OCT 20 1997

In the Matter of the Arbitration Between:

WAUKESHA COUNTY,

-and-

Decision No. 29070-A

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL UNION 200

Appearances: Andrea F. Hoeschen, Attorney at Law, for the Union
Marshall R. Berckoff, Attorney at Law, for the Employer

International Brotherhood of Teamsters, Local Union 200, hereinafter referred to as the Union, filed a petition on August 30, 1994 with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, wherein it alleged that an impasse existed between it and Waukesha County, hereinafter referred to as the Employer, in their collective bargaining. The Union requested the Commission to initiate arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act.

A member of the Commission's staff conducted an investigation of the matter and submitted a report. The Commission found that the Union is the exclusive collective bargaining representative of certain employees of the Employer in a collective bargaining unit consisting of all regular full-time and part-time employees of the highway department excluding office employees, professional employees, guards, craftsmen, confidential employees, supervisors and other employees. The Union and the Employer have been parties to a collective bargaining agreement covering the wages, hours and conditions of employees in the bargaining unit and that the agreement expired on December 31, 1995.

On October 11, 1995, the parties exchanged their initial proposals on matters to be included in the new collective bargaining agreement. Thereafter, the parties met on three occasions in an effort to reach an accord. Subsequent to the filing of its petition requesting the Commission to initiate arbitration, an investigator from the Commission's staff conducted an investigation that reflected that the parties were deadlocked in their negotiations. On March 20, 1997, the parties submitted their final offers, written positions regarding authorizing the inclusion of non-residents of Wisconsin on the arbitration panel to be submitted by the Commission as well as a stipulation on matters agreed upon. The investigator notified the parties that the investigation was closed and advised the Commission that the parties remained at impasse.

The Commission concluded that the parties had substantially complied with the procedures set forth in the Municipal Employment

Relations Act required prior to the initiation of arbitration and determined that an impasse existed between the parties.

The Commission ordered that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties involving the employees in the bargaining unit and directed them to select an arbitrator. Upon being advised that the parties had selected Zel S. Rice II as the arbitrator, the Commission issued an order appointing him as the arbitrator to issue a final and binding award pursuant to Section 111.70(4)(cm)6 and 7 of the Municipal Employment Relations Act to resolve the impasse by selecting either the total final offer of the Union or the total final offer of the Employer.

The Union's proposal, attached hereto and marked Exhibit 1, provided for the deletion of "other than entry level jobs (Wage Level I and II)" from Article 11.01 of the collective bargaining agreement. The Union also proposed to modify the language of in Article 11.06 of the collective bargaining agreement to provide that demotions be treated the same as promotions. Those two changes would require that a current employee who applied for a lower paid position would be entitled to an interview and to have seniority considered. The Union also proposed changing Article 15.05 to provide that the Employer pay the full employee's share of the contribution to the Wisconsin Retirement Fund effective January 1, 1996. The Union proposed adding to Article 18.07 of the collective bargaining agreement to provide that "in the event of the death of an employee, the benefit of this section shall be payable to the employee's beneficiary or estate." The Union proposed that the agreement be for three years and that the wage schedule would increase $.65 per hour on December 30, 1995, $.65 per hour on December 28, 1996 and $.65 per hour on December 27, 1997.

The Employer's final offer, attached hereto and marked Exhibit 2, provided that all tentative agreements previously agreed upon and all provisions of the 1994-1995 contract as modified by the arbitration award and stipulated changes be included in the collective bargaining agreement. It proposed that prescription drug co-pay in Article 15.01 be modified to $5.00 for CompCare, HUMANA-WHO and PrimeCare. The Employer proposed that Article 15.05 be modified to increase its contribution of the employee's share of the contribution to the Wisconsin Retirement Fund from 6.2% to 6.5% on a prospective basis following ratification of the contract by the parties. The Employer proposed to change the eligibility dates for floating holidays in Article 16.01b from January 1 and July 1 to February 1 and June 1. The Employer proposed modifying the mileage reimbursement amount on a prospective basis following the ratification of the contract by both parties to provide that the reimbursement rate be $.30 per mile in 1997 and $.32 per mile in 1998. The Employer proposed changing the car pool incentive on a prospective basis to provide

