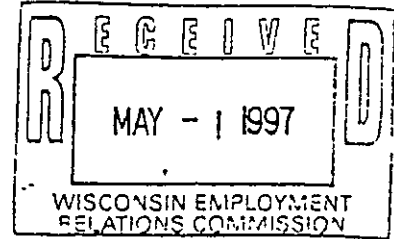


ARBITRATION OPINION AND AWARD



In the Matter of Arbitration )  
 )  
Between )  
 )  
JACKSON COUNTY (HIGHWAY DEPARTMENT) )  
 )  
And )  
 )  
JACKSON COUNTY HIGHWAY EMPLOYEES )  
LOCAL UNION 2717-C, AFSCME, AFL-CIO )  
\_\_\_\_\_ )

CASE 111  
NO. 53604  
INT/ARB 7859  
Decision No. 28802-A

Impartial Arbitrator

William W. Petrie  
217 South Seventh Street #5  
Post Office Box 320  
Waterford, WI 53185-0320

Hearing Held

Black River Falls, Wisconsin  
November 1, 1996

Appearances

For the District

JACKSON COUNTY  
By James Michael DeGracie, Esq.  
Corp. Counsel/Personnel Director  
Jackson County Courthouse  
307 Main Street  
Black River Falls, WI 54615

For the Union

WISCONSIN COUNCIL 40,  
AFSCME, AFL-CIO  
By Daniel R. Pfeifer  
Staff Representative  
Route 1, Box 333  
Sparta, WI 54656

## BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Jackson County Highway Department and the Jackson County Highway Department Employees, Local Union 2717-C, AFSCME, AFL-CIO, with the matter in dispute the deferred wage increases to be paid to those in the bargaining unit during the term of a two year renewal labor agreement, extending from January 1, 1996 through December 31, 1997.

The parties engaged in contract renewal negotiations on various occasions following their initial exchange of proposals on September 21, 1995, and after their failure to reach a complete agreement, the Union on December 26, 1995 filed a petition with the Wisconsin Employment Relations Commission seeking arbitration under Section 111.70(4)(cm)(7) of the Wisconsin Statutes. After preliminary investigation by a member of its staff, the Commission on July 31, 1996 issued certain *findings of fact, conclusions of law, certification of results of investigation and an order requiring arbitration*, and on September 17, 1996 it issued an *order appointing arbitrator*, directing the undersigned to hear and decide the matter.

An interest arbitration hearing took place in Black River Falls, Wisconsin on November 1, 1996, at which time the parties agreed upon certain modifications to their final offers, and both thereafter received full opportunities to present evidence and argument in support of their respective positions. Both thereafter closed with the submission of post-hearing briefs, after which the record was closed by the undersigned effective February 26, 1997.

## THE FINAL OFFERS OF THE PARTIES

The respective final offers of the parties, hereby incorporated by reference into this decision, principally differ in the areas of wages, health insurance, funeral leave and contract language, and their remaining areas of difference consist of the following.

(1) In the area of wages, the final offers of the parties are described as follows.

(a) The County proposes the following wages/changes in wages:

- (i) Abandonment of rate ranges in favor of flat rates for each of the five levels in the wage structure.
  - (ii) Reduction of the previous Range 1 from a starting rate \$10.38 per hour, movement to \$10.82 at six months, and movement to \$11.12 at eighteen months of service, to a flat rate of \$9.00 per hour for Probationary Employees.
  - (iii) Substitution of the previous top of the rate ranges for Range 2 through Range 5 as the flat rate for these levels in the wage structure, thus proposing \$11.27/hour for Range 2, \$11.52/hour for Range 3, \$11.97/hour for Range 4, and \$12.29/hour for Range 5.
  - (iv) Wage increases of 3% across the board effective January 1, 1996 and January 1, 1997.
- (b) The Union proposes the following wages/changes in wages:
- (i) Retention of the previous rate ranges and five range wage structure.
  - (ii) Wage increases of 3% across the board effective January 1, 1996 and January 1, 1997, based upon the bargaining unit weighted average wage.
- (2) In the area of health insurance, the final offers of the parties are described as follows.
- (a) The County proposes as follows: effective January 1, 1996, that the Employer pay 95% and the employees 5% of family and single health insurance premiums; effective January 1, 1997 (after the implementation of the 3% deferred increase) that an additional 14¢ per hour be added to the wage schedule as a *quid pro quo* for the insurance premium payment changes.
  - (b) The Union proposes as follows: that the Employer continue to pay 100% of family and single health insurance premiums during calendar year 1996; effective January 1, 1997, that employees contribute \$11.25 per month for single coverage, or \$25.00 per month for family coverage; effective January 1, 1997, that the wage schedule be increased by \$25.00 per month (14.4¢ per hour) as a *quid pro quo* for the insurance premium payment changes.
- (3) In the area of funeral leave, the Union proposes the addition of step-brother and step-sister to the covered category of relatives, and the County proposes the continuation of the status quo.
- (4) In the area of Drug and Alcohol Testing Procedures, the Union proposes the addition of the following language:
- "The Union accepts the Employer's Drug and Alcohol Testing Program to the extent that it is mandated by law. Said acceptance in no way limits any rights or benefits found elsewhere in the Collective Bargaining Agreement that are not inconsistent with federal or state law."
- In this area, the County proposes the continuation of the status quo ante.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Arbitrator to give weight to the following principal 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 final offer is the more appropriate of the two before the Arbitrator, the Union emphasized the following principal considerations and arguments.

