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EDWARD B. KRINSKY, ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

:

In the Matter of the Petition of :

:

FOREST COUNTY HIGHWAY EMPLOYEES :

LOCAL 1057, AFSCME, AFL-CIO : Case 54

: No. 41520

To Initiate Arbitration Between : INT/ARB-5120

Said Petitioner and : Decision No. 26025-A

:

FOREST COUNTY (HIGHWAY DEPARTMENT) :

:

Appearances:

Mr. Lawrence R. Heath, Labor Attorney, for the County.
Mr. Steve Hartmann, Staff Representative, AFSCME Council 40,
AFL-CIO, for the Union.

On August 17, 1989, the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator ". . . to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act, to resolve said impasse by selecting either the total final offer of . . ." the County or the Union.

A hearing was held at Crandon, Wisconsin, on August 31, 1989. At the hearing the parties had the opportunity to present testimony, evidence and arguments. No transcript of the proceedings was made. At the conclusion of the hearing the parties agreed to file briefs and reply briefs. The latter were exchanged by the arbitrator on December 11, 1989.

The parties have a dispute about two issues: wages and health insurance. With respect to the wage issue, the parties agree that there shall be wage increases on January 1, 1989, July 1, 1989, January 1, 1990 and July 1, 1990. On these dates the County proposes to increase wages: 2.5%, 2.0% based on 1988 wages, 2.5% and 2.0% based on 1989 wages. The Union proposes to increase wages 3%, 1%, 3% and 1%.

With respect to the health insurance issue, the final offers are as follows:

County:

2. Health Insurance: For calendar year 1989, the current plan with a \$50.00 deductible would remain in effect and the County would pay up to \$242.74 of

the family monthly premium and up to \$97.39 for the single monthly premium for the health insurance coverage which is in effect in calendar year 1989. 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.

Union:

- (3) Article 19 Section A revise as follows: "The Employer agrees to pay \$97.39 per month of the single monthly premium and \$242.74 per month of the family monthly premium (for 1990 the County shall pay any and all increase in the family and single premium with dollar amounts to be inserted into the contract via a Side Letter) of the present employee hospital and surgical group insurance plan carried with WPS which provides, in part, for a fifty dollar (\$50) major illness deductible (maximum of 3 per family). In the event of change in carrier there shall be no change or lowering of current benefits. The parties recognize that insurance deductibles may be renegotiated in a successor agreement. Effective upon signature of the successor agreement to the 1987-88 contract the parties shall implement the WPS-COMPARE Hospital Review.

Preliminary Matters

The first issue that must be dealt with is the County's submission of several "substitute exhibits" at the time it submitted its original brief to the arbitrator on October 18, 1989. The Union objects to the receipt of these substitute exhibits.

At the close of the arbitration hearing on August 31, 1989, the parties agreed that the record would be closed as of that date with certain exceptions. The Union would be permitted to present current cost of living figures. The County would be permitted to present new health insurance rates when it received them. The parties would have a period of two weeks, or until on or about September 14th, to appraise each other of errors in the exhibits. Given this explicit understanding, therefore, the submission of substitute exhibits going beyond these agreements would appear to be untimely. The arbitrator has examined the substitute exhibits before ruling about their exclusion from, or inclusion in, the record.

In Substitute Exhibit #7 the only changes are in rates for 1989 and 1990 shown for mechanics employed by Vilas County. The arbitrator notes that the new figures presented by the County are identical to those shown in Union exhibits. Therefore, even though the County's submission is untimely, the arbitrator will receive Substitute Exhibit #7 since all it does is make clear that the parties are now in agreement on those figures.

In Substitute Exhibit #28 the only change is a correction of two obviously reversed column headings in the original exhibit. There is no change in the data shown. Since this error is clearly of a clerical nature, the arbitrator will receive the exhibit.

Substitute County Exhibit 6 shows Shop/Construction Foreman wage rates for several counties, as does the original exhibit. However, for Oconto County, which already has wage rates shown, the substitute exhibit adds a new line entitled "Foreman" and shows rates for it. The Oconto County Agreements are in the Union's exhibits. Therefore, the rates shown are verifiable by the arbitrator. However, in its original presentation the County chose to use the Oconto County "Shop Foreman" rates for comparison purposes. It did not use the Class Grade VII Foremen rates. The arbitrator has no way of knowing whether this was a clerical oversight, or a subsequent realization by the County that perhaps it wanted to show an additional classification to support its arguments. Because this addition to the exhibits is not clearly correction of an error, and its submission is untimely, the arbitrator will not receive substitute County Exhibit 6.

Substitute County Exhibit 9, like the original Exhibit 9, shows private sector wage comparisons in Forest County. The Union objected to the original exhibit at the hearing because, among other things, it had no way to verify the data. The arbitrator will discuss the Union's objections further, below, if necessary. The substitute exhibit is not a correction of erroneous data, with one exception. The rates shown for Conner Industries for 1989 on the original exhibit are shown as 1988 rates on the substitute exhibit. The other changes on the substitute exhibit are the addition of a classification at one company, with accompanying wage rates, and the addition of some ten wage rates shown for other companies which appeared as blanks on the original exhibit. The arbitrator agrees with the Union that this is not correction of errors, but rather supplying additional data after the agreed upon close of the record. The arbitrator is willing to receive the error correction, noted above, for Conner Industries, even though it is untimely, but he will not receive the remainder of substitute County Exhibit 9, whether or not the information shown is correct.

