ARBITRATION OPINION AND AWARD

In the Matter of Arbitration

Between

SHEBOYGAN COUNTY

And

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL UNIONS NO. 2427, 1749, 110; AMERICAN FEDERATION OF TEACHERS, LOCAL UNION NO. 5011; SHEBOYGAN COUNTY ASSOCIATION OF SOCIAL WORKERS

Case 150 No. 47658 INT/ARB-6518
Case 151 No. 47659 INT/ARB-6519
Case 152 No. 47660 INT/ARB-6520
Case 153 No. 47661 INT/ARB-6521
Case 154 No. 47662 INT/ARB-6522

Decision Nos. 27585-A
27586-A
27587-A
27588-A
27589-A

Impartial Arbitrator

William W. Petrie
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Post Office Box 320
Waterford, WI 53185-0320

Hearing Held

Sheboygan, Wisconsin
November 1, 1993

Appearances

For the Employer

SHEBOYGAN COUNTY
By Louella Conway
Personnel Director

For the Unions

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES
By Helen Isferding
District Representative

AMERICAN FEDERATION OF TEACHERS, LOCAL UNION 110
By Carol Beckerleg
Field Representative

SHEBOYGAN COUNTY ASSOCIATION OF SOCIAL WORKERS
By Larry Samet
Representative

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding involving impasses between Sheboygan County and three labor organizations representing County employees within five separate bargaining units.[1] The parties differ solely with respect to the specifics of certain Union and Employer proposed changes in the medical and hospitalization insurance coverage to become applicable January 1, 1993; the final offers of the parties and the impasses are identical within all five bargaining units.

The parties exchanged proposals and met on various occasions in an unsuccessful attempt to achieve complete negotiated settlements, after which the County, on June 25, 1992, filed a petition with the Wisconsin Employment Relations Commission seeking binding interest arbitration pursuant to the criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes. After preliminary investigation by a member of its staff, the Commission on March 12, 1993 issued findings of fact, conclusions of law, certifications of the results of investigation, and orders requiring arbitration of all five cases; on June 16, 1993, it issued an order directing the undersigned to hear and decide the matters as arbitrator.

A consolidated hearing took place before the undersigned in Sheboygan, Wisconsin on November 1, 1993, at which time all parties received full opportunities to present evidence and argument in support of their positions. Briefs and reply briefs were thereafter submitted relative to the five impasses, after which the record was closed by the undersigned effective January 7, 1994.

THE FINAL OFFERS OF THE PARTIES

The final offers of the parties, which are hereby incorporated by reference into this decision and award, are summarized as follows:

(1) The Unions propose the following health insurance to be applicable during the term of the general agreement:

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[1] Case 150 No. 47658 INT/ARB 6518, involves the Sheboygan Federation of Nurses and Health Professionals, Local 5011, AFT, AFL-CIO, which represents a unit identified by the WERC as consisting of "all public health nurses, registered nurses and represented Unified Service employees excluding all nurse directors and supervisors."

Case 151 No. 47659 INT/ARB 6519, involves the Institution Employees, Local 2427, AFSCME, AFL-CIO, which represents a unit identified by the WERC as consisting of "all Sheboygan County Institution employees excluding Administrators, Assistant Administrators, Medical Directors, Director of Nursing, R.N.'s, Inservice Coordinators, Supervisors, Director of Social Services, Bookkeeper, Medical Technician and OTR."

Case 152 No. 47660 INT/ARB 6520, involves the Highway Department Employees, Local 1749, AFSCME, AFL-CIO, which represents a unit identified by the WERC as consisting of "all employees of the Highway Department, excluding the Commissioner, Patrol Superintendent, Shop Superintendent, Supervisors and temporary seasonal employees."

Case 153 No. 47661 INT/ARB 6521, involves the Support Service Employees, Local 110, AFSCME, AFL-CIO, which represents a unit identified by the WERC as consisting of "all regular full-time and regular part-time personnel employed in the Court House, auxiliary departments and building, excluding elected officials, supervisors, professionals of the Human Services Department, all nurses and all deputized employees of the Sheriff's Department."

Case 154 No. 47662 INT/ARB 6522, involves the Independent Association of Social Workers, which represents a unit identified by the WERC as consisting of "all employes of the Human Services Division of Social Service engaged in professional social work and volunteer coordinating activities, excluding the Director, Division Manager and Social Work Supervisors."

(a) Retention of the status quo ante during calendar year 1992;

(b) Effective December 1, 1993, that Employees contribute $10.00 per month for family and $5.00 per month for single coverage;

(c) Renewal of the parties' negotiations for 1994 health insurance coverage, to begin in August of 1993.

(2) The Employer Proposes the following health insurance to be applicable during the term of the renewal agreement;

(a) Retention of the status quo ante during calendar year 1992.

