ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between IOWA COUNTY (Courthouse & Social Services) And IOWA COUNTY COURTHOUSE & SOCIAL SERVICES EMPLOYEES' UNION LOCAL 413, AFSCME, AFL-CIO	CASE 84 NO. 52908 INT/ARB 7697 Decision No. 28697-B

Impartial Arbitrator

William W. Petrie
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Hearing Held

Dodgeville, Wisconsin
October 31, 1996

Appearances

For the District

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BACKGROUND OF THE CASE

This is a statutory final-offer interest arbitration proceeding between Iowa County and Wisconsin Council 40, AFSCME, AFL-CIO, with the matter in dispute the terms of a renewal labor agreement between the parties covering a bargaining unit of Courthouse and Social Services employees of the District.

The parties met in negotiations after their initial exchange of proposals on May 24, 1995, and, after they were unable to reach full agreement, the Union on July 17, 1995, filed a petition with the Wisconsin Employment Relations Commission seeking final and binding interest arbitration of the matter pursuant to Section 111.70(4)(cm)(7) of the Wisconsin Statutes. After preliminary investigation by a member of its staff, the Commission on June 5, 1996 issued certain *findings of fact, conclusions of law, certification of results of investigation and an order requiring arbitration,* and on July 1, 1996 it issued an *order appointing arbitrator,* directing the undersigned to hear and decide the matter.[1]

An interest arbitration hearing took place before the undersigned on October 31, 1996 in Dodgeville, Wisconsin, at which time both parties received full opportunities to present evidence and argument in support of their respective positions, and each reserved the right to close with the submission of post-hearing briefs and reply briefs; following the receipt and distribution of the briefs and reply briefs, the record was closed by the undersigned on January 23, 1997.

THE FINAL OFFERS OF THE PARTIES

The final offers of the two parties, hereby incorporated by reference into this decision, may generally be described as follows:[2]

(1) Both offers overlap with one another to a considerable extent, and only a few items remain in dispute.

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[1] A petition of the County objecting to the jurisdiction of the Commission to order it to Interest Arbitration was denied by Commission Order [Iowa County, Case 84, No. 52908, INT/ARB-7697, Decision No. 28697 (WERC, 4/96)].

[2] Pursuant to the agreement of both parties, the Employer's original certified final offer, dated November 28, 1995, was replaced by a modified final offer dated July 8, 1996.

(2) The only remaining impasse item in the final offer of the Union addresses *hours of work for employees of the Land Conservation Office*, in which connection it had proposed, in part, as follows:

> "There shall be a trial period from April 1 - October 31, 1996, during which the normal work dya (sic) shall be seven (7) hours per day, 7:00 a.m. to 3:00 p.m., and the normal work week shall be thrity-five (sic) hours per week, Monday through Friday...This schedule may be continued, after October 31, 1996, by mutual agreement of the parties."

At the arbitration hearing, which took place on the expiration date of the above proposed trial period, the Employer refused to move the trial period ahead to 1997, and it refused to continue the proposed schedule after October 31, 1996, thus establishing that *no item remains at impasse in the final offer of the Union*!

(3) The only remaining impasse items contained in the final offer of the Employer consist of the following:

(a) Its proposed deletion of the prior President's Day and Columbus Day holidays, in exchange for the addition of one floating holiday, and full rather than half day holidays on Christmas Eve and on Good Friday.

(b) Its proposed reduction in Employer paid health insurance premiums for employees on medical leaves of absence who were hired after January 1, 1996.

(c) Its proposed reduction in Employer contribution toward health insurance premiums for part-time employees hired after January 1, 1996.

(d) Its proposed effective date of the agreed upon reclassification of the Secretary/Clerk/Typist position in the Child Support Office to a Child Support Specialist, as the later of either the ratification date of this agreement or January 1, 1996.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Arbitrator 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. Comparisons 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. Comparisons 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. Comparisons 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. 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 hearing.

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 UNION

In support of the contention that its is the more appropriate of the two final offers before the Arbitrator, the Union emphasized the following principal considerations and arguments.

(1) That the following *introductory facts and observations* are material and relevant to the outcome of these proceedings.

(a) That the only remaining operative impasse items are contained in the final offer of the Employer, and include *certain changes in paid holidays, reduced health insurance during medical and parental leaves for employees hired on or after January 1, 1996,* and *reduced employer contribution for health and dental insurance premiums for part-time employees hired on or after January 1, 1996.*

(b) In addressing *the statutory criteria,* that neither the *lawful authority of the Employer,* the *stipulations of the parties* nor *changes during the pendency of the proceedings* appear to have significance in these proceedings; that the principal focus of the Union's case is upon the *external comparison* criterion.

(2) That the Union proposed primary *external comparison pool* should be adopted by the Arbitrator in these proceedings.

(a) That the Union proposes that the pool consist of the counties of Columbia, Crawford, Dane, Grant, Green, Lafayette, Richland and Sauk, while that the County differs only in its proposed exclusion of Dane County and addition of the cities of Dodgeville and Mineral point.

(b) That other Iowa County bargaining units have utilized the statutory interest arbitration process, with the most recent involving Highway Department employees; that Arbitrator Richard Tyson utilized the same comparables as are proposed by the Union in the case at hand, while Arbitrator Howard

Bellman had earlier utilized the counties adjacent to Iowa County, and those contiguous thereto.[3]

(c) That interest arbitrators have consistently held that, once established, comparability pools should not be disturbed by future interest arbitrators.[4]

(d) That since the comparability pool has been established in prior proceedings and since there is no compelling evidence to justify its modification, that the Employer's attempts at modification of the group should be rejected.

(e) That Dane County must be included as a primary comparable.

(i) That Dane and Iowa Counties are not twins, in that Dane is larger, wealthier, and more urban; on the other hand that both have significant agricultural sectors, both share a long common boundary, and the only four lane highway in Iowa County connects it to Dane County.

(ii) That Iowa County is part of the greater Dane County labor market, as reflected in commuting patterns, which shows strong and growing labor market interaction between the two counties.[5]

(iii) That while no two counties are comparable, to fail to include Dane County is to ignore the fact that it is immediately contiguous to Iowa County.

(f) That the cities of Dodgeville and Mineral Point must not be included as primary comparables.

(i) That these cities have never been used as primary comparables in the past.[6]

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[3] Citing the contents of Union Exhibit #14, the January 14, 1994 decision of Arbitrator Tyson, and Union Exhibit #15, the August 15, 1978 decision of Arbitrator Bellman.

[4] Citing the following arbitral decisions: the December 1983 decision of *Arbitrator Michael Rothstein* in School District of Marathon, Decision No. 19898-A; the April 1986 decision of *Arbitrator Jay Grenig* in Janesville School District, Decision No. 22823-A; the July 1985 decision of *Arbitrator Robert Mueller* in Cuba City Board of Education, Decision No. 22267-A; the July 1985 decision of Arbitrator Sharon Imes in Tomah Area School District, Decision No. 22247-A; the May 1989 decision of *Arbitrator Joseph Kerkman* in Rock County (Sheriffs Department), Decision No. 25698-A; the December 1986 decision of *Arbitrator Del Rice* in Rock County, Decision No. 23688-A; the April 1986 decision of *Arbitrator Richard J. Miller* in Port Edwards School District, Decision No. 23060; and the October 1989 decision of *Arbitrator Frederick Kessler* in City of Manitowoc (Police), Decision No. 26003-A.

[5] Citing the contents of Union Exhibit #35.

[6] Citing the contents of Union Exhibits #14, #15 and #18.