that employees using personal vehicles for Employer authorized work related purposes who transported other employees to be eligible for an additional mileage allowance of $.10 per mile when three to four people were in a vehicle, $.20 per mile when five to six people were in a vehicle and $.30 per mile when there were seven or more people in a vehicle. The Employer provided that Article 25.01 be changed by deleting Section 25.01(A) and adding a new Section 25.01(A) providing for the submission of Union demands by August 1 and Section 25.01(B) providing for the submission of the Employer's counter proposal or answer by September 1. The Employer proposed increasing employee's wages by 3% on December 30, 1995; 3% on December 28, 1996, and 3.5% on December 27, 1997.

COMPARABLE GROUPS

The Union proposed an external comparable group, hereinafter referred to as Comparable Group A, consisting of Dodge, Jefferson, Kenosha, Milwaukee, Ozaukee, Racine, Walworth and Washington counties. The Union also submitted a secondary comparable group, hereinafter referred to as Comparable Group B, consisting of the City of Brookfield, Village of Menomenee Falls, City of Muskego, City of New Berlin, City of Oconomowoc, Town of Pewaukee, City of Waukesha, Village of Big Bend, Village of Butler, Town of Brookfield, Town of Delafield, Village of Dousman, Village of Eagle, Village of Elm Grove, Village of Hartland, Town of Lisbon, Town of Merton, Village of Mukwonago, Town of Oconomowoc, Village of Pewaukee, Town of Summit, Village of Sussex and Town of Vernon. Comparable Group B represents nearly every municipality within Waukesha County and they have populations as small as 1,250 and highway departments as small as 1.

The Employer proposes a comparable group hereinafter referred to Comparable Group C, consisting of Racine County, Walworth County, Washington County, Ozaukee County, Jefferson County and Dodge County. Comparable Group C includes all of the counties in Comparable Group A except Milwaukee County and Kenosha County.

The Union contends that Arbitrator Gundermann relied on Comparable Group A in the Waukesha County (Sheriff's Department) Decision No. 24603-A. It points out that the employer borders on Milwaukee County and is less than 20 miles from Kenosha County. The Union asserts that the Employer is actually 2.5 times larger than Kenosha and less than half the size of Milwaukee County. It points out that the Employer is six times larger than Jefferson County which it considers an appropriate comparable. It asserts that the Employer has 11 more employees than Kenosha County and maintains 800 more lane miles. The Union argues that although Milwaukee County has about twice as many employees, the Employer maintains 200 more lane miles. It points out that the Employer's employees have worked side-by-side with Kenosha and Milwaukee County highway department employees both at home and in Kenosha and

Milwaukee Counties. The Union argues that the Employer's workers do similar work and use similar skills and equipment as the highway workers in Milwaukee County and Kenosha County. The Union takes the position that changes in traffic patterns establish that the Employer has more in common with Milwaukee and Kenosha Counties than any of the other comparables.

