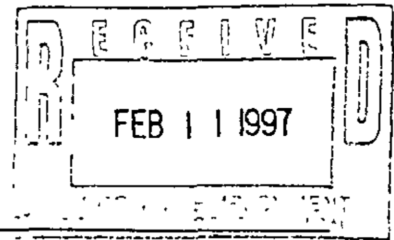

BEFORE THE ARBITRATOR

In the Matter of the Petition of	Case 144 No. 51985 INT/ARB-7498
LOCAL 332A, AFSCME, AFL-CIO	Decision No. 28751-A
To Initiate Arbitration Between Said Petitioner And	Heard: 10/08/96 Record Closed: 12/24/96 Award Issued: 2/7/97
LINCOLN COUNTY (COURTHOUSE)	Sherwood Malamud Arbitrator

APPEARANCES:

Phil Salamone, Staff Representative, Local 332A, AFSCME, AFL-CIO, 7111 Wall Street, Schofield, Wisconsin 54476, appearing on behalf of the Union.

Ruder, Ware & Michler, S.C., Attorneys at Law, by Dean R. Dietrich, appearing on behalf of the Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On July 2, 1996, 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 Local 332A, AFSCME, AFL-CIO, hereinafter the Union, and Lincoln County (Courthouse), hereinafter the Employer or the County. Hearing in the matter was held on October 8, 1996, at the Lincoln County Courthouse in Merrill, Wisconsin, at which time the parties presented testimony and documentary evidence. The briefs of the parties were exchanged among themselves. The Arbitrator received the initial and reply briefs by December 24, 1996, at which time the record in the matter was closed. 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.

ISSUE IN DISPUTE

HEALTH INSURANCE

The Union Proposal

Delete current 19.06 and 19.07.

Revise Article 19.01 as follows:

All regular full-time employees and regular part-time employees who work eighteen (18) hours per week or more shall be eligible for the County's group hospitalization-surgical care insurance plan.

Effective 1/1/95-The County shall pay 100% of the single monthly premium and the family monthly premium of the health insurance plan, with deductible provisions of one hundred dollars ($100) per person per year (maximum of three per family per year).

Effective 1/1/96 or as soon thereafter as the County deems practical, the deductible amount payable by the employee shall become two hundred dollars ($200) per person per calendar year (maximum of three (3) per family per year) with a maximum out of pocket payment of one thousand dollars ($1000) per year.

The Employer Proposal

The Employer proposes to retain the status quo. The language of Article 19 as it appears in the 1992-94 Agreement reads as follows:

1. Continue Article 19 - Insurance, Paragraph 19.01 - Group Coverage, and combine Paragraphs 19.06 and 19.07 as existing in the current Labor Agreement to reads (sic) as follows:

   "All regular full-time employees and regular part-time employees who work eighteen (18) hours per week or more shall be eligible for the County's group hospitalization-surgical care

insurance plan. Effective 1/1/93, the County shall pay ninety-five percent (95%) of the single monthly premium and the family monthly premium for the health insurance plan, with the $100 per person, three per family per year deductible provisions, for the employee. The County shall pay ninety percent (90%) of the single and family monthly premium of the deductible plan for the employees hired after 5/18/92."

STATUTORY CRITERIA

The criteria to be used to resolve this dispute are found 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:
> 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

The Courthouse unit and the Employer have had a bargaining relationship since 1983. The expired agreement, a 3-year contract for calendar years 1992 through December 31, 1994 is the first contract in which the Union agreed to employee contribution towards health insurance premiums of 5% for those hired prior to May 18, 1992 and 10% for those hired subsequent to May 18, 1992.

The contract that is the subject of this arbitration award covers calendar years 1995 and 1996. At the time of the writing of this Award, this Agreement has expired. However, the parties have implemented all agreed upon matters including wages for calendar years 1995-96. The parties' agreements on several insurance programs, such as: the Preferred Provider option, Prescription Drug Card Benefit and a Precertification Program with a $150 penalty for noncompliance have been implemented, as well.

The parties disagree over the comparability group of clerical units to which this Courthouse unit should be compared. Both the Employer and the Union accept the contiguous counties of Taylor, Price, Oneida and Langlade counties as comparables. The Union proposes Marathon County as a comparable. The County objects to the use of Marathon as a comparable. Marathon has a significantly larger population and tax base than Lincoln County.