(ii) That when their inclusion as a primary comparable was arbitrally considered in the past, it was opposed by the County and rejected by the Arbitrator.[7]

(iii) That a much stronger case for exclusion of the cities of Dodgeville and Mineral Point can be made in the case at hand, because of the lack of even the intraindustry comparison of law enforcement officers which existed in the case cited immediately above.

(iv) That the functions of city and county government are far different, their employees do not work in the same "industry," and there is simply no basis for considering the cities of Dodgeville and/or Mineral Point to be included within the primary external comparison group in these proceedings.

(3) That there can be no "inability to pay" arguments advanced in these proceedings. In this connection, that the Employer has made no mention of such an issue, the short term costs of the two final offers do not significantly differ, and the contents of Union Exhibit #15 establish that the County has significant additional taxing authority under the law.

(4) That the crux of the dispute is the County's attempt to improperly change the status quo through the arbitration process.

(a) That it is attempting to make sweeping changes in employee benefits in the following respects: pro-rating the health and dental insurance premiums for part-time employees; reducing the number of months during which it pays for the health insurance of employees on medical and/or maternity leaves; and eliminating two holidays in favor of making two half-day holidays into full holidays and adding one additional floating holiday.

(b) That while interest arbitrators are occasionally faced with attempts by one of the parties to change the status quo, they are normally reluctant to accept such changes and, absent compelling reasons, they favor preservation of the negotiated status quo.[8]

(c) That arbitrators have normally required satisfaction of a three-pronged test in selecting final offers containing changes in the status quo ante: *first*, that the proposing party has demonstrated a need for such change; *second*, if so, that the proposing party has provided a quid pro quo for the change; and, *third*, that the presence of the

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[7] Citing the contents of Employer Exhibit #19, the December 17, 1993 decision of *Arbitrator Gil Vernon* in Iowa County (Sheriff's Department), Case No. 64 No. 46722 MIA-1674, wherein he rejected the inclusion of either Mineral Point or Dodgeville in the primary external comparison group.

[8] Citing the following arbitral decisions: the July 1987 *decision of Arbitrator Arlen Christianson* in Menomonee Falls School District, Dec. No. 24142-A; the March 1991 *decision of Arbitrator William Petrie* in Twin Lakes #4 School District, Dec. No. 26592-A; the January 1987 *decision of Arbitrator Byron Yaffe* in Waukesha County (Highway Department), Dec. No. 23530-A; the *decision of Arbitrator Jay Grenig* in City of Greenfield (Public Works), Dec. No. 22411-A.

prerequisite requirements have been established by clear and convincing evidence.[9]

(d) That the County has failed to meet any of the normal prerequisites for its proposed changes in the status quo ante.

(5) That the Employer has *failed to justify its proposed changes in the status quo on the payment of health insurance premiums.*

(a) That of the thirty-one bargaining unit positions, seven are part-time; within a relatively short period of time, therefore, one quarter of those in the bargaining unit will receive reduced benefits.

(b) That the *cost of insurance coverage* does not justify the proposal; in this connection, that insurance premiums have increased only moderately over the past several years.[10]

(c) That *external comparisons* do not justify the change, in that four of the counties in the primary comparison group provide the same insurance contributions for both part-time and full-time employees, which represents the status quo in these proceedings.

(d) That *internal comparisons* do not justify the change, in that two of four internal bargaining units pro-rate insurance for part time employees, and two do not do so; that there has been no recent changes in this area, the negotiated practices have been in effect for several years, and there is no evidence of any problems.

(e) That the Employer has offered no *quid pro quo* for its proposed change in insurance benefits; in this connection, that its increased contribution to the Wisconsin Retirement Fund was granted within each of the other bargaining units, without linkage to any concession.

(6) That the Employer has failed to justify its proposed changes to the status quo in the area of paid holidays.

(a) That the Union was certified as the exclusive bargaining agent for those in the unit in 1978, this is the first interest arbitration between the parties, and it is clear that all provisions of the 1994-1995 agreement were the product of voluntary negotiations.

(b) That the inclusion of President's Day and Columbus Day in the list of holidays for employees is a matter historically regarded as reasonable by the parties, which makes more difficult the County's burden of establishing clear and convincing evidence of a need for a change in the status quo.

(c) That the County has failed to identify any persuasive basis or need for its proposed change in the agreed upon holidays, even though none of the external comparables have Presidents

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[9] Citing the February 1988 *decision of Arbitrator Sherwood Malamud* in D.C. Everest Area School District, Dec. No. 24678-A.

[10] Citing the contents of Union Exhibits #30 - #34, which reflect an approximate 11% increase in insurance costs between 1993 and 1997.

Day or Columbus Day as paid holidays. That while the Personnel Coordinator complained that citizens are unable to conduct business on these two days, there is no showing that the citizenry has been clamoring for a change; indeed, that the Union's final offer would enable citizens to conduct business for one-half days on Christmas Eve and Good Friday.

(d) That there is not full comparability within the primary intraindustry comparison group, in that Columbia, Crawford, Dane, Green, Richland and Sauk counties have a paid holiday on the day after Thanksgiving.

(e) That while the much smaller Professional bargaining unit has accepted the Employer proposed changes in paid holidays effective with calendar year 1997, selection of the final offer of the County in these proceedings would require retroactive application of its terms to January 1, 1996, thus raising significant problems relating to re-computation of straight time and overtime pay for time worked on the changed holidays.[11]

(f) That the Personnel Coordinator testified that the County's non-represented employees have the same holidays which the Union seeks to maintain in these proceedings; that she also speculated that should a change be approved for non-represented employees, their holidays would be inconsistent with those in the bargaining unit, thus potentially complicating the scheduling of trials over holiday periods, but such speculation should not carry significant weight in these proceedings.

(g) That there is simply nothing in the record which indicates a need to change the holidays as proposed by the County in these proceedings.

(7) That the County has failed to justify its proposed changes in employer paid health insurance benefits for employees on medical leave who were hired after January 1, 1996; as with other Employer proposed changes in the status quo, these proposed changes are unsupported by any apparent justification, and are unsupported by any quid pro quo.

In summary and conclusion, that the following principal arguments and considerations favor arbitral selection of the final offer of the Union in these proceedings: the Arbitrator should utilize the external comparables urged by the Union; the Employer has failed to demonstrate either a compelling need or an appropriate quid pro quo in support of its proposed changes in the status quo; and that selection of the Union's final offer is justified by arbitral consideration of various of the arbitral criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes.

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[11] Citing Berns v. WERC, 99 Wis.2d 266 (1980), and Sauk County v. WERC and AFSCME, Local Union No. 3148, AFL-CIO, Supreme Court Case No. 89-2059.

In its *reply brief*, the Union emphasized or re-emphasized the following principal considerations and arguments.

(1) Contrary to the arguments of the Employer that *no appropriate bases exist for the inclusion of the cities of Dodgeville and Mineral Point within the primary intraindustry comparison group*: that recent statutory changes relied upon by the Employer do not apply to the case at hand, and/or that they address local economic conditions; that no basis has been established for disregarding the decision of Arbitrator Vernon;[12] that there is nothing to indicate that Arbitrator Vernon's comparability analysis had been either *issue related* or *issue dependent*; and that the County has been to arbitration several times in various bargaining units, and never have these two cities been considered as comparables.

(2) That the County's opposition to the inclusion of Dane County in the primary intraindustry comparison group is based upon size, which should not be determinative; that Dane County, as the dominant economic power in South-Central and South-Western Wisconsin, must be taken into consideration when determining wages and benefits for employees of Iowa County.

