



STATUTORY CRITERIA

Under Sec. 111.70(4)(cm)7, the arbitrator is required 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.
- e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
- f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost-of-living.
- h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, 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 the private employment."

## POSITIONS OF THE PARTIES

### The Union

The Union supports its final offer relating to fair share by reiterating the "free rider" argument and by noting that its proposal incorporates an election requirement (for all members of the bargaining unit to be conducted by the WERC). (A majority of those voting must approve the Union's fair share proposal before it will become effective.) In addition, the Union faults the Employer for failing to make any counter proposal.

The Union primarily relies upon its evidence that private and public health care units which surround Shawano County have union shop or fair share agreements and its evidence that the majority of counties with health care centers have fair share agreements. While the Union concedes that there is no Employer's bargaining unit which does enjoy fair share, it argues that it does not represent those other County employees and that other public employers in the County, notably the teachers in Shawano-Gresham School District and the City of Shawano DPW employees do have fair share agreements. In rebutting the Employer's reliance upon an arbitration award regarding this unit by Arbitrator Haferbecker in 1986 in which he rejected the Union's prior fair share proposal, the Union quotes from other arbitrators who have reached more favorable conclusions in regard to fair share proposals in unions' final offers.

As to its proposal limiting subcontracting, the Union argues that the existing Management Right language which expressly states that the Employer has "the sole right to contract for any work it chooses. . ." does not offer bargaining unit members sufficient protection despite the Employer's argument that the County has never subcontracted in a way that produced an adverse impact upon the bargaining unit. The Union points to privatization of county health care facilities across the state and to protection against subcontracting language which may be found in several County collective bargaining agreements covering several other County bargaining units (as well as language which is the subject of another County bargaining unit's arbitration case). Thus, internal and external comparables support the Union's final offer on this issue.

For all the above reasons, the Union concludes that its final offer should be selected.

### The County

The Employer employs two arguments to support its position rejecting the Union's fair share proposal. First, it points to Arbitrator Haferbecker's 1986 arbitration award covering this bargaining unit in which the arbitrator concluded that "this is a major policy question usually left to collective bargaining." Second, it believes that heavy (if not exclusive) weight should be given to internal comparables where there is no unit of County employees which enjoy this benefit.

In response to Union exhibits covering external comparables, both private and public sector, the Employer rejects them as too general or not appropriate. Finally, the County notes that the percentage of dues paying members in this bargaining unit has been declining. Since the County concludes that the Union has failed to sustain its burden of demonstrating a need for change from the existing provision for voluntary dues deduction, the County urges rejection of the Union's final offer on this issue.

Turning to the subcontracting issue, the County notes that the existing language has been in the parties' collective bargaining agreements in substantially the same form for a long period of time. Moreover, during that period, there has in fact been no subcontracting which has affected members of this bargaining unit nor any controversies between the parties to test this language. In the absence of any reason to change and in the absence of any comparables covering County employees with agreements containing language like the Union's final offer, the County concludes that the arbitrator must rule in its favor.

Overall, therefore, the County believes that its offer is "clearly more reasonable" in this proceeding and "must be accepted."

#### DISCUSSION

It is true that during the early years of interest arbitration under MERA, some arbitrators demonstrated a reluctance to rule in favor of a Union's final offer which included a fair share provision, except in unusual circumstances. There are more recent examples of this reluctance; proposals for fair share provisions continue to be treated by some arbitrators as a "special" type of mandatory subject of bargaining, although instances are more difficult to find in recent years. While it is understandable that this Employer places heavy (if not exclusive) weight upon internal comparables where there are no bargaining units covered by a fair share provision, there is nothing in the statutory factors which justify special treatment of the subject of fair share provisions, including looking at internal comparables exclusively.

Looking at the Union's evidence of external comparables, (although greater specificity may be more desirable) it is clear that a significant number of surrounding counties have health care units (either public or private sector) which have union security provisions which go beyond the existing voluntary dues deductions the County presently provides for members of this bargaining unit. In addition, within the County, there is one school district and one unit of city employees which provide for fair share deductions for bargaining unit employees. Thus, there is strong external support for the Union's position on this issue. The Union's position is further strengthened because its final offer fair share language requires a fair share election administered by the WERC. Only if a majority voting in such an election favor the Union's fair share proposal will it become effective. This provision, voluntarily included by the Union, certainly goes a long way to respond to the Employer's arguments that a declining percentage of employees in the bargaining unit support the Union through

voluntary dues deductions. Thus, as to fair share, the arbitrator concludes that the Union's statutory factors' arguments are stronger than the County's, particularly in light of the close connection between employees in this bargaining unit and other health care units' employees in surrounding counties (in contrast to the less close connection with other County employees).

