BEFORE THE ARBITRATOR

In the Matter of the Petition of

LOCAL 2470, AFSCME, AFL-CIO

To Initiate Arbitration
Between Said Petitioner and

MONROE COUNTY

Case 113 No. 52143
INT/ARB-7544

Decision No. 28452-A

Heard: 8/25/95
Record Closed: 10/16/95
Award Issued: 11/30/95

Sherwood Malamud
Arbitrator

APPEARANCES:

Dan Pfeifer, Staff Representative, Local 2470, AFSCME, WCCME #40, Rt. 1, Box 333, Sparta, Wisconsin 54656, appearing on behalf of the Union.

Ken Kittleson, Personnel Director, P.O. Box 202, Sparta, Wisconsin 54656, appearing on behalf of the Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On July 13, 1995, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator to issue a final and binding award pursuant to Sec. 111.70(4)(cm)6.c., Wis. Stats., with regard to an interest dispute between Monroe County and Local 2470, WCCME, AFSCME Council #40, AFL-CIO, hereinafter the Union. Hearing in the matter was held on August 25, 1995, at the County Highway offices in Sparta, Wisconsin, at which time the parties presented testimony and documentary evidence. The parties exchanged briefs among themselves. The Arbitrator received the initial and only briefs filed by the parties on October 16, 1995. Further submissions and objections to those submissions were received up through November 24, 1995. Based upon a review of the evidence, testimony and arguments presented by the parties, and upon the application of the criteria set forth in Sec. 111.70(4)(cm)7.a.-j., Wis. Stats., to the issues in dispute herein, the Arbitrator renders the following Award.

STATEMENT OF THE ISSUES IN DISPUTE

There are three issues determined in this Award for the successor Agreement that covers calendar years 1995 and 1996.

I. Wages

The Union proposes a 3.25% across-the-board wage increase in each of calendar years 1995 and 1996.

The Employer proposes a 2.5% across-the-board wage increase in each of calendar years 1995 and 1996.

II. Health Insurance

The Employer proposes to increase the cap on the amount of the monthly employee contribution towards health insurance premiums from $28.00 to $31.00 for single coverage and from $66.50 to $75.00 for family coverage. The increase in caps would be effective December 1, 1995, for insurance coverage for January 1, 1996.

The Union proposes to retain the caps at $28.00 and $66.50. Under both the Union and the Employer proposals, the percentage employee contribution towards health insurance premiums would remain at 13%. Should the increase in premiums generate an employee dollar contribution in excess of the cap, the Employer would pay the amount of the increase in excess of the cap.

III. Retirement

The Union proposes that effective January 1, 1996 the Employer pay the increase in the employee's share of the contribution towards retirement of 3/10 of 1%.

The Employer proposes to retain the Employer's payment of the employee's share of the contribution towards retirement at 6.2% and not increase it to 6.5% effective January 1, 1996.

STATUTORY CRITERIA

The criteria to be used to resolve this dispute are contained in Sec. 111.70(4)(cm)7, Wis. Stats. Those criteria are:

> 7.Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:
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> 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 the 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 the 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 the parties, in the public service or in private employment.

BACKGROUND

There are 49 employees in this bargaining unit. Thirty-four employees take family health insurance coverage and eight take single coverage. Seven employees do not avail themselves of the health insurance benefit.

The Employer changed carriers. In 1994, the carrier was Blue Cross. For 1995, the Employer changed to WPS. As a result of this change in carrier, the monthly family premium declined from $515.98 in 1994 to $490.79 in 1995. The premium for single coverage increased slightly from $208.98 in 1994 to $212.06 in 1995. The employee contribution declined from $66.50 in 1994 to $63.80 in 1995. The employee contribution toward single coverage increased from 1994 to 1995 from $27.16 to $27.56 monthly.

There is a minor dispute over comparability. The Employer includes Buffalo and Pepin counties into the range of comparables. The Union excludes these two counties.