(3) That the County's argument that internal comparisons should control the outcome of these proceedings, is contrary to well accepted arbitral standards which assign greater weight to such arbitral criteria as intraindustry comparisons and bargaining history.

(4) That the County's holiday pay arguments should not be determinative in that there has been no internal holiday consistency, that retroactive application of the holiday changes would cause problems, and that the alleged public difficulties of differing holidays within certain bargaining units was largely the product of speculation.

(5) That the County's medical leave based arguments should not be credited for the following reasons: that there is no evidence of economic hardship; that if cost savings are involved, it establishes the need for an adequate quid pro quo; that the claimed need for uniformity is contrary to the fact that the negotiated status quo ante in the bargaining unit has existed for many years; that alleged upset in other bargaining units should be disregarded; that two tiered benefits within a single unit are inherently inequitable; and that the contents of the second paragraph of Employer proposed Section 12.07 are inherently ambiguous and impractical.

(6) That the County's part-time employee insurance premium proration proposal, the most important issue in dispute, should not be selected for the following reasons: that the Company urged quid pro quo, its increase from 6.2% to 6.5% for the employees' share of retirement contributions, was offered to all other County employees; contrary to the professed need for uniformity, that the second and third largest County bargaining units do not have insurance premium proration for part time employees;[13] that two tiered benefits within a single unit are inherently inequitable; and that the evidence relating to private sector comparisons is

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[12] Citing the contents of Employer Exhibits #19, #21 and #22.

[13] Citing the practices within the Sheriff's Department and the Courthouse bargaining units.

not persuasive in that it was largely based on hearsay, and it includes neither an indication of the extent of use of part time employees, nor any definition of what constitutes part-time employment.

(7) That the parties are in apparent agreement that the land conservation hours issue has become moot.

(8) That the Employer's arguments relating to the effective dates of reclassifications should not be credited for the following reasons: that the County's arguments are inconsistent, confusing and/or contradictory in various respects; and that the Union's offer clearly provides for reclassification of the Child Support Specialist classification effective January 1, 1996, and for the Benefit Specialist reclassification to be effective on the date of the arbitration award.

POSITION OF THE COUNTY

In support of the contention that its is the more appropriate of the two final offers before the Arbitrator, the County emphasized the following principal considerations and arguments.

(1) That the remaining impasse items before the Arbitrator include the following items: *first*, a proposed change in the current schedule of paid holidays; *second*, a proposed change in the medical leave of absence language, pertaining to Employer payment of insurance premiums for employees hired after January 1, 1996; *third*, a proposed change in the Employer's contribution toward health insurance premiums for part-time employees hired after January 1, 1996; *fourth*, on what basis the new work schedule for the Land Conservation Classification should be continued beyond October 31, 1996; and, *fifth*, the effective date of the classification of the Secretary/Clerk/Typist position in the Child Support Office to a Child Support Specialist classification.

(2) That a threshold issue is arbitral determination of the primary pool of external comparables prior to considering the merits of the parties' offers.

(a) That in three prior Iowa County interest arbitrations involving other bargaining units, the Arbitrators have utilized *Columbia, Crawford, Grant, Green, Iowa, Lafayette, Richland* and *Sauk* counties as the primary external comparables, to which the Union proposes the addition of Dane County and the County proposes the addition of the cities of Dodgeville and Mineral Point.

(b) That the Wisconsin Legislature recently changed Section 111.70(4)(cm)(7) to provide greater weight upon economic conditions in the jurisdiction of the municipal employer; that, although not yet applicable when the underlying petition was filed, it particularly supports arbitral consideration of the Dodgeville and Mineral Point comparisons in these proceedings.

(c) That the absence of any wage issue in these proceedings, makes arbitral consideration of the Dodgeville and Mineral Point paid holiday and insurance premium practices particularly useful; that employees of both cities are also represented by AFSCME, and they represent approximately 31.5% of the total county population.

(d) That Dane County should not be included among the primary external comparables for the following primary reasons: it had a 1995 *population* of nearly 400,000 as compared to 21,000 in Iowa County; it had 1995 *real estate values* totalling $18,541,671,555, versus $842,356,600 for Iowa County; it had *per capita income* nearly 50% higher than Iowa County; and that travel patterns between the two counties do not support inclusion of Dane County among the primary comparables.

(e) That the Arbitrator should give no consideration to Dane County in these proceedings.

(3) Regardless of the composition of the primary external comparables, that *internal comparisons* should control the outcome of these arbitration proceedings.

(a) That the internal Iowa County comparisons are particularly compelling when addressing the non-wage issues involved in these proceedings.

(b) That issues pertaining to holidays, leaves of absence, insurance for part-time employees, and the effective date of a wage reclassification, more closely relate to Iowa County employees than to external comparisons.

(c) That arbitral consideration of all internal and external comparisons, however, favors selection of the final offer of the County in these proceedings.

(4) In connection with *the paid holidays impasse item*, that the following considerations should be determinative.

(a) That employees in the bargaining unit presently have eleven paid holidays, and the County simply proposes deletion of Presidents Day and Columbus Day in exchange for full day holidays on Christmas Eve and Good Friday, and an additional floating holiday.

(b) That the principal reason for the Employer proposal is to have the paid holiday schedule conform to that for other county employees.

(c) That Personnel Coordinator Annette Goldthorpe testified that the varied holiday schedules had been causing problems to the County in the past, and that having some offices closed and others open on certain holidays had generated complaints from the public in the past; that acceptance of the final offer of the Union, containing varied holidays, would generate confusion and disruption to the judicial system.

(d) That the Employer has undertaken to change the holiday schedules for non-represented employees, and employees in the Professional Employees bargaining unit have agreed to the same holiday schedule proposed by the County in these proceedings.

(e) That the Union presented no reasons for its opposition to the proposed change in holidays, and it presented no evidence on this issue.

(f) That those in the bargaining unit are the only employees working for the County who have not agreed to a holiday

schedule which excludes both Columbus Day and Presidents' Day.[14]

(g) That the holiday proposal of the County is supported by the intraindustry comparables, in that no other such employers provide either Presidents' Day or Columbus Day as paid holidays, or two have half day versus full day holidays on Christmas Eve and Good Friday; accordingly, that arbitral consideration of these external comparables supports the holiday proposal of the County.[15]

(h) That no Iowa County private employers provide paid holidays on either Columbus Day or Presidents' Day; accordingly, that arbitration consideration of private sector comparables supports the holiday proposal of the County.[16]

(i) In summary, that the Employer has advanced good reasons in support of its holiday proposal, it is not proposing to reduce or eliminate the number of paid holidays, and the Union has presented no reason for its opposition to this proposal.

(5) In connection with *the Medical Leave of Absence impasse item*, that the following considerations should be determinative.

(a) That the Employer is proposing reductions in the durations of Company paid health insurance premiums for employees on *unpaid medical leave* or *parental leave*, from maximums of one year to a maximums of six months and twelve weeks, respectively, for employees hired on or after January 1, 1996.

(b) That the underlying bases for the proposed changes are two-fold: *first*, economics, in the form of the County's wish to limit its insurance costs for employees on unpaid leaves; and, *second*, in the form of eliminating inconsistency between various of the bargaining units of County employees; that because the proposal would take away an existing benefit, the County has proposed limiting it to employees hired on or after January 1, 1996.

(c) That the Union has presented no testimony or other evidence supporting its opposition to this proposal, or identifying any anticipated adverse effects.