The Union argues that the city hall employees of the City of Merrill should serve as a comparable to the Lincoln County Courthouse unit. The Employer objects on the ground that those employees are unrepresented.

In the spring of 1995, the Union and the County bargaining committees reached a tentative agreement on a successor contract for calendar years 1995 and 1996. On June 22, 1995, Staff Representative Salamone advised the County that the Union membership had rejected the tentative agreement. He informed the County's negotiators that the basis for the rejection was the health insurance issue.

DISCUSSION

Tentative Agreement

The Arbitrator sets out the arguments of the parties in the course of the analysis that follows.

The Union objects to the receipt in evidence of County exhibits concerning the tentative agreement reached by the negotiating committees and rejected by the Union's membership. In part, the Union relies on the analysis of Arbitrator Kerkman in the City of Green Bay, 19841-A, and that of Arbitrator Krinsky in Ladysmith School District, 19803-A, 4/83. The Union cites the following additional awards in support of its position: Stanley-Boyd School District, 26887-A (Baron, 8/91); D.C. Everest School District, 21941-A (Grenig, 10/85); Juneau County, 21418-C (Kessler, 10/84); and Jefferson School District, 26877-A (Slavney, 12/91).

The Union raises the novel point that the Employer did not ratify the tentative agreement. The Union acknowledges that the County would argue that it did not ratify because of the Union's rejection.

In Lincoln County, 25391-A (Reynolds, 1988), the Arbitrator gave substantial weight to a tentative agreement. The Union notes that the County, in that case, did not object to the inclusion or consideration of the tentative agreement. Similarly, the Union notes that in Douglas County, 28215-A (Malamud, 3/94), whatever weight this Arbitrator gave to a tentative agreement was the result of the opposing party's failure to object

to the introduction of evidence concerning the rejection of three tentative agreements by the union membership.

The Union argues that this Arbitrator does not weigh tentative agreements, quoting DeSoto School District, 21184-A (Malamud, 7/84), as follows:

> First, the District's comments with regard to the rejection of the tentative agreement reached with the assistance of the Mediator/Arbitrator have no bearing on the outcome of this case. The statute does not provide any penalty for rejection of a tentative agreement reached in mediation with a Mediator/Arbitrator. Although the Mediator/Arbitrator agrees that the rejection of tentative agreements carries with it the potential of seriously undermining the credibility of the bargaining representative and/or bargaining committee of the party rejecting the tentative agreement, nonetheless, the statute provides that an impasse is to be resolved by the Mediator/Arbitrator selecting the final offer of either the Employer or the Union. The negative consequences which flow from a rejection of a tentative agreement inhere in that action. The statute does not create a mechanism to repair any damage which may result to the bargaining relationship as a result of the rejection of a tentative agreement. The repair of the relationship must therefore fall to the parties outside of the operation of the mediation/arbitration process.

The Employer relies heavily upon the views expressed by this arbitrator in Douglas County (Highway Department), 28215-A (Malamud, 3/95). It cites other arbitral opinion on the admissability of tentative agreements. Arbitrator Milo Flaten in the City of Wauwatosa, 27869-A (8/94), notes that the fact that the parties reach a tentative agreement on all issues and one party to the dispute submits as its final offer the rejected tentative agreement, suggests the reasonableness of that offer. Arbitrator Flaten relies on the awards of Arbitrator Kerkman in City of Oshkosh (Public Library), 24800 (2/88), Milwaukee Metropolitan Sewerage District, 24813 (5/88), Arbitrator Petrie in City of Wauwatosa, 19760 (3/83) and Arbitrator

Stern in Portage County Office and Professional Employees, 25654 (11/88) in support of that view.

The Employer notes that some Arbitrators accord tentative agreements some weight. In Village of Schaumburg, Illinois, (Fleischli, 1994), Arbitrator Fleischli considers tentative agreements, because in his view, the arbitrator's award should try to approximate the agreement the parties would have or should have reached by themselves.[1]

The awards in DeSoto School District and Douglas County are distinguishable from this case. DeSoto was decided under a different statutory scheme in which the arbitrator served as a mediator. The mediator who assisted the parties in reaching a tentative agreement, also served as the arbitrator when the employer's principal subsequently rejected the mediated settlement. It is in that statutory framework that the arbitrator noted that the statute did not provide a penalty for rejection of a tentative agreement.