(b) Effective January 1, 1993 that the following changes be implemented:

(i) employees to contribute 5% to the cost of single and family coverage, with the cost based upon actual claims experience in the 12 month period ending on October 31 of the prior year;

(ii) implementation of a Section 125 Tax Reduction Plan; implementation of a Preferred Provider Option;

(iii) a 10% co-pay of services by non-participating providers to a maximum of $350.00 for single coverage and $1,000 for family coverage;

(iv) an employee in continuing treatment for the same illness for the previous six (6) months, shall continue treatment for six (6) months after the provider leaves the network without payment of the 10% co-pay;

(v) payment for annual physicals by member providers to employees and dependents to a maximum of $150.00 per physical;

(vi) return of 50% of the savings to those employees using preferred providers to a maximum of $100.00 for single and $300.00 for family, with savings to be placed in the Section 125 Plan for use by the employee for other uncovered medical expenses;

(vii) participation in the Supplemental and Additional Life Insurance programs through the Wisconsin Retirement System.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the undersigned to give weight to the following arbitral 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.

POSITION OF THE EMPLOYER

In support of the contention that its final offer, rather than that of the Unions, is the more appropriate of the two final offers before the Arbitrator, the County argued principally as follows.

(1) That the following preliminary facts and considerations are material and relevant to the outcome of these proceedings.

(a) That the County employs approximately 1,400 employees, of which approximately 1,350 are included in the various bargaining units.

(b) For many years that the County has jointly negotiated identical health care coverage with all unions, for all covered employees.

(c) At the beginning of the 1992-1993 insurance negotiations, the Employer notified the unions that future health insurance negotiations would take place in conjunction with the negotiation of the full labor agreements. That this was in response to an arbitral decision which concluded that health insurance costs could not be utilized in package costs when negotiating a labor agreement, due to the broad and separate health and dental negotiations within the County.

(d) That in this last consolidated negotiations, the County is proposing a package which addresses many of the issues of concern in health insurance today. That the County is proposing a very generous health and dental insurance package which provides first dollar coverage for many services, and which allows continuation of the generous coverage along with opportunities for cost savings programs for employees. That while its offer provides for employee contributions, proper utilization of other items more than offsets the minimal proposed contribution.

(e) That the final offer of the Unions provides for a minimal contribution toward the cost of health insurance, but for no other alternatives for cost savings.

(2) That the primary external, intraindustry comparables should consist of the five of Wisconsin's seventy-two counties which are within 20% above or 20% below the population of Sheboygan County (i.e. Eau Claire, Marathon, LaCrosse, Fond du Lac and Washington), plus those counties contiguous to Sheboygan County (i.e. Manitowoc, Calumet, Fond du Lac, Ozaukee and Washington).

(a) That utilization of the Counties urged by the Unions would result in considerable population disparities, and that Brown, Outagamie, Racine, Rock and Winnebago Counties cannot reasonably be compared with Sheboygan County.

(b) In the above connection, that Brown County has a population 90% greater, and Racine County a population 70% greater than Sheboygan County, while Dodge County is 25% lower in population, while Rock, Winnebago and Outagamie County are more than 25% larger.

(3) That arbitral consideration of *the lawful authority of the municipal employer* and the *stipulations of the parties* criteria provide no appropriate bases for distinguishing between the final offers of the parties.

(4) That arbitral consideration of *interests and welfare of the public and the ability to pay* criteria favor the selection of the final offer of the employer in these proceedings.

(a) That since the County has the ability to tax and such ability has not been put into lawful jeopardy, the case at hand involves an issue of priorities.

(b) That among the primary external comparables urged by the County, it ranks second highest in its average full value tax rate for 1992; accordingly, it is clear that Sheboygan's tax rate is substantial.

(c) That it is well known that health care costs have risen substantially over the years; that Employer Exhibit 20 shows substantial increases of 16.27% in 1991, 24.98% in 1992, and an anticipated maintenance of costs in 1993 due to the utilization of the WPPN Program.

(d) That in an attempt to control health care costs and to maintain a 0% tax increase or a possible decrease, the County has attempted to utilize cost savings measures that create very little impact upon employees, which measures are included in the final offer of the Employer.

(e) That had Sheboygan County not chosen to participate in the WPPN Network in 1992, the cost of health insurance would have increased substantially in 1993 and would have created a greater tax burden upon the residents of the County. That the County proposed WPPN participation for employees in the bargaining units along with implementation of a "steering mechanism" are needed to ensure continued savings.

(f) That had the County not participated in SEARCH there would have been a need to tax at a higher rate; while such ability exists, this action is not in the public interest. Accordingly, that arbitral consideration of the interest and

welfare of the public criterion clearly favors the position of the County in these proceedings.

(5) That arbitral consideration of the *comparisons with other employees performing similar services* criterion favors selection of the final offer of the Employer.

(a) Because of the breadth of the five bargaining units and the issue involved, it is appropriate to utilize broad comparisons of all employees in these proceedings.

(b) That arbitral internal comparisons within Sheboygan County favor the selection of the final offer of the County, since its provisions have already been implemented for non-bargaining unit employees and, as of April, 1994, County Board Supervisors will be contributing 12.4% toward their premium costs in addition to participating in the WPPN and the SEARCH networks.

(6) That arbitral consideration of the *comparisons with other employees generally in public employment* criterion favors selection of the final offer of the Employer.