(d) That no other employees in Iowa County bargaining units are entitled to more than six months of unpaid medical leaves and/or more than six months of paid insurance during such leaves.[17]

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[14] Citing the contents of Employer Exhibits #14, #15, #16 and #26. In this connection it acknowledges that Deputy Sheriff's have a totally different holiday schedule, including Columbus Day and Easter Sunday as two of their eleven paid holidays; it emphasizes, however, that Deputy Sheriffs are scheduled to work 365 days per year, and that their eleven paid holidays are the same number enjoyed by other County employees.

[15] Citing the contents of Employer Exhibit #25.

[16] Citing the contents of Employer Exhibit #26.

[17] Citing the contents of Employer Exhibit #33.

(e) Among the intraindustry comparables, that only those in the bargaining unit receive Employer paid insurance for up to one year; that no Iowa County private sector employers contacted by the County pay insurance premiums beyond the twelve week Family Leave Law Minimum.[18]

(f) In summary, that escalating insurance costs, comparisons, and the need for greater uniformity within the County, particularly support the position of the County on this impasse item.

(6) In connection with *the insurance premium proration for part-time employees impasse item*, that the following considerations should be determinative.

(a) That the Employer is proposing proration of health and dental insurance premiums for part-time employees hired after January 1, 1996.

(b) That the principal underlying bases for the proposed change are economics and the desire for parity among the County's part-time employees; that because the proposal would reduce an existing benefit, the County has proposed limiting it to employees hired on or after January 1, 1996.

(c) That while no bargaining unit employees hired before January 1, 1996 will suffer from the change, all of them received higher percentage wage increases than other County employees for the same period of time.[19]

(d) That the Union presented no reasons or evidence in support of its opposition to this proposed change; presumably that it is opposed due to the reduction of benefits for part-time employees.

(e) That no other Iowa County bargaining unit receives full payment of health insurance for part-time employees, and the Employer's final offer would provide uniformity in this area.[20]

(f) That a majority of the intraindustry comparables do not pay the full amount of health insurance premiums for their part-time employees.[21]

(g) That only one of eleven Iowa County private employers contacted by the Employer, pays the full amount of health insurance premiums for part-time employees.[22]

(h) In summary, that Iowa County is one of the few area employers providing both health and dental insurance, that part-time bargaining unit employees are the only such employees to have the full amounts of their health and

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[18] Citing the contents of Employer Exhibits #31, #32 and #33.

[19] Citing the contents of Employer Exhibit #34.

[20] Citing the contents of Employer Exhibit #30.

[21] Citing the contents of Employer Exhibits #27, #28 and #29.

[22] Citing the contents of Employer Exhibit #30.

dental insurance paid by their employer, that the Employer is properly attempting to limit future costs, and that the Union's unwillingness to accept this change is unreasonable.

(7) In connection with *the new working hours for the Land Conservation employee impasse item*, that the matter has become moot and the County would be prepared to negotiate again on this matter during forthcoming contract renewal negotiations.

(8) In connection with *the effective date of reclassification of the Secretary/Clerk/Typist position in the Child Support Office to the Child Support Specialist classification impasse item*, that the following considerations should be determinative.

(a) That while the parties have agreed to the reclassification, the effective date of such change remains in dispute.

(b) That the parties have agreed to reclassify the Benefits Specialist as of the effective date of the arbitration award, and it is important to have both changes effective on the same date; that to have different effective dates of agreed upon classification changes could create dissension and conflict within the bargaining unit.

(c) That the Union has presented no reasons or evidence in support of its position in this matter.

(d) In summary, that it makes no sense to treat the two reclassifications differently, and the Employer's final offer on this item would provide uniformity.

In summary and conclusion, that the final offer of the Employer should be selected for the following principal reasons: the Employer has supplied good reasons for its positions on each of the impasse items, while the Union has provided virtually no reasons for its positions other than its unwillingness to agree; that the employees in the bargaining unit are neither underpaid nor deprived of benefits that others enjoy; to the contrary, that they have recently received the highest percentage wage increases in the County, and they have as good or better holiday, insurance and medical leave benefits as comparable public or private employees; that the Employer's final offer will only adversely affect new hires; that adoption of the Union's final offer, due to its unwillingness to agree, would create public confusion and irritation; and that reclassification of two positions on different dates would cause resentment within the bargaining unit.

In its *reply brief*, the Employer emphasized or reemphasized the following principal considerations and arguments.

(1) That the following considerations indicate that *Dane County should not be included as one of the primary intraindustry comparables*: no arbitrator has ever established such comparability for this

bargaining unit; there is no evidence in the record that the parties had always utilized Dane County as a comparable; and that the fact that Dane County shares a border with Iowa County should not be determinative.

(2) That the cities of *Dodgeville and Mineral Point should be included among the primary intraindustry comparables*: that there is no evidence to indicate that they have not been utilized by the parties as comparables in the past; that the prior decision of Arbitrator Gil Vernon should not be controlling on this matter;[23] and that it is not material that the city workers are not in the same "industry" as the workers in the bargaining unit.

(3) That the Union's arguments that the *Employer is attempting to change the status quo*, that it is *improper to ask an arbitrator to change the status quo*, and that the *Employer has a burden to show both a need for and a quid pro quo for a change in the status quo* should not be determinative: that the Employer's offer does not constitute a change in the status quo, in that they apply solely to persons hired after the expiration of the old agreement; that changes in the labor agreement can be made by arbitrators; and, even if a proposed change in the status quo is involved herein, the Employer has provided ample justification for such change.

(4) That the proposed *changes in health insurance charges* are justified both by economics and by a need for consistency within the County.

(5) That the proposed *leaves of absence changes* are justified by economics, by supervisory considerations, and by a need for consistency within the County.

(6) That the proposed *holiday changes* are justified by operational uniformity, economics, efficiency and reduction of confusion to the public.

(7) In connection with the *quid pro quo arguments of the Union*, that arbitrators are recently coming to the conclusion that the economic impact of ever increasing health insurance premiums upon employers has reduced the need to support proposed changes with quid pro quos;[24] that the Employer is proposing an adequate quid pro quo within the holiday schedule by its offer of two alternate holidays in exchange for those eliminated; and that the agreed upon higher wage increases within the bargaining unit provide an appropriate quid pro quo for the Employer proposed changes.

(8) That the Union argument relating to problems in implementing retroactive changes in holidays is a red herring, in that certain items, due to their very nature, cannot be implemented on a retroactive basis, in which case they are implemented on the effective date of an arbitral award.

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[23] Citing the contents of Employer Exhibit #18.

[24] Citing the following arbitral decisions: *Arbitrator Rice* in Walworth County Handicapped Children's Ed. Bd., Dec. No. 27422-A (May 1993); *Arbitrator Oestreicher* in City of Beaver Dam (Police Department), Dec. No. 26548-A (January 1991); and *Arbitrator Friess* in Howards Grove School District, Dec. No. 43261 INT/ARB-5483 (September 1990).

FINDINGS AND CONCLUSIONS

Prior to reaching a decision and rendering an award in these proceedings, the undersigned will offer certain preliminary observations relative to the *nature of the interest arbitration process*, the *normal application of the statutory arbitral criteria in Wisconsin*, including *the makeup of the primary intraindustry comparison group*, and the *significance of proposed changes in the status quo ante in the final offer selection process*. Thereafter *the various individual impasse items will be evaluated on the basis of the statutory criteria*, and *the more appropriate of the two final offers will be selected and ordered implemented* by the Arbitrator.