POSITIONS OF THE PARTIES

The Union Argument

In its brief, the Union reviews the exhibits that it and the County presented. The Union notes that little data was presented by the County concerning Buffalo and Pepin counties. The Union argues that there is no need to include these counties in the group of comparables.

In the evaluation of the wage dispute between the parties, the Union argues that the total package increase should be compared to the increase in the Consumer Price Index in the application of the *cost-of-living* criterion. The Union argues that its final offer with a total package increase of 3.32% for 1995 and 4.54% for 1996 is preferred over the County's total package increase of 1.66% for 1995 and 3.56% for 1996. Over the two year period

in question, the Union argues that its offer more closely tracks the increase in the Consumer Price Index and cost of living than the Employer's final offer.

On the health insurance issue, the Union maintains that in seven of the eleven comparables that it proposes, employer contributions towards the premium for family coverage exceeds the contribution levels paid by Monroe County. The Union notes that the employee contribution for single coverage is the highest among the comparables. The Union argues that the Employer proposal to change the amount of the caps constitutes a change in the status quo. The Employer proposes no quid pro quo for this change. The Union maintains that the Employer errs when it asserts that employee contribution towards premium in 1994 was 11%. The Union argues that it was 12.88% for family premium rather than 13%. It was 13% for the single premium.

On the retirement issue, the Union notes that of the collective bargaining agreements that are open for calendar year 1996, Monroe is the only county that has refused to pick up the 3/10 of 1% increase of the employee's share of the contribution towards pension. The Union maintains that the comparables support its proposal to change the status quo.

The Union argues that the *overall compensation* criterion supports its offer. The Union notes that this Employer does not pay longevity, although six of the comparables do have some form of a longevity program. Furthermore, the Union notes that Monroe County is not a leader in the provision of benefits in terms of sick leave payout upon retirement, holidays or vacation.

The Union notes in its brief that the tentative agreement reached in Sauk County was rejected, consequently the data provided concerning that comparable has no bearing on this dispute.

The Union disputes the manner in which wage minimums-hire rates were charted by the Employer in its exhibits.

The Union takes issue with the County's position that there exists an internal settlement pattern in Monroe County. The Union notes that only

one of the five organized units of the County has settled; i.e., the law enforcement unit. The remainder of the units are in arbitration. The non-represented employees do not bargain over wage rates and should not be included with the law enforcement unit as a basis for establishing a pattern. The Union argues that the County position amounts to a situation in which the County would have the tail wag the dog.

The Union concludes that its offer should be selected by the Arbitrator for inclusion in the successor Agreement.

The Employer Argument

The Employer argues that this Arbitrator should take cognizance of the recommendations made by the Council on Municipal Collective Bargaining and the change in legislation that incorporates the recommendation of the Council concerning the statutory criteria. Under the law, as amended, the two new criteria should be considered in this case: the greatest weight should be accorded to restrictions imposed on local government spending, and greater weight should be accorded to local economic conditions.

On the retirement issue, the County objects to this Union proposal. It argues that the Union only interjected this issue into the bargaining in the course of the exchange of final offers. The County argues that the retirement issue, the increase in the contribution towards the employee's share for retirement was not negotiated, as such it is unreasonable. The County notes that it will pick up the increased share of its contribution, 3/10 of 1% for calendar year 1996. It maintains that the purpose of increasing the pension contribution and imposing that increase on both the Employer and employee is to have the employee share in the cost of pension increases. The Union proposal defeats that purpose. In 1996, the cost of the County meeting this increased contribution towards pension amounts to $7,310.00. Under the Union's offer, it amounts to $12,203.00.

On the health insurance issue, the Employer notes that the law enforcement unit accepted the increase in caps. The County maintains that this would not generate a change in the status quo. The Employer emphasizes that the employee contribution remains at 13% under its

proposal. The increase in the caps will insure that the Employer will contribute no more than 87% of the cost of family premium. Assuming a 10% increase in the cost of health insurance premiums, the County projects that health insurance will cost $19,192.80 in 1996 as contrasted to $20,916.96 under the Union's caps. The County notes that under the Union's proposal to retain the cap on monthly family premiums at $66.50 for the employee contribution, that cap will be hit if health insurance increases by only $2.70.