The Union, in its reply brief, correctly notes that in Douglas County the union that represents the Douglas County employees raised no objection to the presentation of evidence concerning the rejection by the Union membership of three separate tentative agreements. Accordingly, the Arbitrator did not exclude that evidence at the arbitration hearing.

Here, the Union strenuously objects to the submission of evidence concerning a Tentative Agreement. The Union presents extensive evidence on "bargaining history" to counter the County's tentative agreement evidence, should the Arbitrator receive that evidence. At the arbitration hearing, the Arbitrator indicated that he would rule on the admissibility of the tentative agreement evidence in this Award.

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[1] This Arbitrator does not share the view expressed by Arbitrator Fleischli in Village of Schaumburg, supra, that the goal of an arbitral award is to approximate the agreement that the parties would or should have reached. This Arbitrator views his function is to select the final offer that best meets the statutory criteria.

This Arbitrator adopts the rationale expressed by Arbitrator Krinsky in his award in City of Marshfield (Fire), Case 101, No. 45435, MIA-1611, to-wit:

> It is the arbitrator's view that rejected tentative agreements should not be controlling of the outcome of interest arbitration cases. This is because either party's negotiators must have the freedom to attempt to negotiate a tentative agreement, even at the risk that it will be rejected by their constituents. For an arbitrator to decide that a rejected tentative agreement must be implemented through arbitration, without seriously considering other evidence, would have the effect of making negotiators reluctant to take the risk of trying to reach a voluntary agreement, because the price of a rejection would be reviewed as too high.
>
> A tentative agreement which has been rejected is entitled to some weight, however, in the arbitrator's opinion. It is one of the things which is appropriately considered under statutory criterion (h), the "other factors" criterion which pertains to other factors normally taken into account in arbitration. The reaching of a tentative agreement is evidence that the negotiators mutually viewed the tentative agreement as a reasonable compromise to their differences. Neither party can then sustain an argument in arbitration to the effect that the terms of the tentative agreement are unreasonable. (Emphasis in Employer's original brief at p. 29.)

The bargaining committee of each party to a dispute should have the latitude to reach agreement, and then persuade its principal to ratify that settlement. If an Arbitrator imposes the settlement based on a tentative agreement, then the bargaining committees would lose the flexibility necessary to resolve disputes. The Arbitrator finds the evidence concerning the tentative agreement reached by these parties admissible.

Arbitrator Krinsky addresses the issue of what weight should be accorded a rejected tentative agreement. A tentative should be accorded some weight. It indicates that the parties' bargaining committees both found the terms of the tentative agreement to be reasonable.

Conclusion Tentative Agreement

The Arbitrator now turns to apply these principles to the facts of this case. The tentative agreement reached by the Union and the Employer for calendar years 1995 and 1996 continues employee contributions toward health insurance and provides an across the board increase equal to that received by other County units. The tentative agreement establishes the reasonableness of the Employer final offer. There is no evidence of any event that relates to the rejection of the tentative agreement that occurred from the time the negotiators reached that tentative agreement until the time the Union membership rejected it. No change occurred during the pendency of this proceeding that makes the tentative agreement unreasonable.

As noted above, the Union argues that the County did not ratify the tentative agreement. However, the County's final offer is identical to the rejected tentative agreement. As noted above, the tentative agreement aspect of the criterion, "Such Other Factors" supports the Employer's final offer.

Bargaining History

The "bargaining history" relates to agreements struck by the parties in previous contracts to the one that is the subject of this arbitral proceeding. The Union placed in evidence initial proposals, County Board resolutions, and the County supplemented that record with bargaining notes of its former personnel director.

This Arbitrator's reluctance to receive evidence concerning the give and take that resulted in the impasse that is the subject of the arbitration proceeding is not changed by this ruling. Evidence of who proposed what and the conduct that ultimately led to the impasse that is the very subject of the arbitration proceeding often pertains to matters that may, and probably should, have been raised in another forum. Here, the bargaining history relates to the agreements reached by the parties in previous collective bargaining. It explains the impasse and hard feelings reflected in this dispute.

Bargaining history, the agreements that the parties reached in 1990 and 1991 and the 1992 through 1994 contract weighed under the "Such Other Factors" criterion, as well. Staff Representative Salamone credibly testified that the Employer and Union attempted increase the 48 month step, the top step under the Courthouse salary schedule by 4% in 1990 & 1991, and then again by 6% in 1993 and 1994 to raise the wage rates of clerical employees in the Courthouse to approximate the wage level of the clerical classification in the Social Services unit of Economic Support Specialist. In the 1990-91 Agreement, the Employer agreed to continue to pay 100% of the premium for single and family coverage.

