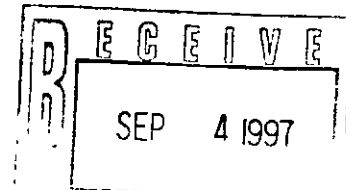


**State of Wisconsin  
BEFORE THE ARBITRATOR**



In the matter of the Petition of

LOCAL 995, AFSCME, AFL-CIO

To Initiate Interest Arbitration  
Between Said Petitioner and

Case 171, No 53428  
Int-Arb 7785  
Decision No. 28983-A

COLUMBIA COUNTY  
(HIGHWAY DEPARTMENT)

Appearances

Mr David White, Staff Representative, appearing on behalf of the Union

Attorney, Donald J Peterson, Corporation Counsel, appearing on Behalf of the County

**INTEREST ARBITRATION AWARD**

Local 995, AFSCME, AFL-CIO, hereinafter referred to as the Union, filed a petition to initiate interest arbitration pursuant to Section 111 70(4)(cm), Wis. Stats., with the Wisconsin Employment Relations Commission with respect to an impasse between it and Columbia County (Highway Department), hereinafter referred to as the County. The undersigned was appointed as arbitrator to hear and decide the dispute as specified by order of the Wisconsin Employment Relations Commission dated January 23, 1997. A public hearing, followed by an evidentiary hearing was held in Wyocena, Wisconsin, on May 12, 1997. No stenographic transcript was made. The parties, however, were given the opportunity to present evidence and to examine and cross-examine witnesses. There were some delays in the filing of briefs by mutual agreement of the parties, but the parties completed their post-hearing briefing schedule, the last brief being received by the undersigned on August 11, 1997. The record was closed at the receipt of the last reply brief.

**ISSUES AND FINAL OFFERS:**

At the time their final offers were submitted, there were only two issues in dispute - health insurance and wages.

The County's final offer proposed to keep the current standard health insurance plan plus adding a managed care health insurance plan. However, the County proposal provided that the County would pay 90 percent of the monthly premium cost associated with the managed care plan rather than 90 percent of the current standard insurance plan. Along with this health insurance proposal, the County's wage offer is to increase all hourly wage rates, with the exception of the seasonal

employees, by 43 cents per hour effective January 1, 1996 and by an additional 45 cents per hour effective January 1, 1997. The County proposes to increase the seasonal employee classification rate by 10 cents per hour effective January 1, 1997.

The Union's final offer is strictly a wage offer. It maintains the status quo language on health insurance, proposing no change in the current health insurance plan and the County's contribution of 90 percent of the premium. For the calendar year 1996, the Union proposes an increase on all wage of 25 cents (an average unit wage increase of 2%) effective on January 1, 1996, and an additional 25 cents on July 1, 1996 (another 2% on the unit average). For 1997, the Union proposed that all wages be increased by 25 cents (2%) on January 1, 1997, and by an additional 25 cents (2% on the unit average) on July 1, 1997.<sup>1</sup>

### **STATUTORY CRITERIA:**

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70(4)(cm), Wis Stats, as follows.

7. 'Factor given greatest weight' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer.
- 7g. 'Factor given greater weight' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified under subd. 7r.
- 7r. 'Other factors considered' In making any decision under the arbitration procedures authorized in this paragraph, the arbitrator or arbitration panel shall also 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

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<sup>1</sup>The Union's offer also includes an item relating to the mechanic's pay which is included in the Employer listing of stipulations and is not at issue in the instant case before the undersigned.

government to meet the costs of any proposed settlement

d. Comparison 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 employees performing similar services.

e. Comparison of the 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. Comparison of the 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 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 in 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

#### **POSITIONS OF THE PARTIES:**

The parties agree on the applicable external comparables: Adams, Dane, Dodge, Green Lake, Jefferson, Marquette, Rock, and Sauk Counties

#### County

The County argues that the health insurance premium history within the County confirms the need for alternative measures. In this respect it notes that all of the comparable counties were successful in negotiating either managed care/HMO options or were self-insured and better able

to control monthly premium costs. Based upon comparability data alone, the implementation of the dual plan is a viable alternative, along with a modification of the County's premium contribution levels. Again, looking at comparable costs, the County's costs are, in the County's view, alarming. The County stresses that under the standard plan currently in place, the County's single premium costs have consistently exceeded the comparable average in both calendar years 1996 and 1997. The family premium costs yield similar results. Furthermore, the County makes the same point with respect to combined medical coverage, i.e., medical, dental and vision benefits. Noting that if the Union's position of maintaining the status quo is sustained, the County will continue to pay nearly seven percent more than the comparable average, the County insists that upon these hard facts alone, its offer with respect to health insurance is justified. As health care costs skyrocket, alternatives must be presented, namely greater contribution on the part of the employees to maintain superior health benefits. The County's offer allows employees the ability to elect the select managed care plan, which is funded at the current ninety percent contribution level or to assume a greater responsibility for paying a greater portion of the total standard plan premium now enjoyed as a benefit.

Historically, the County stresses that over the years it has had to absorb significant increases in the health insurance premiums with the Standard plan, in some of those years there were double-digit increases. Because of the significant increases the County has sought and achieved health insurance changes with various bargaining units and its non-represented employees in the 1996 calendar year.