- (1) That the following preliminary facts are material and relevant to the outcome of these proceedings.
  - (a) That prior arbitrations have established the appropriateness of Adams, Buffalo, Clark, Juneau, Monroe and Trempealeau counties constituting the primary external comparison group,

and Wood, Eau Claire and La Crosse counties as secondary comparables.

- (b) That the following items remain in dispute in these proceedings: health insurance premium contributions; health insurance quid pro quos; wage increases as a percentage of each rate or based upon the average wage; drug and testing procedure language, and the wage structure.
- (2) That Section 111.70(4)(cm)(7g), the "factor given greater weight" preliminary provision, should carry no weight in these proceedings for the following reasons: *first*, that the County provided little or no evidence that this is a factor in Jackson County; *second*, the County has proposed a change in the wage structure which entails an immediate additional cost of \$4851.40; and, *third*, that when the higher health care costs of the Union's offer are offset against the higher wage costs of the Employer's offer, the difference in total costs between the two final offers is inconsequential.<sup>1</sup>
- (3) That appropriate CPI increases of approximately 3.1%, due to insignificant differences in the costs of the two final offers,<sup>2</sup> do not favor the final offer of either party in these proceedings.<sup>2</sup>
- (4) That the Union's health insurance proposal is favored by the record in these proceedings.
- (a) That while both parties have proposed employee contribution to health care premiums, the Employer's past failures to follow third party administrative recommendations relative to its contributions to its self-insured fund, have distorted the record in this area.<sup>3</sup>
- (b) That there is no internal pattern of employee health insurance contributions, within the three other Jackson County bargaining units.<sup>4</sup>
- (c) That while another arbitrator favored the County's position in the area of health insurance, the Union now proposes the County's final health care proposal from that proceeding.<sup>5</sup>
- (d) That the parties agree to employee contribution for health insurance for 1997, with the Union proposing \$11.25 and \$25.00 caps on such contributions for individual and family coverage, and the Employer proposing 5% employee contributions; that the Union urges that automatically shifting future health insurance premiums from the County to its employees is unwarranted.
- (e) In the area of quid pro quos for health insurance contributions, that employees in the Human Services and the

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<sup>1</sup> Citing the contents of Union Exhibits 7 to 22, and Employer Exhibit 16.

<sup>2</sup> Citing the contents of Union Exhibits 23 and 24.

<sup>3</sup> Citing the contents of Union Exhibit 25.

<sup>4</sup> Citing the contents of Union Exhibit 26.

<sup>5</sup> Citing the contents of Employer Exhibit 6.