The Employer has consistently considered the counties in Comparable Group C as comparable to it for wage purposes. Those counties are contiguous and the employees in their departments perform work similar to that performed by the Employer's employees. It takes the position that Kenosha is not contiguous to the Employer and is not in the same labor market. It asserts that Kenosha and Milwaukee counties have not historically been considered comparable by either of the parties or by arbitrators in decisions involving the Employer. The Employer argues that Milwaukee County's size and organizational structure and the unique issues involved in servicing its highways make it separate and different. It contends that Milwaukee County has never been considered comparable for wage comparison purposes. The Employer takes the position that the cities, towns and municipalities in Comparable Group B are not comparable because the employees' duties and responsibilities are not the same as those of its employees. It pointed out that employees in some of those communities are involved in non-traditional highway work such as landscaping, pruning trees, doing maintenance in buildings, doing playground work and maintaining their own equipment and vehicles. The Employer argues that some of those non-comparable employees work with sewer and water utility equipment. It takes the position that very small units are not a reliable comparison because unusual wage or benefit adjustments have little effect on the community given the small number of employees. The Employer argues that arbitrators have decided interest arbitration cases involving the Employer and have accepted the contiguous counties in Comparable Group C as the proper comparables. It points out that in a recent interest arbitration case involving the Employer and the Wisconsin Professional Police Association, Arbitrator Edward Krinsky held that the appropriate comparables for the Employer were the same six contiguous counties in Comparable Group C. It contends that in the Gunderman decision cited by the Union as finding Milwaukee County was a comparable, the case referred to was not a wage issue. The Employer asserts that in the decision of Arbitrator Gunderman, both the Employer and the Union agreed that Milwaukee County would be relevant because the issue involved was one of job classification peculiar to only a couple of departments in the State. It argues that the six counties that have been historic comparables for Waukesha County are Jefferson, Walworth, Dodge, Racine, Washington and Ozaukee Counties. In the most recent Waukesha County interest arbitration, Arbitrator Edward Krinsky rejected municipalities within Waukesha County as comparables. The Employer points out that Washington County, one of the counties in Comparable Group C, just completed an interest arbitration involving its highway

employees and in that case the parties stipulated that Dodge, Fond du Lac, Ozaukee, Sheboygan and the Employer were the comparable highway departments to compare with Washington County. In that case, Washington County and the Union stipulated that the counties contiguous to Washington County were the appropriate comparables and Milwaukee County was not a proper comparable.

The Union offers no evidence to indicate why the communities within Waukesha County should be considered comparable when the Employer has never considered them comparable in the past and the parties have never agreed upon them as comparables in bargaining or arbitration. The only evidence presented was that much of the work of the city, town and village patrol workers is unlike that of the Employer's highway department employees. There is no evidence that the Employer has hired from the ranks of those towns or villages. From 1995 to 1997, only one of the Employer's employees went to work for a community within Waukesha County. There is no basis for utilizing economic data from those communities in evaluating the position of the parties in this case.

Arbitrators generally do not disturb the comparables used historically by the parties. Arbitrator Petrie stated in a recent arbitration hearing involving the Employer's deputy sheriff unit that if the parties have used a particular set of comparables in the past, it is very difficult to justify a change in the comparable group unless there have been some rather revolutionary changes that have taken place. There is no evidence that any revolutionary changes have taken place within the bargaining units of the Employer or of any of the comparable groups. It is true that the traffic on the Employer's highways has increased recently but that did not change the type of work that the employees did. The only change in the type of equipment used by the Employer's employees has been that they have been using more winged plows for plowing snow.

The Employer points out that it and its bargaining units have maintained internal consistency with the same across the board percentage wage increases over the years. Every one of the Employer's bargaining units from 1986-1995 have reached agreement on settlements expressed in percentages with only two exceptions.

Based on the historic utilization of the counties in Comparable Group C in negotiations and in arbitration proceedings and in the absence of any evidence of substantial change in the type of work done by the employees of the Employer and the rest of the comparable groups, the arbitrator finds Comparable Group C to be the most appropriate of the external comparables. Comparable Group A is quite similar to Comparable Group C and would probably be almost as appropriate were it not for the fact of the distortion caused by the inclusion of Milwaukee County and the fact that Kenosha is in a different labor market.