Insisting that health insurance cost concerns have plagued all employers, public and private alike, the County argues that some cost shifting or changes in the benefit levels must occur. Hitting employee pocketbooks raises the awareness level and directly impacts on the usage of the benefits, especially when it costs nearly \$7,000 per year to maintain family health insurance coverage. Comparability cuts both ways in the County's view. Just as the Union wants a "comparable" wage increase, so too does the County want to pay a "comparable" premium for health insurance benefits. The County and Union must both strive to contain health insurance costs, but the Union has failed to cooperate. The County submits that it has its back against the wall because maintaining an exceptional health insurance benefit is becoming cost-prohibitive.

The County argues that the concept of internal fringe benefit consistency calls for the selection of the County's final offer citing general arbitral authority regarding internal consistency with respect to fringe benefits. This is particularly important because the major desire for most employers is to maintain consistent benefit packages. The desire to gain internal consistency becomes even more necessary when the bargaining unit is a lone "hold-out" group. Because other County bargaining units have found the implementation of the select managed care plan to be reasonable and have voluntarily agreed to the same changes as contained in the County's final offer, and the Union offers no compelling reason as to why it should receive preferential treatment, the County's offer should be selected.

The County points out that the non-represented groups, and the nurses bargaining unit voluntarily accepted the implementation of the select plan while the non-sworn and sworn sheriff's bargaining

units are at an impasse in bargaining but that the major issue in both of these dispute is wages. Both sheriff's units have indicated in negotiating sessions that they will accept the County's proposed health insurance changes, only the AFSCME bargaining units, Highway, Health Care Center, Professionals and Courthouse/Human Services are refusing to accept the County's health insurance proposal.

In addressing the Union's argument that there is no internal pattern which would support the County's final offer, the County points out that the four of the seven units which are resisting the County health insurance offer are all AFSCME bargaining units.

The County's offer, it suggests, is simply an extension of the established pattern within the County. The Union's final offer is clearly unreasonable on its face. While it is difficult to determine where parties will ultimately settle, the County is determined to secure some relief in its health insurance costs. A final offer from a Union that maintains the *status quo* on health insurance is grossly unrealistic and, from the County's perspective, should not be sustained.

The County disagrees that a *quid pro quo* must be offered for the contractual change sought in the health insurance. It has not offered the nurses such a *quid pro quo* nor has it done so in the sheriff's bargaining units. The arbitrator should not impose a *quid pro quo* when other units have voluntarily settled without one. Moreover, at least one arbitrator has held that increasing health costs alone reduce or eliminate the need for an employer to offer a *quid pro quo*.

As additional support for this argument, the County points to another award where the arbitrator found that if overwhelming comparable support exists and the bargaining unit employees enjoyed a benefit at a lesser cost, a *quid pro quo* was not necessary. The County insists that the employees within the highway bargaining unit have enjoyed health insurance benefits over the past two years which are more than what the County provides for other bargaining unit members. *Quid pro quo* is not an important issue because the County is not attempting to change the *status quo* but rather giving employees the option to select an insurance policy that is appropriate to meet their own personal needs.

In its reply brief, the County insists that the Union is ignoring overwhelming arbitral precedent insisting that a *quid pro quo* is unnecessary. If the proposed health insurance program is good enough for a majority of the employees in the other collective bargaining units, why isn't it good enough for this particular AFSCME unit, the County asks.

Arguing in the alternative, the County avers that if a *quid pro quo* is required, the County maintains that it has satisfied this requirement by providing for a two year wage increase that is greater than the comparable average. The two year settlement pattern among the eight comparable counties is an increase of 6.685%. The County's final offer provides for a two year wage increase of 7.32%, fully .635% more than that deemed reasonable among the external comparables.

Asserting that the monthly family premiums have steadily increased, and that since 1991, the monthly family premium has nearly doubled, the County alleges that escalating health insurance costs are most certainly a defensible reason for seeking changes in a health insurance program. In response to Union arguments that premium data relative to the external comparables does not point to "a need to change", the County avers that this is true only when health insurance premiums are compared. When composite premiums for medical, dental, and vision insurance are included, the County's costs, even under the County's final offer, far outstrip those paid by other comparable counties.

Rather than seeking out additional benefit design changes, the County chose to provide an alternative cost-saving measure for its employees, a managed care program, rather than increasing deductibles or implementing major medical co-pays. Dental insurance coverage will stay the same under either the managed care or standard plan so that it is not truly in issue. Vision care does differ in accordance with the plan selected, but Adams County is the only comparable County to offer its employees vision insurance coverage, and vision insurance is a unique benefit that is not universally available costing the County an additional \$135 per year per employee.

As a final argument, the County claims that its health insurance offer does not adversely impact the bargaining unit members, noting that if the employee opts for the managed care plan, his/her contribution to the premium costs will be reduced. Only if the current standard plan is selected will the employee be required to pay a significant increase. It notes that a family opting for the select plan would pay \$182.04 less per year than that of the comparable average. Under either the standard or managed care plan maximum employee out-of-pocket charges would be less than those required by comparable plans in the comparable counties. Employees are not adversely affected by the limitation in the selection of physicians because nearly all of the employees already receive medical treatment from the physicians within the managed care plan. Therefore, the County asserts that there is simply no way for the Union to argue that it is being harmed by the County's final offer.