Substitute County Exhibit 40, like the original, shows rates for health insurance programs at private companies in Forest County. At the hearing the Union objected to the original exhibit because, among other things, it had no way of verifying the rates. The County stated, and the arbitrator so noted when the original exhibit was presented, that the County would verify the rates with certified letters of some kind. The arbitrator indicated that the County could do so. The County included with the submission of the substitute exhibit, copies of the letters it sent to the companies seeking verification of the rates. Because the County indicated it would do so, and the arbitrator agreed, the arbitrator will receive substitute County Exhibit 40. The arbitrator will discuss the Union's objection to the entire exhibit further, below, if necessary.

The Union objects also to Addenda A, B and C attached to the County's brief. Addenda A and B are letters to the County Clerk from Malchow, the WPS Representative, dated September 28, 1989, and October 3, 1989. As mentioned above, the County had the arbitrator's approval at the hearing to submit the 1990 insurance rates, and these rates are contained in the letters from Malchow. The Union's objection to receipt of these Addenda is that the County did not forward the information to the Union prior to submission of the initial brief, but instead included the information there. While the arbitrator agrees that it would have been desirable and fair play for the County to submit the data right away, the fact remains that the parties had agreed to submit reply briefs, and did so, and thus the Union had ample time to incorporate the new cost data into its arguments. Thus, the arbitrator will receive Addenda A and B.

Addendum C is an October 10, 1989 letter from Malchow to the County concerning the possibility of splitting the County's health insurance group into two. That is not rate information. The County contends that Addendum C is a response to a question raised by the Union. The arbitrator recalls no such inquiry in his presence. It is new information, submitted in an untimely fashion. The arbitrator will not receive Addendum C into evidence.

Comparables

The parties are in agreement about which other counties are appropriate for comparison purposes: Florence, Langlade, Oconto, Oneida and Vilas. The County makes wage comparisons also with the Town of Wabeno and City of Crandon, units of government within the County. The Union objects. There is no need for the arbitrator to rule on these comparisons since, as explained below, they do not affect his analysis of the wage dispute one way or another. Also, the Union proposes that the arbitrator consider the tri-county Human Services Board of which Forest County is a part. The County objects. There is no need for the arbitrator to rule on this disagreement either because the inclusion or exclusion of this unit of government does not significantly affect the arbitrator's analysis of the parties' dispute.

Wages: Facts and Discussion

The parties agree that the wage issue in this case is secondary to the issue of health insurance, and the arbitrator concurs with that assessment. There is very little difference between the parties' wage proposals. Both are for two years, and both have an annual cost equal to a 3.5% increase. The difference is that the County's proposal raises the rates over the previous year by one-half a percent more than does the Union's proposal in each of two years.

The arbitrator has reviewed the final wage offers in light of the statutory criteria. Since, in relationship to the other counties used by the parties for comparisons, the County is poor economically and ranks last and is far below the median wage for each job classification in terms of cents per hour, the arbitrator must conclude that the County's wage increase proposal is very slightly preferable because it closes the gap slightly more than does the Union's. Since there is so little to choose from in distinguishing the parties' wage offers, however, the arbitrator has not done an analysis of the offers in this

decision specifically showing how each compares against each of the statutory criteria. There is no point to doing so, because the arbitrator is of the opinion that the award in this case should go to the party with the preferable final offer with respect to health insurance.

Health Insurance Issue: Facts and Discussion

The County and the Union exchanged initial proposals for a new Agreement on October 3, 1988. The County's proposal contained no reference to health insurance. The Union's proposal contained an item: "(2) Insurance: County to pay 100% of premium and add dental insurance on group."

Union representative Hartmann testified that the parties met on November 2nd at which time the County informed the Union that there was an increase in health premiums, and the County couldn't meet further until it got more cost data. The County had been informed of the higher premiums in October by WPS representative Malchow, but it had not yet shared this information with the Union.

On November 13th Hartmann wrote the following letter to County representative Heath:

This is to confirm our conversation of November 9. At that time we agreed to postpone the scheduled bargaining session between Local 1057 and Forest County.

Additionally, I stated that although Local 1057 was willing to allow Forest County to seek bids for health and dental insurance, Local 1057 does not believe that either under terms of the Collective Bargaining Agreement or the Counties' proposals that a change of health insurers or any other changes in health insurance (except for altering the premium paid by the County and adding dental insurance) are properly before the parties in bargaining. Therefore, while Local 1057 is willing to listen to such suggestions as the County may have, we feel no obligation to bargain any such changes.

I look forward to hearing from you to establish further bargaining dates.

On December 12th the County's Finance Committee met with representatives of WPS to discuss the County's insurance program.

At that meeting, the Finance Committee established the new (1989) insurance rates. The minutes of the meeting include the following:

Mr. Erlandson and Mr. Malchow of WPS met with the Committee and explained the insurance programs available for Forest County. They explained the advantages of staying with the partial self-funded program as it is very unlikely the county will have another bad year such as 1988. They also gave the County Clerk the figures to use for computing the rates for the retirees. They explained to the Committee the advantages of keeping the retirees in the program, because if the group goes under 100 participants, the insurance premiums will be much higher. There is a state law which gives breaks to groups of over 100 participants. After all the pros and cons were discussed, the County decided to stay with the partial self-funded program for another year. The program is to include the retirees. Motion . . . to have Personnel Administrator send a letter to all county personnel that after meeting with the insurance people, rates will be going up. The new rates are: Family - \$242.74; Single - \$97.39; 1 over 65 - \$73.25; 2 over 65 - \$146.50; and 1 over 65, 1 under 65 - \$179.50. Motion Carried.