(a) That three of the five counties comparable by population have employee premium contributions ranging between 5% and 24% of total premium costs.

(b) That when considering adjoining counties all except Calumet County have employee contributions for health insurance, and Calumet County requires a 5% contribution only for family premiums; that the remaining counties have at least a 5% contribution and Fond du Lac (also referenced above) has a 24% employee contribution option.

(c) That a statewide survey to which 36 counties responded indicates that substantial numbers of plans require contributions, and that 5% is not an unreasonable level of employee contribution.

(d) That other public sector employees in Sheboygan and the surrounding area share insurance premium costs, including five units in the City of Sheboygan, Howards Grove Public School and the Sheboygan Area School Districts. That the final offer of the County is further favored by consideration of the fact that it does not distinguish between the contribution level for full time versus part time employees, contrary to the practices in the City of Sheboygan, Howards Grove Public Schools and the Sheboygan Area School District.

(e) That Wisconsin interest arbitrators have recognized that employees should, to some degree, share in the escalating costs of health insurance.

(7) That arbitral consideration of *the private sector comparison* criterion favors the selection of the final offer of the Employer, in that a growing percentage of private sector employers require employee co-payments and premium contributions.

(8) That arbitral consideration of *the cost of living criterion* favors selection of the final offer of the Employer. In this connection that recent negotiated wage increases have exceeded increases in consumer prices, and the County has been unable to include health

insurance cost increases in connection with wage and benefits determinations.

(9) In connection with arbitral application of *changes in circumstances criterion* that, due to delays in getting to arbitration, the Employer cannot retroactively apply those components of its proposal involving deductibles, returns on savings, utilization of a Section 125 plan, and life insurance participation; accordingly, that the implementation of these programs should take place only after the decision and award is rendered, and no retroactive premium contributions should be required of employees. In consideration of the above, that this criterion should not be given determinative weight.

(10) That arbitral consideration of *the other factors normally taken into consideration criterion* favors the selection of the final offer of the Employer, in that it shows many benefits accruing to employees flowing from its offer; in this connection that employees will principally benefit from the Section 125 Tax Reduction Plan, from the full payment of $150.00 for physicals scheduled with the appropriate providers, from the return of 50% of the savings to those employees utilizing a preferred provider, and from employee utilization of the supplemental life insurance.

In summary that the County's final offer reasonably balances the maintenance of a very high level of benefits against the need to control costs, in that it addresses the problem of continual increases in health care costs, while providing the greatest amount of flexibility for the affected employees.

In its reply brief the County reiterated certain of its original arguments, and it emphasized the following principal considerations and arguments.

(1) That the fact that County Board Supervisors are included in a common experience pool with other County employees is entitled to no weight in these proceedings.

(2) That the Union conclusion that the 1992 health insurance premiums in Sheboygan are 19% less than the average among comparables is inaccurate and misleading.

(3) That when using County proposed comparables the average differential is only 9%, which is a minimal differential when considering monthly costs of coverage.

(4) That Union submitted premium cost data for comparables is inaccurate in that it fails to take into consideration multiple plan offerings including the fact that some plans are not utilized.

(5) That County offered insurance comparisons are more accurate and valid that various offered by the Unions.

(6) That the position of the Union with respect to the implementation dates contained in the Employer's final offer is unrealistic.

(7) Contrary to the position of the Unions, that the Employer would pay 25% of the premium for supplemental life insurance.

(8) That certain Union arguments relating to the County proposed Section 125 Plan are inaccurate and misleading.

(9) That Employer affiliation with SEARCH would create no additional negotiations responsibilities for the Unions.

(10) That the Unions were not "cut-out" of the Employer's cost cutting deliberations.

(11) That the Employer final offer is clear and unambiguous with respect to its intended application.

(12) That the Unions apparently do not wish to utilize any cost effective health insurance programs, or to otherwise assume responsibility for monitoring health care costs.

(13) *In order to maintain the levels of benefits presently* available, it is necessary for the employees to make some choices which, if utilized effectively, will actually result in greater take home pay.

POSITION OF THE UNIONS

In support of their contention that the joint final offer of the Unions is the more appropriate of the two offers before the Arbitrator, the Unions argued principally as follows.

(1) That their position may be briefly summarized as follows.

(a) That Sheboygan County has not established the need for any changes in health insurance.

(b) That the Employer proposed changes are ambiguous in their intended meaning, and they are likely to generate disagreements relative to their effective dates.

(c) That arbitral consideration of the comparables does not support the Employer proposed changes.

(d) That the Employer has failed to offer an appropriate quid pro quo for the proposed changes.

(2) That the primary *intraindustry comparison group* in these proceedings should consist of the five counties immediately adjoining Sheboygan County (i.e. Calumet, Fond du Lac, Manitowoc, Ozaukee and Washington Counties), in addition to Eau Claire, Marathon, LaCrosse, Kenosha, Brown, Dodge, Outagamie, Racine, Rock and Winnebago Counties, all of which fall within the top twenty counties in the state in terms of population.

(a) That the above intraindustry comparison group has been utilized by the parties in all past interest arbitrations.