The County argues that the Union's criticism surrounding the select plan are minimal and easily discountable. For the employees who choose to maintain the "cadillac" standard plan, the choice is accompanied with a greater employee cost. In addressing the Union's "freedom of choice" argument, the County observes that ninety percent of the employees are already using doctors within the managed care plan. With regard to premium contributions, higher contributions will only be the case if the employee opts to continue in the standard plan. Insofar as there may be a benefit reduction which occurs in the managed care plan when an employee does not wish to receive the generic substitution and is required to pay the difference between the cost of the brand-name drug and the generic substitution, the County notes that if the medical practitioner indicates "no substitutions", the traditional flat \$5 co-pay applies. The employee must request that his physician state "no substitutions." Insofar as the vision care benefits are concerned, the County notes that both the standard and select plans exclude the benefits to which the Union alludes. For these reasons, the County asserts that the criticisms to the benefit levels

provided by the managed care plan are the Union's grasping at straws and should be disregarded by the arbitrator under the circumstances.

With respect to wages, the County alleges that the Union's final wage offer unjustifiably improves the comparable wage relationship more than that of the County's final offer. While the County affirms that the most critical issue is that of the health insurance changes, the parties' wage offers also differ. According to the County, its final offer maintains the same or improves the benchmark rankings in all classifications as does the Union's. Under each and every position surveyed, the County's final offer improves its wage relationship to that of the comparable average. Because the County's final offer accomplishes these ends, the Union's final offer which provides for 12 cents per hour end-rate adjustments over the two-year period, is wholly unnecessary.

With respect to the external comparables on wages, the County argues that its wage offer is more reasonable resulting in a 3.64 percent increase for 1996 and a 3.68 percent increase for 1997, noting that the settlement pattern for the external comparables averages out to be a 3.4 percent increase for 1996 and a 3.29 percent increase in 1997. In contrast, the Union's wage offer outstrips the comparable settlement pattern by .83 percent in 1996 and .77 percent in 1997. The Union's offer, it points out exceeds the comparable average by 1.5 percent. Gains such as this should not be achieved through interest arbitration and the County's offer on wages is clearly the most reasonable. Moreover, the County also points to the nine percent wage lift in the Union's offer over the two year contract period. Because the County's wage offer provides for significant improvements in relationship to the comparable average under all four classifications surveyed, it should be deemed the more reasonable under the statutory criteria.

Addressing the Union's argument that "catch-up" is needed because the County's unit is significantly below the average of the comparables, the County stresses that the unit has enjoyed a split-year wage increase in each of the past four years amounting to a cumulative lift of twenty percent. It asserts that the Union has failed to provide historical data justifying the necessity of the "catch-up" increase. Conceding that in three of the four comparable positions surveyed, the maximum wage rates are below that paid among the comparable counties, the County argues that the most recent contract was the result of voluntary negotiations and that the unit's wage position may have existed for a long time. The Union, according to the County, cannot continually cry catch-up as a defense for an exorbitant final offer. The County's final offer is more than sufficient to keep pace with the comparable wage rate increases in each of the individual classifications noted above, while the Union's is exorbitant in comparison to the external comparables.

The final argument made by the County is that in light of the interests and welfare of the public, the County cannot justify the additional costs generated by the Union's final offer. Comparing the Union's offer to the levy rate information over the past ten years, the County argues that from 1996 to 1997 alone, the County's equalized valuation has increased a full ten percent, along with the total County levy increasing by six percent. The decrease in the mill rate was not enough to offset the substantial increases in the land values throughout the County.

Based upon this data, the County suggests that economic restraint is needed and the Union's final argument calling for the continuation of the premium contributions along with the addition twelve cents hourly wage rate adjustment over the two year period continues to place the County under significant economic pressure.

Accordingly the County requests that its offer be selected as the more reasonable of the two offers before the arbitrator

### Union

The Union's first argument is that there is no state law or directive that limits the County's ability to pay for either offer. It points out that the County's calculation overstates the difference in the cost of the offers because it assumes that the County's health insurance offer would be in place retroactively to January 1, 1996, and this will not be the real result. Even assuming that the County's calculations are accurate, the difference between the offers is not so great as to cause statutory revenue limits to be significant. Assuming the County is costing correctly, the cost of the Union's offer exceeds the County's offer by \$19,438.45 in 1996 and \$34,505.05 in 1997. Under a more honest accounting, the difference, the Union argues, is \$5,452.82 for 1996 and \$6,294.53 for 1997. The Union believes that the County is legally permitted to increase its mill rate by \$.6555 and, given that the 1997 equalized valuation of Columbia County is \$2,121,915,550, the County will be able to use the property tax tool to raise an additional \$1,389,854.69. With an increase in sales tax revenues in 1996 of more than \$100,000 over the previous year, the property and sales tax will be sufficient to pay for either offer. Moreover, there are no State-imposed limitations on County revenues which have any impact on the selection of either offer.

The Union next asserts that local economic conditions do not favor either offer. In order to evaluate the local economic conditions, these conditions must be compared with those of the other comparable counties to gain an appropriate picture. In the Union's view, the economy of the County is better than that of the comparables when per capita income, adjusted gross income, and sales tax revenue increases are considered. The County fares slightly above average in the per capita income, above average in adjusted gross income, and only one comparable has a greater increase in sales tax revenues than the County. From these statistics, the Union alleges that the County has a strong local economy. Therefore, the "greater weight" factor cannot be said to favor the County's offer.