Courthouse units received additional \$25.00 increases per month, while those in the Sheriff's Department unit received extra increases of 4% over a four year period.<sup>6</sup>

- (5) That the Union presented evidence at the hearing that an AFSCME represented employee had requested and received funeral leave for a step relationship, which was later approved by the Personnel office on the basis of its past practice, with the admonition that future requests would be denied until such time as a change in the agreement took place; that the Union is now merely attempting to put in writing a previous past practice, and one that already is recognized in the County's Courthouse labor agreement.<sup>7</sup>
- (6) In connection with the Union proposed drug and alcohol testing language, that it is merely seeking to ensure that the County does not unilaterally impose additional testing requirements without bargaining with the Union. That the Union's proposal is also supported by external comparables and by its inherent logic.<sup>8</sup>
- (7) In connection with the matter of whether wages should be across the board on individual rates, or based upon the bargaining unit weighted average, the following factors should be determinative.
  - (a) The difference between the two methods is minimal, with total hourly wage increases from 33¢ to 37¢ under the Employer's final offer, versus hourly wage increases of 34¢ under the Union's final offer.
  - (b) That the Union's proposal is consistent with the method of determining wage increases used by the parties in the past.<sup>9</sup>
- (8) That the County proposed changes in the wage structure are fatally flawed.
  - (a) During negotiations that the County proposed to raise the rates of the Laborers, Light Equipment and State Auxiliary equal to that received by the Patrolmen, in order to reduce paperwork, but it sought a quid pro quo for such change in the form of reducing the starting wage for new employees to \$9.00 per hour, which was rejected by the Union.
  - (b) That the County has the obligation to show why the wage structure should be changed, to offset the principle that parties should not achieve in arbitration what they would not have achieved in conventional negotiations.
  - (c) That there is no compelling proof that Jackson County Highway Department starting wages should be reduced to \$9.00 per hour.<sup>10</sup>
  - (d) That it is impossible to determine from the record, how long probationary employees would remain at the \$9.00 per hour

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<sup>6</sup> Citing the contents of Union Exhibits 41-43.

<sup>7</sup> Citing the contents of Union Exhibits 39-40.

<sup>8</sup> Citing the contents of Union Exhibit 45.

<sup>9</sup> Citing the contents of Union Exhibit 46.

<sup>10</sup> Citing the contents of Union Exhibits 27, 29, 31, 33, 35, 37 and 44.

rate, until they could move to a regular classified rate of pay.<sup>11</sup>

In summary, based upon the record as a whole, it submits that the Union's final offer is more appropriate and asks that it be selected by the undersigned in these proceedings.

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 following preliminary facts are material and relevant to the outcome of these proceedings.
  - (a) The parties entered into the following stipulations at the scheduled hearing.
    - (i) The Union's final offer was amended to add "step-brother" and "step-sister" to Article 12, Section 2.
    - (ii) The County's final offer was corrected to provide the accurate current hourly wage for all employees.
    - (iii) They agreed that the omission of certain language in the final offers, pertaining to health insurance, had been the result of the language not being in dispute in these proceedings.
    - (iv) They agreed to modify range 3 of Exhibit "A" to provide for current equipment now in the possession of the Highway Department.<sup>12</sup>
  - (b) In the area of health insurance, that the parties are in dispute as follows.
    - (i) The County proposes to pay 95% of both the family and the single premiums of the agreed upon program, including major medical, effective January 1, 1996, with the employee paying the remaining 5%.

As a quid pro quo for its proposed change in health insurance, it proposes that an additional 14¢ per hour be added to the wage schedule after the calculation of the across the board wage increases for January 1, 1997.
    - (ii) The Union proposes that the Employer pay 100% of both the family and single premiums for 1996, and that employees contribute \$11.25 per month for the single

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<sup>11</sup> Citing the contents of County Exhibit 15 and Union Exhibit 3.

<sup>12</sup> In this connection, they modified the listing of Heavy Equipment by adding All Crawler Dozers and 5th Wheel Moving Tractor Excavator, and by deleting Big Cat, Oshkosh, Moving Truck #81, Pick-up with attachment for paver and Hoe Cruiser; they additionally added the skid steer with all attachments under Light Equipment.

plan and \$25.00 per month for the family plant effective January 1, 1997.

As a quid pro quo for the employee health insurance contributions, it proposes that an additional \$25.00 per month (14.4¢ per hour) be added to the wage schedule after calculation of the across the board wage increases for January 1, 1997.

(c) In the area of *scheduled wages*, the parties are in dispute as follows.