Also on December 12th, Hartmann wrote to Heath as follows: "Local 1057 is prepared to bargain. Could you inform us if and when Forest County will be prepared to bargain." On December 14th, Heath forwarded Hartmann's letter to County Personnel Director Ziolkowski and asked him to ". . . review your calendar and that of the Personnel Committee and contact me concerning alternate available dates . . ."

Receiving no further response from the County, on December 22nd, Hartmann filed a petition for arbitration with the WERC. It indicated that after the initial exchange of proposals on October 3rd, there had been one negotiations meeting.

On January 3, 1989, Heath wrote to the WERC, acknowledged receipt of the petition, and stated:

. . . A delay occurred while the County sought proposals on health insurance for county employees. Mr. Hartmann did indicate the bargaining unit was ready to recommence negotiations. While the County remains willing to continue with such negotiations, delays in conveying available alternate negotiation dates occurred as a result of the Christmas and New Year holidays. I am communicating to Mr. Hartmann available dates for negotiations as the County does not believe

impasse has been reached. If the Union determines it wishes to proceed with arbitration pursuant to its Petition then, at a minimum, one or more mediation sessions should be scheduled.

The parties had a negotiations meeting on January 26, 1989, at the County's request. The County proposed a package to the Union which it rejected. The following day, Heath sent the WERC its "preliminary final offer," the same package presented on January 26th. The letter contained the following item.

County Response to Union Proposal #2: The County rejects establishment of dental insurance for the group and proposes that the current \$50.00 deductible remain in effect for 1989 and that the County pay 85% of the monthly family and single premiums (Note: The family premium for insurance in effect in 1989 is \$242.74 and the single premium is \$97.39) and, if a two year contract is negotiated, the insurance plan for 1990 would have a \$200.00 deductible (to a maximum of three for a family and the County would continue to pay 85% of the monthly family and single premiums for the monthly coverage in 1990.

On January 31, 1988, WERC staff member Mawhinney conducted an investigation and mediation and determined that the parties were deadlocked in their negotiations.

On February 8th, Malchow sent the following letter to County Personnel Administrator Ziolkowski:

The following information is to confirm our telephone conversation of February 7, 1989. The information is a comparison of cost between the counties current Special Service contract, WPS' Care Share program and the Care Share program with Health Care Compare.

The Care Share program is a comprehensive (sic) major medical contract with a \$200 deductible per person and a \$600 family aggregate deductible. Benefits are payable at 100% following the deductible. The deductible is waived for accidents. I've enclosed a Care Share Plan (CSP) brochure.

Health Care Compare is an inpatient-hospital pre-admission certification.

The following comparison are estimates for the 1989 contract period. I would suggest using an estimated increase of 25% for 1990 comparison purposes.

FOREST COUNTY #24481.0 & .1

	<u>SPECIAL SERVICE</u>	<u>CSP \$200/100%</u>	<u>CSP/WITH HEALTH CARE COMPARE</u>
ADMINISTRATIVE	12.55%	12.55%	13.30%
A.S.L. PER CONTRACT	\$ 2,791	\$ 2,582	\$ 2,530
EXPECTED CLAIMS	\$236,674	\$218,954	\$214,544
EXPECTED TOTAL COST	\$266,377	\$246,433	\$243,078
MONTHLY DEPOSIT			
Single	\$ 85.09	87.97	\$ 86.77
Family	\$ 236.51	\$ 218.80	\$ 215.82

The above amounts as they apply to CSP are approximate and not to be considered a firm proposal.

Malchow testified that he does not recall when he first discussed Care Share with the County. It was prior to February 8th. Malchow does not recall if it was prior to January 1st. He believes that the February 8th letter was the first documentation he sent of the Care Share Program and its rates.

On February 9th Ziolkowski sent Heath "a copy of the information from WPS Insurance comparing our present Special Service Contract with WPS' Care Share program and the Care Share program with Health Care Compare . . ." This information was not shared with the Union.

On February 10th, Hartmann sent the Union's final offer to WERC Mediator Mawhinney. It included the following items:

- (1) Revise Article 19 Section A to 100% (as a percent) payment of family and single insurance premiums
- (3) Revise Article 19 Section A to reflect a \$200/person deductible up to a \$600 maximum yearly deductible expense per family.

On February 14th Mawhinney exchanged the parties' final offers.

On February 15th Mawhinney sent the parties a "mediator's proposal" for their consideration. The parties had requested that Mawhinney make a proposal for settlement. The proposed package included the following health insurance provisions:

- (3) Health insurance -- for 1989, put the known dollar caps into the contract, of \$97.39 and \$242.74, along with the current \$50 deductible.

For 1990, the County will pay the increases in premiums, with the dollar amounts to be inserted in the contract. The Union agrees to a \$200 deductible (to a maximum of 3 per family but in no event more than a total of a \$600 outlay per family).

The Union and the County agree to meet and confer regarding any cost containment measures offered by the insurance carrier. The Union should agree to accept, after meeting and conferring, any new cost containment measure which does not result in additional expenses to employees. If the cost containment measure results in additional expenses to employees, the parties must negotiate over it.

. . .

In the event that this package is unacceptable to the parties, I would propose, as an alternative, that you consider the following package:

. . .

- (3) Health insurance -- dollar caps to equal 100% of premium in both years of the contract, with the same meet-and-confer requirement on new cost containment measures.
The deductible of \$200 - \$600 is to be paid first by the employee during the contract year of 1990, with the County to reimburse the employee at the end of the 1990 term, on a dollar-to-dollar

amount, with the employe responsible for paying first and bringing receipts to verify expenses. The County would be reimbursing employes only for expenses beyond the current deductible amounts in effect.