The Nature of the Interest Arbitration Process

As the undersigned has emphasized in many prior interest proceedings, an interest arbitrator operates as an extension of the parties' normal collective bargaining process, and his or her normal goal is to attempt to put the parties into the same position they would have occupied but for their inability to reach complete agreement at the bargaining table. In attempting to do so, the arbitrator will closely examine the parties' *past practices* and their *negotiations history* (both of which fall well within the scope of Section 111.70(4)(cm)(7)(j) of the Wisconsin Statutes), in the application of the other statutory criteria. These principles are well discussed and described in the following excerpt from the widely respected and authoritative 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:
>
> > '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 their evidence, we

> think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining..."[25]

The Normal Application of the Statutory Criteria

While the Wisconsin Legislature has not prioritized the various arbitral criteria contained in Section 111.70(4)(cm)(7) of the Statutes, it is widely recognized by interest arbitrators everywhere that *comparisons* are normally the most frequently cited, the most important, and the most persuasive of the various arbitral criteria, and the most persuasive of these are normally the so-called *intraindustry comparisons*. These considerations are addressed as follows in the respected book by Irving Bernstein:

> "a. Intraindustry Comparisons. The intraindustry comparison is more commonly cited than any other form of comparisons, or, for that matter, any other criterion. Most important, the weight that 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 among the wage-determining standards...."[26]

The makeup of the primary intraindustry comparison group within which to apply the above described comparisons is frequently in issue, and this is the case in these proceedings. In this connection, both parties agree that such group should include *Columbia, Crawford, Grant, Green, Iowa, Lafayette, Richland* and *Sauk* counties, but the Union urges the inclusion of *Dane County*, and the Employer urges the inclusion of the cities of *Dodgeville* and *Mineral Point*.

Contrary to the thrust of the arguments advanced by the parties, the question is not whether Dane County and/or the cities of Dodgeville and/or Mineral Point should or should not be totally excluded from consideration, but whether they should be included within the *primary intraindustry comparison group* in these proceedings. Various of the criteria contained in Section 111.70(4)(7) of the Wisconsin Statute broadly mandate arbitral consideration of comparisons, but not all such comparisons are entitled to the same weight, which was exactly the point implicit in the following observations of

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

[26] Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, pg. 56.

Arbitrator Tyson in his January 14, 1994 decision and award, wherein he continued the use of the same *primary intraindustry comparison group* previously identified by Arbitrator Rice in 1987 (i.e., Columbia, Crawford, Grant, Green, Iowa, Lafayette, Richland and Sauk counties):

> "...The arbitrator is inclined not to include Dane County as a primary comparable in part because it was not included in the 1987 arbitration proceedings (and the Union has not given evidence of changes in circumstances to warrant its inclusion herein) and in part because Dane County is different from the other comparables in these several respects. However, the Undersigned is cognizant of the strong labor market and economic influence of Dane County on the surrounding counties, and will therefore give it some consideration. Certainly it is at least as likely to exert an upward influence on Iowa County wages as Grant County will exert downward.
>
> To conclude, the Arbitrator will use the pool of comparables utilized by Arbitrator Rice in his 1987 award, and will give some consideration to Dane County as he evaluates the parties' offers."[27]

Arbitral reluctance to disregard the parties' *bargaining history* and to adopt the same comparisons utilized in the past, either in their conventional bargaining or in interest arbitration, is also well described in the following additional excerpt from Bernstein's book, wherein he uses the term "wages" in its broad sense:

> "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 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."[28]

What next of the Employer urged distinction between the previous arbitral determinations of the primary intraindustry comparison group and the case at hand, on the basis of the presence of wage disputes in such prior arbitrations which are not present in these proceedings? While this is an ingenious argument, its premise is inconsistent with the statutory criteria and its use would generate significant practical difficulties in the interest arbitration process. In these connections it is noted that the criteria

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[27] See Union Exhibit #14, the January 14, 1994 decision of Arbitrator Richard Tyson in Iowa County (Highway Department), WERC Case No. 66, No. 47057, INT/ARB 6386, at page 11.

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

contained in Section 111.70(40(cm)(7) clearly mandate broad arbitral comparisons of the "wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings" with those of other groups of employees, but they neither provide for nor anticipate the rather impractical approach of requiring *separate comparisons among separate groups, for separate impasse items!*[29]

Without unnecessary elaboration, the undersigned will note at this juncture that neither party has established a sufficiently persuasive basis to justify arbitral modification of the *primary intraindustry comparison group* previously used in Iowa County interest arbitrations, and reflected in the prior decisions of Arbitrators Rice, Tyson and Vernon. Accordingly, and for the purpose of these proceedings, this group will continue to consist of *Columbia, Crawford, Grant, Green, Iowa, Lafayette, Richland and Sauk* counties, and *Dane County, Dodgeville* and *Mineral Point* comparisons will be given only such weight as may be otherwise appropriate under the Wisconsin Statutes.[30]

Status Quo Considerations

Interest arbitrators faced with demands for changes in the negotiated status quo ante, normally require the proponent of change to demonstrate that *a legitimate problem exists which requires attention*, that *the disputed proposal or proposals reasonably address the problem*, and that *the proposed change is accompanied by an appropriate quid pro quo*. In this case the undersigned is faced with the arguments of the Union that the County, as the proponent of various changes in the status quo ante, must meet these tests, while the County has presented various alternative arguments to the effect that it has proposed no changes in the status quo, and/or that no quid pro quos are needed in support of its proposed changes, and/or that it has

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[29] Such *piecemeal separate comparisons*, using different comparison groups for wages and for benefits, would also be contrary to the apparent intention underlying Section 111.70(4)(cm)(7)(h) of the Wisconsin Statutes, which mandates arbitral consideration of the *overall compensation* presently received by municipal employees.

[30] Despite the Employer's argument that no previous arbitrator had ever established the primary intraindustry comparison pool for the same bargaining unit involved in these proceedings, the previous arbitral determinations remain very persuasive in these proceedings.

established the requisite appropriate bases for the selection of its final offer, including any appropriate quid pro quos.

The significance of the status quo ante has frequently been considered in the Wisconsin interest arbitration processes, including the following excerpts and quotations from various prior decisions by the undersigned:

> "...underlying principles governing the handling of proposed changes in the status quo in the public sector have previously been addressed as follows by the undersigned:
>
> > 'Certain important considerations must be kept in mind in addressing status quo questions in the interest arbitration process. It must be recognized that there is a significant distinction between private sector interest impasses, where the parties have the future right to strike or to lock out in support of their bargaining goals, versus public sector impasses, where the parties lack the right to undertake strikes or lockouts. A complete refusal to allow innovations or to consider changes in the status quo in the latter context, would operate to prevent unions from gaining the progressive and innovative changes achieved by their private sector counterparts in across the table bargaining, and such a refusal would also operate to prevent public sector employers from gaining important changes through the collective bargaining process, which changes have already been enjoyed by certain private and/or public sector counterparts.
> >
> > The distinction between the public and the private sector interest arbitration processes, and the need for greater arbitral flexibility in consideration of proposed innovation or changes in the status quo in public sector disputes, where the parties lack the ability to strike or to lock out, has been addressed as follows by Arbitrator Howard S. Block:
> >
> > > 'One of the most compelling reasons which makes it necessary for neutrals in public sector disputes to strike out on their own is the dearth of public bargaining history. The main citadels of unionism in private industry have a continuity of bargaining history going back to the 1930s. Public sector collective bargaining, on the other hand, is still a fledgling growth. In many instances its existence is the result of an unspectacular transition of unaffiliated career organizations responding to competition from AFL-CIO affiliates. As we know, a principal guideline for resolving interest disputes in the private sector is prevailing industry practice -- a guideline expressed with exceptional clarity by one arbitrator as follows:
> > >
> > > > 'The role of interest arbitration in such a situation must be clearly understood. Arbitration in essence, is a quasi-judicial, not a legislative process. This implies the essentiality of objectivity -- the reliance on a set of tested and established guidelines.
> > > >
> > > > 'In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of the extraordinary pressures

which led to the exhaustion of their traditional remedies.