(i) *The County proposes 3% across the board wage increases to be effective on January 1, 1996 and January 1, 1997, and the following changes to the wage schedule: Range 1 for Probationary Employees at a rate of \$9.00/hour; within Range 2, that machinery not listed as heavy equipment will be classified as light equipment, and the addition of State Auxiliary Patrolman at a rate of \$11.27/hour; and that the remaining ranges read as follows:*

"Range 3	Heavy Equipment	\$11.52/hour
	Air Compressor	
	Chip Spreader	
	End Loaders (2 yds or larger)	
	Grader - including shoulder machine	
	Paver	
	Rollers (all)	
	Tandems (with dual wings)	
	Sign and Bridge Inspector	
	Time Keeper/Stock Clerk	
	Weed Sprayer	
Range 4	Mechanic - Welder	\$11.97/hour
Range 5	Foreman	\$12.29/hour"

A.1 There shall be four (4) posted full-time Heavy Equipment positions, exclusive of Time Keeper/Stock Clerk position."

(ii) In the above connections, *the County proposes that the wage increases during the renewal agreement be implemented as follows: that 1996 be calculated by first instituting the above scale and then adding the percentage increases; that on January 1, 1997 the percentage increases will be included in the hourly wage; and that the "quid pro quo" will then be added to the hourly wages of employees.*

(iii) *The Union proposes 3% across the board wage increases effective January 1, 1996 and 1997, in each case based upon the bargaining unit weighted average wage.*

(d) In the area of drug and alcohol testing procedures, the parties are in dispute as follows.

(i) *The Union proposes the following new language: "The Union accepts the Employer's Drug and Alcohol Testing Program to the extent that it is mandated by law. Said acceptance in no way limits any rights or benefits found elsewhere in the Collective Bargaining*



Agreement that are not inconsistent with federal or state law."

- (ii) *The County proposes retention of the status quo in this area.*
  - (e) In the area of *Funeral Leaves*, the Union proposes the addition of "step brother and step sister" to Article 12, Section 2, while the County proposes retention of the status quo in this area.
- (2) That the County's final offer is more equitable, when compared to comparable counties and to other employees of Jackson County.
- (a) That the County agrees with the Union that the primary external comparables should consist of Adams, Buffalo, Clark, Juneau, Monroe and Trempealeau Counties, while the Union urges that La Crosse, Eau Claire and Wood Counties should be considered secondary comparables; that the position of the County is consistent with its previous interest arbitration decisions.<sup>13</sup>
  - (b) That Adams, Buffalo, Clark, Juneau, Monroe and Trempealeau counties require higher percentage contributions from employees for *family coverage*, than those proposed by the Employer in these proceedings; that Adams and Monroe counties require higher employee contributions for single coverage, than those proposed by the Employer in these proceedings.
  - (c) That the Employer proposed quid pro quo of 14¢ per hour for all employees, more than offsets its proposed employee premium contributions.
  - (d) That the County's health insurance proposal is favored by internal comparisons with labor agreements covering its AFSCME represented Courthouse and Human Services bargaining units and its Jackson County Professional Police Association agreement, and with its benefits for non-represented employees, and with non-represented employees at the Pine View Home Health Agency, the Pine View Nursing Home and at Pine View Terrace.
  - (e) That the various comparisons more persuasively favor the County's offer, when considered in conjunction with its proposed quid pro quo.
- (3) That the County's final offer is more appropriate based upon cost of living considerations.
- (a) That the CPI for urban wage earners and clerical workers should be utilized in these proceedings and that movement in the index in 1995, the year prior to the effective date of the current agreement, provides the most important evidence; that the CPI increase during calendar year 1995 was 3.1%.<sup>14</sup>

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<sup>13</sup> Citing the following decisions: Arbitrator Vernon in Jackson County (Department of Social Services), Dec. No. 20461-A, 9/83; Arbitrator Haferbecker in Jackson County (Sheriff's Department), Dec. no. 21878, 01/85; and Arbitrator Rice in Jackson County (Courthouse Employees), Dec. No. 24531-A, 10/87.

<sup>14</sup> Citing the contents of County Exhibit 4 and Union Exhibit 23.