It is appropriate to consider the wages, hours and working conditions of the Employer's internal bargaining units in making determinations in situations like this. It is the opinion of most arbitrators that internal comparisons are appropriate when there has been a pattern of consistency for a number of years in the relationship between the various bargaining units with respect to wages, hours and conditions of employment. This arbitrator has always given special consideration to the pattern of relationships between the various bargaining units of a single employer and is reluctant to disrupt the pattern in the absence of some evidence establishing a change in the similarities. The Employer and Union have not mutually agreed on the use of municipalities for comparison purposes in past. The arbitrator finds the comparison with the contiguous highway departments as more meaningful and appropriate, the arbitrator will concentrate on Comparable Group C for comparisons. There may be some reliance on Comparable Group C. Internal comparisons will be given substantial weight.

PROMOTIONS, TRANSFERS, DEMOTIONS

The Union proposes the deletion of the work "other than entry level jobs (Wage Level I and II)." It would modify the language of Article 11.06 to provide that demotions should be treated the same as a promotion as outlined in Article 11.02 of the current collective bargaining agreement. The language in the expired contract gives the Employer a considerable amount of discretion with respect to an employee bidding to a lower paying classification. An employee can only use seniority to bid to a higher paying position and it has no value if the employee wants a demotion. It needs only give the employee consideration for the position. The Union argues that this standard does not require the Employer to even interview an employee applicant for a demotion. It contends that six of the seven employers in Comparable Group A have bidding procedures that do not differentiate between demotions and promotions and allow employees to use seniority to post to any vacancy.

The Employer opposes the change because it could force it to lose an employee in a high skilled mechanic job who might want to post to a lower position and dilute the reason for job posting that gives employees promotional opportunities. It has no contract with any union for any of its other bargaining units that requires posting of entry level jobs. The Employer takes the position that the Union offers no quid pro quo for the change the Union seeks in Section 11.01 and 11.06 of the collective bargaining agreement.

The Union objects to the fact that the existing language does not require the Employer to even interview an employee applicant who applied for a demotion to a lesser position. It objected to the fact that the Employer did not even consider an employee's qualifications for a demotion because it determined that it would

have not served its best interest. The primary purpose of an employer in entering into a collective bargaining agreement is to make certain that it serves its best interest. Seniority is one of the most severe limitations upon the exercise of managerial discretion. Every seniority provision reduces the Employer's control over the work force and permits the Union to participate in the administration of the system of employment preferences that pit the interest of each worker against those of all others. The same concept with respect to demotions would apply to transfers. The Employer is able to exercise its discretion with respect to transferring an employee from one position to another position in the same classification. It has the authority to deny a transfer of an employee regardless of his seniority and keep him in a position that would serve its best interest.

This arbitrator is ordinarily quite sympathetic to the concept of seniority; however, this is a situation where the Employer and the Union have agreed on a seniority system in their contract that is quite comprehensive. It provides that the Employer is not required to give consideration to seniority in making promotions or transfers. Giving up that important right without receiving any quid pro quo from the Union would be quite a sacrifice on the part of the Employer. In the absence of any compelling evidence that would justify imposing new restrictions on the Employer to fill entry level positions and regulate demotions and transfers, the arbitrator finds the Employer's position more reasonable than that of the Union. The fact that the Employer had no provisions in it collective bargaining agreement with any of its other bargaining units that require posting of entry level jobs weighs heavily against imposing on it the changes that the Union seeks. Generally, employers try to maintain uniformity in all of their collective bargaining agreements and arbitrators are reluctant to disturb it in the absence of some compelling reason. The mere fact that one employee sought a demotion and was not interviewed could not be classified as a compelling reason.

Accordingly, the arbitrator finds the Employer's position rejecting the Union's proposal to change Article 11.01 and Article 11.06 at least as appropriate as the Union's proposal.