(b) As indicated by the undersigned in a 1984 interest arbitration decision for the parties, that the comparison criterion should be regarded as the most important of the various arbitral criteria, and that so-called intraindustry comparisons should receive the greatest weight in these proceedings.

(3) That the Employer is proposing major health insurance changes in employee *premium contributions*, a *change from a standard fee for service to a preferred provided plan*, and *a limit in benefit levels* in the event of utilization of a doctor outside the provider network.

(a) That the proponent of a significant change in the status quo ante should be required to establish, by clear and convincing evidence, both *the need for* and *an appropriate*

quid pro quo for such change; that the Employer has failed to meet either of these prerequisites to change.

(b) That there is no demonstrated need for the County proposed changes in health insurance.

(i) The County's current health insurance costs are extremely low.

(ii) Why should the Employees pay more for health insurance that its proposed $10.00 per month for family or $5.00 per month for single coverage, when the County already enjoys one of the lowest insurance costs among comparable counties and public sector employers in the area?

(iii) That bargaining unit employees have kept health care costs down, and even with the absorption of the $800.00 monthly cost of health insurance premiums for County Board Supervisors, they still rank near the bottom in rankings by cost with the intraindustry comparables.

(iv) That comparison of details of health insurance coverage with the comparable counties does not support the proposed changes of the County.

(v) That combined County dental and health costs are approximately 14% lower than comparables, and rank near the bottom of comparable counties.

(vi) That the Unions' offers of $5.00 contributions to the single health plan and $10.00 contributions toward the family health plan, are more than adequate and reasonable, considering the low rates enjoyed by the County. In this connection, that six of the comparable counties continue to provide insurance at no cost to employees, and generally at greater employer cost than in Sheboygan County.

(vi) That the cost comparisons contained in Employer Exhibit 19 are misleading in various respects: they show a temporary health premium contribution for City of Sheboygan employees that will soon revert to the normal City contribution of 105% of the lowest cost available plan; that City employees thus normally receive Employer health insurance premiums significantly larger than those in the case at hand; and that the Employer has not included insurance premium rates for the Sheboygan Area School District, which prevents meaningful use of the data in making comparisons.

(4) That the Employer's final offer is flawed and will lead to confusion, potential litigation, and will unreasonably harm the affected employees.

(a) That the Employer has failed to substantiate the need for its proposed changes, and they constitute nothing more than *overkill*.

(b) That selection of the Employer's offer would result in increased premium sharing, increased deductibles and changes in benefits, all in a single round of negotiations, due to

the fact that the authority of the Arbitrator is limited to the selection of one of the final offers in its entirety.

(c) That the implementation of a preferred provider, option retroactive to January 1, 1993, would have disastrous results for employees who had used a non-participating provider prior to the issuance of an award favoring the Employer; such employees could owe up to $1,000 in co-pays for a family plan and $350 for single coverage, without knowing what they were incurring and how to avoid such cost! Further, that the change would entail costly penalties which are not justified by comparisons, and which would constitute an unjustified major change which should evolve from negotiations rather than from the arbitration process.

(d) That the intended application of the proposed 10% co-pay for services is ambiguous in various important respects.

(e) With a proposed effective date of January 1, 1993, employees may already have used up a six month extension with their own out-of-network provider, and might be subject to additional co-pay requirements.

(f) That the proposed $150 annual physical reimbursement raises additional questions. Does it apply for 1993? Will it pay anything for a non-provider physician? How would it work with the limited number of preferred providers listed in Sheboygan's network?

(g) That the Employer proposed return of savings to those employees using preferred providers raises additional questions. How can the savings be placed into a Section 125 Plan which is non-existent for 1993? That the use of such money only for uncovered medical expenses does not guarantee the employee anything, and it might even encourage excessive medical care usage.

(h) That 1993 participation in the proposed supplemental and additional life insurance program is impossible.

(5) That the Employer has failed to offer an adequate quid pro quo in exchange for the various changes proposed in its final offer.

(a) That major changes sought by the Employer include a 5% premium sharing by employees and increasing deductibles for the use of non-network providers.

(b) That the Employer proposed Section 125 Plan is not in place for 1993, even though it would collect contributions for the year, and when it is in place the Employees would lose money which is not used; that the County's proposal relating to treatment outside the network has already expired; that a maximum of a $150 physical with a strange doctor is not a valuable consideration; that a return of undefined savings with the requirement that it be used for medical reasons is not sufficient to justify the County's offer; and that the opportunity to get supplemental and additional life insurance at employee cost is insufficient to justify selection of its offer.

(c) That the selection of the Employer's final offer would inappropriately entail abandonment of the self-insured process, and the addition of another party to the relationship between the Unions and the Employer (the

Sheboygan Employers Alliance to Reduce Costs of Health Care or SEARCH); that the interests of the parties will be best served if they can continue to work and to accomplish things through bilateral negotiations.

(6) That the Employer has offered no claim of inability to pay, its tax rate has not increased over the last year, and its current low premium costs simply do not justify its drastic proposed changes.

