STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In The Matter of an Interest Arbitration between	:	
CRAWFORD COUNTY HIGHWAY DEPARTMENT EMPLOYEES LOCAL 2769, AFSCME, AFL-CIO and	:	Case 52 No. 43734 INT/ARB-5624 Decision No. 26529-A
CRAWFORD COUNTY (HIGHWAY DEPARTMENT)	:	

Appearances:

Dennis M. White, Attorney, Brennan, Steil, Basting & MacDougall, S.C., appearing on behalf of Crawford County.

Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO appearing on behalf of Crawford County Highway Department Employees Local 2769, AFSCME, AFL-CIO.

Arbitration Award

On July 12, 1990 the Wisconsin Employment Relations Commission, pursuant to 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act appointed the undersigned as Arbitrator in the matter of a dispute existing between the Crawford County Highway Department Employees Local 2769, AFSCME, AFL-CIO, hereafter referred to as the Union, and Crawford County (Highway Department), hereafter referred to as the County. On October 3, 1990 a hearing was held in Prairie du Chien, Wisconsin at which time both parties were present and afforded full opportunity to give evidence and argument. No transcript of the hearing was made. Post hearing briefs were exchanged through the Arbitrator on November 13, 1990.

Background

The County and the Union have been parties to a collective agreement the terms of which expired on December 31, 1989. On September 28, 1989 the parties exchanged initial proposals on matters to be included in a new collective bargaining agreement. Thereafter, the parties met on two occasions and failing to reach an accord, the Union filed a petition on January 17, 1990 with the Wisconsin Employment Relations Commission to initiate Arbitration. After duly investigating the dispute, the WERC certified on June 26, 1990 that the parties were deadlocked and that an impasse existed.

Final Offers of the Parties

The County's Final Offer

> "All provisions of the prior collective bargaining agreement will remain in effect except as noted herein or as set forth in the stipulations of the parties."

1. Wages: (Appendix A)

   a. Effective January 1, 1990, wage rates in the Appendix will be increased 4.5% across the board, except that Range 5 rates will remain unchanged.

   b. Effective January 1, 1991, wage rates in the Appendix will be increased 4.5% across the board over 1990 rates, except that Range 5 rates will remain unchanged.

2. Health Insurance

   a. Amend Section 29.01 to provide that, effective January 1, 1990, the County will pay 100% of the premium for single employees and shall pay 95% of the premium for one family plan for employees with dependent; effective January 1, 1991 the County will pay 100% of the premium for single

employees and will pay 95% of the premium for the family plan for employees with dependents, provided that the County contribution for the family plan premium shall not exceed $329 per month in 1991. Also amend Section 29.01 to provide that health insurance will not be provided to part time employees who are regularly scheduled to work an average of less than twenty hours per week.

b. Amend Section 14.03 to provide that in the event of an employee's illness which prevents the employee from working, the County will not be obligated to pay its share of the employee's health insurance premium after the employee has been absent from work for six (6) continuous months. The County will continue to pay its share of the health insurance premiums for those employees who are on workers' compensation leave.

3. Employees shall pay the cost of commercial drivers' licenses.

Union's Final Offer

1. Wages: Effective 1/1/90 - 4% increase A T B based on the average wage.

   Effective 1/1/91 - 4 1/2% increase A T B based on the average wage. (Including the 1990 4% increase).

   Above wage increases exclude Range 5.

2. Stipulation Dated June 11, 1990.

3. All items not addressed in the Union's final offer to remain as in the 1988-1989 agreement between the parties.

4. Employer to pay for the costs of employee commercial drivers' licenses.

Statutory Criteria

As set forth in Wis. Stats. 111.70(4)(cm)7, the parties and the Arbitrator are to consider the following criteria:

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 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 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 pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

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

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

Positions of the Parties

The Employer's Position

The Employer acknowledges that "the underlying dispute between the parties centers on the payment of health insurance for family coverage." It submits further that health insurance costs have escalated so dramatically "that it is only equitable

to have employees pay a portion if they want to keep their cadillac health plan." In support of this position the County offers the following points.