WISCONSIN RETIREMENT FUND

The Union proposes that the Employer pay the full retirement contribution for the employees to the Wisconsin Retirement Fund and the Employer has proposed that it pay 6.5% as the employee's share on a prospective basis only. The expired collective bargaining agreement required the Employer to pay up to 6.2% toward the employee's share. The Employer proposes to maintain the status quo language but increases its percentage for the employee's share from 6.2% to 6.5% on a prospective basis. The Union argues that its offer is more in line with the comparables. Ozaukee and Walworth

pay the full percentage and Racine pays up to 7%. Jefferson and Washington cap the contribution at 6.5% and only Dodge County pays less than 6.5%. It points out that the Employer's offer on retirement contributions is not retroactive and its offer would pay contributions at 6.2% for 1996 and most of 1997 and 6.5% for 1998. The Employer argues that its offer to increase its contribution toward the employee's share of the Wisconsin Retirement Fund from 6.2% to 6.5% is $.0448 per hour or $300.00 per employee over this three-year contract. It contends that this change would have the effect of requiring it to automatically pay any increases in employee contributions without having an opportunity to negotiate them or get any credit for such increases in the collective bargaining process. The Employer asserts that its offer of 6.5% would fully pay the employee's share prospectively and it asserts that such increases should be negotiated and not automatic. It points out that the Union offers no quid pro quo for its proposed change in the status quo.

The arbitrator would ordinarily find that the Employer's proposal to make a contribution of 6.5% for the employee's share of the contribution to the Wisconsin Retirement Fund would be preferable. It would pay the full amount of the current premium and the Union can ask no more than that. The proposal would require the Union and the Employer to negotiate the amount of the contribution for each contract but it is an economic item and ordinarily should be negotiated along with the other economic items. In this case, the Employer only offers to pay 6.5% prospectively. In municipal interest arbitration cases the practice is to provide most benefits retroactively. The law prevents the Union from taking any immediate action when the old agreement expires that would require a quick decision on a new collective bargaining agreement. Because of the delay caused by negotiations and by arbitration, it is the practice of most employers and unions to make any economic benefits retroactive to the date of the expiration of the old agreement. That is the most reasonable approach to resolving issues through arbitration and avoiding any immediate action that disrupts the community.

Accordingly, the arbitrator finds the Union's proposal that the language in Article 15.05 be changed to provide that the Employer pay the full employee's share effective January 1, 1996 to be most appropriate.

SICK LEAVE

The Union proposes a change of sick leave policy of the Employer by providing that when an employee dies, his estate would receive 50% of the unused sick leave accrued.

The Union argues that sick leave is an earned accrued benefit and it contends the current provision in Article 18.07 is patently

unfair. It points out that death works a complete forfeiture of earned sick leave but those employees who retire before their death receives 50% of their unused sick leave accrual. The Union takes the position that if retirees receive sick leave payout, there is no rational reason why employees who die should not receive it. It asserts that five of the seven comparables in Comparable Group A pay out at least a portion of sick leave upon death. The payout ranges from 20% for Dodge County to employees with only five years of service to 65% of unused sick leave plus two week's pay for Jefferson County employees. Apparently, Ozaukee County does not provide for payout upon death but makes a cash payment equal to 50% of the employee's wages at the end of each year for excess sick leave earned during the year. The Employer asserts that there are no internal comparables to support the Union proposal. It contends that sick leave is not a benefit that is funded or accrued but exists as a self-insured mechanism to provide some income continuation for employees who are ill or injured. The Employer argues that sick leave has never been nor was it intended to be a death benefit. It contends that the death benefit provided by the Employer's life insurance program of one year annual salary at the death of the employee is the best in either Comparable Group A or C. The Employer points out that the Union offered no quid pro quo for this new benefit.

As was pointed out earlier, employers seek to maintain uniformity with all of its bargaining units with respect to fringes and most other provisions of each collective bargaining agreement unless one of them has a unique situation. The arbitrator recognizes that it is somewhat unusual for the Employer to provide a payout of accrued sick leave to retirees and not pay it to employees who die, but, it does provide an insurance policy as a death benefit that is much more valuable to employees than 50% of the accrued sick leave. The mere fact that some other employers in Comparable Group A and C pay out accrued sick leave to the estate of deceased employees is not a reason, standing by itself, to do it for the employees in this bargaining unit. The policy of uniform benefits that the Employer tries to maintain prevents it from getting itself into a whipsaw situation where each bargaining unit can make a case for it to get a benefit just because another bargaining unit has it. Had the Union offered some substantial quid pro quo to the Employer in return for such a benefit, there would be some basis for its position but that is not the case here.