With regard to the County's health insurance proposal, the Union insists that the managed care plan proposed by the County in addition to the offer of the current standard fee-for-service plan now enjoyed by employees is an inferior health plan and constitutes an attempt to change the status quo. This plan is something of a fee for service-HMO hybrid with some managed care features. While the Union acknowledges that some features of this second plan are positive, the



plan contains a reduction in certain benefits which more than offset these improvements, the most obvious of which is loss of freedom of choice of physicians and hospitals

Also significant is the fact that employees opting to remain in the current standard plan would be required to pay the amount of the standard plan premium which exceeds 90% of the new managed care plan. Under the Union's offer of no change, employees utilizing the standard plan for 1997 would pay \$55.96 per month for the family plan and \$23.42 per month for the single plan. If the County's proposal is implemented employees who wish to maintain the status quo with the benefits in the standard plan now in effect would have to pay \$85.02 per month for the family plan and \$35.60 per month for the single plan for the 1997 year, an increase of 51.9% in the employee's premium

The Union maintains that there are substantial benefit reductions in the new managed care plan. It cites the differing treatment with which the two plans treat generic versus brand name drugs. The standard plan recommends but does not require generic substitutes as contrasted to the managed care plan permitting brand names only where the physician indicates "no substitutes." Moreover certain drugs are excluded under the managed care plan but not specifically excluded under the standard plan, such as human growth hormone, anorectic drugs, and smoking deterrents and there are differences in the permitted dose supply. The Union asserts that there are also differences in the vision care benefits because employees in the past received full coverage for blended bifocal and trifocal lenses and protective lenses for people who work with video display terminals

More importantly, the Union suggests that the County is overstating the advantages to the managed care plan because Columbia County employees who use Alliance health care providers (in this case ninety percent of the bargaining unit employees according to Personnel Director Aiello) are already charged Alliance or the managed care rates. Thus, the County has already been getting the most significant of the alleged advantages provided by the managed care option under the standard plan.

According to the Union, the County is improperly attempting to change the *status quo* through arbitration. Changes in the *status quo* are not to be taken lightly. Citing arbitral precedent, when an issue has been resolved by prior agreement, the party seeking to change that resolution must carry the burden of establishing the need for the change. Arbitrators will avoid changing the *status quo* by giving either party what they could not have achieved at the bargaining table. Moreover, if it is concluded that the proposed change would not normally have been acceptable at the bargaining table without a *quid pro quo* flowing from the proponent of the change to the other party, arbitrators will be extremely reluctant to endorse the proposed change.

Citing an arbitral test which requires the party seeking the change to demonstrate by clear and convincing evidence a need for the change and that the party proposing the change has provided a *quid pro quo* for the proposed change, the Union contends that the County has failed to demonstrate a need for its proposed change in the *status quo*. The cost of the standard plan

does not show a need because there has not been any particular problem with rising health insurance costs, said costs increasing seven percent over the past three years. Moreover, for 1997, there is no increase in the premiums at all. External comparables do not establish such a need either because Dane, Dodge, and Rock Counties have costs which are about the same or even more than what the County would pay under the Union's offer. The County's dental insurance premium costs are less than Dane's and Dodge's. Furthermore Columbia County employees pay a greater percentage of the premium than the employees of any of the comparables. In addressing the County's claim that health insurance premium costs are alarming when compared to the comparables, the Union states that under its offer a single premium would rank third highest among the comparables and a family premium would rank sixth. This is hardly excessive. Because the County did not provide data on the rates of premium increases for comparable counties, its assertion that the premium increases have been excessive is without evidentiary support.

Responding to County arguments that its offer is more reasonable because the County is paying about 21 cents per hour more for a family plan which included dental and vision than the comparables, the Union suggests that this argument would have far more impact were it not for the fact that Columbia County pays its employees so poorly in comparison to the comparables. Asserting that for each benchmark position with the exception of master mechanic, the pay was far below the average in 1995, the 21 cent per hour additional insurance cost for a family plan must be viewed in this light.

The Union also argues that there is no internal pattern to support the County's proposed change because only one unit, the nurses, has settled a contract that includes the County's health insurance proposal. This is the smallest of the seven units representing only 19 of the 360 unionized employees. Furthermore, the Union stresses that although the sworn and unsworn sheriff's units may have indicated a willingness to accept the County health insurance proposal, those contracts have not been settled. Viewing the percentage of employees in these three units, the Union contends that combined, they represent only 76 employees or 21.1% of the County's organized employees. The highway bargaining unit alone comprises 20% of the County's organized employees. The vast majority of the County's employees have not accepted the proposed health insurance language. The characterization of the AFSCME units as a "lone hold-out" is absurd under the circumstances existing at present.

The Union also notes that the nurses' settlement is quite different from the County's final offer to the highway employees. Over the two year period, the County is offering more than an eight percent lift to the nurses, while in the instant case it is offering the highway employees an increase of seven percent on the average. The Union asserts that the nurses got a *quid pro quo* from the County which is not being offered in this case.

The Union strenuously avers that the County offer does not provide a bona fide *quid pro quo* for the insurance benefit change. Under the County's offer, not only would employees be forced to accept a reduced health insurance benefit but also have to watch their wages erode

relative to the comparables. Lacking a *quid pro quo*, the County offer plainly fails the tests in evaluating the merits of a change in the *status quo*.