'The arbitrator attempts to accomplish this objective by first understanding the nature and character of past agreements reached in a comparable area of the industry and in the firm. He must then carry forward the spirit and framework of past accommodations into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to either party that which they could not have secured at the bargaining table.'

Viewed in the light of the foregoing principles, the public sector neutral, I submit, does not wander in an unchartered field even though he must at times adopt an approach diametrically opposite to that used in the private sector. More often than in the private sector, he must be innovative; he must plow new ground. He cannot function as a lifeless mirror reflecting precollective negotiation practice which management may yearn to perpetuate but which are the target of multitudes of public employees in revolt.'

Although Arbitrator Block was principally addressing employer resistance to union requested change or innovation in a context in which the union lacked the ability to strike, the principle has equal application to the situation where an employer is proposing innovation or change, which is being resisted by a union. If public neutrals were precluded from recognizing change or innovation, the matter could not be rectified by the parties in their next negotiations, at which time they had the power to undertake economic action in support of their demands! A union dedicated to avoidance of change in a context where all impasses moved to binding interest arbitration, rather than being open to strikes and lockouts, could forever preclude an employer from achieving change, even where it was desirable or necessary, and/or where the change had achieved substantial acceptance elsewhere.'f/n

Wisconsin public sector statutory interest arbitrators have recognized the occasional need for innovation or for change in the status quo ante, provided that the proponent of such change or innovation has demonstrated that a legitimate problem exists which requires attention and that the disputed proposal reasonably addresses the problem. The Wisconsin interest arbitrator, operating as an extension of the contract negotiations process, normally attempts to place the parties into the same position they would have reached over the bargaining table had they been able to agree, and an appropriate quid pro quo may be required to justify the proposed elimination of or substantial change in an established, existing and defined policy or benefit; the rationale for the so-called quid pro quo requirement is that neither party should gain either the elimination of or a substantial change in a previously negotiated policy or benefit, without having advanced a bargaining quid pro quo equivalent to that which normally would have evolved from the give and take of conventional bargaining. It would be very difficult, for example, for either party to justify the elimination or the substantial modification of a recently negotiated policy or benefit, unless a very persuasive case had been made. In an earlier school district interest arbitration, for example, the undersigned addressed as follows an employer proposed elimination of a compacted salary schedule for teachers that had been agreed upon in the immediately preceding negotiations:

'What then of the arguments of the Employer that its agreement to a compacted salary schedule in negotiations for the 1983-84 agreement does not represent the status quo, that the agreement was reached out of fatigue rather than conviction, and that the negotiations history showed a lack of understanding of the full implications of the compacted salary schedule at the time of the agreement? What of the countervailing arguments of the Association that the compacted schedule does represent the status quo, that it was agreed upon only after full discussion and explanation between the parties, and that the new salary schedule was the product of considerable give and take in the negotiations process?

After a full examination of the record in these proceedings, the Arbitrator has reached the preliminary conclusion that the compacted salary schedule which was voluntarily agreed upon by the parties in the negotiations leading to the 1983-84 renewal agreement, was the product of full discussion between the parties, did not evolve from any apparent misconceptions or mistakes, and apparently represented compromise by the parties in the normal give and take of bargaining. These conclusions are rather clearly indicated by the comprehensive minutes of the parties' eighteen negotiations meetings that preceded the 1983-84 agreement. In reviewing these minutes the Arbitrator particularly noted the fact that the Association's salary schedule proposal was first presented to the Employer on April 20, 1983 and, after many intervening meetings, was adopted on October 3, 1983; the minutes clearly indicate certain changes of position by the parties, predicated upon acceptance or non-acceptance of the proposed salary schedule.

Having preliminarily concluded that the compacted salary schedule properly represents the previously negotiated status quo, has the Employer presented the requisite persuasive case for arbitral revision of the schedule? The District urged comparisons dealing with percentage relationships at various points in its proposed salary schedule, are simply unpersuasive in the dispute at hand, as are the relative rankings within the suggested comparison group. Had the ranking and the percentage figures been presented at a point in time when the Employer was protesting a suggested movement into a compacted salary schedule, the data would have been material and highly relevant to the outcome. In the situation at hand, however, the Arbitrator is called upon to deal with a situation where the parties comprehensively modified the salary schedule during a series of eighteen negotiations meetings just a single year prior to the effective date of the renewal negotiations leading to the matter in dispute in these proceedings. It simply would take a far more persuasive case than the arguments advanced by the District, to justify arbitral abandonment of the negotiated settlement of the parties from the prior year.'f/n

What, however, of the situation where the costs and/or the substance of a long standing policy or benefit have substantially changed over an extended period of time, to the extent that they no longer reflect the conditions present at their inception? Just as conventionally negotiated labor agreements must evolve and change in response to changing external circumstances which are of mutual concern, Wisconsin interest arbitrators must address similar considerations pursuant to the requirements of Section 111.70 (4)(cm)(7)(j) of the Wisconsin Statutes; in such circumstances, the proponent of change must establish that a significant and unanticipated problem exists and that the proposed change reasonably addresses the problem, but it is difficult to conclude that a bargaining quid pro quo should be required

> to correct a mutual problem which was neither anticipated nor previously bargained about by the parties. While comparisons should not alone justify movement away from the negotiated status quo, if it has been established that the requisite significant and unanticipated problem exists, arbitral examination of comparables can go a long way toward establishing the reasonableness of a proposal for change.
>
> The parties agreed upon the ten year maximum period of Employer payment of unreduced health care premiums for early retirees in the late 1970s, but the meteoric escalation in the cost of health insurance since that time has exceeded all reasonable expectations, and the immediate prospect for future escalation is also significantly higher than could have been anticipated by either party some twelve or thirteen years ago. In short, the situation represents a significant mutual problem, and it is clearly distinguishable from a situation where one party is merely attempting to change a recently bargained for and/or a stable policy or benefit for its own purposes."[31]

As emphasized above, therefore, interest arbitrators operate as *extensions* of the bargaining processes, they normally attempt to put parties into the same position they would have occupied but for their inability to reach agreement at the table, in so doing they closely consider the status quo ante, and they avoid *substituting* themselves for the bargaining process by giving either party what they would not have been able to achieve at the bargaining table. As urged by the Employer in these proceedings, however, in *public sector* interest disputes, arbitrators must be somewhat more flexible in considering demands for change from the parties; to completely reject innovation/change would be to doom its proponent from ever gaining such goal(s) in either conventional negotiations or in any statutory interest arbitration process, even though such innovation/change was fully justified by other considerations. Even in dealing with such public sector interest disputes, however, arbitrators normally require *a persuasive basis* to be established in support of any demand to add new language and/or new or innovative benefits, and some form of *quid pro quo* may also be required in support of the selection of an offer containing significant changes or innovations; in addressing the *quid pro quo element*, interest neutrals should

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[31] See the *decision of the undersigned* in Algoma School District, WERC Case 18, No. 46716, INT/ARB-6278, November 10, 1992, pp. 22-25, which includes quotations from these prior sources: Mukwonago School District, WERC Case 39, No. 39879, INT/ARB-4705, December 15, 1988, pp. 24-26 (quoting Block, Howard S., Criteria in Public Sector Interest Disputes, Reprint No. 230, Institute of Industrial Relations, University of California, Los Angeles, California, 1972, pp. 164-165, and Des Moines Transit, 38 LA 666); and Joint School District Number 1, Towns of Wheatland, Brighton, Randall and Salem, Wisconsin, WERC Case 5, No. 33613, MED/ARB-2869, July 8, 1985, pp. 11-12.

consider the type of give and take bargaining which might have enabled the parties to have voluntarily reached agreement on the disputed item(s). In applying these principles to the case at hand, it is noted that the County, as the proponent of change, bears both the *burden of proof* and the *risk of non-persuasion*.