In summary that the Employer is unreasonably proposing health care changes which are disproportionate to any demonstrated need, its offer is confusing in various respects, and it contains no appropriate quid pro quo in support of the proposed changes.

In the reply brief the Unions restated certain of the arguments referenced above and emphasized the following considerations and arguments.

(1) That the County's initial brief referred to certain purported facts which are not contained in the record.

(2) That various ambiguities contained in the Employer's final offer would be likely to cause confusion and litigation if adopted, which result would be contrary to the *interests and welfare of the public*.

(3) That neither the Employer proposed Section 125 Plan, nor its proposed employee paid Supplemental Life Insurance program would constitute *an adequate quid pro quo* for the Employer proposed reduction in health insurance.

(4) That various of the Employer's arguments relating to the *interests and welfare of the public criterion* simply amount to an unwillingness to pay.

(5) That the fact that certain unrepresented County employees are required to contribute to the costs of their health insurance is not entitled to significant weight in these proceedings.

(6) That certain Employer advanced arguments relating to the comparables, are misleading: it has ignored the low cost of the Sheboygan County plan versus the comparables, in addition to the greater number of options available elsewhere; it has included the rates for part-time employees which are not in issue; it has included school district figures without sufficient information to validate the comparisons; and it has included a temporary $6.00 employee insurance contribution in the City of Sheboygan, which expires in 1994.

(7) That the testimony of one Employer witness was too general to receive significant weight.

FINDINGS AND CONCLUSIONS

Prior to specifically applying the various statutory criteria to the record and arriving at a decision in these proceedings, the Arbitrator will offer certain preliminary observations in the following areas, relating to the interest arbitration process: the nature of the Wisconsin interest arbitration process; the significance of the status quo ante; the significance of the comparison criterion; and the composition and application of the primary intraindustry comparison group in the dispute at hand.

The Nature of the Wisconsin Interest Arbitration Process

An interest arbitrator operates as *an extension of the parties normal collective bargaining process*, and his or her normal role is to attempt to place the parties into the same position they would have occupied but for their inability to agree at the bargaining table. An interest arbitrator will closely examine and consider the parties' *past practices* and their *negotiations history* (which criteria fall well within the scope of Section 111.70(4)(cm)(7)(j) of the Wisconsin Statutes), in the consideration and application of the various other statutory criteria. This principle is described as follows in the frequently cited book by Elkouri and Elkouri:

> "In a similar sense, the function of the 'interest' arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the Arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:
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> > 'Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon consideration of policy, fairness, and expediency, of what the contract rights ought to be. In submitting their case to arbitration, the parties have merely extended their negotiations - they have left to this Board to determine what they should in negotiations, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men have agreed to? ... To repeat, our endeavor will be to decide the issues, as upon the evidence, we think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining..."[2] (emphasis supplied)

The Significance of the Status Quo Ante

The proponent of change(s) in the status quo ante is asking an arbitrator to reach a decision that is inconsistent with the parties' bargaining history, and it generally must establish *a very persuasive case* in support of such a proposal. In accordance with Section 111.70 (4)(cm)(7)(j) of the statutes, Wisconsin public sector interest arbitrators have recognized the need for innovation or change where the proponent has demonstrated that a legitimate problem exists which requires attention, when the proposal reasonably addresses the problem, and where an appropriate quid pro quo is provided in connection with the change. The rationale for the latter requirement is that neither party should achieve the elimination of or a substantial change in a previously negotiated policy or benefit, without having advanced something equivalent to what would have been required at the bargaining table.

While the Union is correct that the County's health care costs have been below the average of the primary external comparables, health care cost control is a legitimate and vital consideration to virtually all employers, unions and employees, and the Employer's proposal addresses this problem in various ways. A serious question exists, however, relative to the existence of an adequate quid pro quo for the proposed changes. In this connection the Employer is proposing 5% employee premium contributions, movement from a

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[2] Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, pp. 104-105. (footnotes omitted)

standard fee for services plan to a preferred provider approach, and limits on benefit levels for services outside of the provider network, *in exchange for* the implementation of a Section 125 Tax Plan, potential return of 50% of certain savings to the Section 125 plan for medical use, a $150 physical per year for employees and dependents, within the provider network, and the opportunity to receive partially paid supplemental additional life insurance. While these changes may be of significant value to some employees who are able and willing to fully utilize them, their actual dollar value to most employees is difficult if not impossible to determine, and it is fair to conclude that they simply would not have been adequate to support the changes requested by the County in the give and take of conventional bargaining.

On the basis of the above, the undersigned has preliminarily concluded that the major proposed changes in the status quo ante by the Employer have not been accompanied by an adequate quid pro quo.