In responding to the County contention that comparability cuts both ways with respect to wages and health insurance, the Union submits that logically this assertion would favor moving both elements, wage costs and insurance costs, toward the average. The County offer, however, would result in the County moving closer to the average on health insurance costs, but would do nothing to move closer to the average on the wage costs. Given that the insurance costs are on the order of 21 cents per hour above the average of the comparables and the 1997 wages, with the exception for the master mechanic, would be more than \$1.00 per hour below the average, clearly the wage disparity outweighs the insurance question. The Union also takes strong exception to the characterization of its position on the health care issue as intransigence. Finding the offer unacceptable does not constitute intransigence on its part.

With respect to wages, the Union argues that the pattern of internal wage settlements strongly supports the Union's offer. Of the seven bargaining units, the four represented by AFSCME do not have contracts for 1996 or 1997. The two law enforcement units have agreements settled through 1996. Only the nurses have settled for 1996 and 1997. With regard to 1996 wages, the sheriff's sworn unit received 2.5% effective 1/1/96, and 2.5% effective 7/1/96 for a total lift of 5%. The non-sworn received 2.25% and 2.25% for the same period for a total lift of 4.5%. The two classification of nurses received the following PHN I 3.9% and PHN II 4.2%. The Union's offer for 1996 is 2% and 2% for a total lift of 4% for 1996, while the County proposed 3.5% for 1996. Comparing all of these settlements, the Union asserts that its 2%-2% split offer is closer to the mark than is the County's 3.5% increase.

Pointing to the various benchmarks for specific classifications, the Union stresses that wages paid to Columbia County highway employees lag far behind the comparables and justify catch-up. Looking at patrolman, truck driver, grader operator, and mechanic classifications, the data suggests that at the maximums Columbia County is \$1.09 per hour or 8.4% below the average for the patrolman classification; \$1.01 per hour or 7.9% below for truck-drivers, \$1.21 per hour or 9.2% below for equipment operators. For the master mechanic, at the maximum, the County is \$.60 or 4.5% above the average. With regard to the benchmarks at the starting rate minimums, for the patrolman classification the County is below by \$2.05 per hour or 17.2% below the average; for the truck driver at the starting rate, \$2.14 per hour or 17.6% below; and for the mechanic starting rate, \$.31 or 2.5% below the average of the comparables. Because such unacceptable wage disparities exist, catch-up wage increases are warranted and this has been the rationale adopted by numerous interest arbitrators to justify catch-up.

Citing arbitral precedent, the Union submits that once it is determined that catch-up is called for, the offer which more promptly resolves the problem is favored and the need for catch-up outweighs other statutory criteria. Comparability criteria should be given greater weight. The Union alleges that its offer provides meaningful relief while the County's fails to address this need. At best the Union's proposal provides only modest relief while the County's offer provides

no relief at all or makes matter worse on a number of benchmarks, e g., the maximum rate for patrolman in 1997, the start and maximum truck driver rates for 1996 and 1997, the grader rates for 1996 and 1997 Only with respect to the master mechanic, does the start rate move slightly closer to the average while at the maximum under the County offer it is moves marginally further way again

In the Union's view, its offer provides modest improvement in the standing of the highway employees relative to the comparables This is done without greatly changing the standing of the master mechanic, the only position for which catch-up is not required. The Union's offer therefore balances the need for catch up for the majority of bargaining unit employees without giving the master mechanics an unduly large or small increase In contrast, the County's offer ignores the problem of low wages in this bargaining unit entirely

In its reply brief, the Union stresses that the data demonstrates that the wage deviations from the average of the external comparables for each benchmark except the master mechanic were huge in 1995 and the County's offer does little to address this problem by 1997. The Union also asserts that the County's brief contains a very flawed benchmark analysis, pointing especially to the County table with respect to the patrolman position and patrolman helper benchmark.

With regard to the County's contention that the difference between the offers of the parties in 1997 is \$55,854 and that the County would have to raise the levy to pay for the Union's more expensive offer, the Union maintains that the County has understated the costs of its offer and overstated the costs of the Union's offer Specifically it notes that the County has calculated its own costs utilizing the lower select plan costs for all of 1997 and the Union's offer as if it were \$ 50 per hour from January 1, 1997, which is not in fact the Union's offer

For all of these reasons, the Union requests that the arbitrator select its offer

## **DISCUSSION AND OPINION:**

### **I THE "GREATEST WEIGHT FACTOR"**

In this case there are no state laws or directives that limit the County ability to pay for either offer. The County makes no serious argument that it is constrained by statutory revenue limits such that there would be a serious impact with the selection of the Union's offer While the County does make several salient points regarding the impact of the mill rate decreasing by 4.55% in 1996 and the decrease being insufficient to offset the substantial increases in the land values, and the total mill rate increase of 20.45% over the 1992 mill rate costs, the County is not barred by statute from levying more to fund the Union's offer. This is because it may still increase its mill rate by \$0.655 Through usage of the property tax tool and the increase in sales tax collection resulting in \$100,000 more than received in 1995, the undersigned cannot find that there are State imposed limitations on County revenues which have any impact on the decision in this matter. This factor does not clearly favor one party or another and the case is determined by

the application of the lesser factors.