With regard to the wage issue, the County projects that the cost of the wage increases that it proposes over two years of the successor Agreement will amount to $87,367.80. It projects the cost of the Union's wage proposal at $113,921.71 over the same two-year period. The county has not budgeted for the increases proposed by the Union.

On the wage issue, the County notes that the southwest region of the state is identified by DILHR as a low wage area. Private sector rates bear out this point. The Union proposal only further distances the rates paid in Monroe County from the rates paid to employees performing similar work in private employment.

The County emphasizes that it has achieved a pattern of internal settlement. County Exhibit #37 demonstrates that the percentage settlements achieved by all units and paid to non-represented employees has been consistent since 1989. Should the Arbitrator select the Union's final offer, that pattern would be broken. The law enforcement unit and non-represented employees have all accepted the settlement offered to this unit.

The County notes that both the Union and County agree that the rates paid by Monroe County at the various classifications is consistent with the average paid by the comparables.

Many arbitrators recognize that it is the local settlement pattern that best reflects the increase in the cost-of-living. The wage offer it makes here is consistent with the increase in the cost-of living.

The County argues that the new criteria providing the greatest weight to evidence of legislative restrictions on spending by a municipality and the greater weight to be afforded to the evidence of local economic conditions, should be applied and considered together with the interest and welfare of the public in this case. The County emphasizes that the per capita income and equalized value of real property in Monroe County is below the average. The County argues that it has demonstrated the existence of an internal pattern of settlement. That internal pattern should be followed in this case. Accordingly, the County asks the Arbitrator to select its final offer for inclusion in the successor Agreement.

DISCUSSION

Introduction

The County argues that this Arbitrator should apply the criteria recently included in MERA. Under the terms of the new legislation, the new criteria do not apply to this case. If the legislature intended that the new criteria be applied to cases that had been certified by the Commission and were awaiting hearing before an arbitrator, they would have written the statute accordingly. Furthermore, the evidence submitted at hearing does not support the application of the new criteria to this case. There is no evidence as to what, if any, limitations have been imposed on County spending. There is no evidence as to the relationship of County expenditures to the limit imposed on Monroe County. Other than tax rates and per capita income, there is no other evidence as to the state of the economy in Monroe County or in the region encompassed by Monroe County and its comparables. The new statutory criteria are not applied in this case.

On November 1, 1995, the Employer submitted for consideration by this Arbitrator the award of Arbitrator John C. Oestreicher dated October 31, 1995 determining an interest dispute in another Monroe County unit. The Employer justifies the submission of this award on two grounds. First, the County maintains that the decision should be considered by the Arbitrator under the criterion *changes during the pendency of these proceedings*. Secondly, the award issued by Arbitrator Oestreicher is a public document under Wisconsin's open records law. As such, it becomes

part of the public record, and it is appropriate for the County to submit that award to the Arbitrator. The Union objects to the submission of this Award.

On November 22, the Arbitrator returned the Oestreicher award to the Employer. At the hearing on August 25, 1995, the parties agreed that the record in this matter would be closed, with several exceptions, as of August 25, 1995. In his letter dated September 1, 1995, Personnel Director Kittleson states the following:

> I understand that the record is closed as of August 25 and no additional information may be considered with the exceptions of the above information and your utilization of current cost-of-living information.

The exceptions noted in Personnel Director Kittleson's letter dated September 1 do not include the Oestreicher award.

The County's application of the statutory criterion of *changes in the foregoing during the pendency of the arbitration proceeding* may indeed suggest a legitimate basis for the receipt and consideration of the Oestreicher Award by this Arbitrator. However, the parties agreed to close the record as of August 25, 1995. The submission of the Oestreicher award is for the specific evidentiary purpose of establishing the wages, terms and conditions of employment established by that arbitrator for the Human Services Professional unit. At the time of the hearing before the Arbitrator, that interest dispute had not yet been resolved. If the parties wanted the first award issued by an arbitrator to influence the other cases pending at the time of the issuance of the first award, they could do so by keeping the record open in all cases to receive such evidence, or alternatively, they could select one arbitrator to decide all cases pending arbitration. Were the Arbitrator to receive the Oestreicher award and consider it in this case, he would be acting contrary to the criterion *the stipulation of the parties* and the specific agreement of the parties on this procedural matter.