1. The county needs to have co-payments. Here the Employer recognizes that any change in the status quo requires justification. This justification, argues the County, is provided by the increase in cost to the County of health insurance premiums since the requirement that it pay 100% of these premiums occurred in 1984. The premium for family coverage which was $172 per month in 1985 had jumped to $320.72 by 1990. On top of this increase, the Employer also contends that it has paid wage increases above the Consumer Price Index (CPI) for every year except 1987. Continued payment of such increases will push its ranking in net pay virtually to the top of its comparables. This, says the County is not justified by its population or property values.

In a related vein, the County points to its position among the comparables it cites asserting a need to keep its wages in line and to bring down its health insurance costs. Here, its analysis of wage and health coast data placed in evidence suggests that even with 95% family coverage cost the Employer would still rank higher than five of the comparable counties. Moreover, the $329 cap it also proposes again would leave it in line, in terms of actual dollars paid on health insurance, with its comparables. According to the County,

> "the current system into which the County is locked will soon produce the anomaly of the poorest county paying the

first or second highest pay -- a result which can not be justified."

The County characterizes the 4.5% wage increases offered in 1990 and 1991 as higher than that achieved in many other settlements in the area and as such this is a necessary quid pro quo to "buy out" the existing language on health insurance.

Despite all of its efforts to find a way out of the dilemma of rising health care costs, the County maintains that the Union has not cooperated in a cost reduction program. Here the County cites as supportive of its position the award of Arbitrator Robert Reynolds, Jr. (Monroe County Highway Employees Local 2740, WERC Dec. No. 26166-A, 1990).

2. Balancing the Statutory Criteria would favor the County's Offer. As a second major category of arguments in its favor the County next turns to the criteria provided in Section 111.70 (4)(cm)(7) Wis. Stats. For example, in terms of the stipulations of the parties, the Employer contends that the Union's unwillingness to accept lesser health insurance benefits is in the Employer's favor. Second, the County points to the fact that Crawford County is relatively poor and yet has one of the highest tax rates. As a matter of the interests and welfare of the public as well as its ability to pay this criterion is seen to weigh in the Employer's favor. Third, as the Employer has previously argued, it concludes that whether by private sector, state employee or local government comparisons, its offer is more reasonable. Fourth, as judged by the changes in the cost of living criterion, the Employer contends that its offer, even when

calculated with the co-payment deducted still exceeds the relevant changes in the CPI.

Finally, under the statutory criterion of "Other Factors Taken into Consideration" the County takes up the remaining items in its offer. Thus, it contends that, since there are no part time employees in this bargaining unit, the proposal to eliminate health insurance for part-time employees will have no impact. Similarly, it takes the same position on its proposal to pay only for six months, the health insurance for someone ill. Finally, it argues that the Union has shown no need for the County to pay "the minimal fee for a commercial driver's license."

The Union's Position

Health insurance

1. The County has not offered a quid pro quo to support its demand that the insurance language of the contract be changed. Thus, says the Union, if you deduct the cost to the employees of the health insurance co-payment from the County's wage offer the remainder results in an average wage increase of $51.81 per month or a net increase of 3.4%. Quoting Arbitrator Gil Vernon, (Buffalo County, INT/ARB-4749, Feb. 24, 1989) that a significant change required a meaningful quid pro quo the Union herein asserts that the Employer fails this test.

2. The Union contends that the Employer's proposal results in a greater benefit to itself than to the employees.

3. Requiring a health insurance co-payment by the employees is

merely cost shifting that would not necessarily reduce future premiums. To support this argument the Union relies on the opinions of Arbitrators James Stern (Random Lake School District, Dec. No. 26390-A, 10/3/90) and Daniel Nielsen (Manitowoc School District, Dec. No. 26263-A, 6/27/90). Moreover, again citing Arbitrator Nielsen in his Manitowoc decision, the Union contends that the status quo would be changed significantly in 1991 by the cap of $329 per month on the Employer's health care cost pick up. This change would shift the burden of negotiating premium increases on to the Union and make the increase in premiums above $329 the responsibility of the employees.