## II. THE "GREATER WEIGHT" FACTOR

This factor is tied in with the traditional factors and does not stand alone as does the greatest weight factor, which must be considered separately and given weight above all else. The greater weight factor should be considered along with the other factors but is given greater weight. The type of data necessary to provide an informed opinion might include employment and household incomes, the ranking of the community among other similar communities and relative quality of life information. In viewing income statistics for the comparable counties, it appears that the County's per capital income is slightly above average. For 1993 through 1995, the adjusted gross income for the County is above average with only Dodge and Green Lake Counties enjoying larger increases. Sales tax revenues have also increased for the County. Given the available data provided by the Union and the County's failure to supply contradictory data, it must be concluded that the County has a fairly strong local economy such that local conditions would not favor either offer. Furthermore, the Union's offer would not unfavorably impact the local economy as being too costly.

## III. THE OTHER FACTORS

**A. Wages** The Union's offer is 25 cents per hour (an average of 2%) effective 1/1/96, 25 cents per hour (av. 2%) effective 7/1/96, 25 cents per hour (av. 2%) effective 1/1/97; and 25 cents per hour (av. 2%) effective 7/1/97.

The County's wage offer is 43 cents per hour (an average of 3.5%) for all employees but seasonals effective 1/1/96, and 45 cents per hour (an average of 3.5%) for all employee but seasonals effective 1/1/97. The County would increase the seasonal pay classification by 10 cents per hour effective 1/1/97.

Examination of the two offers with the supporting data reveals that the two final wage offers are nearly identical. The cost of both wage offers is also similar. The Union proposes a less costly wage package with a higher lift at the end of both years and includes seasonal employees in all wage rate raises. The County would only pay an additional 10 cents in 1997 to seasonal employees and proposes a single cents-per-hour increase for all classifications for each year effective January 1 of that year. Under the Union's wage offer, the ending wage rates will be approximately 7 cents higher in 1996 and 5 cents higher in 1997 than if the County's offer is adopted. Because the wage offers are so similar, and the parties have clearly identified the health insurance proposals as the most critical issue, consideration of the parties' wage proposals in and of themselves, or standing alone does not resolve the issue of which final offer is the preferred offer.

Nevertheless, it is important to analyze the wage issue on the merits

## 1 Internal Comparables

For 1996, the three bargaining units not represented by AFSCME are all settled. However, the only bargaining unit to reach an agreement for both 1996 and 1997 is the nurses' unit. This is the smallest unit representing the smallest number of employees.

The nurses have accepted the County's health care proposal and agreed to the following raises along with the health insurance change. For 1996, PHN I in the first four years received 3.25%, PHN I after their 4<sup>th</sup> and 5<sup>th</sup> years received 3.25% plus 10 cents (3.9% lift on their wages). For 1997, PHN I in the first four years received 3.0%, PHN I after their 4<sup>th</sup> and 5<sup>th</sup> year received 3.0% plus 10 cents (3.6% on the lift). Thus, over the two years, they enjoy a lift of 7.5%.

PHN II's in 1996 in their first four years received 3.25% in 1996. After the 4<sup>th</sup> and 5<sup>th</sup> year, PHN II's received 3.25% plus 15 cents (4.2% lift on their wages). For 1997, PHN II's in their first four years received 3.0%. PHN II's after the 4<sup>th</sup> and 5<sup>th</sup> year received 3.0% plus 15 cents (3.9% lift on their wages). Over the two years, the PHN II's receive a lift of 8.1%.

The sworn and non-sworn sheriff's units both received a split wage increases for 1996, 1996 being the second year of a two year agreement. Both units received the wages increases set forth below without accepting the County's health insurance proposal. (It is unknown whether it was seriously proposed at that time. The sworn unit received 2.5% effective 1/1/96 and 2.5% effective 7/1/96. The unsworn unit received 2.25% effective 1/1/96 and 2.25% effective 7/1/96. Neither unit is settled for 1997. This is all the information that is available to the undersigned with respect to the internal comparables.

From this data, the internal comparables unquestionably support the Union's offer for 1996. The sworn sheriff's unit received a lift of 5%, the unsworn, a lift of 4.5%. The nurses' received lifts of 3.9% and 4.2% respectively.

For 1997, there is much less evidence. Only the nurses have settled. The average lifts in that unit when considering both PHN I's and II's were 3.6% and 3.9%.

Because the nurses unit, the only settled unit with a contract covering the same two year period as is in dispute here, received a lift of 7.8% (averaging the PHN I and II lifts together) over this time period, it is concluded that the internal comparables, as scant as they may be for 1997, also favor the Union's offer over the County's offer. Thus the internal comparables support the Union's offer on wages.

## 2 External Comparables

The parties agree upon the applicable counties to be used as external comparables. The undersigned views the external comparables in two contexts. The wages for the two year period in question for the comparable counties are settled. A comparison of the average increases provided by the comparable counties in each year to those of Columbia County employees under both offers is instructive. The effect of both offers on specific classifications at various benchmarks and comparing these rates to those of the comparable counties at the same benchmarks is also an important consideration.