For all of the above reasons, the Oestreicher award was returned to the Employer. That award was not read by the Arbitrator. It is not considered in this Highway unit case.

In the award that follows, the Arbitrator applies the statutory criteria to the wage issue, the health insurance cap dispute, and the dispute over the contribution to retirement. The Arbitrator then weighs the relative merits and strengths of the positions of the parties on each of these issues in making the determination as to which final offer is preferred for inclusion in the successor Agreement.

The Arbitrator finds that the criteria *the lawful authority of the municipal employer; stipulations of the parties*, and *the interest and welfare of the public . . .* and changes in any of the foregoing[1], do not serve to distinguish between the final offers of the parties, except as noted above with regard to the admissibility of the Oestreicher award. Accordingly, these four criteria are not discussed any further in this Award.

Comparability

The Union excludes Buffalo and Pepin counties from its list of comparables. The County includes both counties in its list. The County introduced into evidence the 1990 briefs of both the Union and the County that they submitted to Arbitrator Reynolds on the last occasion that they proceeded to arbitration in the Highway unit. In that case, both the Union and the County included Buffalo and Pepin counties in their list of comparables.

Most significantly, in the past, both parties included Buffalo and Pepin counties as comparables for the Monroe County highway unit. There is little data in this record concerning the wages and benefits paid by these two counties to their highway employees. However, there is no basis in this record to alter the comparability grouping.

The range of comparables identified by the parties includes LaCrosse. It is significantly larger than Monroe County in population and in total

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[1] The Arbitrator advised the parties at the arbitration hearing that the most recent issue of the Consumer Price Index will be considered by this Arbitrator, under the changes during the pendency criterion. Neither party objected to the Arbitrator's review of the most current CPI figures at the time this Award issues.

equalized value of property. The data concerning equalized value, both total and on a per capita basis, per capita income, population, and geographic proximity support the inclusion of the smaller counties of Buffalo and Pepin to provide an appropriate range for the comparability group for the Monroe County highway unit. Both the Union and the County include the cities of Sparta and Tomah as comparables to Monroe County for this blue collar unit. The group of comparables employed by the Arbitrator in this case are: Buffalo, Crawford, Jackson, Juneau, LaCrosse, Pepin, Richland, Sauk, Trempealeau, Vernon, and Wood counties; the cities of Sparta and Tomah.

WAGES

The wage issue is the most significant of the three issues in dispute. There are two components to the wage issue; the wage levels and the amount of the year-to-year increases in wages. First, this Arbitrator reviews the wage levels generated by the Union and Employer proposals. The Union and County agree that in the base year, 1994, the wage levels at the benchmark classifications of Heavy Equipment Operator/Mechanic and Patrolman, closely approximate the average wage levels paid by comparable public employers to their employees in these classifications. The 3/4 of 1% annual difference in the offers of the parties will tend to slightly increase or decrease the rates paid in Monroe County from the average paid by other employers. The significance of that difference generated by the final offers of the parties relative to the average may be easily ascertained from a review of the other aspect of the wage issue, the amount of the year-to-year increases agreed to by comparable Employers and their employees for calendar years 1995 and 1996.

Comparability-Public Sector

Under the Employer's final offer, the increases provided to the Equipment Operator II and Mechanic are 29 cents per hour and 28 cents an hour for employees in the auxiliary and standby classification. The Union's proposal generates a 1995 wage increase of 36 cents per hour for employees in the auxiliary and standby classification, 38 cents in the Heavy Equipment Operator II classification, and 37 cents in the Section Leader classification. The average increase in these classifications among the comparables is 37

cents in the Section Leader classification and 42 cents in the Equipment Operator II classification.

