BEFORE THE ARBITRATOR

In the Matter of the Petition of

WISCONSIN COUNCIL #40 OF COUNTY &
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO

To Initiate Arbitration
Between Said Petitioner
and

Case 53
No. 49631 INT/ARB-6983
Decision No. 27889-A

LAFAYETTE COUNTY

Appearances:
David White, Staff Representative, appearing on behalf of the Union.

Brennan, Steil, Basting & MacDougall, S.C., Attorneys at Law, by Howard Goldberg, appearing on behalf of the Employer.

INTEREST ARBITRATION AWARD

Wisconsin Council #40 of County & Municipal Employees, AFSCME, AFL-CIO, (herein "Union") having filed a petition to initiate interest arbitration pursuant to Section 111.70(4)(cm), Wis. Stats., with the Wisconsin Employment Relations Commission (herein "WERC"), with respect to an impasse between it and Lafayette County (herein "Employer"); and the WERC having appointed the Undersigned as arbitrator to hear and decide the dispute specified below by order dated January 10, 1994; and each party having made oral argument and having waived the filing of post-hearing briefs.

ISSUES

The parties final offers form the issues in this matter. I summarize the issues as follows. The bargaining unit consists of approximately 50 employees, approximately 20 professional employees and 30 non-professional employees, in the courthouse. Effective for the 1993 year, the professional employees have moved to a separate bargaining unit.

The parties have a reopener in their 1991-2 collective bargaining agreement which reads as follows:

> The Employer shall contribute up to $425 per month for family health coverage or $215 per month for single coverage, whichever applies, for each full-time employee covered by this Agreement who has been on the payroll

> for thirty (30) days or more, subject to the following provisions. The Employer guarantees that the 1991 rate will not exceed $425 family and/or $215 single. ....
>
> The Employer agrees that should the 1992 health insurance premium rates exceed either $450 family and/or $225 single, the parties agree that the contract shall be re-opened for the purpose of negotiating wages and/or health insurance provisions. Any impasse in said negotiations is subject to interest arbitration under Section 111.70 Wis. Stats. ...."

The Employer's premium equivalent under its self-insurance for 1992 was $505.65 family/$222.94 single. Accordingly, the agreement was reopened. The sole issue in this dispute is the health insurance contribution. The Union proposes to require the Employer to pay the "full" contribution. The Employer proposes as to the non-professional employees:

> "The County will pay up to the first $425 of the monthly premium for the family coverage of the insurance premium for the 1992 Lafayette County health insurance plan in effect during that year. The next $24.99 of all monthly premium in excess of that amount, for family coverage, shall be paid by the (sic) each employee to the extent applicable. Any additional monthly premium for the family coverage will be paid by the County. The county will pay up to $215 of the monthly premium for the single coverage of the insurance premium for the 1992 Lafayette County health insurance plan during that year. This increase in the County (employer) contribution toward the paid portion of the premium over the amounts set forth in the labor agreement for calendar year 1992 will only apply for that calendar year and will revert to the $425.00/$215.00 levels set forth in the labor agreement as of the end of the 1992 calendar year.

BACKGROUND

The Employer has five bargaining units now. Two are the former courthouse unit involved in this case. There are also a sheriff's unit, hospital unit, and highway unit. All but the highway unit were in the Employer's self-funded health insurance plan for 1992. The Highway unit was under a HMO plan and the

health insurance premiums specified for 1991 in this agreement were contained in that agreement and adequately covered the full premiums for that plan. All of the other units' agreements contained provisions setting out the same maximum employer contribution to health insurance as that specified in this agreement for 1991. The other agreements did not provide for a reopener and, thus, the other units employees' were responsible for the full increase in health insurance premium. The unrepresented unit also participated in the self-funded plan. There is no evidence as to specifically how they were treated.

Throughout 1992, the actual expenditures exceeded the premium equivalents from the beginning of the year. The Union was not notified about this problem until so late in 1992, that it precluded any changes if there were any that could be made.

In negotiations for the 1993-4 collective bargaining agreements in all bargaining units, including this one, the Employer proposed uniform percentage increases in all but the newly created professional courthouse unit. In that unit, the Employer also added a step at the top of the salary schedule which resulted in an additional increase for the professional employees.
The Employer also proposed that it would waive recovering the health insurance premium excess due from employees for the 1992 collective bargaining year, for any bargaining unit which accepted the Employer's final offer for the 1993-4 year without arbitration. All of the other bargaining units have accepted the Employer's offer without seeking interest arbitration and the Employer has waived the employees' 1992 contribution to health insurance in those units. The Employer's offer herein gives effect to that settlement with the newly created unit of professional courthouse employees by excluding them from the proposal herein for employee contribution to health insurance. The non-professional unit's current position for the 1993-4 negotiations is that it seeks to have the same increase as the other units plus an additional step to the salary schedule similar to that received by the professional unit. The Employer is unwilling to grant this unit the additional step.