With respect to the average increases in pay Adams County employees received 3.5% in 1996, 3.0% in 1997 for a lift over the two years of 6.5%. Dane County employees received 2% effective 1/1/96, 1% effective 7/1/96, 2% effective 1/1/97 and 1.5% eff. 7/1/97 for a 6.5% lift over two years. Dodge County employees received 3.8% in 1996 and 3.7% in 1997 for a lift of 7.5% over the two year period. Green Lake County employees received 3% in 1996 and 3% in 1997 for a lift over two years of 6%. Jefferson County employees received 3.42% in 1996 and 3.31% in 1997 for a lift of 6.74%. Marquette County employees received 3.25% for 1996 and 3.0% for 1997 for a lift of 6.25% over the two years. Rock County employees received 3.0% in 1996 and 3.0% in 1997 for a lift of 6% over the two year period. Finally Sauk County employees received 4.2% in 1996 and 3.8% in 1997 for a lift of 8% over the two year period. Viewing the two offers before me, it is apparent that on the basis of average increases offered to comparable highway units, the County's offer is favored.

The analysis of external comparables does not end there however. Both parties presented a benchmark analysis. Examination of both parties' benchmark analysis suggests that both offers maintain or slightly improve the ranking of the County with respect to comparable counties in the various classifications analyzed. Utilizing the County's analysis, it appears that with the exception of the patrolman's helper classification in 1996 and the patrolman classification in 1997, both offers improve the rankings of the mechanic and foreman to the same extent. The Union's offer would raise the ranking of the patrolman's helper to a greater extent in 1996 but by 1997 both parties' offers would provide for the same rank in the comparables. The Union's proposal improves the patrolman's ranking in 1997 to a greater extent than does the County's offer.

However, in analyzing the benchmark data provided, noting the errors in Table 8 as pointed out in the Union's reply brief, the Union's benchmark data appears to be more reliable. This data demonstrates that the County's wages, especially at the minimums of the various classifications are far below the average of the comparables. In fact in many of the classifications, the wages are more than a \$1.00 less than the comparables. The County's offer, may in some cases drop the wages to even \$2.00 less than the average in some classifications (e.g., starting rates of patrolman, grader operator). Both the Union's assertion that County employees are poorly paid and the County's offer does little to address the problem and the County's assertion that the wages of County employees being somewhat below average is not solely a result of the County's final offer but the result of countless bargains past have merit.

The Union argues that catch-up is due, while the County urges that it is not due under the circumstances especially here where the last bargain contained split-year wage increases. The undersigned believes that some "catch-up" is probably due given the low ranking and low wages of the Columbia County employees. However, the County's point that the County's position in the rankings was not the result of a single bad bargain over a single contract, but rather the result of many voluntary bargains over the years is more persuasive in this instance. For this reason, it is concluded that the external comparables slightly favor the County's offer.

### 3 Other Factors

While data was presented on other municipal employees such as the Department of Public Works employees for the City of Portage in the form of their collective bargaining agreement. Neither party cited this evidence in its arguments to the undersigned. An examination of the agreement reveals that these employees enjoy wage rates significantly higher than those in the County's highway department. It appears that said employees received raises ranging from 44 cents to 55 cents for each year depending upon the classification with the majority of classifications receiving about 45 cents per year for each year of the two year agreement. Without, however, knowing what these sums represent insofar as an average unit increase for that bargaining unit over each of the two years, it is difficult to make comparisons. Moreover, the undersigned does not have the benefit as to what other, if any, monetary items were part of the bargain in that contract. Accordingly, it is concluded that the factor of wages for other municipal employees does not favor either offer.

Furthermore, no evidence was presented with respect to the consumer price index by either party. This criteria, under the circumstances does not favor either offer.

Finally, the County argues that the interests and welfare of the public favor its offer. However, here, where the differences in the wage offers are not so significant, the undersigned must conclude that such interests on the part of the public, if they exist, favor the County ever so slightly. This is especially true because the public has a countervailing interest in reasonably satisfied employees performing their job duties without resentment due to substantial underpayment for their services.

The undersigned views the internal comparables, especially for 1996, which strongly support the Union's offer, and the single internal wage comparable for 1997 as more significant than the external comparables which slightly favor the County's offer. The Union's offer on wages is slightly preferred over that of the County. However, wages are not dispositive of the parties' dispute over their contract. Rather, it is the parties' health insurance proposals standing alone and viewed on their merits and coupled with the wage proposals which are determinative in this case.



**B Health Insurance** The Union's offer with respect to health insurance is the status quo.

The County proposes the implementation of a managed care (select) health insurance plan in addition to the County's current standard plan. The County proposes to reduce its monetary contribution to 90% of the monthly premium of the select plan.

In interest arbitration, the party proposing a departure from the *status quo* has the burden of proof in justifying the necessity for the changes proposed. A change in the *status quo* is not to be taken lightly. Moreover, arbitrators are reluctant to grant a party in interest arbitration what it could not gain through bargaining. Some arbitrators require that a persuasive basis be established for the change while others require clear and convincing evidence to establish that there is a need for the change and that the party proposing the change has provided a *quid pro quo*.

The undersigned is cognizant that some arbitrators will not require a *quid pro quo* where there is overwhelming support for the change in the comparables. Other arbitrators have concluded that comparable support minimizes the need for a *quid pro quo*. Nevertheless, the undersigned believes that the County as the proponent for the health insurance change must establish the need for the change by clear and convincing evidence and must demonstrate overwhelming comparable evidence supportive of the change to escape the need to provide a *quid pro quo*.