This data establishes that the Union's offer is equal to or less than the average increase paid by public sector comparable employers to employees in these classifications. The Employer's offer generates an increase of approximately 30 cents in the second year of the Agreement. The Employer offer is below the average wage increase at the various classifications in 1995 by approximately 8-9 cents per hour and below the average increase in 1996 by 10 cents per hour. The average increase among those settled for 1996 (Crawford, LaCrosse, Wood, Sparta, and Tomah) is 40 cents per hour.[2]

The above data clearly demonstrates that the size of the wage increase proposed by the Union is equal to or less than the wage increase in each of the two years in dispute granted by comparable public employers to employees in the relevant classifications.[3] This criterion provides strong support to the selection of the Union's final offer for inclusion in the successor Agreement.

Comparability - Private Sector

County Exhibits 19-23 are pages from the DIHLR 1995 wage survey for the Wisconsin Western Service Delivery Area. This service delivery area not only includes Monroe County but seven of the eleven counties identified above as comparables to Monroe County. These exhibits clearly establish that the wage rates paid by Monroe County at the classification of Heavy

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[2] The Arbitrator recognizes that four of the five comparables settled for 1996 are four of the thirteen comparables with greater resources or pay higher rates than Monroe.

[3] In its brief, the Union contests the manner in which the Employer calculates and charts the minimum rates paid by comparables to its employees. The Arbitrator, however, provides no weight to the minimum rates paid by comparables. In Monroe County, the top rate is achieved after six months. There is no evidence in this case that the hire, recruiting rate, poses any problem or is a subject of dispute between the parties. Accordingly, the Arbitrator focuses on the top rate paid by comparable employers to employees in the pertinent classifications relevant to this unit.

Equipment Operator, Mechanic and Truck Driver are well above the rates paid by private sector employers to employees in these classifications. This data does not establish the year-to-year wage increases that private sector employers are now providing to employees in these classifications.

This exhibit establishes that wage levels in Monroe County are higher than private sector employers. It supports the selection of the lower wage offer made by the Employer, in this case. However, the absence of data concerning trends in the size of wage increases paid by private sector employers to employees in these classifications, this data can only be given limited weight by the Arbitrator. Again the crux of the issue in this case is not so much the wage levels, but the year-to-year increases generated by the proposals of the parties.

Such Other Factors - Internal Comparability

This Arbitrator considers evidence concerning percentage wage settlements among the various units of a single employer under this criterion. The Employer argues that the settlement achieved in the law enforcement unit and the percentage wage increases it has committed to make to non-represented employees that are consistent with its final offer in this dispute establish a pattern of internal comparability that must be followed by this Arbitrator in this case.

The Union argues that the Employer has not established a pattern of settlement. Indeed the law enforcement unit together with the non-represented employees comprise 49% of the work force in Monroe County. The majority of the work force, 51%, are in arbitration. The Union and Employer offers in dispute in the other units that are in arbitration are consistent with the offers of the parties in this proceeding.[4]

The Employer emphasizes that arbitrators accord significant weight to internal comparability. It notes in its brief the observations of Arbitrator Vernon on the matter of internal comparability:

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[4] The Arbitrator bases this analysis on Union Exhibits 15 and 16, as well as, County Exhibits 15-18 in the discussion concerning the size of the wage increases provided by public sector comparable employers.

> Arbitrators when confronted with such situations, take a fairly uniform approach. It has been stated before:. . . where a consistent internal pattern of wage rate increases can be shown in the contract year this internal pattern should be given controlling weight unless the union can demonstrate that acceptance of the employer's final offer would result in significant disparities in wage levels relative to the external comparisons. . . . There are very strong equity considerations which arise when an internal pattern is established. Instability in bargaining, dissension and morale problems can occur when one group is treated differently than others. . . .(Dec. No. 24656-A)

This Arbitrator provides controlling weight to an internal pattern, where an internal pattern is established. It is difficult to achieve an internal wage settlement pattern. A settlement in one of five bargaining units and the unilaterally imposed wage and benefit settlement provided by the Employer to its non-represented employees does not constitute an internal settlement pattern.