The advantages and disadvantages of these packages should be obvious to both of you. I struggled with the wage increases to compensate for the deductible, and in all good conscience and with complete objectivity, I believe the wage proposal to be a fair compromise for the major change in the deductible.

Please feel free to call me and discuss these proposals at any time. I shall continue to monitor your progress toward a settlement, unless you both indicate to me that you need to exchange final offers at another time.

On February 28th, Heath responded to Mawhinney as follows:

I have reviewed your letter of February 15, 1989 with the Forest County Personnel Committee. The County would agree to your first proposal subject to the understanding that some clarification is necessary with respect to your proposal on the cost containment measures under the insurance. For example, under the proposed insurance plan the employee or his/her physician is required to contact a professional service when elective surgery is contemplated. During that contact there is a brief review of the contemplated procedure. Under the cost containment plan, if such a call is not made and the employee simply proceeds with the elective surgery, I believe the benefits would be reduced. In such an instance the County would not be responsible for additional costs. I am enclosing a copy of the Care Share Plan which is offered by Wisconsin Physicians Service. Should you have any questions concerning this response, please contact me at your earliest convenience.

On March 7th, Mawhinney wrote to Hartmann as follows:

Please find enclosed a copy of the Care Share Plan and a copy of Larry Heath's letter to me regarding settlement in the Forest County Highway Department.

I understand from our conversation that your bargaining unit members were in agreement to my first proposal for a settlement, but that you are concerned about further changes in insurance. I don't know what your current contract language states and whether it would be necessary to amend it further to cover the contingency under the Care Share Plan for an employe who proceeds with elective surgery without contacting a professional service for a brief review of that elective procedure. Please bear in mind that this contact is a regular feature of such plans, and there are additional benefits provided in return for the cost containment measures.

Mawhinney wrote to Heath as follows on March 13th:

I sent Steve Hartmann a copy of the Care Share Plan materials, but upon a little investigation, I wonder if I sent the right materials. Steve called to question whether the Care Share Plan was a cost containment plan or a general policy. I checked with the Wisconsin Physicians' Service in Madison, and a representative there said that the Care Share is a regular major medical plan with no pre-admission requirements or cost containment measures. The WPS representative said that the WPS's cost containment plan is called 'Health Care Compare.'

Steve has indicated to me that the bargaining unit will accept my first proposal as is, without any modifications or further changes. Any additions to the insurance proposals, beyond what I have proposed for the deductible and arrangements for further cost containment measures, are unacceptable to the bargaining unit.

On March 17th Heath wrote to Mawhinney as follows:

Enclosed please find a copy of the explanation of the WPS Health Care COMPARE Hospital Review Program. I request that you present a copy of that program to Steve Hartmann and ask that he consider the same. As you indicated in previous correspondence, such cost containment programs are becoming (sic) common features of health insurance programs in an attempt to slow down the spiraling costs of health insurance coverage.

It also seems logical to me that the employees would have an interest in such program. This is not only because of the possibility that it will tend to stabilize health insurance costs, but also, should serve to reassure an employee, his or her family and their physician when a surgical procedure, for example, is being considered. No one likes to go under the knife and no one likes to stay in a hospital longer than necessary. This cost containment measure should help to reassure the employee and his/her physician that the contemplated surgical procedure is the correct one and, if it is not, that there might be a less drastic procedure available as an alternative.

Finally, in closing, if Mr. Hartmann advises you that the bargaining unit members do not want to have the Health Care COMPARE Hospital Review Program as a part of the health insurance benefit, then the County will accept your first package as Mr. Hartmann has indicated to you that the Forest County Highway Department employees will also accept.

On April 11th Hartmann sent Mawhinney the Union's final offer. Hartmann testified that what was sent was an error which was corrected within 24 hours and the Union then submitted another final offer.

The County submitted its final offer in a letter from Heath to Mawhinney on May 4, 1989. The Union submitted another final offer on May 9th. It is the May 4th and May 9th final offers which were certified by the WERC as the official final offers.

Forest County has paid the following health insurance rates to WPS in each calendar year:

WPS rates :
effective 1/1/85-12/31/85
Single \$ 75.56 Family \$195.29

WPS rates :
effective 1/1/86-12/31/86
Single \$ 75.56 Family \$195.29

WPS "rates": (Changed to a Cost-Plus Basis)
effective 1/1/87-12/31/87
Single \$ 67.31 Family \$173.97

WPS "rates":
effective 1/1/88-12/31/88
Single \$ 64.32 Family \$160.80

As mentioned above in October 1988, WPS notified the County that its rates for 1989 would increase. The rates established by WPS were \$95.09 single and \$236.51 family.

On a document provided to the Union by WPS representative Raymaker, he stated:

Note: Forest County's loss ratio-claims paid-premium received for 1988 was in excess of 200%. The normal WPS loss ratio for Forest County is approximately 83%. This marked deviation from the claims pattern set during the previous 3 years necessitated the WPS 41% increase in the County's aggregate stop loss coverage.

Malchow testified that because of the high, unanticipated 1988 WPS loss ratio, the County had to pay WPS \$50,013.55 in 1989 over and above the higher rates for 1989. These losses reflect the experience of all of those covered by the policy, not just the employees in this bargaining unit. No data were presented showing the claims experience of the bargaining unit. The higher premium rates are based on the 1988 experience and are designed so that there will not be a repeat of the 1988 loss ratio. Malchow testified that WPS is anticipating that for 1990, statewide, for groups of less than 100 employees, premiums will rise approximately 30-40%.