In the three year 1992-94 Agreement, the parties agreed to an across the board wage increase in the first year. In the second and third years, they agreed to a 6% increase for employees at the 48 month, the top step, in both calendar years 1993 and 1994. The Union argues there is no linkage between the Union concession to cost shifting some of the cost of health insurance premiums for both family and single coverage and the 6% wage increases.

The 6% increases in 1993 and 1994 exceeded the increases granted by the County to employees in its other units. They received approximately 4% increases in each of those two years or in some cases a 5% increase in 1994. It is in calendar years 1993 and 1994 that employees began to contribute towards health insurance premiums at a rate of 5% for those employees hired prior to May 18, 1992, and at 10% for those hired after that date. The Union notes that neither the notes of the Personnel Director nor the minutes of the discussion at the County Board when it ratified the Courthouse 1992-94 Agreement link the health insurance contributions to the 6% wage increases at the 48-month step.

The Union explains that the reduced increases of 1% at the hire rate, 2% at the after probation rate, and 3% at the 18-month step provide the savings for the higher increases at the 48-month step. However, Employer Exhibit 66 establishes that of the 67 employees in the Courthouse unit as of January 1, 1992, 59 had been hired prior to May 19, 1992. In Exhibit 66B, of the 57 employees in this unit as of 1993, 35 were at the top step, 12 were at the 18-month step, 3 at the after probation rate, and 7 were new hires. Neither party presented costing data for the settlement of the 1992-

94 Agreement. In 1993, 22 of 57 employees would receive between 3% and 1% less than the average 4% increase provided to employees in other bargaining units. Certainly, that offsets a great deal of the higher increase provided to 35 employees at the top step. The employees who received less in 1993 and in 1994 ultimately will benefit from the higher rate when they reach the 48-month step. However, absent costing figures, the Arbitrator is not persuaded that the reduced increases for 22 employees totally offsets the higher increases to the other 35 in the unit.

The 6% increase at the 48-month step is replicated in the third year of the 1992-94 Agreement. The negotiators in 1992 could anticipate that employee contributions towards health insurance in 1993 and 1994 would substantially reduce Employer costs for that benefit and generate a total package cost that would not exceed the total package costs generated in the County's settlements with its other bargaining units. Employer Exhibits 68 and 69 demonstrate that 15 employees in 1993 and 11 in 1994 did not participate in the health insurance plan.[2]

Most significantly, the Union bargaining committee agreed to take back the 1992-94 Employer proposal to the membership without a recommendation. The membership voted by a narrow margin to accept the Employer proposal. Staff Representative Salamone credibly testified that he advised the membership of the County's position in bargaining concerning employee contributions towards health insurance. Salamone told the membership that the Employer's bargaining committee represented that it would not reach a voluntary settlement without employee contributions towards health insurance. Soon after the unit and the County Board ratified the Courthouse contract, the Employer began to back away from its insistence on employee contribution towards premiums in its bargaining with its other units. The Employer resolved those agreements for 1992 and 1993 or 1992-1994 continuing to pay 100% of premiums for both single and family coverage for employees in all its other units including nonrepresented employees.

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[2] It is unclear from the evidence submitted whether any employees did not participate in the Employer's health insurance plan when it paid the full premium.

When the parties began to negotiate over the terms of the agreement at issue here, the 1995-96 Agreement, the Union advised the Employer's bargaining committee that the Union membership felt betrayed by the County's settlement with all other units including nonrepresented County employees by continuing to pay the full health insurance premiums for those employees. Nonetheless, at the conclusion of those negotiations for the 1995-96 Agreement, the parties achieved a tentative agreement that ultimately was rejected by the Union membership. The significance of the tentative agreement has been discussed above.

Internal Comparability

The Courthouse unit is the only one not settled for calendar years 1995 and 1996. The other represented units have all settled on wage rates consistent with those offered and accepted by the Union **and** with the Employer's payment of the full health insurance premiums for both single and family coverage. The nonrepresented employees of the County do not contribute towards health insurance premiums.