The Union's evidence relating to comparable subcontracting language is more troublesome. Even where the County has already agreed to some restrictions upon its right to contract work covered by other bargaining units, that language differs somewhat from the Union's proposed restrictions. For example, for the bargaining unit represented by United Professionals for Quality Health Care, the County has agreed to negotiate "the impact on bargaining unit employees of any subcontracting" and for the two Sheriff's Department units, the right to contract out cannot deprive current employees of "their opportunity to work their normal work week" (emphasis added).

At the undersigned's request, the Union submitted language from eight external "comparables" being relied upon by the Union. A scrutiny of contractual language relating to subcontracting contained in these additional documents indicates that restrictions upon subcontracting range all the way from a promise to "meet with the Union to discuss the layoff (resulting from subcontracting)" to a promise to "make every reasonable effort to find employment within the (Employer's) facility for employees displaced by virtue of subcontracting" to a recognition of the Employer's right to subcontract "provided that bargaining unit employees are not laid off or have their hours reduced as the result of the subcontract." Thus, there is a wide range of language restrictions. In light of this, while it is understandable that the Union desires to protect the jobs of bargaining unit members in the event that the trend toward privatization of county health care units in Wisconsin directly spreads to Shawano County, it has not submitted sufficient evidence under the statutory criteria governing this interest arbitration proceeding to support the specific language or restrictions contained in its final offer. Accordingly, if the subcontracting issue were the only issue in dispute before the undersigned, she concludes that the County's arguments would prevail based upon the record presented.

In view of the above conclusions which favor the Union's final offer on the fair share issue and the County's final offer on the subcontracting issue, the undersigned must choose which final offer package is more reasonable. The statutory criteria offer little guidance in making this determination under these circumstances. However, it appears relevant to note that this arbitration award is being issued well into the two year period covered by the tentative agreement between the parties and that if the parties follow their 1988 bargaining timetable, they will begin negotiations for a successor agreement in less than one year. It is not unreasonable to assume that such bargaining will occur "in the shadow of" the above discussions contained in this arbitration decision. If the County's final offer package is selected, the County will find it difficult to ignore a Union proposal for fair share based upon this arbitrator's above conclusions supporting the

Union's fair share proposal when the statutory factors governing an interest arbitration proceeding under MERA are applied. In such future negotiations, the Union will be aware of the specific need to document the reasons justifying any subcontracting language which it may propose at that time. In contrast, if the Union's subcontracting language (as well as fair share language) is forced upon the County because of this arbitration award, there will be little opportunity for the beneficial effects of the collective bargaining process to be experienced by both parties and the County may be indefinitely "stuck" with an important contractual limitation which has not yet received substantial support among internal or external comparables. For these reasons (that the "cost" of imposing the Union's final offer upon the County is greater in policy terms than the "cost" of imposing the County's final offer upon the Union), the undersigned believes that the County's whole package should be selected.

AWARD

Based upon the statutory criteria contained in Sec. 111.70(4)(cm)7, the evidence and arguments of the parties, and for the reasons discussed above, the arbitrator selects the final offer of the Employer and directs that it, along with all already agreed upon items, be incorporated into the parties' collective bargaining agreement for 1989 and 1990.

Madison, Wisconsin  
November 17, 1989

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June Miller Weisberger  
Arbitrator

ADD: FAIR SHARE

The Employer agrees that he will deduct from the earnings of all employees in the collective bargaining unit the amount of money certified by the Union as being the monthly dues uniformly required of all members and pay said amount to the Treasurer of the Union on or before the end of the month. Changes in the amount of dues to be deducted shall be certified by the Union thirty (30) days before the effective date of the change.

As to new employees, such deductions shall be made from the first paycheck following their first six (6) months of employment.

The Employer will provide the Union with a list of employees from whom such deductions are made with each monthly remittance to the Union.

The Union as the exclusive representative of all the employees, union and non-union, fairly and equally, and all employees in the unit will be required to pay, as provided in this section, their proportionate share of the costs of representation by the Union. No employee shall be required to join the Union, but membership shall be made available to all employees who apply consistent with the Union's constitution and bylaws. No employee shall be denied Union membership because of race, creed, color or sex.

The Parties agree that before the "Fair Share" provision can become effective there must be an election by the employees authorizing said provisions. The election for the "Fair Share" shall be conducted by the Wisconsin Employment Relations Commission under their (WERC) rules. A majority of those employees voting shall be needed to implement the "Fair Share" provision.

The Union shall indemnify and hold harmless the County from any and all claims of liability which may arise out of the Employer's compliance and/or administration of this procedure.

Amend Section 3, Vested Right Of Management:

The County Board, through the committee and administrator, shall have the sole right to contract for any work it chooses, said contracting shall not have the effect of displacing bargaining unit members, .....

Annex A