Accordingly, the arbitrator finds the Employer's position with respect to the pay out of sick leave to be more appropriate than that of the Union.

HOSPITAL AND SURGICAL INSURANCE

The Employer proposes to modify Section 15.01 of the collective bargaining agreement to increase the prescription drug

co-pay to $5.00 for CompCare, HUMANA-WHO and PrimeCare. The Employer argues that some of its employees already pay a $5.00 co-pay for prescription drugs. Others pay $3.00 or $5.00 on the co-pay. The Employer proposes to equalize the drug co-pay at $5.00 for all employees. Currently the Employer's social workers, public health nurses, deputy sheriffs and the master unit have all agreed on a $5.00 co-pay for prescription drugs. Unrepresented employees also have a $5.00 co-pay for prescription drugs. Equalizing the drug co-pay will provide the Employer with a small premium reduction in its current health insurance premiums. The drug co-pay pattern in Comparable Group C is not uniform, Jefferson and Walworth Counties have a 80/20 co-pay after deductible. Dodge County has a 90/10 co-pay after deductible. Racine and Washington Counties have a $5.00 co-pay for generic drugs and a $10.00 co-pay for brand name drugs. Ozaukee County has a $4.00 co-pay for generic drugs and a $7.00 co-pay for brand name drugs. The Employer's proposal of a standard $5.00 co-pay for all employees compares favorably with the co-pay provisions for Comparable Group C and is the same as the co-pay for all of its internal comparables. The Union presented no evidence or arguments against the increase of the drug co-pay to a uniform level of $5.00.

Accordingly, the arbitrator finds that the Employer's proposal to increase the drug co-pay for the bargaining unit to $5.00 for all employees is appropriate.

FLOATING HOLIDAYS

The Employer's final offer includes a modification of eligibility dates for two floating holidays. The eligibility dates for accruing and taking holidays are now January 1 and July 1. The Employer proposes to defer eligibility by one month at the beginning of the year by going from January 1 to February 1 and to advance eligibility in the middle of the year from July 1 to June 1. Employees now receive and will continue to receive two floating holidays per year. The Employer makes its proposal because of administrative difficulties occurring because current eligibility dates now fall in the same time and pay period as the contract holidays of New Year's Day and the Fourth of July holiday. The Employer has made this same proposal to all other bargaining units and they have all agreed to the change. Therefore, internal comparability supports it. It does not a take away or reduce the benefit. It advances by one month eligibility for popular warm weather holidays. In the course of bargaining, the Union offered no explanation of its reason for opposing the proposed change. It did not present any evidence at the hearing and made no arguments in its brief against the proposed change. Under the circumstances, the arbitrator finds no reason to reject the Employer's proposal with respect to floating holidays.

Accordingly, the arbitrator finds that the Employer's final offer to modify of the eligibility dates for two floating holidays to be changed to February 1 and June 1 is appropriate.

MILEAGE

The Employer proposes to modify Article 23, Section 23.05 to provide a reimbursement rate of $.30 a mile in 1997 and $.32 a mile in 1998 if employees are required to use their own automobiles on the Employer's business. Currently, they are reimbursed at the 1995 rate of $.27 per mile. The Employer proposes that its increases be effective prospectively after the arbitration award. The Employer argues that it does not seek anything in return for improving this benefit and it does not charge the package for it. It does so to have a uniform mileage reimbursement with all of the other bargaining units. The Employer concedes that the mileage reimbursement provision has little or no impact on this bargaining unit and is of little value to the employees in it. The Union contends that the Employer's proposal is of no value to this bargaining unit and does not enhance the value of the Employer's formal offer. It considers it a non-issue. The arbitrator finds that there is no basis for not accepting the Employer's final offer with respect to mileage reimbursement.

