator shall, within five (5) working days, give an answer in writing to the Association.

3. Issue No. 2 of the County's final offer is adopted as the County proposed, except that where in the second last line there is a reference to five working days the five working days will be changed to ten (10) working days.

4. The second sentence of Article IX of the predecessor Collective Bargaining Agreement shall be amended to read: Grievances may be processed by a member of the Association Bargaining Committee during normal working hours on County property, provided that he/she has the permission of the Personnel Administrator or the Department Head in the absence of the Personnel Administrator for more than one full day. Additionally, the words "from the immediate supervisor, if available" will be stricken where they appear in lines 13 and 14 of Article IX of the predecessor Agreement.

5. Issue No. 4 as set forth in the final offer of the County is to be incorporated into the Collective Bargaining Agreement.

6. Issue No. 5 contained in the final offer of the County is to be incorporated into the Collective Bargaining Agreement. The language of Article XVII, Insurance, will remain unchanged from the predecessor Collective Bargaining Agreement, except that where the premium amounts for health insurance are set forth, the premium amounts shall be changed to $242.74 for family coverage and $97.39 for single coverage. Additionally, the provision will contain the following added language: The parties agree to continue to negotiate over the County's health insurance proposal contained in its final offer of May 4, 1989, and if they are unable to reach agreement and impasse over these negotiations occurs by November 9, 1989, this Arbitrator will retain jurisdiction over that issue and will resume hearing on November 16, 1989, to determine whether the County's offer or the Union's offer on health insurance will become part of the Agreement.

8. In a side agreement not contained in the Collective Bargaining Agreement, the parties agree that the Employer will arrange an informational meeting with members of the Bargaining Committee and a WPS representative some time on or about September 15, 1989, for the purpose of furnishing detailed information about the insurance program advocated by the County, and for the purpose of answering questions that the Committee may have regarding the program. Thereafter, the parties will meet on either September 25 or September 28, 1989, to negotiate over the insurance at 7:00 p.m., and will also meet on October 9, 1989, if necessary, at 7:00 p.m. to continue said negotiations.

9. The wage offer of the Employer contained in its final offer dated May 4, 1989, as Issue No. 7 is to be incorporated into the Collective Bargaining Agreement.

10. The terms found in the Association's final offer as filed with the Wisconsin Employment Relations Commission at Issue No. 3, which reads: "Article XXII, page 24, paragraph f, add to the end the following phrase 'except for Article XXI'", are to be incorporated into the Collective Bargaining Agreement.

Dated at Fond du Lac, Wisconsin, this 30th day of August, 1989.

Jos. B. Kerkman,
Arbitrator

JBK:rr