The County's health insurance proposal of higher deductibles, cost containment and a new insurance plan is a reaction to the substantial increase in health insurance premiums, plus a surcharge, in 1989 and the need to do something about it. The thrust of its proposal, it argues, is to get the employees to take more responsibility for minimizing health insurance premium increases by having the employees pay more of their health costs, in hopes that the use of unnecessary medical services will decrease and hence premiums will not be as high.

There are numerous changes proposed by the parties in the health insurance language. Each is examined in turn.

First is the proposed dollar premiums for 1989 and 1990. Both final offers contain the same dollar premiums. The County argues that its willingness to agree to pay the dollar-equivalent of the full cost of the health insurance premiums is conditioned upon the acceptance by the Union of the other changes it is seeking. That argument notwithstanding, the premiums for 1989 and 1990 are the same whichever final offer is chosen.

Second, both offers add the WPS-COMPARE Hospital Review Program which was not a part of the current Agreement. The Union makes the effective date of this addition, the date of "signature of the successor agreement to the 1987-88 contract . . ." The County's offer would implement the plan "for calendar year 1990." The County's offer states that it will "implement a plan equal to or better than the plan offered by WPS known as Compare Hospital Review." Since it is already 1990, and since the arbitrator does not know how, if at all, a program such a COMPARE Hospital Review could be applied retroactively, there would not seem to be much difference between the parties' offer on this point. The Union's offer has the advantage of certainty; that is, knowing that the plan in question is WPS-COMPARE, not "a plan equal to or better than . . . WPS . . . Compare . . ." The arbitrator does not have a strong preference for either final offer with respect to COMPARE, since the offers are essentially the same.

Third, there is language in the current Agreement and in the Union's final offer which states, "The parties recognize that insurance deductibles may be renegotiated in a successor agreement." That language is absent from the County's final offer. The Union argues that the County never presented this change in bargaining; that is, it never discussed with the Union the need to eliminate the language or the rationale for it. As a practical matter, the arbitrator is not sure that the presence or absence of the language makes a great deal of difference, but the Union's point is an important one. Language should not be changed unilaterally through final offers and arbitration without the parties first bargaining about it. There is nothing in the record which indicates that after receiving the County's final offer the Union sought to bargain about this language or that it asked the investigator to keep the investigation open until this matter could be discussed with the County. That fact notwithstanding, on this portion of the health care issue, the Union's final offer is favored by the arbitrator based on the bargaining history.

Fourth, there is language in the current Agreement and in the Union's final offer which states with respect to any change in insurance carrier, "In the event of a change in carrier, there shall be no change or lowering of current benefits." That language is not in the County's final offer. There is language in the County's offer which states, "The County would from time to time, have the right to change the insurance carrier if it elects to do so, providing benefits are equal to or better than the health insurance plans for the respective periods referred to above." The arbitrator is not persuaded that there is a great deal of difference between the Union's "there shall be no change or lowering of current benefits," and the County's "providing benefits equal to or better than . . ." The Union argues that the County never presented this change in bargaining; that is, it

never discussed with the Union the need to make the change or the rationale for it. For the same reasons indicated in the preceding paragraph, on this portion of the health insurance issue, the Union's final offer is favored by the arbitrator.

Fifth, the County's final offer has language not contained in the current Agreement or addressed in the Union's final offer: "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 said monthly premiums for the insurance coverage in effect after December 31, 1990." This language, which potentially imposes a cost on the employees of the bargaining unit for increased health insurance premiums after December 31, 1990, was never bargained or discussed by the County with the Union prior to its inclusion in the County's final offer. For the reasons stated above in the preceding two paragraphs, the Union's final offer is favored by the arbitrator on this aspect of the health insurance issue.

Sixth, the County proposes to change the insurance plan from the current WPS plan to "a health insurance plan equal to or better than the plan known as the Care Share plan offered by WPS . . ." The County proposes that this new plan be effective, "beginning with calendar year 1990." No change in the current plan is proposed by the Union.

From the outset of bargaining, through the arbitration procedure, the Union did not propose a change in the health insurance plan. The Union did agree to the County's suggestion that the parties adopt the COMPARE cost containment program.

The County's initial proposal in October 1988, did not propose a change in the health insurance plan. At their November 2nd bargaining session the County informed the Union that there was an increase in health insurance premiums and it needed time to consider its options. There was no mention of a change in health insurance plan at that meeting. The parties met in bargaining on January 26, 1989, and there was no mention by the County of a change in health insurance plan. The following day, the County submitted its preliminary final offer and there was no mention made of a change in health insurance plan. After meeting with the mediator the parties requested that she make a proposal for settlement. She did so in a letter to the parties on February 15, 1989, which contained two alternative proposals. In neither proposal was there a mention of a change in health insurance plan.

On February 28, 1989, County representative Heath responded to the mediator. The letter, quoted above, dealt at length in the first paragraph with the mediator's proposal on "cost containment measures under the insurance . . ." The paragraph

ended with Heath's "enclosing a copy of the Care Share Plan which is offered by Wisconsin Physicians Service." This was the first mention of Care Share. As was made clear subsequently, Care Share is not a cost containment program and thus Heath's reference to it as such was erroneous.

Heath's February 28th response is not construed by the arbitrator as a proposal by the County of Care Share as a new health insurance plan, only as an intent to make the cost containment feature more specific. This construction by the arbitrator is supported by the subsequent correspondence between Heath and the mediator.