The Significance of the Comparison Criteria

The Wisconsin Legislature has not established the relative importance of the various statutory arbitral criteria, and their importance will frequently vary from case to case. Generally speaking, however, there is no doubt that the single most persuasive and the most frequently cited criterion in interest disputes is comparisons. This principle has been repeatedly recognized by Wisconsin interest arbitrators, and is well described in the following additional excerpt from the Elkouris' book:

> "Without question the most extensively used standard in interest arbitration is 'prevailing practice'. This standard is applied with varying degrees of emphasis, in most interest cases. In a sense when this standard is applied the result is that disputants indirectly adopt the end results of the successful collective bargaining of other parties similarly situated. The arbitrator is the agent through whom the outside bargain is indirectly adopted by the parties."[3]

Similar observations are also made in the following extracts from the respected book by Irving Bernstein:

> "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the Union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill.....Arbitrators benefit no less from comparisons. They have the appeal of precedent and ... awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.
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> a. *Intraindustry comparisons.* The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. More important, the weight it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance in the wage-determining standards."[4]

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[3] How Arbitration Works, pages 104-105.

[4] Bernstein, Irving, The Arbitration of Wages, University of California Press-1954, pages 54-56. (footnotes omitted)

On the basis of the above, the undersigned preliminarily notes that the most frequently used and most persuasive arbitral criteria is normally *comparisons*, and the most persuasive of these are normally the so-called *intraindustry comparisons*.[5]

The Composition and Application of the Primary Intraindustry Comparison Group in the Case at Hand

Mere recognition of the principle that so called intraindustry comparisons are the most extensively used and the most persuasive of the various arbitral criterion does not address the matter of which employers and which employees comprise the comparison groups. In this connection the Unions urge arbitral use of the same primary intraindustry comparison group historically utilized by past negotiators and past interest arbitrators, while the County proposes a different group. What of the County's argument that the primary intraindustry comparison group should be, in effect, redefined by the Arbitrator, and that it should thus be limited to the five statewide counties closest to it in terms of population, and to the five counties contiguous to Sheboygan County?[6]

While Wisconsin interest arbitrators are sometimes called upon to initially recognize or to define the makeup of the parties' principal intraindustry comparison group, the makeup of such groups is not revisited by arbitrators in each subsequent interest proceeding! To the contrary, Wisconsin interest arbitrators normally utilize and defer to the parties' bargaining history, including the composition of the comparison groups utilized in their prior negotiations and/or in their prior interest arbitration proceedings; in operating as an extension of the parties' bargaining process the role of the undersigned is to resolve the impasse before him, not to casually redefine or reconstitute the parties' normal comparisons, and/or to otherwise casually alter bargaining criteria historically utilized by them. These very well established and lasting principles have frequently been referenced by the undersigned in the past, and they are also well addressed in the following additional observations of Bernstein:

> "The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment, and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again...."[7] (emphasis supplied)

Without unnecessary elaboration, the undersigned will note that there is nothing in the record that would justify arbitral reexamination or revision of the counties comprising the primary intraindustry comparison group historically utilized by the parties.

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[5] While the *intraindustry comparisons* terminology obviously derives from the private sector, the same underlying principles of comparison are used in public sector interest impasses; in this connection the so-called *intraindustry comparison* groups consist of other similar units of employers employed by comparable governmental units.

[6] Fond du Lac County appears on both lists.

[7] The Arbitration of Wages, page 66. (footnotes omitted)

What next, however, of how the comparisons should be applied among the various counties? The typical practice is to apply the comparison criterion on *bargaining unit by bargaining unit* and on *classification by classification* bases; in other words and by way of hypothetical example, police department bargaining units are compared to police department bargaining units, police officers are compared to police officers, and detectives to detectives, etc. Since these consolidated proceedings involve only a single health insurance impasse item which is common to all five bargaining units, it is clear that the application of the so-called intraindustry comparison should be on county by county bases, where possible, rather than on individual bargaining unit by bargaining unit bases.

On the basis of the above, the undersigned has preliminarily concluded that the *primary intraindustry comparison group* in the dispute at hand consists of the counties historically utilized by the parties in the past (ie. Racine, Rock, Brown, Outagamie, Winnebago, Marathon, Dodge, Kenosha, La Crosse, Fond du Lac, Ozaukee, Manitowoc, Eau Claire, Sheboygan, Calumet and Washington Counties), and that the comparisons should preferably be made on an overall basis, rather than on bargaining unit by bargaining unit bases.

Application of the Comparison Criteria

The undersigned will preliminarily note that certain residual disputes exist between the parties relative to the accuracy of the health insurance cost figures for various comparable counties, certain of which were highlighted at the reply brief stage of these proceedings, and this situation normally poses significant problems for an interest arbitrator. It also poses potential problems for the proponent of change who normally has the burden of persuasion, as residual factual or statistical disputes may significantly detract from the ability to establish the bases for change!

Parties may wish to meet in advance of arbitration hearings to reach agreement with respect to the accuracy of data to be submitted to the arbitrator. During the hearing process, the parties also have the opportunity to cross examine their opposite numbers on the contents of the various exhibits to reconcile any discrepancies in the figures shown thereupon; due to the fact that it is frequently difficult to fully digest the contents of the exhibits at a hearing, I normally suggest a post-hearing period of ten days to two weeks within which the parties can get together to reconcile discrepant figures, during which time I remain available on at least a teleconference basis in the event the parties are unable to reach agreement. Any of these procedures would be preferable to asking an arbitrator to address factual disputes at the briefing stages of interest proceedings.