With these basic tenants in mind, the analysis begins with

#### 1. The Internal Comparables

The County seeks to characterize the four AFSCME units as "lone hold-outs" resisting its health care proposal. This view is rejected based upon the facts available at the close of the record. Only one bargaining unit, the nurses, has settled its contract with the County's proposed health insurance changes as a part of the agreement. The two sheriff's bargaining units have not settled their contracts. Oral indication of a willingness to accept the health care proposal when the other monetary aspects of those agreements remain unsettled will not suffice to establish the County's point that these units have accepted the County's health care proposal because the ultimate bargain in both units could come out very differently. Simply stated, no agreement yet exists with those two units; only one unit has agreed to the changes in the health insurance. For this reason, the County cannot rely on the "lone hold-out" theory or the internal comparables to support its offer.

The County argues that it need not offer a *quid pro quo* for its proposed change, given the necessity for the change. While the necessity for the change will be addressed below, the cogent point to be made is that the County did provide a significant *quid pro quo* to the nurses, the only settled unit, in the lift which it offered to their more senior employees which it has not offered to the highway unit. PHN II's with over four years of seniority received a lift of more than 8% over the two year period, while the more senior PHN I's received 7.5% over that same period. To

secure its health insurance proposal, the County has been willing to offer approximately .8 of a percent more to the nurses. Its final offer to the Union does not reflect the same. For this reason, there is merit in the Union's argument that it is not being offered sufficient *quid pro quo*.

Nor has the County persuaded the undersigned that it is treating all of its internal bargaining units with consistency at this point in time. For this reason, the undersigned believes that the internal comparables favor the Union's proposal, given the County's offer of a *quid pro quo* to the nurses without a commensurate *quid pro quo* to this unit.

## 2 The External Comparables

There is no question that the County's health insurance costs are high and that they are significantly higher than the average of the comparables. Part, but not all, of these higher costs are due to a vision plan which is not included in the health care package offered by any other comparable with the exception of Adams County. Looking at Table 4, showing 1997 employer health insurance premium contributions, it is evident that under the Union's offer, only three of the comparable counties will be paying a higher family premium and only two will be paying a higher single premium. The same appears to be true for 1996 combined premiums on the family plan. It is evident why the County is requesting relief and that its offer will move it more to the center in the ranking. This cost component is the overriding element in the County's argument and it is the part of the County's proposal which pegs the premium contribution to 90% of the select managed care plan rather than on the standard plan which will give the County the relief which it desires.

Setting aside the merits and comparisons of the standard plan versus those offered by the managed care select plan, the real question before the undersigned is whether the employees should be compelled to accept an employer contribution level pegged to the 90% of the managed care select plan. It is true that the County's health care costs are high but they are not so extreme as to be outside the realm of what some of the other comparables are paying. Furthermore, as the Union points out, Columbia County has not seen a dramatic rise in its health care costs over the past three years. Other comparables saw premium increases for 1997 which did not occur in Columbia County. It should also be noted that Columbia County employees pay a greater percentage of the premium than the employees of any of the comparables so County reliance upon making employees assume some of the premium burden has already been achieved.

This arbitrator, in viewing the totality of these facts, including the substantially higher premium which the County assumes in comparison to the average of the comparables, simply cannot find that the County has established necessity under the circumstances. While compelling the highway employees to choose the managed care plan is desirable and may ultimately become

external comparables favor the County so overwhelmingly as to justify the departure from the status quo. Nor does she find that the external comparables support such a significant change in the bargained-for health insurance benefits without the offer of a *quid pro quo*.

Therefore, the Union's offer with respect to health insurance is favored.

### C. Wages and Health Insurance Proposals Considered in Combination

Analysis of both offers suggests that relief for the County in the premium area is warranted. However, the traditional bargaining pattern for these parties over a number of years has left them with very low wage rates and "cadillac" health, dental, and vision insurance for which the County pays an substantially higher amount of money toward its share of the premiums in comparison to the external comparables. For better or worse, that is the position into which the parties have bargained themselves. This arbitrator cannot find that the exceptional circumstances exist which are necessary to overcome the strong principle of allowing the parties to voluntarily negotiate a change in health insurance plans and premiums. The facts do not exist at this time which would justify a departure from the position which the parties have historically created for themselves.

The Union points out that the insurance costs are on the order of 21 cents per hour above average of the comparables and the County's offer would provide 1997 wages that, except for the master mechanic, are more than \$1.00 per hour below the average of the comparables. While in one sense, this is comparing apples to oranges, in another sense, this fact simply reinforces what the parties have bargained for over the years. A change as significant as the adoption of the managed care plan with the premiums pegged to the less expensive plan without a more compelling demonstration of necessity and a *quid pro quo* is simply not warranted at this time.

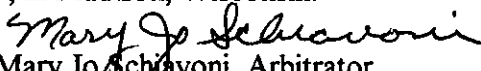
### CONCLUSION:

Although there is very little monetary difference between the two wage proposals, the difference in the health insurance proposals is significant. The Union's position is preferable primarily because the County has not met its burden in proving the need for the proposed change. Having considered all the factors, 7, 7g, 7r, a. through j., under Sec. 111.70(4)(cm)7, and having discussed their applicability to the instant case,

### AWARD

The Union's final offer is adopted as the award in this proceeding and incorporated into the parties' 1996-1997 collective bargaining agreement.

Dated this 3rd day of September, 1997, in Madison, Wisconsin.

  
Mary Jo Schiavoni, Arbitrator