After the mediator sent a copy of the Care Share plan to the Union, and Union representative Hartmann questioned whether it correctly represented a cost containment program, the mediator wrote to Heath on March 13th, quoted above, to get the matter straightened out. In particular, she noted, "I checked with the Wisconsin Physicians' Service in Madison, and a representative there said that the Care Share is a regular major medical plan with no pre-admission requirements or cost containment measures. The WPS representative said that the WPS's cost containment plan is called 'Health Care Compare'."

On March 17th Heath sent the COMPARE program to the mediator, for the Union's consideration. No mention of the Care Share plan or of any other change of health insurance plan was made in this response.

After that, final offers were submitted and certified. The next mention of the Care Share program was in the final offer submitted by the County. It was not discussed with the Union directly or through the mediator.

This review of the bargaining history makes it clear that the Union is correct that from October 1988, when bargaining began until the submission of the certified final offers in May 1989, there was no discussion and/or bargaining between the parties directly or through the mediator about changing the health insurance plan. There was discussion and adoption of a cost containment program, but not of a change in the basic insurance plan. With something as major as a change in health insurance plan, the arbitrator feels that contract language should not be changed unilaterally through final offers and arbitration without the parties first bargaining about it. Thus, for the reasons expressed earlier in discussion of the third, fourth and fifth items, the arbitrator favors the Union's position on this issue based on the bargaining history.

Seventh, the County proposes a change in deductibles. The current language provides for ". . . a fifty dollar (\$50.00 major illness deductible (maximum 3 per family) . . ." The Union's

final offer maintains the current language. The County's final offer contains ". . . 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)." This language is to be effective for calendar year 1990. The County's offer thus contains two changes; the amount of the deductible and a change from a major medical deductible to a first dollar deductible. These changes were contained in the County's preliminary final offer on January 27, 1989. In its final offer of February 10, 1989, the Union accepted this County proposal with respect to deductibles, although in a later submission of final offers it reverted to the current language.

The parties' briefs contain a great deal of argument with respect to the likely effect on health insurance premiums of raising the deductibles so that greater costs of medical services will be borne by the employees than is presently the case. For the sake of brevity, the arbitrator is not going to repeat those lengthy arguments here.

At the arbitration hearing, the County called WPS representative, Malchow, as a witness. He testified that the County's proposed Care Share plan was likely to contain costs ". . . because of the proposed \$200 deductible." He testified that noticeable cost containment would depend upon having the \$200 deductible, and that the current WPS plan and Care Share have the same premiums whether there is a \$50 or \$100 deductible. On cross-examination Malchow testified that he had no evidence of such cost containment achievement with him, and his testimony was based upon advice from WPS' actuary. He testified that when deductibles are raised from \$50 to \$200 there is a reduction in premiums. He knew of no evidence that this reduction was for any reason other than an assumption that employees would not use medical services as much with the higher deductibles.

Malchow acknowledged that in the period 1985-88 the health insurance rates for the County's employees were quite low relative to other groups even though there was a \$50 deductible in effect. (Those rates are quoted above.) Malchow testified that he agreed with the last sentence of Raymaker's letter (quoted above), that "This (1988) marked deviation from the claims pattern set during the previous 3 years necessitated the WPS 41% increase in the County's aggregate stop loss coverage." He acknowledged that up to 1988 the \$50 deductible appeared not to have been abused by the County's employees and 1988 was a bad year, an aberration.

Malchow testified that he recommends greater cost sharing to his clients. He thinks that this is a widely believed concept in the industry as a way to hold down health insurance costs. The County's exhibits include numerous articles containing similar statements by business and insurance experts.

At the time of the arbitration hearing, Malchow did not know what the County's rates would be for 1990. As mentioned previously, he testified that around the State, groups of 100 or fewer employees were experiencing rate increases in the 30-40% range. On cross-examination he acknowledged that such rate increases were happening also with groups that had already gone to a \$200 deductible. He testified that he thought that the increase in rates would be still higher for those with a \$50 deductible.

Over the objections of the Union at the arbitration hearing, the arbitrator permitted the County to submit the 1990 health insurance rates when it received them from WPS. These data were then submitted by the County in its original brief. The rates show that under the current plan, the 1989 family rate is \$236.51 and for 1990 it will increase to \$322.53, or an increase of 36.4%. The 1990 rate for the County's proposed Care Share plan, with the COMPARE plan included is \$306.44, or an increase of 29.6% over the 1989 current plan. Had the Care Share plan with COMPARE been in effect in 1989, the rate would have been \$215.82 per month, and thus the increase to the 1990 rate (\$306.44) would have been 42%.

These figures show that if the County's proposal were implemented for 1990 its health insurance costs would go up less under its proposal (29.6%) than under the Union's proposal (36.4%). The increase in the Union's proposal may be overstated somewhat because the rates quoted for the current plan do not include the COMPARE cost containment program which is part of both final offers.

If one looks at the savings to the County for 1990 under its proposal in dollar terms, the savings in family premiums (which is the insurance coverage for most of the bargaining unit) is (\$322.53 minus 306.44) \$16.09 per month per employee or (x 12) 193.08 per year (x 22 employees) or a total of \$4,247.76 for the family coverage of the bargaining unit.

One cannot know what future premiums will be under the current plan or Care Share. Given the fact that the Care Share rate increase between 1989 and 1990 (42%) was greater than the increase in the parties' current plan (36.4%) during that period, the arbitrator is not confident that a change to Care Share will produce the savings that the County is seeking.