Basically the Unions submit that the present premium costs of the Sheboygan health insurance are very low when compared to the intraindustry comparisons, whether measured in terms of *dollar differences*, *percentages* or *simple rankings by cost*. While the Employer takes issue with the specific accuracy of the Union figures, it is clear to the undersigned that the Union's basic conclusions are both accurate and persuasive. While I prefer not to do so I prepared 1992 and 1993 spread sheets from the contents of Employer Exhibit #18, which includes all of the intraindustry comparables except Outagamie County, and from these spread sheets I arrived at the following conclusions:

(1) The Employer's 1992 data show that Sheboygan County health insurance costs were significantly lower than in the comparable counties, whether compared on the basis of *average dollar differentials*, *percentage differentials* and/or *rankings*. In these connections the dollar differences are substantial and the percentage differences are clearly in double figures; only three counties, Washington, Calumet and Eau Claire, appear to have lower family coverage costs than Sheboygan County, and only Calumet County appears to have lower single coverage costs.

(2) The Employer's 1993 data show that Sheboygan County health insurance costs remained significantly lower than in comparable counties on the same bases referenced above, with the *average dollar differentials* remaining approximately the same and the *percentage differentials* remaining in double figures; only Washington and Marathon Counties had lower family coverage costs than Sheboygan County, and only Calumet County appears to have lower single coverage costs.

(3) The Employer's 1992 and 1993 data also indicate as follows: that Fond du Lac, Manitowoc, Ozaukee, Washington, Dodge and Racine Counties require employee contributions for both single and family coverage; that Eau Claire, Marathon, Kenosha and Rock Counties require no employee contributions for health care; and that Calumet, Brown and Winnebago Counties have no employee contributions for single coverage.

On the basis of the above the undersigned has preliminarily concluded that consideration of the *intraindustry comparison criterion* does not support arbitral selection of the Employer proposed very substantial changes in the health insurance coverage offered to its employees, on the basis of comparable costs. A majority of comparable employers now require some form of employee contribution toward the costs of health insurance, however, which is consistent with the fact that both final offers propose some employee premium contributions. Arbitral consideration of the intraindustry comparison criterion, therefore, clearly favors selection of the final offer of the Union.

What of the additional comparisons cited and relied upon by the County, including those with non-represented county employees, with certain other public sector employees, and within the private sector? Not only are such comparisons normally entitled to far less weight than the intraindustry comparables, but the Union is quite correct that the City of Sheboygan and the School District data is not comprehensive, the internal comparables within the county involve only non-represented employees, and the private sector comparison arguments of the Employer were based upon testimony that was far too non-specific and general to be accorded significant weight in these proceedings.

For the reasons described above the Impartial Arbitrator has preliminary concluded that while the internal and certain other public sector comparisons cited and relied upon by the County tend to support its position in these proceedings, they are entitled to little weight in the final offer selection process.

The Interests and Welfare of the Public and the Ability to Pay Criteria

It is preliminarily noted that the weight placed upon these criteria vary from case to case, and in situations involving absolute inability to pay they will normally take precedence over all other arbitral criteria. The Employer admits that it is not claiming either an inability to pay or even an impaired ability to pay, but rather cites its current substantial tax rate, the rising costs of health care, and the necessity of controlling costs to control taxes. The Union cites the fact that taxes have not increased over the past year, references the fact that the Employer's exhibits show its tax rates to rank twenty-ninth among seventy-two Wisconsin counties, submits that the County's current low premium costs simply do not justify its proposed health insurance changes, and characterizes the situation as merely reflecting an *unwillingness to pay*.

While various of the Employer's arguments are individually persuasive, the same so called interests and welfare of the public considerations have not changed since the last time that the parties went to the bargaining table, at which time the present health care plan was renewed. There is no evidence of

a recent impaired ability to pay, for example, no recent tax increases, and no indication that the selection of either final offer would result in changes in taxes. While the financial interests of the taxpaying public are valid considerations, it must also be noted at this point that the interests and welfare of the public are also served by paying competitive wages and benefits so as to attract and hold effective employees.

On the basis of the above, the undersigned has preliminarily concluded that arbitral consideration of the *interests and welfare of the public* and the *ability to pay* criteria does not definitively favor the position of either party in these proceedings.

The Cost of Living Criterion

In this connection the County submitted that wage increases averaging 4.75% for 1991, 1992 and for 1993, exceeded CPI increases of 4.1%, 2.9% and 2.6% for the same years, urged that recent increases in health care costs to the Employer had exceeded the average CPI increases, and complained that it had been disadvantaged by inability to get full credit for health care increases in calculating wages and benefits package costs.