What first of the Employer's arguments that the proposed changes in the areas of paid holidays and Employer paid health care insurance premiums do not represent changes in the status quo ante for two reasons: *first*, that its paid holiday proposal retains eleven paid holidays, the same number as provided in the expired agreement, and it does not entail a reduction in benefits; and, *second*, that its proposed changes in Employer paid health care premiums for part-time employees and/or those on leave was applicable only to those hired on or after January 1, 1996, thus having no effect on incumbent employees? In these respects the undersigned finds the following considerations to be determinative:

(1) The Employer, while proposing retention of eleven paid holidays for those in the bargaining unit, would reduce from thirteen to ten the number of days on which specifically designated holidays are to be celebrated; such proposal would, therefore, reduce the number of days on which designated holidays are celebrated and on which overtime pay could be earned, thus somewhat reducing the previously negotiated economic benefits and protections due the employees in the bargaining unit.[32] Despite the Employer proposed retention of eleven paid holidays, therefore, the undersigned has preliminarily concluded that its proposal is not a mere neutral modification of the holiday schedule, and that it must establish the normal bases for such a proposed change in the status quo ante.

(2) The Employer is correct that no employee on the payroll prior to January 1, 1996 would be hurt by its proposed reductions in paid health and/or dental insurance benefits for employees on extended leaves and/or future part-time employees; its argument that no change in the status quo is thus being proposed, however, is a specious one, in that it represents real and significant future reductions in benefits within the bargaining unit, and the introduction of a two tiered benefits structure, which constitute significant changes in the negotiated status quo ante. Despite its arguments to the contrary, therefore, the undersigned has preliminarily concluded that the Employer is also proposing changes in the status quo ante in this area, and that it must establish the normal bases for such a change.

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[32] By way of hypothetical example, an employee who took a so-called *floating holiday* need not be replaced at holiday overtime rate, and employees required to work on *Columbus Day* and/or on *Presidents' Day* would no longer be working on designated holidays.

In connection with *the paid holidays impasse item*, the undersigned notes that even if the Employer's arguments that non-uniformity in the celebration of paid holidays is a significant problem and that its proposal reasonably addresses the problem are fully credited, the previous schedule of half day and full day holidays evolved from the give and take of bargaining between the parties, and it should not normally be modified in arbitration, without the normal type of quid pro quo which would have been required at the bargaining table.

In connection with *the employer paid health insurance premium impasse items*, even if the Employer's argument that the rising health care costs are a significant problem is fully credited, and even if its more tenuous argument that a two tiered program of reducing such premium payments for part-time employees and for those on extended leaves of absence reasonably addresses the problem, the matter of an appropriate quid pro quo remains. While the Employer is quite correct that arbitrators are sometimes prepared to select final offers containing cost-sharing or cost reductions in health care without the normal quid pro quo, such cases normally fall within the "*unanticipated and mutual problem category*" previously addressed by the undersigned as referenced in footnote #31 above, and they are distinguishable from the case at hand. On these bases, the Arbitrator has preliminarily concluded that the paid health insurance premium impasse items fall within the normal category of proposed changes in the status quo ante, and require the type of quid pro quo which would normally have been required at the bargaining table.

What next of the Employer's contention that it had provided an appropriate *quid pro quo* through its agreement to higher wage increases for those in the bargaining unit? In this connection it relied upon the contents of Employer Exhibit #34 showing the following combined 1996-1997 wage increases within the various bargaining units of County employees: Sheriff's Department - 6.29%; Highway Department - 8.31%; Professional Unit 8.33%;

and Courthouse Unit 9.48%.[33] The undersigned finds this argument unpersuasive for the following principal reasons:

(1) There is nothing in the record to support the conclusion that the wage settlement had been either proposed or agreed upon by the parties as including a *quid pro quo* for acceptance of the Employer proposed changes in paid holidays and/or in employer paid health insurance.

(2) As described earlier, the most persuasive evidence of the appropriateness of a particular wage level is normally gleaned from *intraindustry comparisons*, rather than *internal comparisons* of employees performing non comparable jobs. There is nothing in the record, however, to allow the undersigned to readily consider comparable levels of wages and/or wage increases within the primary intraindustry comparison group defined earlier.

(3) The evidence in the record does not address the sufficiency of the Employer claimed quid pro quo.

On the above described bases, the Arbitrator has preliminarily concluded that the Employer has failed to establish the existence of an appropriate quid pro quo in support of its proposed changes in the negotiated status quo ante, thus failing to fully meet the normal criteria normally considered by interest arbitrators in determining the propriety of such proposed changes.[34]

The Impasse Over Hours of Work in the Land Conservation Office

Although this item remains a part of the certified final offer of the Union, both parties at least tacitly agreed and urged in their briefs that it had become moot by virtue of its contents and the passage of time. Accordingly, the undersigned has preliminarily concluded that arbitral consideration of this impasse item does not favor the position of either party in the final offer selection process.

The Dispute Over the Effective Date of the Reclassification of the Secretary/Clerk/Typist Position in the Child Support Office

In this area the undersigned is initially faced with the necessity of determining the presence or absence of an impasse item in this area. In its

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[33] The comparisons on this exhibit measure *total lift* over two years, with the lower two year aggregate percentages received within the Sheriff's Department obviously at least partially attributable to the fact that these *increases were fully paid effective January 1 of each year, while the split increases received within the other bargaining units were partially paid on January 1 and October 1 of each year.*

[34] The criteria for arbitral evaluation of the propriety of proposed changes in the negotiates status quo ante, fall well within the scope of Section 111.70(4)(cm)(7)(j) of the Wisconsin Statutes.

final offer the Employer proposed that the effective date of the parties' agreed upon reclassification of the Secretary/Clerk/Typist position in the Child Support Office to a Child Support Specialist Classification, should be *the later of the ratification date of the agreement or January 1, 1996*. In this connection the parties differ as follows: the Employer equates the *ratification date of the agreement terminology* with the date of the arbitral award in these proceedings, and urges that the reclassification become effective on the date of the arbitral award; the Union submits that the *ratification date of the agreement terminology* refers to the final step in approving a tentative agreement reached at the bargaining table, rather than the date of an arbitral award which requires no ratification.

When an arbitrator is faced with the need to determine the intended meaning of a certified final offer, he or she will follow the principle that clear and unambiguous language speaks for itself and determines its intended application. In applying this principle to the language contained in the Employer's final offer, it is clear that a January 1, 1996 effective date for the reclassification is proposed, except in the event of a later ratification date. Since the date of an arbitral award is *not* the same as the date of ratification, and since the Employer did not propose an exception to the January 1, 1996 effective date for a later arbitral award, the undersigned has preliminarily concluded that the effective date of the reclassification would be January 1, 1996 under either of the two final offers and, therefore, that no impasse exists in this area.

The Impasse Over Paid Holidays

As previously discussed, the relative weight to be placed upon various external and internal comparisons may vary with the impasse item under consideration and the circumstances peculiar to each case, and the case at hand very well illustrates this point. In this connection, external intraindustry comparisons may persuasively indicate the number of paid holidays to be provided, while internal comparables may persuasively identify when such holidays should be celebrated.