POSITIONS OF THE PARTIES

The Union takes the position that it is improper for an Employer to hold up agreement for 1992 because the 1993-4 settlement has not been reached. It argues that since the Employer has not required any other bargaining unit to pay the excess health premium, this unit should be treated the same as the other units. It believes that this is the very purpose for the reopener in this agreement. It also argues that the Employer prejudiced the Union's negotiating position because it did not raise the issue of the health insurance premium until during the negotiations for the 1993-4 agreement on December 22, 1992. The Employer did not give the Union the specific information as to the amount of increase

until it notified the Union by letter dated April 14, 1993. Had the Union been notified earlier, the Union would have been able to negotiate a change in carrier. It notes that the parties have agreed to a change in health plan for the 1993 contract year. It disagrees with the Employer in that it believes that if health insurance costs were exceeding 20% over estimates, the Employer must have known early in the benefit year that that problem was occurring. While the Union's notes don't show any specific discussion before December, 1992, about health insurance, it admits that the Employer may have made unspecific claims about insurance costs in negotiation process.

The Employer takes the position that there would have been no reopener had the insurance increase been less than the amount which triggered the reopener. The proposal made herein does not require employees to pay any more than would have been required under the agreement without reopener. Thus, the Employer believes that the mere existence of the reopener and its arbitration provisions is actually irrelevant to this case.

It also notes that the administration of its self-funded plan is different than traditional insurance plans in that it only learns at the end of the year how much it has spent. According to the Employer's notes it raised the issue of the high cost of the 1992 insurance in the fall of 1992 at which time Mr. Goldberg told him that it would be about $495 family. In any event, it denies that it acted in bad faith. It offered the testimony of County Clerk Pickett to establish that the Employer did not realize the scope of the problem until late summer and that it then promptly took actions including providing the Union with an opportunity to look at new plans.

The Union denied that when it negotiated the dollar caps on health insurance that they knew that the final premium wouldn't have been determined until after the benefit-year. Union believes that the high 20% level of overrun must have been obvious in the spring of 1992. In any event, the last notice interfered with the Union's right to substitute. The Union contends that had it been notified earlier that it could have taken action as early as September. Evidence submitted by the Union which showed that the meeting to discuss the new health insurance December 10, 1992. Further, the Employer first raised the issue of the excess in bargaining for the 1993 agreement in a session on December 22, 1992.

DISCUSSION

It is the arbitrator's responsibility to select the final offer of the party, without modification, which is closest to appropriate. This decision is to based upon the arbitrator's

evaluation of the final offers in the light of statutory factors. These factors are:

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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

e. Comparison of wages hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.

f. Comparison of wages hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes, 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 parties, in the public service or in private employment.

The Union has argued that the Employer delayed its discovery of the problem with the health insurance premium. Factor j. includes "other factors" ordinarily considered by arbitrators and fact finders. Arbitrators and fact finders have traditionally considered the "bad faith" actions of parties as a factor for making awards. Indeed, under earlier versions of Sec. 111.70, fact finding was the "remedy" for bad faith bargaining. In this case, however, the Employer did not act in bad faith to prevent the Union from proposing changes in health insurance which would have prevented the 1992 problem. The testimony of County Clerk Pickett in this matter was forthright in that he recognized early that costs were running high, but that he believed at the time that the problem related to one-time factors which were going to be corrected in subsequent months. Mr. Goldberg credibly testified that he estimated the premium equivalent to the Union in negotiations in the fall of 1992. The Union simply believed this was "rhetoric" and did not make any information request. It wasn't until December, 1992 when the Union learned how serious the problem was. Under these facts, the failure to communicate was not the result of any bad faith conduct by the Employer, but a normal miscommunication (or lack of communication). While it is regrettable that the matter was not addressed sooner, the Employer's conduct is not such that it is a factor in this case.

Both parties rely upon the internal comparability criterion to support their position. However, they disagree about the application of the internal comparability criterion. All of the other relevant units settled for essentially the offer of the Employer herein. It is only as part of the Employer's proposal for the 1993-94 agreement that it proposed waiving the the health premium due from employees for the 1992 year, as a condition of settlement.[1] I have concluded that the proper application of the internal comparison factor would not take into account that the Employer waived the contribution for 1992 as part of the 1993 settlement. A prime consideration for this decision is the better administration of the interest arbitration system. That, in itself, is an "other factor" which is properly considered by arbitrators. The crux of Section 111.70(4)(cm) interest arbitration is its total package final offer, winner take all, nature. The Employer's offer to waive the 1992 employee contribution is equivalent to an offer of an additional one-time only signing bonus. By considering the Employer's waiver of the 1992 contribution as part of the 1993 settlement, in the 1992 arbitration, the Union splits the issues for the 1993 year and effectively defeats the final offer aspect. In making this choice,

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[1]It is unclear the extent to which the Employer has delayed collecting the employee contributions due from employees. No evidence was presented on the precise manner in which the employee contribution was administered. Accordingly, no opinion is expressed or implied as to that aspect of this dispute.

I note that the Union is in a position to make a final offer which would obtain both the increase its seeks and an additional one-time payment which would equate to the amount waived by the Employer in other units. Nothing in this award should be viewed as precluding the adoption of such an offer if the arbitrator of the 1993 package finds its appropriate. Accordingly, the Employer's offer is supported by internal comparisons and other relevant considerations and it is adopted herein.

AWARD

That the parties' 1991-2 agreement contain the final offer of the Employer.

Dated at Milwaukee, Wisconsin this 8th day of March, 1994.

Stanley H. Michelstetter II
Arbitrator