While the Employer is apparently correct that increases in wages have recently outstripped contemporary increases in the CPI, these considerations cannot appropriately be applied to the dispute at hand. When the parties negotiated the above referenced wage increases they were conclusively presumed to have disposed of all wage issues, including cost-of-living, and there is no basis for the arbitrator to indirectly revisit this prior agreement in these proceedings. This principle is well described in the following additional extract from Bernstein's book:

> "Base period manipulation...presents grave hazards. Arbitrators have guarded themselves against these risks by working out a quite generally accepted rule: the base for computing cost-of-living adjustments shall be the effective date of the last contract (that is, the expiration date of the second last agreement). The justification here is identical with that taken by arbitrators in the case of a reopening clause, namely, the presumption that the most recent negotiations disposed of all the factors of wage determination. 'To go behind such a date,' a transit board has noted, 'would of necessity require a relitigation of every preceding arbitration between the parties and a reexamination of every preceding bargain concluded between them.' This assumption appears to be made even in the absence of evidence that the parties explicitly disposed of cost-of-living in their negotiations. Where the legislative history demonstrates this issue was considered, the holding becomes so much the stronger." [8]

The County is quite correct in observing that employer health care costs have escalated in recent years, but this situation is common to virtually all employers who provide such benefits, and the reaction of comparable employers to such increases was addressed above. While the cost of living criterion somewhat favors the position of the Employer in this connection, it cannot be assigned determinative weight in these proceedings.

The Overall Compensation Criterion

In this connection the Employer merely reiterated its argument that recent wage increases within the bargaining units had outpaced movement in the CPI, urged that County fringe benefits were very good, and submitted that arbitral consideration of this criterion favored selection of its final offer.

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[8] The Arbitration of Wages, page 75. (Footnotes omitted)

This criterion mandates arbitral consideration of *all elements of employee compensation*, thus precluding focus upon isolated or singular items that are not representative of the entire compensation package. Despite the apparent presence of good overall compensation levels within the various bargaining units, the evidence in the record is insufficiently detailed to provide for meaningful application of this arbitral criterion. Accordingly, the undersigned has preliminarily concluded that arbitral consideration of the overall compensation criterion does not favor the position of either party in these proceedings.

Summary of Preliminary Conclusions

As addressed in more significant detail above, the undersigned has reached the following summarized, principal preliminary conclusions.

(1) A Wisconsin interest arbitrator operates as *an extension of the parties' normal collective bargaining processes*, and his or her normal role is to attempt to place the parties into the same position they would have occupied but for their inability to agree at the bargaining table.

(2) In carrying out the above responsibility an interest arbitrator will closely examine the parties' *past practices* and their *negotiations history* (which criteria fall well within the scope of Section 111.70(4)(cm)(7)(j) of the Wisconsin Statutes), in the consideration and application of the various other statutory criteria.

(3) The proponent of *change in the status quo ante* generally must establish a very persuasive case in support of such proposal. This generally entails establishing that *a legitimate problem exists* and that *its proposal reasonably addresses the problem.* Wisconsin interest arbitrators also recognize that neither party should achieve the elimination of, or a substantial change in a negotiated policy or benefit, without having advanced *an appropriate quid pro quo*, equivalent to that which would have been required at the bargaining table. The failure of the Employer to establish a persuasive basis for its proposed changes in health insurance and/or its failure to provide an appropriate quid pro quo, clearly favor the selection of the final offer of the Union in these proceedings.

(4) The most persuasive and frequently used arbitral criteria are *comparisons*, and the most persuasive of these are normally the so-called *intraindustry comparisons*.

(5) The *primary intraindustry comparison group* in the case at hand should consist of the counties historically utilized by the parties in the past (i.e. Racine, Rock, Brown, Outagamie, Winnebago, Marathon, Dodge, Kenosha, La Crosse, Fond du Lac, Ozaukee, Manitowoc, Eau Claire, Sheboygan, Calumet and Washington Counties). Comparisons should be on an overall basis, rather than on bargaining unit by bargaining unit bases.

(6) Arbitral consideration of the *intraindustry comparison criterion* clearly favors the selection of the final offer of the Union in these proceedings.

(7) The *private sector comparison* arguments of the County were based upon testimony that was far too non-specific and general to be accorded any significant weight in these proceedings. While the *internal comparisons* and certain *other public sector comparisons* cited and relied upon by the County tend to support its position

in these proceedings, they are entitled to little weight in the final offer selection process.

(8) Arbitral consideration of the *interests and welfare of the public and the ability to pay* criteria, does not definitively favor the position of either party in these proceedings.

(9) Arbitral consideration of the *cost of living* criterion somewhat favors the position of the County, but it cannot be assigned determinative weight in these proceedings.

(10) Arbitral consideration of the *overall compensation* criterion does not favor the position of either party in these proceedings.

Selection of Final Offer

Based upon a careful consideration of the entire record, including a review of all of the statutory criteria in addition to those cited above, the Impartial Arbitrator has preliminarily concluded, for the reasons referenced above, that the final offer of the Unions is the more appropriate of the two final offers. This conclusion is principally indicated by the Employer's failure to have provided an adequate *quid pro quo* in support of its very substantial proposed *changes in the status quo ante*, and by virtue of the fact that consideration of the *intraindustry comparisons* does not support the selection of the County's offer on the basis of comparable costs.

AWARD

Based upon a careful consideration of all of the evidence and arguments advanced by the parties, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Unions is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the Unions, hereby incorporated by reference into this award, is ordered implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

February 24, 1994