- (b) That while the parties are very close in their 3% per year final wage increase proposals, when the higher total package costs of the Union's final offer are considered, arbitral consideration of the cost of living criterion favors selection of the final offer of the County.
- (4) That the County's wage scale proposal is both economically advantageous to the Union and more efficient for the County.
  - (a) That the proposal would eliminate the starting, the 6-month and the 18 month wage rates; that incumbent Laborers would move to the top of Range 2, currently \$11.27, and that all remaining wages would be at the top of the current ranges; that probationary employees would be placed in Range 1 at \$9.00 per hour.
  - (b) That the County's proposal would increase the earnings of incumbent employees, for which the County should receive a quid pro quo, even though it would also benefit in the form of greater efficiency in handling time sheets and in the establishment of the flat starting rate for probationary employees.
  - (c) Contrary to the position of the Union that the County's proposal is not a completely novel one: that the Adams County Highway Contract currently pays probationary employees at 85% of the scheduled wage rate during their six month probationary periods; that the City of Black River Falls Municipal Street Employee agreement provides for new hires to receive 90% of the scheduled wage rate for six months, 95% of the schedule wage rate for the next six months, and the full scheduled rate after one year of service.
  - (d) That the County feels that the new wage scale would be a benefit to both the County and to bargaining unit employees.
- (5) That the County's health insurance and wage proposal are more equitable than the final offer of the Union.
  - (a) That those in the bargaining unit have long received fully paid health insurance from the Employer, which has significantly insulated them against inflationary pressure and loss of income in this area.
  - (b) That the County is proposing to have employees pay 5% of their health insurance premiums, and has also proposed a 14¢ per hour quid pro quo for this change.
  - (c) That because insurance costs are calculated into CPI increases, the percentage contribution proposed by the County would more closely tie the benefit to the CPI; that percentage changes in the cost of health insurance should be shared by the employees.
- (6) That the Union propose an *increase in funeral leave* and language addressing the *alcohol and drug policy*, without providing the County with appropriate *quid pro quos*.

In summary and conclusion that the County's final offer should be selected because it is supported by the above referenced facts, by relevant case law and by arbitral authority; accordingly, that the Arbitrator should

conclude that the County's final offer is favored by arbitral consideration of the following factors: external and internal comparisons; appropriate quid pro quos supporting proposed changes in health insurance premiums and in the wage scale; and the Union's failure to advance any quid pro quos for its proposed changes in funeral leave and in the drug and alcohol policy language.

FINDINGS AND CONCLUSIONS

Prior to reaching a decision and rendering an award in these proceedings, the undersigned will offer certain preliminary observations relating 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 the status quo ante in the final offer selection process*, including the matter of when *quid pro quos may be required* in support of final offers. Thereafter the various *components of the two final offers of the parties* will be separately considered, after which 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 in Wisconsin and elsewhere, an interest arbitrator operates as an extension of the parties' normal collective bargaining process, and his or her normal role 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 doing so, he or she will normally closely review parties' *past practices*, their *prior agreements*, and their *negotiations history* (each 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. This principle is 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..."<sup>15</sup>

The 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, except to the extent provided in sub-section (7g), 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*.<sup>16</sup> 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 comparison, 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..."<sup>17</sup>

While the makeup of primary intraindustry comparison groups is frequently in issue in statutory interest arbitration in Wisconsin, both parties agree in these proceedings that this group in the case at hand should continue to consist of Jackson County, in addition to Adams, Buffalo, Clark, Juneau, Monroe and Trempealeau counties.

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<sup>15</sup> Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, pp. 104-105. (footnotes omitted)

<sup>16</sup> In the case at hand, the projected costs of the two final offers are very close to one another, and there is nothing in the record to persuasively indicate that the economic conditions within the County would be significantly impacted upon by arbitral selection of either final offer.

<sup>17</sup> Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, pg. 56.

In addition to the *intraindustry comparison criterion*, the parties emphasized certain *internal comparisons*, and they particularly stressed the *significance of the proposed changes in the negotiated status quo ante* by both parties.

Neither the *lawful authority of the County*, the *stipulations of the parties*, nor the *changes in circumstances criteria* have been significantly argued by the parties in these proceedings, and it is also apparent to the undersigned that these criteria are not entitled to significant weight in the final offer selection process. Due to the fact that the parties are very close to one another in terms of the overall economic costs and the operational implications of their final offers, the undersigned has preliminarily concluded that neither the *financial interests and welfare of the public criterion*, the *cost of living criterion*, nor the overall *compensation criterion* is entitled to as significant weight in these proceedings as might otherwise have been the case.