Accordingly, the arbitrator finds the proposal of the Employer with respect to mileage reimbursement is appropriate and would be an acceptable provision in the collective bargaining agreement for both the Employer and the Union.

CAR POOL INCENTIVE

The Employer proposes a new benefit called car pool incentive. The benefit would be prospective after the arbitration award and encourages employees who might be using personal vehicles for department authorized business to transport other employees in their vehicles. The incentive provides additional mileage reimbursement to the driver based on the number of passengers carried. If there are 3-4 people in a vehicle, the car pool incentive would be $.10 per mile extra. If there were 5-6 people in a vehicle, the car pool incentive would provide $.20 per mile to each vehicle and if there were 7 people in a vehicle, the car pool incentive would pay $.30 per mile. This is not a benefit in the current contract and the Union has never voiced any opposition to it but has simply not agreed to it. All of the other collective bargaining units of the Employer have agreed to this car pool incentive language. Thus, it is supported by all internal comparables. The Employer has not claimed economic credit for this improvement and has not charged the package for it. The Union offered no evidence or arguments against the car pool incentive. It did point out that the provision would have virtually no impact

on its members and the only purpose of the Employer's offer was to keep car pool reimbursement consistent for all bargaining unit. The Union takes the position that the Employer's car pool incentive proposal does not enhance the value of the Employer's final offer and is a non-issue. The arbitrator finds the car pool provision to be a non-issue because the Union has taken no position against it and has no reason to object to it. It does keep car pool reimbursement consistent for all bargaining units and that is not an unreasonable goal for the Employer.

Accordingly, the arbitrator finds the Employer's proposal for car pool reimbursement to be appropriate and should become a part of collective bargaining agreement.

TIME FOR NEGOTIATIONS

The current collective bargaining agreement calls for a mutual exchange of bargaining proposals by the parties by August 1 and the first meeting to be held by October 15. The Employer proposes that Union's bargaining proposal be made by August 1 and the Employer's counter proposal or answer be made by September 1. The Union presented no evidence and made no proposals with respect to the time for negotiations. The Employer argues that it will have proposals coming in from its other bargaining units on August 1. It contends that before it can respond to any proposal, it needs to have a staff evaluation done of all of them. The Employer takes the position that it needs a study to determine what is happening in comparable counties and in the private sector, economic costs, the impact of non-economic proposals, staffing issues and other considerations. It asserts that until its human resources department performs its evaluation and prepares proposed responses as well as the Employer's own proposals, it cannot respond to the Union proposal. The Employer contends that bringing all bargaining units into the same time cycle will make the bargaining process more expeditious and more efficient. In the absence of any evidence by the Union or any argument against the Employer's proposal in its brief, the arbitrator has no reason to reject the proposal that the Union's demand be submitted by August 1 and the Employer's counter proposal or answer be submitted by September 1.

Accordingly, the arbitrator finds the Employer's proposal with respect to the time frame of negotiations to be appropriate.

WAGES

The Union seeks a wage increase of $.65 per hour for each of the three years of the collective bargaining agreement. The Employer proposes a 3% increase on December 30, 1995 a 3% increase on December 28, 1996 and a 3.5% increase on December 27, 1997. The Union argues that the Employer's wage increase offer is