4. The Union argues that it would be more beneficial to both parties if the compensation increase were paid in health insurance rather than wages. This conclusion rests on the assumption that no liability for unemployment taxes, income taxes or retirement cost would thus be incurred.

5. The County's offer, if accepted, would be retroactive to 1/1/90 and cause a deduction from back pay.

6. The union's offer on health insurance more nearly matches the comparables. In this regard the Union puts forward the City of Prairie du Chien and Lafayette County, both of which pay 100% of the cost of premiums, Monroe County which caps only the amount that employees pay, and except for Richland County other comparables do not support a cap of $329 per month.

Wages

1. When compared to both the changes in the cost of living and

the wage increases of comparable bargaining units, the County's wage offer falls short. The Union argues here that the Employer's offer of 4.5% for 1990 would be subject to taxation and then 1.1% would be deducted for the employees' share of the health insurance premium. This would leave 3.4% which the Union maintains is less than changes either in the CPI or comparable wages during the same time period. Thus, says the Union, its offer of 4% is more reasonable.

2. As for the 1991 wage increase although both offer 4.5% the Union asserts again that based on the Employer's deduction for the co-payment and the cap the net increase from the Employer's wage offer would be exceeded by both the CPI and the comparables.

3. The Union also argues that the agricultural economy in Crawford County has improved which presumably would thereby increase the County's ability to pay.

4. The Union notes that its members endured a wage freeze in 1987.

5. Finally, the Union disputes the relevance of any issues raised by the Employer with regard to over time payments to the bargaining unit or the possibility of a Crawford County sales tax.

Health Insurance for Part-time Employees and Employees Ill for Six Months

1. According to the Union, there is trouble with the language for both these items as proposed by the Employer. For example, the Union points to the phrase, "regularly scheduled" and

questions the application of this language to situations in which an employee regularly "works" 20 hours per week but is scheduled for less than 20 hours. Similar questions are raised with regard to the words "will be provided" and to the date at which the six month period would commence and/or end.

2. The Union also maintains that the health insurance changes sought by the Employer mentioned above also constitute significant alterations in the status quo for which there is no quid pro quo offered. There are no part timers and no history of employees who illness has carried beyond six months. Consequently, argues the Union, there is therefore no issue with these proposed changes and no demonstration by the County that the current contract language needs modification.

Commercial Driver's License Proposal

For this issue the Union merely says that the matter of a commercial driver's license is a condition of employment and therefore should be paid by the County.

Discussion

The parties are at odds over three sets of issues by which the successor agreement to their existing contract would be modified: health insurance; wages; and payment for required commercial driver's licenses. The parties are in agreement that the dispute centers on the County's proposal to make a number of changes in the current health plan. The dispute over the respective wage offers is also important although the actual differences between the parties' positions is relatively small.

That is, the Union's demand is for increases of 4.0% and 4.5% for 1990 and 1991 and the Employer has offered 4.5% for each of the two years in question. The larger Employer wage offer for 1990 constitutes an additional amount to "buy out" the changes it seeks in the health insurance plan.

The issue of the responsibility for payment of the commercial driver's license is of insufficient weight to affect the outcome of this dispute. Moreover, the parties have provided the arbitrator with little evidence or argument by which the reasonableness of the respective positions can appropriately be judged. Therefore, this specific issue will not be considered further herein.

The Comparables to be Applied

The parties are in agreement that the following counties are appropriate benchmarks: Iowa, Juneau, Lafayette, Monroe, Richland and Vernon. In addition, the Employer would also include Grant County plus the City of Prairie du Chien. The Union points out that Grant is nonunion and therefore should not be included. With regard to Prairie du Chien, the city's contract's were still in interest arbitration at the time the hearing on the instant dispute was held.

While Grant County is contiguous to Crawford it's nonunion status is sufficient to rule out what would otherwise constitute an appropriate benchmark. The City of Prairie du Chien, on the other hand, will be considered as a secondary benchmark should become necessary. In sum, the Arbitrator's primary set of

comparables will consist of the five counties proposed by the Union.