In terms of the deductibles themselves, the cost to the employees for a family of three for 1990 increases either from nothing (if there is no major medical usage) or from a maximum of \$150 (if there is major medical usage by three family members) under the Union's final offer, to up to \$600 under the County's final offer. Under the Union's final offer the potential costs

to employees is much greater since the current arrangements have a 20% co-payment requirement for the first \$25,000 of major medical expenses which is eliminated under the County's final offer. Thus, under the County's final offer, employees will pay higher deductibles, but employees with major medical expenses will probably pay much less than under the current plan.

The County argues that this cost burden is not unreasonable or disproportionate, especially because the County is continuing to pay the full premium cost increases and is removing the employees' potential burden of co-payments for major medical expenses. The County argues that under the Union's final offer, the burden will be assumed disproportionately by the County by its agreement to pay the full premium costs for 1989 and 1990 in addition to its absorbing the full cost of the 1988 stop-loss surcharge, and also because under the Union's final offer the County won't enjoy savings in future premiums resulting from the implementation of higher deductibles.

The Union's position is basically that it does not view it as appropriate to increase the costs to the bargaining unit through higher deductibles where it is not clear that there will be continued lowered premiums in the future.

While the amount of cost savings in terms of lower premiums in the future through having higher deductibles cannot be accurately predicted, there appears to be the probability that some such savings will be produced, and the arbitrator is sympathetic to the County's arguments in this regard. He notes also that at one point in the final offer process, in an earlier exchange of final offers, the Union included the higher deductibles in its final offer. Since the parties differ substantially about deductibles, the arbitrator will withhold any judgments about the issue until the statutory factors are applied to the issue.

Statutory Factors:

In analyzing which of the two final offers is preferred, the arbitrator must weigh the statutory factors for decision-making. In this dispute there is no issue with respect to the following factors: (a) lawful authority of the employer; (b) stipulations of the parties; (c) that portion of (c) which deals with the financial ability of the unit of government to meet the costs of any proposed settlement. Also, there is no need for the arbitrator to consider factor (i), changes in circumstances during the pendency of the arbitration. (As mentioned earlier, the parties agreed upon what additional materials could be presented, and the arbitrator has discussed and ruled on their disagreements, above.)

The arbitrator will consider the other factors in turn, below.

The first factor is that part of (c) dealing with "the interests and welfare of the public." The County, through a series of exhibits not described in this decision, has demonstrated clearly that Forest County is poor economically in relationship both to the comparable counties and to counties in the State. As such, it is in the interests and welfare of the public to minimize the cost of the new Agreement. As indicated above, however, there is a very small difference between the parties' final offers in wages. There is a \$4,200 difference in the cost of family health insurance during the term of the Agreement. There is mainly the County's hope that by having a new insurance arrangement, if its final offer is implemented, it will enjoy future health insurance savings. Since one cannot predict the future of such changes with assurance, and since there is relatively little difference between the final offers for 1989 and 1990, the arbitrator has no sound basis for favoring one final offer more than the other during the term of the proposed Agreement based upon the interests and welfare of the public factor. If one looks beyond 1990, perhaps there is more advantage to the public, of unknown magnitude, if the County's final offer is implemented.

Factor (d) requires the arbitrator to consider comparisons of the wages, hours and conditions of employment of the employees in this dispute, with those of "other employees performing similar services." The most appropriate comparisons for this purpose are the highway employees in the agreed-upon counties: Florence, Langlade, Oconto, Oneida and Vilas. As mentioned previously, there is little to choose from on the wage issue. The final offers are almost the same, and the County's wages are low compared to what is paid in these other counties. Since the County's offer is very slightly higher on wages and closes the year-end gaps by a few cents more than the Union's does, its offer is preferred for wages.

With respect to health insurance, the median dollar amount of total family health insurance premiums paid in these other counties in 1989 is \$270 per month. The 1989 premium in both final offers for 1989 is some \$27 below the median. If just the dollars paid by the counties as their shares of the premium are considered, the median in 1989 for those counties is \$248. The County's 1989 share is \$243. Thus, there is nothing about the relative position of the County in relationship to the comparison counties which indicates that the County is at a relative disadvantage with respect to health insurance premiums. Also, since the premiums paid in both final offers are the same, there is nothing for the arbitrator to choose from using this measure.

In 1989 these comparison counties had a median family maximum deductible of \$300 in their health insurance plans and a majority of them had major medical deductibles, not first dollar deductibles. Both final offers for 1989 have a maximum \$150 deductible. Thus, there is some justification in the comparisons for a higher deductible. However, the County's proposed 1990 deductible of a \$600 maximum would put the County \$300 above the median of the comparison counties. In the arbitrator's opinion these comparisons favor the Union's final offer.

In 1989, a majority (3 of 5) of the comparison counties had their deductibles apply to major medical expenses (as does the County's in the current Agreement) rather than first dollar coverage. Thus, the comparisons would continue to favor the Union's final offer which maintains major medical deductibles rather than deductibles for first dollar coverage.

In 1989, a majority (3 of 5) of the comparison counties had cost containment programs in effect. Since both final offers in this dispute contain a cost containment plan, neither final offer is preferred based on this measure.

Only one (or perhaps two - the data conflict) of the other counties pays 100% of the family health premium. The median is 90-92%. However, both final offers would have the County continue to pay the full cost of the insurance for 1989 and 1990, so there is no preference between them on that measure.

Factor (e) requires the arbitrator to consider comparisons of the wages, hours and conditions of employment of the employees in this dispute with those "of other employees generally in public employment in the same community and in comparable communities."

With regard to the same community, the County bargains with two other bargaining units. Its proposed health insurance changes are not in effect in either unit. In the Sheriffs' unit, a voluntary Consent Award was reached in November 1988 for 1988 and 1989 which made no changes in the structure of the health insurance package. Of course no such change is proposed in the current dispute until 1990, so the Sheriffs' settlement for 1988 and 1989 is not significant to the current dispute. In the Courthouse unit, the health insurance issue is in arbitration, just as it is in this case.