The Significance of the Negotiated Status Quo Ante

Wisconsin interest arbitrators, when faced with demands for significant change(s) in the negotiated status quo ante, normally require the proponent of such change(s) to establish a very persuasive basis for such change(s), normally by demonstrating 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 area the undersigned is faced with arguments advanced by both parties: the Union urges that the Employer, as the proponent of significant change, has the burden of establishing the requisite *very persuasive bases* and appropriate *quid pro quos* for its proposed modifications to the wage structure and new entry level wage rates, and its proposed sharing of payments for medical insurance premiums on the part of employees; the Employer urges that the Union, as the proponent of improved funeral leaves and new language in the area of alcohol and drug policy, has the obligation to establish *persuasive bases for*, and to advance appropriate *quid pro quos* for these changes;

additionally, urges the Employer, its own wage proposals sufficiently benefit both parties, as to justify a quid pro quo from the union in this area.

The Impasses Relating to the Wage Structure, a New Entry Level Wage Rate, and a New Method of Implementing Wage Increases

When the parties have historically negotiated a wage structure containing rate ranges, have agreed upon automatic progression through such rate ranges, and have a negotiated entry level wage rate, the proponent of elimination of such rate ranges in favor of flat rates, and a significant reduction in the entry level wage rate and an extended period to progress thereafter, has urged very significant changes in the status quo. Of particular significance is its proposed reduction of the entry level job from \$10.38 per hour with automatic progression to \$11.12 per hour at the end of 18 months, which was in effect on December 31, 1995, to a flat rate of \$9.00 per hour for 18 months; this constitutes a very significant reduction in wages for future hires! In proposing these changes, the County has clearly triggered the necessity of establishing the requisite persuasive basis for its proposed changes, by identifying a legitimate problem which requires attention, by showing that the proposal reasonably addresses such problem, and providing an appropriate quid pro quo for such proposed change. The apparent desire to cut wages at the entry level, unaccompanied by more, is simply insufficient to meet the first two requirements, and nowhere in the record has the Employer identified an adequate quid pro quo to support its proposal. In this connection, the undersigned will merely note that the Employer's highly unusual argument that its wage proposal would benefit both parties, and its assertion that the Union had somehow failed to present an appropriate quid pro quo in support of it, is imaginative but unpersuasive!

While apparently four of the six counties comprising the primary intraindustry comparison group (i.e., Adams, Buffalo, Juneau and Trempealeau counties), have negotiated so-called flat rate wage structures, this factor alone falls far short of justifying the Employer's proposed change in the previous wage structure. More importantly, the entry level wage rates among the intraindustry comparables average more than \$2.00/hour above the

\$9.00/hour entry level wage rate proposed by the Employer in these proceedings.<sup>18</sup>

While it is far less important in these proceedings, the Employer has also apparently proposed a change in the parties' prior method of implementing their across the board wage increases, but has neither suggested nor established a persuasive basis for such change.<sup>19</sup>

On the basis of all of the above considerations, the Impartial Arbitrator has preliminarily concluded that the County simply failed to meet its burden of establishing the requisite persuasive bases for its proposed changes in the status quo ante in the wage structure, and for its proposed very significant reduction in the entry level wage rate within the structure. These considerations strongly and very significantly favor arbitral selection of the final offer of the Union in these proceedings!

The Impasse Relating to the Sharing of Health Insurance Premium Payments

In this area the Employer has made the requisite very persuasive case for arbitral adoption of its final offer changing the status quo ante by including a form of shared health insurance premiums between itself and its covered employees. Indeed, all six Counties in the primary intraindustry comparison group already have some form of sharing in the payment of health insurance premiums,<sup>20</sup> and it is quite apparent that this practice is rapidly gaining ground in contemporary labor agreements.

The Union has also accepted the concept of shared payments of health insurance premiums, however, and the parties differ only with respect to the

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<sup>18</sup> In this connection the apparent 1996 entry level wage rates for the primary intraindustry comparables are: Adams County - \$9.89/hour; Buffalo County - \$11.73/hour; Clark County - \$10.90/hour (1995 rate); Juneau County - \$10.22/hour; Monroe County - \$11.42/hour; and Trempealeau County - \$12.29/hour.

<sup>19</sup> The Union proposed method of basing across the board percentage wage increases on the average working rate in the bargaining unit was apparently used by the parties in the past, and the Employer is now urging percentage adjustments at each level in the wage structure.