The Health Insurance Dispute

The Parties' dispute over the Employer's effort to modify the current health insurance language revolves around four interrelated proposals: (1), to require that Employer would pay 95% of family coverage beginning in 1990; (2), the amount paid by the County for family coverage premiums would not exceed $329 per month beginning in 1991; (3), health insurance would not be provided to part time employees scheduled to work less than twenty hours per week; and (4), the County would not be required to pay its share of the health insurance premiums for an employee continuously absent from work for reasons of illness for six months.

The Parties' dispute over health insurance is rooted in several events which occurred in 1984. Following an interest arbitration decision which awarded the Crawford County Sheriff's bargaining unit 100% employer paid health insurance the County negotiated similar coverage with its highway department employees. Apparently in exchange for 100% employer pickup of the premium the Union accepted the County's wage offer. At that time the County was paying 85% of the family premium.

The evidence also shows that in each year since 1984 the cost of health insurance premiums has increased. Thus, a family coverage premium that was $172.40 in 1985 had reached $320.72 by 1990; an increase of 86%. And in fact, the percent increase from

1988 to 1989 was 29.5% and 14.2% the following year.

The County accepts that, as the party seeking to change the contractual status quo, it bears the burden of proving the necessity to do so. In support of this position it has raised a twofold argument, citing first the increasing costs of health insurance that it now shoulders alone and second, the wage offer it believes sufficient to constitute a buyout of the existing language.

Let us examine the first part of the County's argument. The increasing cost of health insurance is, of course, not limited to Crawford County. Whether private or public sector employers, all have been unable to stem the rising tide of premium costs. This is despite the continuing search by a variety of means to brake the increases. This is amply illustrated in County Exhibit 26 in which comparable county employers have adopted HMO's, standard plans, self funding, employee choice of plans, co-payments, deductibles, and maximum dollar coverage, among others. Yet the dollar amounts paid for family coverage, for the most part, are quite similar for all the counties in the comparison set.

From the same County Exhibit 26 we also see that in comparison to Crawford's increase of 14.2% in 1990 every other county except Lafayette had greater premium cost increases. These ranged from 16.3% for Richland County to 25% for Monroe. Apparently, Crawford County is doing no worse than its sister counties whatever the approach they may be taking and, perhaps in 1990, Crawford may have done even better.

The above conclusion is reinforced when one notes from County Exhibit 26 that the dollar amount for family coverage paid by the County in 1990 was exceeded in Richland, Vernon, and Lafayette counties. It was also exceeded by two of the three plans provided by Iowa County and by one of the three plans available from Juneau. Monroe county, at $318.72 was within two dollars. One might therefore conclude from these data that despite what the Employer refers to as a "cadillac" health plan Crawford County is not out of line with its comparables. Again, it may even be doing a somewhat better job of controlling its premium costs.

The Employer has also stressed that it is a poor county for whom the current health plan is an unreasonable economic burden. If such a conclusion is to be reached here, however, it must be supported in several ways. First, the County needs to demonstrate more completely than it has that the financial circumstances under which the current plan was voluntarily accepted five years ago are significantly different today. While premium costs have increased, there is no evidence to show that they have increased more for Crawford County than for other Counties. Second, there is also no evidence to indicate that Crawford County's economic position is worse now than five years ago either in an absolute or relative terms.

Third, cost shifting approaches as typified by the County's proposal to reduce it's premium pick up and to cap its 1991 cost have had little success in holding down health care cost

escalation. Cynthia Hosay, vice president of the Martin E. Segal Co., characterizes these approaches as a "quick fix" which provide only temporary relief.(County Exhibit 18). Thus, while the Employer may in fact need better control of its health care costs it is incumbent for the County to show, which it has not, that its proposal, in fact, will accomplish this.

Beyond the County's contention that the change in the health plan status quo is justified by economic circumstances, the County has also asserted that it's wage offer is an adequate buyout. To judge this assertion, we need to consider several items including first, the nature of the Union's investment in the current language and second, the value of the Employer's offer. In other words, has the Employer offered a fair and reasonable price for what he is attempting to buy?