Cost-of-Living

The Employer argues that the level of settlements among the comparables, external and internal, establish the level of the increase in the cost-of-living. This Arbitrator considers the data relative to internal and external comparability under the Comparability criteria. To consider that data under this criterion simply duplicates the analysis under two criteria. The application of the CPI to the total package costs of the Union and the Employer offers serves as one measure of the cost-of-living. The increase in the CPI in one year usually serves as the measure of the wage increase for the next year.

The increase in the cost-of-living under the Non-metro Area Urban Wage Earner and Clerical Worker Index for 1994 is 3%. This increase in the cost of living during calendar year 1994 serves as a basis for measuring the total package offer of each party to this dispute for calendar year 1995. The County's total package offer of 1.66% for 1995 is significantly below the 3% increase in the CPI. The Union's 2.32% total package increase

generated by the Union's offer, more closely approximates the increase in the CPI.

The increase in the cost-of-living for the first ten months of 1995 under the Non-metro Area Urban Wage Earner and Clerical Worker Index increased by 3.4%. This increase for 1995 serves as a basis for the increase to be paid employees in calendar year 1996. The total package cost of the County's final offer for calendar year 1996 is 3.56%, and for the Union, it is 4.54%. The County's final offer more closely approximates the increase in the cost-of-living during 1995 that should guide the size of the total package increase for 1996.

The *cost-of-living* criterion provides strong support for inclusion of the Union's final offer for calendar year 1995, and for the inclusion of the County's final offer for 1996 in the successor Agreement.

The total package increase for the two year term of the Agreement equals 5.22% under the County's final offer. The Union's offer generates a total package increase of 6.86%. The increase in the Consumer Price Index over the two year period of 1994 and 1995 approximates 6.4%. The Union's final offer more closely approximates the increase in the cost of living over the term of this successor Agreement. This criterion supports the inclusion of the Union's final offer in the successor Agreement.

Overall Compensation

The Union submits evidence demonstrating that the level of holiday and vacation benefits in Monroe County is below the level of those benefits paid by comparable employers. In addition, six of the eleven comparable employers suggested by the Union pay longevity; Monroe County does not. The Union argues that this evidence demonstrates that Monroe County is not a leader in the benefit package it provides to its employees.

This evidence supports the Union final offer. However, it is accorded little weight, here.

Summary of the Criteria on the Wage Issue

The comparability-public sector employees performing similar work criterion provides strong support for the selection of the Union final offer. The data submitted by the Employer concerning private sector wage rates provides some support for the selection of the Employer's lower final offer. All the other criteria pertinent to this issue, particularly the cost-of-living criteria, provide support for the selection of the Union final offer on the wage issue.

HEALTH INSURANCE

Comparability

The Arbitrator compares the dollar contribution paid by Monroe County for indemnity health insurance as contrasted to the dollar contribution made by comparable employers for similar coverage. With the reduction in premium levels achieved through the change in carrier instituted by the Employer for 1995, the contribution of the Employer for family coverage is $426.99; the average contribution by comparable employers for 1995 is $428.51. Clearly, the dollar contribution by this Employer closely approximates, but is slightly below, the dollar contribution towards health insurance provided by comparable employers. Although the Union questions the percentage contribution reflected in County Exhibit #13 for calendar year 1993, that exhibit demonstrates that, for most of the period from 1980-1995, the Employer contribution towards premium has been approximately 87%.

The Arbitrator concludes that the comparability criterion on the health insurance issue does not serve to distinguish between the final offers of the parties.

Such Other Factors - Status Quo

The Arbitrator concludes that this criterion bears significantly on the identification of the final offer that should be included in the successor Agreement.

The Union argues that it attempts to retain the cap on the amount of the employee contribution towards health insurance premium at the same level that existed in 1995, the first year of the successor Agreement. The Employer argues that only through an increase in the cap on the amount of the employee contribution, may the percentage contributions of 87% paid by the Employer and 13% paid by the Union be maintained.