The employees at Pinecrest Nursing Home, who are now represented by the Labor Association of Wisconsin, previously contributed towards the cost of health insurance. Yet, in the most recent agreement the Employer has agreed to pay 100% of the premium for single coverage. (In the Courthouse unit, those employees taking single coverage are covered by the 5%/10% contribution, as well.) The settlements in the Highway, Developmental Disabilities (Lincoln Industries), and Social Services units extend through calendar year 1997; all without employee contribution towards health insurance premiums.

In the negotiations with the bargaining units other than the Courthouse unit, the Employer and the respective unit bargaining representatives have agreed to increase deductibles from $100 per individual and $300 per family to $200 per individual, $600 per family. The increase in deductibles in these other units went into effect January 1, 1996. The Union proposal mirrors the agreement the County reached with its other bargaining units, and the Union proposes to increase deductibles from $100/$300 to $200/$600 effective January 1, 1996. The Union

proposes, however, that the Employer pay 100% of the premium for both single and family coverage effective January 1, 1995.

The Union correctly states that arbitrators provide substantial weight to internal comparability when it comes to establishing common fringe benefits among different bargaining units of one Employer. Arbitrator Krinsky in Gillette School District, 26301 (Krinsky, 7/91), addresses the issue as follows:

> There is only one other group of employees referred to by the parties which is employed by the district; namely teachers. The district argues that because of their different functions and responsibilities, teachers are not a relevant group for comparison purposes. The arbitrator agrees with that position insofar as salary is concerned. However, the record shows that for many years the teachers and the Council-represented employees have received the same insurance benefits. Moreover this has not been by chance. Since at least 1982, the agreement has contained language in the insurance article which states, "the rest of the language will be the same as that agreed to with the Gillette Education Association."

The Union argues that this analysis is applicable, here. The Union notes that since 1983, when the Courthouse unit began its bargaining relationship with the Employer, the Employer has paid the full premium for health insurance. Since the mid-1980s, that benefit has consistently been maintained for all units other than the Pinecrest Nursing Home and, most recently, employees in the nursing home unit taking single coverage will have their full premium paid for by the Employer.

Internal comparability, which this Arbitrator considers under the "Such Other Factors" criterion, (h), provides strong support for the Union's position.

Status Quo

The Union admits that it attempts to change the status quo in this bargain. The Union is mindful of the analytical framework this Arbitrator

employs to address proposals that attempt to change the status quo. The party proposing change must establish a need for change, and it must provide a quid pro quo for the change. It must clearly establish both the need for change and the adequacy of the quid pro quo offered.

The Union argues that it has established a need for this change. Its proposal to increase deductibles to $200/$600 consistent with the deductible levels agreed to by the other County units represents an adequate quid pro quo for its proposal.

The County strenuously objects. It argues that the Employer has no problem recruiting new employees. There is no need for the change.

The Employer argues that there is linkage between the 6% increases provided at the top step in the last two years of the 1992-94 agreement and the employee contribution towards health insurance premiums. It paid heavily, 6% increases in 1993 and 1994 to obtain employee contributions to pay a portion of health insurance premiums. The Union now offers little or nothing to restore Employer full payment of health insurance premiums.

The Union argues that it has established a need for the change. There is turnover in this unit. In its Reply brief it argues that an increasing number of employees have been hired since 1987. By 1993, 40 of 68 employees had been hired since 1988. (The total of 68 includes part-time.)

The Arbitrator finds that the Union has demonstrated that unit employees are leaving this Employer. An increasing number will be effected by the May 18, 1992 cut-off for higher contributions towards health insurance premiums.

The question of the adequacy of the quid pro quo remains.

The Employer self-funds health insurance. Employer Exhibit 70 lists the premium costs of family and single coverage for all employees of Lincoln County. Yet, there is no differential in premium cost for either single or family coverage whether the deductible is $100/$300 or $200/$600. The absence of cost differentials between health insurance coverage with higher deductibles is the product of the pricing mechanism for health insurance

premiums established through the Employer's self-funding process. However, whatever savings the increased deductible generates are not established in the record.

The Union proposes the Employer pay the full premium in the first year of the agreement beginning January 1, 1995. Yet, it offers the increase in deductibles only in the second year of the agreement. It does so in a manner consistent with other units. It is not known whether the cost of increased deductibles based on the health insurance usage of members of the unit offsets the cost of the restoration of the benefit, full payment of single and family coverage premiums by the Employer. Since the Employer sets the "price" of the premiums, this lack of evidence cannot be attributed to the Union.