Without placing a precise monetary value on the status quo, it is clear that the Union has a substantial investment in the current language. For example, employees opting for family coverage, under the Employer's offer, would pay $192.43 in 1991. They pay nothing currently. In 1991, the cap of $329 would further increase the employees's cost. While the 1991 increase is unknown at this point a reasonable estimate would be 13.5%. This figure has been derived by calculating the average annual increase in health insurance premiums incurred by the County since 1985. Assuming an increase of this magnitude, the family premium would rise to about $364 for 1991. If the cap of $329 is deducted the resulting $35 would make the effective employee

pickup 10% and the yearly cost $420. The existence of the cap, thus, could raise the cost the employees' share of the health insurance premium very substantially in 1991.

The cap, as the union argues, will also shift the negotiating burden to the Union. The status quo places the Union in an advantageous bargaining position, and as such, is also a benefit of no small value. Again, while no specific monetary value will be ascribed herein to this benefit it would obviously be valuable to whichever party held this advantage.

Moreover, a review of the comparable counties reveals that were the County to obtain a cap it would be the only county in its comparison set to do so.

As noted above, two additional changes in the existing language of the health plan have also been proposed by the County. As identified previously the County would drop the coverage both for part time employees scheduled for less than twenty hours of work and also for those whose illnesses have continuously kept them off the job for six months. The Parties have stipulated that there are no employees currently in the Crawford County Highway Department who fall into either of these categories. The Employer has essentially made no case to justify modifying this language in either respect. Absent this justification the Union is not willing to give up the benefits, potential or not, that the current language provides.

The Employer's inducement to the Union to give up the current health care language consists of its offer to raise the wage by

4.5% percent in each of the two new contract years. The Union argues that the "real" amount offered is considerably less, actually netting out at 3.4%. The lower figure, says the Union is the result of the co-payment and cap associated with the Employer's proposed health care.

The average wage increase among the comparable counties was 4% for 1990.(County Exhibit #3). The Employer has not challenged the Union's estimate of a net increase under the County's wage offer of 3.4% This is less than the average of the comparables and it is also less than the increase in the cost of living for 1989 or the annualized estimate for 1990.(Union Exhibits 9 & 10). Even if the use of a "net" wage increase were rejected, it remains difficult to accept the Employer's wage offer as a reasonable exchange for the very substantial modifications in the existing health care language which the County has proposed. The figure of 4.5% for 1990 is only .5% above the comparison counties. It is also less than the annualized change in the CPI anticipated for 1990. (The data for 1991 is too incomplete to judge whether the County's wage offer for the second year is sufficient to constitute a meaningful buyout).

The undersigned must conclude, therefore, that the County has not met it's burden to justify changing the health insurance contractual status quo. Accordingly, the Union's proposal on health care is deemed more reasonable.

The Wage Proposals

The Employer has offered a wage increase of 4.5% for each of

the two years of the successor contract. The Union requests 4% for 1990 and 4.5% for 1991. The differences between the Parties thus are minimal making difficult the selection of either offer as more reasonable than the other. The fact that the Employer has proposed the larger of the increases for 1990 as a buyout further complicates any attempt to judge the wage offers on their own merits. Since, the issue of the wage increase is bound up with that of the proposals on health insurance no attempt will be made here to select a more reasonable wage offer.

The Commercial Drivers' License Issue

This issue is insignificant in terms of the totality of the dispute between the Parties. The record contains no evidence or argument from either side by which one position could be selected. Therefore, neither offer will be evaluated.

Summary

The outcome of this dispute is largely controlled by the disposition of the four health insurance issues raised by the Employer. The arbitrator is unpersuaded that the Employer has sustained its burden to justify a change of this magnitude in the contractual status quo. Further, since the wage issues are an integral part of the health insurance dispute this matter will be resolved in turn by the disposition of the health insurance issues.

In light of the above discussion and after careful consideration of the statutory criteria enumerated in Section 111.70 (4)(cm)7 Wis. Stat. the undersigned concludes that the

Union's final offer is to be preferred and on the basis of such finding renders the following:

AWARD

The final offer of the Union together with prior stipulations shall be incorporated into the Collective Bargaining Agreement for the period beginning January 1, 1990 and extending through December 31, 1991.

Dated at Madison, Wisconsin this 26th day of January, 1991

Richard Ulric Miller, Arbitrator