In the base year, 1994, the employee contribution was at the cap, $66.50. The cap was $66.50 in 1993, as well. Through the Employer's change in carrier, the dollar contribution by employees was reduced to $63.80 for calendar year 1995. During bargaining up through the presentation of the positions of the parties at the arbitration hearing on August 25, 1995, the parties could not know by what percentage the cost of health insurance premiums would increase. In its revised Exhibits 24, 25 and 26, the Employer projected a 10% increase. By the time briefs were filed in this matter, it appears that the increase in the cost of premium for both single and family coverage will be 8.5% for calendar year 1996.

The Union argues that, in the past, the cap was not increased until and unless the amount of the employee contribution exceeded the cap. This argument ignores the fact that the employee contribution was at the cap for calendar years 1993 and 1994. The Union proposal permits an increase in premium of 4.23% at which time the premium contribution for family coverage would increase to the cap, i.e., from $63.80 to $66.50. Since seven employees in this unit do not avail themselves of the health insurance benefit, when the increased cost generated by the lower cap is calculated over the entire unit that cost is moderated. Nonetheless, the Union refusal to increase the caps will cause the Employer contribution towards health insurance premium to exceed 87%. In this respect, it is the Union's offer rather than the Employer's which proposes to change the status quo.

More significantly, the Union proposal undermines the purpose of a cap. Its purpose is to protect employees from large surges in the cost of health insurance coverage in a particular year. Yet, the cap advocated by the Union comes into play should the increase in premium approximate the amount of the total package offer for calendar year 1996, i.e., 4.23%. This increase is significantly lower than the average increase in premium that has occurred in each year, other than the year of the reduction in premium as a

result of the Employer's change in carrier. Simply put, the Union proposal to retain the cap at $66.50 not only would inexorably change the percentage contribution of employee and employer towards the cost of health insurance premiums, but it also undermines the basis for the inclusion of a cap on employee contributions. It transforms this protection for employees from spikes in the cost of premium to a vehicle to alter the percentage contribution to meet health insurance costs.

The cost of the family premium for health insurance will amount to approximately $532.51 for calendar year 1996. The employee share at 13%, without a cap, would amount to approximately $69.23. The retention of the cap at $66.50 would result in the Employer picking up an extra $3.73 per month of what should be the employee's share of the health insurance premium for family coverage. Had the Union proposed an increase in the cap of 4%, it would have generated an amount that closely approximates the increase in premium cost attributable to the employee's 13% payment for family coverage. The Arbitrator can find no basis to sustain the Union's position to retain the cap at $66.50. Accordingly, on the health insurance issue, the Arbitrator concludes that the Employer offer is strongly preferred.

RETIREMENT

Comparability

The Union notes that LaCrosse County and the City of Sparta have three year contracts. Under those contracts, the contribution towards retirement continues at 6.2%. However, in all contracts in which the issue may be addressed, Monroe County is the only Employer that has not agreed to pick up the employee's share of the retirement. Accordingly, the Union argues that the comparables support its proposal for change to the status quo.

Such Other Factors - Status Quo

The County argues that this issue was introduced late in the bargaining. The evidence demonstrates that the legislative changes giving rise to this issue occurred at a time when the parties were submitting final offers and were participating in an investigation conducted by Mediator

Douglas Knudson of the staff of the Wisconsin Employment Relations Commission. The Employer did not object to the inclusion of this issue in the Union's final offer. It did not object to the closing of the investigation with the inclusion of this proposal in the Union's final offer. It is this Arbitrator's view that objections to matters covered in the final offer of a party should be raised before the Wisconsin Employment Relations Commission. It is the job of the Arbitrator to apply the criteria to the final offers certified by the Commission. It is not the task of the Arbitrator to look behind the final offers so certified.

The Union proposes that the 3/10 of 1% increase in the employee's share of the contribution towards pension should be paid by each employee. Article 19 of the expired agreement sets out the amount of the contribution to be paid by the Employer for the employee's share of the employee's contribution towards retirement. The amount of that contribution stated in Article 19 is:

> An amount equal to six and two-tenths percent (6.2%) of the total earnings of such participating employees.