In one respect, the quid pro quo, or lack thereof, offered by the Union may be measured. Here, the Union offer does not delay the payment of full premium to the second year of the agreement when the deductibles would increase, nor does it predate the increase in deductibles to the first year rather than the second year of the agreement. In many previous awards, this Arbitrator has noted the difficulty that an Arbitrator has in establishing the adequacy of the quid pro quo by the proposer of change City of Verona (Police Department), 28066-A (Malamud, 12/94).

The question of the adequacy of the quid pro quo is tied to the underlying dispute between these parties. Whether there is linkage between the 6% increase at the 48-month step of the salary schedule for all classifications in the Courthouse unit, both clerical and nonclerical, and the contribution of employees towards the cost of health insurance premiums. Personnel Committee member Schmitt testified to that linkage. The Union countered that testimony with the minutes of County board meetings which failed to corroborate such linkage. The Union referred to the County's bargaining notes prepared by its former Personnel Director which also makes no reference to the linkage between the 6% increase in calendar years 1993 and 1994 at the 48-month step and the employee contribution towards health insurance premiums of 5% for employees hired prior to May 18, 1992, and 10% for those hired after May 18, 1992. The Arbitrator noted above that absent costing data for these settlements, the smaller wage increases given to 22 of the 57 employees in the unit in 1993 does not fully

offset, in the opinion of the Arbitrator, the larger than average increases received by Courthouse unit employees in 1993 and 1994.

Personnel Committee and County Board member Schmitt testified that employees making a 5% contribution towards health insurance fared well under the 1992-94 settlement. The Union correctly notes in its reply brief that employees hired after May 18, 1992, who must make a 10% contribution towards health insurance premium must pay out substantially more than they receive in wage increases when compared to the 4% or 5% increases received by employees in other units without any health insurance contribution. They did not fare well.

This evidence cuts both ways. Clearly, the question of linkage generates a great deal of heat, but sheds little light on the substance of this dispute. The Union's offer, which is consistent with the County's settlements with other units, relies entirely on the Employer's reversal of bargaining position for the 1992-94 contract. The Union's offer barely acknowledges the need for a quid pro quo. On the basis of the entire record on this issue, the Arbitrator concludes that the Union has failed to establish the adequacy of its quid pro quo.

Comparability

The Union suggests six comparables to the Courthouse unit in Lincoln County. Five of the six are Courthouse units in counties contiguous to Lincoln. The sixth is the city hall unit in the City of Merrill. The Employer objects to the use of Marathon County due to the large disparity in size between Lincoln and Marathon. It objects to the City of Merrill as a comparable, because the employees in the city hall unit are not organized.

On the latter issue, the Arbitrator agrees with the County that nonrepresented employees should not be used as comparables in this statutory process. In Langlade County, 21806-A, 3/95, this Arbitrator restated his view that:

> Nonrepresented employees cannot proceed to interest arbitration under the framework established by the Municipal Employment Relations Act. It

affects the end product, the wage rates paid to these employees.

Consequently, the Arbitrator does not use the nonrepresented unit of city hall employees in Merrill as a comparable in this dispute.

There can be little doubt that Marathon County is an important market force in the labor market in this region of the state. Union Exhibit 9 reflects that the population of Marathon County in 1995 was a little over 122,000 whereas the population of Lincoln was a little over 28,000. The full value of property in Marathon County was a little over $4 billion; the value of property in Lincoln County is slightly over $900 million. In a 1983 interest arbitration award involving the Lincoln County Deputies, Arbitrator R. U. Miller used a ten county comparability grouping including Marathon County as a comparability pool for the deputy unit. It is in a large pool of comparables that a dominant comparable, such as, Marathon County may be used. Here, the Union proposes to use Marathon as a comparable with four other county Courthouse units. In such a small pool, this Arbitrator finds that Marathon would unduly dominate this comparability pool.

In Langlade County, supra, this Arbitrator expressed reservation over the inclusion of Marathon County, in that case. There, both the Union and Employer agreed to its inclusion in the comparability pool, a pool of seven rather than five. The exclusion of Marathon County from this case results in a comparability pool of four units. This Arbitrator gives little weight to such a limited comparability pool. The Arbitrator agrees with the County argument that this limited comparability pool should be given little weight.