In the arbitrator's opinion, the comparisons with the other units of the County with respect to health insurance do not result in a clear preference for either party's final offer more than the other, since nothing is settled for 1990 either voluntarily or through arbitration. Since, however, at the time of this writing what exists in these units is the current Agreement's health insurance arrangements, which the Union maintains in its final offer, there is more support for the Union's offer than for the County's in the internal comparisons.

Factor (f) requires the arbitrator to consider comparisons of the wages, hours and conditions of employment of the employees in this dispute, with those of "other employees in private employment in the same community and in comparable communities." The County has presented the only private sector data, and it has supplied figures for five major employers which have facilities in Forest County. The County alleges that at least some of their employees perform work which is similar enough to the County's employees to regard them as being drawn from the same labor market.

The Union objects, as noted above, to the fact that the data supplied by these companies is in the form of signed letters. No one from any company appeared to be cross-examined, and none of the documents from these companies, setting forth these schedules, if they exist, were presented. There is also no evidence provided to support the County's assertion that these employees either have similar duties or that they are drawn from the same labor market as County employees, although that may in fact be the case.

The arbitrator agreed to receive the evidence. He notes that for 1989 the health insurance premium that the County is paying is higher than what is paid in all but one of these companies. The deductible (maximum of \$150) is below the median (\$250) for these companies. Also, in three of the five companies, employees pay a share of the premiums. Assuming, for argument's sake, that these figures are accurate, they are not persuasive. While they indicate perhaps that the County is a more generous employer than these companies, the fact remains that the parties here are not in dispute about the size of the premium, or who is to pay it, for 1989. While the comparisons provide some justification for the County's raising its deductible, the County is not proposing to do so in 1989, and if the numbers remained unchanged in 1990, the County's proposed \$600 maximum deductible would be the highest among these private sector comparisons. Thus, the arbitrator does not favor either final offer based upon the comparisons with the private sector.

Factor (g) requires the arbitrator to consider "the average consumer prices for goods and services, commonly known as the cost-of-living." The County has supplied CPI figures that show that for the year preceding the to-be-negotiated 1989-90 agreement, the All Urban Consumers CPI index in December 1988 was 4.4% higher than in December 1987 for all items. The change was 4.3% in the North Central Region, and 2.8% in non-metropolitan areas of the North Central Region (less than 50,000 population).

The parties have not provided the arbitrator with the total percentage costs of their respective final offers. In terms of increased costs, both final offers clearly exceed the change in

the cost of living. Since the cost of the County's final offer in 1990 is slightly less than the Union's, the arbitrator has a slight preference for the County's final offer based upon the cost-of-living factor.

Factor (h) deals with "the overall compensation" of the employees. The only comprehensive compensation data brought to the arbitrator's attention in this dispute are data on wages and health insurance. Thus, the arbitrator has no basis for considering other aspects of overall compensation. In any event, as discussed above, there is so little difference in cost between the respective final offers for 1989 and 1990 that the overall compensation factor would not be a persuasive one.

Factor (j) is "such other factors not confined to the foregoing which are normally or traditionally taken into consideration . . . in voluntary collective bargaining, mediation . . . (and) arbitration . . ." With respect to this factor, the arbitrator strongly favors the Union's proposal. The County included changes in its final offer which it did not convey to the Union at the bargaining table directly, or when the parties were in mediation. This is true with respect to several language changes discussed above, but much more importantly it is true with respect to the County's proposed change of the insurance plan. The arbitrator knows of no reason why the proposed change to Care Share could not have been discussed with the Union during mediation. The Union did not, apparently, protest to the WERC about these changes as it surely could have done, although possibly at a cost of further delaying these proceedings. The Union's failure to do so notwithstanding, it is the arbitrator's opinion that it is destructive of the bargaining process and the possibility of voluntary settlement for either party to place substantial changes into final offers where they have not been discussed and bargained previously.

The statute requires that the arbitrator select the final offer of one party in its entirety. As discussed above, the parties and the arbitrator are in agreement that there is no significant difference between the parties' wage offers, and it is really the health insurance issue which must govern this dispute.

Generally speaking, the arbitrator favors measures which the parties can take to contain health insurance costs. They have agreed upon one such measure in this case, the COMPARE plan. It may be the case that the County's proposal of a new health insurance plan, coupled with higher deductibles, if implemented, would reduce the cost of premiums in the future. One can only speculate about that. During the 1990 contract year the savings in premiums under the County's final offer would be \$4,200. However, employees in the bargaining unit would probably pay at

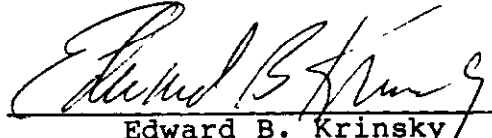
least that much under the County's final offer in medical bills because of the higher deductibles. Moreover, the County's proposed change to \$200 (maximum \$600) deductibles is not supported by the comparisons with the public or private sector. Thus, it is not clear that there is justification in 1990 for the County's move away from the current arrangements, which the Union's offer maintains. When this is coupled with the bargaining history, the arbitrator believes that there is greater justification for the Union's final offer than for the County's.

Based upon the above facts and discussion, the arbitrator makes the following

AWARD

The Union's final offer is selected.

Dated at Madison, Wisconsin, this 5th day of January, 1990.



Edward B. Krinsky
Arbitrator