<sup>20</sup> In this connection see the following: Section 11 in the Adams County agreement; Appendix "A" in the Buffalo County agreement; Article 15 in the Clark County agreement; Article 16 in the Juneau County agreement; Article 15 in the Monroe County agreement; and Article 19 in the Trempealeau County agreement.

implementation date of the sharing of premiums and the form of the quid pro quo; in the latter respect the Employer prefers a fixed percentage sharing formula and a 14¢ per hour quid pro quo, while the Union prefers a specific dollar contribution and a \$25.00 per month (or 14.4¢ per hour) quid pro quo.

In examining the above described positions of the parties the Arbitrator notes that they are very close to one another in this area of their final offers. In this connection, however, the undersigned notes that all six counties comprising the primary intraindustry comparison group have adopted a form of percentage sharing of premiums rather than negotiated fixed dollar amounts, which favors the final offer of the Employer; on the other hand, the Union relies upon the fact that both the Jackson County Courthouse agreement and the Jackson County Human Services agreement have used the \$25.00 quid pro quo urged by it in these proceedings, which somewhat favors the selection of its final offer.

Without unnecessary elaboration, the Arbitrator notes that the record in this area somewhat favors the position of the Employer, but this factor is entitled to significantly less weight in the final offer selection process, than the wage impasse items discussed above.

The Impasse Relating to Funeral Leave Eligibility

What next of the Union proposed addition of step-brothers and step-sisters into the funeral leave provision in the agreement? Contrary to the argument in this area, proposed enhancements of preexisting benefits are not treated in the same manner as changes in the negotiated status quo ante, they normally require no separate quid pro quo, and the merits of such proposals are determined on the basis of application of the normal arbitral criteria.

In this area the Union is proposing to formalize a one time past practice within the bargaining unit of having paid funeral leave benefits in connection with the death of step-sisters or step-brothers, a practice which is required by the Jackson County Courthouse agreement, and one apparently permitted by the Jackson County Sheriff's Department agreement.<sup>21</sup> Arbitral examination of the counties constituting the primary intraindustry comparison

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<sup>21</sup> See Union Exhibits 39 and 40.



group indicates that none have formally agreed to pay funeral leave in the event of the death of a step-brother or step-sister.

On the above bases, the undersigned has preliminarily concluded that the record favors the Employer proposed retention of the prior funeral leave language rather than the Union proposed addition of step-brothers and step-sisters, but this impasse item is entitled to only minimal weight in the final offer selection process.

The Impasse Relating to Contract Language Dealing  
with Drug and Alcohol Testing Procedures

In next addressing the merits of the Union proposed language relating to the drug and alcohol testing program, the undersigned will merely reiterate the above explanation that this type of language proposal falls far short of constituting a significant Union proposed change in the status quo ante. To the contrary, the undersigned has concluded that it is apparently mere language of clarification and that it should not be assigned significant weight in the final offer selection process 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 relating to 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, including the matter of when quid pro quos may be required in support of final offers. 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, except to the extent specified in sub-section 7q, 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, in addition to Jackson County, consists of Adams, Buffalo, Clark, Juneau, Monroe and Trempealeau counties.*
- (5) *The proponent of significant change(s) in the status quo ante must normally make a very persuasive case for such change(s), including demonstration that a significant problem exists which requires attention, that the disputed proposal reasonably addresses such problem, and that an appropriate quid pro quo has been provided.*
- (6) *The County has failed to meet its burden of establishing the requisite persuasive bases for its proposed changes in the status quo ante in the wage structure, and for its very significant proposed reduction in the entry level wage rate within the structure, thus strongly and significantly favoring arbitral selection of the final offer of the Union in these proceedings.*
- (7) *In connection with the impasse of the parties relative to the shared payment of health insurance premiums, the record somewhat favors the position of the County, but this factor is entitled to significantly less weight in the final offer selection process than the wage impasse items discussed above.*
- (8) *In connection with the impasse of the parties relating to funeral leave eligibility, the record favors the County proposed retention of the prior funeral leave language rather than the Union proposed addition of step-brothers and step-sisters, but this item is entitled to only minimal weight in the final offer selection process.*
- (9) *In connection with the impasse of the parties relative to contract language dealing with drug and alcohol testing procedures, the record indicates that this item should be assigned no significant weight in the final offer selection process.*

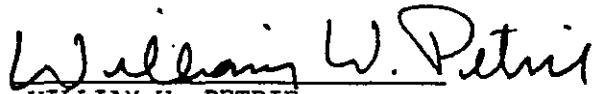
Selection of Final Offer

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 26, 1997