(1) Arbitral examination of the record indicates that those in the bargaining unit are very competitive within the *intraindustry comparables* in the number of paid holidays received each year.[35]

(2) The Employer's desire for *internal uniformity* in the celebration of paid holidays is quite understandable, however, and an examination of the *internal comparables* supports the Employer's contention that continuation of the status quo ante would represent a legitimate problem, which problem is reasonably addressed in its proposal.[36]

On the above described bases the Impartial Arbitrator has preliminarily concluded that consideration of the *internal comparison criterion* favors the selection of the final offer of the Employer in the paid holiday impasse item, and had it proposed and identified *an appropriate quid pro quo* for the limited economic impact of its proposed change in this area of paid holidays, the record would have favored its position on this impasse item. Its failure to do so, however, establishes that the position of the Union is favored on this impasse item.

The Impasses Over Proration of Paid Health Insurance Premiums for Part-Time Employees, and Over Employer Paid Health Insurance Premiums for Employees on Leaves of Absence

The principal remaining evidence relating to these impasse items include *intraindustry comparisons*, *internal comparisons* and other *external comparisons*.

(1) Employer Exhibit #27 compares health insurance coverage provided for part-time employees by the intraindustry comparables, and indicating that Crawford, Grant and Iowa Counties pay for such insurance premiums in full, and that at least five others pay for portions of such insurance on a pro-rated basis.[37]

(2) Employer Exhibit #28 indicates that only Columbus County, among the intraindustry comparables, pays for dental insurance for part-time employees, and it does so on a pro-rated basis.

(3) Employer Exhibits #31, #32 and #33 indicate that at least six of the eight intraindustry comparables provide for some form of mandatory and/or discretionary payment of health insurance costs for employees on leaves of absence, and establish that the status

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[35] Employer Exhibit #25 indicates that one such comparable provides 11.5 paid holidays, one comparable other than Iowa County provides 11.0 paid holidays, one comparable provides ten paid holidays, and the remaining four comparables provide nine paid holidays.

[36] See the internal holiday pay comparisons contained in Employer Exhibit #26.

[37] A question exists in the notes of the undersigned relative to proration of such insurance premiums by Lafayette County.

quo within the bargaining unit is much better than provided by the comparables.

(4) Employer Exhibit #33 examines various internal and private sector comparisons, and shows that non-represented employees have up to a maximum of one year of paid health insurance for those on leaves of absence, reportedly, however, subject to change effective January 1, 1997, and employees within Bloomfield Manor enjoy only the twelve weeks of paid health insurance provided for by federal family leave legislation. Within the Professional Employees bargaining unit, the Highway Department bargaining unit and the Sheriff's Department bargaining unit, employees have up to 6 months of paid health insurance for those on leaves of absence.

This exhibit also indicates that various other area employees have varying practices, none of which provide paid health insurance for up to the twelve month period provided within the bargaining unit.

The above described evidence rather clearly indicates that both part-time and full time employees in the bargaining unit enjoy the benefits of Employer paid health insurance premiums that are significantly better in various respects than provided by intraindustry comparables, by internal comparables and/or by miscellaneous private sector employees located in the same geographic area. Indeed, if the Union were now first seeking full Employer payment of health insurance premiums for part-time employees and/or continued Employer payment of such premiums for up to one year for employees on leaves of absence, arbitral consideration of the above comparisons would not support its position. The parties are not, however, dealing with the introduction of or improvement in previous benefits, but with the propriety of an employer proposal to reduce certain benefits below the previously negotiated status quo, and there is nothing to indicate that the comparisons referenced above were any different when the parties initially negotiated and/or renewed their agreement to the benefits in question. Stated simply, such ongoing comparisons cannot *alone* provide a persuasive basis for change in the previously negotiated status quo ante; even if they had provided a basis for possible change, the reasonableness of its proposed two tiered system would have remained in question, and the Employer's failure to provide an appropriate *quid pro quo* in support of the proposed changes would still have been determinative. Accordingly, the referenced comparisons cannot be assigned determinative weight in these proceedings.

Summary of Preliminary Conclusions

As addressed in greater detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions.

(1) Prior to reaching a decision and rendering an award in these proceedings, the Arbitrator will offer certain *preliminary observations with respect to the specific impasse items in issue*, the *nature of the interest arbitration process*, the *normal arbitral application of the statutory arbitral criteria in Wisconsin*, including the *makeup of the primary intraindustry comparison group*, and the *significance of the proposed changes in the status quo ante* in the final offer selection process; thereafter, the *various impasse items will be evaluated on the basis of the statutory criteria*, and the *more appropriate of the two final offers will be selected and ordered implemented by the parties*.

(2) The primary focus of a Wisconsin interest arbitrator is to attempt to put the parties into the same position they would have occupied but for their inability to achieve a complete settlement at the bargaining table.

(3) Although the Wisconsin Legislature has not prioritized the various arbitral criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, the *comparison criterion* is normally the most important and persuasive of the various criteria, and the so-called *intraindustry comparison* is normally regarded as the most important of the various comparisons.

(4) The *primary intraindustry comparison group* for use in these proceedings consists of the following counties: Columbia, Crawford, Grant, Green, Iowa, Lafayette, Richland and Sauk.

(5) The *proponent of change in the status quo ante* must normally make a very persuasive case for change, and the Employer, as the proponent of change in the areas of *paid holidays* and *paid health insurance*, bears both the *burden of proof* and the *risk of non-persuasion*.

(a) The proposed changes in the areas of *paid holidays* and in *employer paid health insurance* represent changes in the negotiated status quo ante, and both, therefore, would normally require an appropriate quid pro quo.

(b) The Employer has failed to establish the existence of *an appropriate quid pro quo* in support of its proposals, thus failing to fully meet the criteria normally required by interest arbitrators in determining the propriety of such proposed changes.

(6) As recognized by both parties, the impasse over *hours of work in the Land Conservation Office* has become moot by virtue of the contents of the Union's final offer and by the passage of time. Accordingly, arbitral consideration of this impasse item does not favor the position of either party in the final offer selection process.

(7) The *effective date of the reclassification of the Secretary/Clerk/Typist position in the Child Support Office* would be January 1, 1996 under either of the two final offers. Accordingly, no impasse exists in this area and arbitral

consideration of this impasse item does not favor the position of either party in the final offer selection process.

(8) In connection with the impasse over *paid holidays*, the following considerations are determinative: arbitral consideration of the *internal comparison criterion* favors the position of the Employer that a problem exists in connection with the days on which paid holidays are to be celebrated, and that its proposal reasonably addresses the problem; its failure to propose and to identify an appropriate quid pro quo to offset the economic impact of its proposed changes in this area, however, requires an arbitral finding that the position of the Union is favored on this impasse item.

(9) In connection with the impasses over *continued payment of health insurance premiums by the Employer* for *part-time employees* and for those on *leaves of absence*, the Employer's failure to propose and to identify an appropriate *quid pro quo* for its proposed changes in this area cannot be offset by arbitral consideration of the comparison criteria.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, including arbitral consideration of all of the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes in addition to those elaborated upon above, the Impartial Arbitrator has preliminarily concluded that the final offer of the Union is the more appropriate of the two final offers, and it will be ordered implemented by the parties.

AWARD

Based upon a careful consideration of all of the evidence and arguments, 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 Union is the more appropriate of the two final offers before the Arbitrator.

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

WILLIAM W. PETRIE
Impartial Arbitrator

April 2, 1997