The legislature increased the employee contribution by 3/10 of 1% for calendar year 1996. The Union proposal for the Employer to pay this 3/10 of 1% contribution towards retirement would increase the contractual amounts specified in Article 19 from 6.2% to 6.5%. This proposal does change the status quo.

The Union proposes no direct quid pro quo for the payment of the 6.5% contribution towards retirement. This Arbitrator requires that a quid pro quo be offered in exchange for a change to the status quo. In this case, the change in retirement, from 6.2% to 6.5% of the employee's share of the contribution to the pension fund, has a minor impact on the totality of the issues in dispute, herein. However, the Arbitrator concludes that the *Comparability* criterion provides some support to the Union proposal. The *Such Other Factors - Status Quo* criterion supports the Employer's final offer on this issue. On balance, the Arbitrator concludes that the Employer final offer on this issue is preferred.

SELECTION OF THE FINAL OFFER

The Union proposal on the wage issue is preferred. The Union offer is equal to or less than the increase in wages provided by comparable employers. The wage levels paid by Monroe County to employees in this unit are at the average. The adoption of the Employer's offer will result in the wage levels of employees in this unit declining, slightly, below the average paid by comparable employers.

The Union proposes to retain the cap on employee contribution for family and single coverage at $66.50 and $28.00, respectively. As noted above, the Arbitrator concludes that the Union proposal on this issue is unreasonable. The Union proposal on the health insurance cap is not only unjustified, but it is destabilizing. It upsets the balance in Employer/employee contributions towards the cost of health insurance premiums. It also undermines the purpose of a dollar cap on employee contributions towards health insurance. Even if the Employer's projected increase in insurance premium had come in at 10% or even at 11%, as initially proposed by the carrier, a $5.00 increase in the monthly cap from $66.50 to $71.50 would have been sufficient to meet this increased cost and maintain the ratio of Employer and employee contributions. The Employer proposed increase of $75.00 in the cap, it argues, is consistent with the pattern of increases in the cap that occurred in the past. However, the cap issue only impacts the second year of a two year Agreement. The Union offer on this issue is unjustified and destabilizing. The health insurance issue impacts 42 of the 49 employees in this unit.

The retirement issue provides some additional support for the selection of the Employer final offer. The percentage increase in the total package cost of the Union proposal is more consistent with the increase in the cost-of-living during the two year period in question. The wage disparities impact all employees, those who take insurance and those who do not avail themselves of this benefit. It impacts both years of the Agreement. It is the major economic issue in this dispute. Although the Employer offer is strongly preferred on the health insurance issue and preferred on the retirement issue, the wage issue is the major economic issue in this dispute. The Arbitrator accords that issue greater weight in the context of this dispute. The Union proposal on the wage issue is preferred.

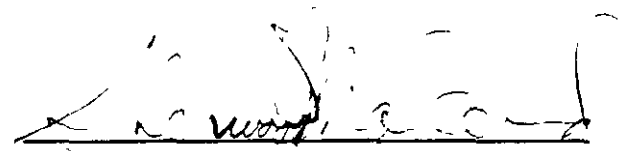
Accordingly, the Arbitrator concludes that the Union's final offer is preferred for inclusion in the successor Agreement by only the slightest margin.

On the basis of the above Discussion, the Arbitrator issues the following:

AWARD

Upon the application of the statutory criteria found at Sec. 111.70(4)(cm)7.a.-j., Wis. Stats., and upon consideration of the evidence and arguments presented by the parties and for the reasons discussed above, the Arbitrator selects the final offer of Local 2470, WCCME, AFSCME Council #40, AFL-CIO, which together with the stipulations of the parties, are to be included in the collective bargaining agreement between Monroe County and Monroe County Highway Employees, Local Union No. 2470, for calendar years 1995 and 1996.

Dated at Madison, Wisconsin, this 30th day of November, 1995.



Sherwood Malamud
Arbitrator