SELECTION OF FINAL OFFER

The Arbitrator has considered the other statutory criteria argued, particularly by the Employer. The cost-of-living criterion provides little assistance in this case. There is no overall costing data included in the exhibits of either the Employer or the Union. The total package offers of each cannot be measured against the cost of living inasmuch as it is difficult to measure the impact of the Union's proposal to increase the deductibles to the $200/600 level.

The Arbitrator finds unpersuasive the interest and the welfare of the public argument presented by the Employer. It fails to take into account the increased contributions that employees hired after May 1992 must make. Similarly, the Union's argument that the 6% increase at the 48-month step will approximate the wage level of the Economic Support Specialist, ignores the fact that the 6% increase at the 48-month step was accorded to all classifications in the unit, both clerical and nonclerical.

This is a difficult case. Internal comparability is often determinative of a dispute over the uniformity of the health insurance benefit among all the employees of an employer. Here, in the expired agreement, only the Courthouse employees agreed to contribute to the cost of premium. In the negotiations that led to the 1992-94 bargain, the Union bargaining committee did not reach a tentative agreement or agree to the Employer's proposal for employee contribution to health insurance premiums and a wage schedule that favored a majority of employees in the unit. Nonetheless, the membership of this unit ratified that agreement. Then, the membership of this unit rejected the tentative agreement for this bargain, the 1995-96 agreement, reached by the parties on the basis of terms consistent with the membership's vote accepting the expired, 1992-94 agreement.

On the other hand, the Employer represented in the 1992 negotiations that it would not settle any contract without employee contributions towards insurance. Yet, no sooner than the Courthouse unit contract was ratified, then the Employer backed away from that bargaining position. It not only settled that agreement, but it continues to settle agreements with other units for 1997 without employee contribution to health insurance premiums.

If the Arbitrator were to rule in favor of the Employer final offer and retain the status quo, the parties would have to resolve the contribution to health insurance issue in the successor to the 1995-96 agreement. Whatever extra benefit the 6% increase at the 48-month step provided in 1993 and 1994, it would no longer serve as an offset to employee contributions towards health insurance in a successor to the agreement at issue here, the 1995-96 contract. In 1997, the Employer settled with three

units without employee contribution to health insurance premiums. Only the Courthouse and Deputy units are not settled for 1997.

The Arbitrator notes in the above discussion that the Union has failed to establish the adequacy of its quid pro quo, the increase in deductible from $100/300 to $200/600 in the second year of the agreement, calendar year 1996.

On the other hand, the Employer has not established the linkage between the 6% increase on wages at the 48-month step in calendar year's 1993 and 1994 in exchange for employee contributions towards health insurance. The County adopted a bargaining stance with all its units for the 1992-94 contracts to continue full payment of premium with no wage increase. Wage increases were dependent upon employee contribution towards health insurance. It abandoned that position in all but this one unit.

Yet, internal comparability provides strong support for the adoption of the Union's final offer. The Arbitrator's reservation for acting on the basis of this evidentiary record stems from the Union's attempt to reverse one of the principal terms agreed through the Union's membership vote to accept the Employer's proposal for 1992-94.

Strong evidence of internal comparability heavily favors the selection of the Union offer. On the other hand, the quid pro quo it offers is inadequate. The Employer's settlement of the Highway, Social Services and Lincoln Industries units for 1997 without health insurance contribution by employees in those units provides additional support to the internal comparability aspect of the "Such Other Factors" criterion.

The tentative agreement reached by the parties establishes the reasonableness of the Employer's final offer. The Union attempts to reverse the concession it made in an earlier bargain in its successor. In order to change the status quo, the Union offer fails to acknowledge that however balanced or unbalanced the 1992-94 agreement was, it does not follow that the Union should achieve full Employer contribution towards health insurance premiums immediately in 1995. If the Employer had made some attempt to get other employee units, even the nonrepresented employees, to contribute to health insurance premiums in 1997, the Arbitrator would have

selected the Employer's final offer and left to the parties the resolution of the health insurance issue in their next bargain. However, it appears that Employer full payment of premium remains the pattern of settlement for 1997. Accordingly the Arbitrator selects the Union's position for inclusion in the 1995-96 Agreement.

Based on 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 the Union for inclusion in the agreement for calendar years 1995 and 1996 between Lincoln County and Local 332-A, AFSCME, AFL-CIO.

Dated at Madison, Wisconsin, this 7th day of February, 1997.

Sherwood Malamud
Arbitrator