unimpressive in light of its low wage rank amount the comparables. It contends that the Employer is sixth among the nine primary comparables in wages using either the Employer's or the Union's offer and is $1.28 less than the average wage. It contends that the Employer's ranking in the comparable groups might make sense if it were also at the bottom of these comparables in terms of population and employees, but just the opposite is true. In Comparable Group A the Employer is second in population, third in bargaining unit size, first in number of lane miles maintained and second in number of lane miles maintained per employee. The Union takes the position that the Employer's wages also fare poorly when compared to municipalities within the county. It asserts that the Employer has more employees and significantly more lane miles to maintain than any municipality but its wages rank in the bottom third of Comparable Group B. The Union argues that the Employer's wages are $1.82 per hour less than the average wage for the municipalities within its borders. It contends that there is no established consistency in the wage rates among the Employer's bargaining units. It takes the position that only the social workers and nurses have settled on a wage package identical to that offered to the Union. The correctional officers settled on a slightly different package and two AFSCME bargaining unit have not reached agreement. The Union argues that the various bargaining units of the Employer have different retirement contribution levels and different vacancy bidding rights and public health nurses will have long-term disability insurance in 1998 which is not provided to any other bargaining unit. It points out that the deputy sheriff's are the only employees of the Employer with educational incentive pay. The Union takes the position that the Employer has seen a dramatic increase in interstate traffic in the past ten years. It asserts that its highway department maintains more lane miles per employee than almost any comparable county and its employees have had to master more advanced equipment in recent years. The Union argues that wing plows for snowplowing use one driver instead of two and require the driver to pay closer attention because the truck simultaneously plows in two directions. It contends that since job duties have increased, a higher wage increase is justified even when the increase exceeds that obtained by the internal units. The Union takes the position that the level in turnover suggests that more competitive wages are necessary to retain qualified employees and its proposal would serve the interest of employee retention by bringing its wages more in line with municipal highway department wages in the county. The Union points out that the Employer relied heavily on overall costing to support its offer but points out that it receives state reimbursement for work perform on state roads. It asserts that the Employer's costing does not represent the actual cost to it and is unreliable. The Employer argues that its final offer for wages is the same for this unit as it has been for all other bargaining units and three of them have settled on that same package of 3% in 1996, 3% in 1997 and 3.5% for 1998. It points out that the package lifts patrol workers average wages from $13.60 an hour to $14.94 an

hour over three years, which is an increase of $1.34 per hour. The Employer argues that its offer provides a new money increase of $5,366 per employee over the three years and a contract cost of $445,378. There are 83 employees in the highway department unit and 63 of them are in the patrol worker classification. Most patrol worker are at the top step in their classification. Eleven employees are mechanics. The other nine employees include lead mechanics, a stock clerk, sign installer and crew leaders. The primary responsibility of the patrol worker is to do highway maintenance, snowplowing and assist in construction projects related to the highway system. The responsibility of the mechanics is to maintain and repair the Employer's centralized fleet. The Employer's patrol workers receive a higher rate of pay when they work on heavy equipment. The equipment operator premium is $.47 per hour. The parties agree that the patrol worker rate is a proper basis for comparison because that is the work traditionally done by county highway employees and is the classification where most of the employees in the bargaining unit are found. The Employer's social worker unit, the public health nurse and the correctional officers unit have reached an agreement on a new contract with similar wage increases. The Employer has proposed the same wage increase of 3% in 1995, 3% in 1997 and 3.5% in 1998 to the other bargaining units that have not yet reached an agreement.

Comparability and consistency of internal wage settlements have been important to the Employer. Over the last ten years the Employer offered the same percentage wage increases to all bargaining units during that entire time. The only exceptions were when one arbitrator imposed a different settlement and a second when the Employer voluntarily agreed to a slightly higher percentage increase as an quid pro quo for the employees taking a less costly health insurance plan. The Employer had made that same offer to all of the other bargaining units. In every settlement over the last ten years, wage increases were expressed in percentages, calculated in percentages and granted in percentages. In no case did the employees receive a flat cents per hour adjustment as demanded by the Union.

The Employer concedes that in years past a number of county employees left the Employer to go to Brookfield for more money. However, in the last two years only one employees has left the Employer for another department and there has been no problem with turnover in the highway department. Most of the turnovers that have occurred were due to retirements, a few employees changing careers and the one employee who left the Employer to work for Brookfield. The Employer does not consider Kenosha as a comparable because it is farther south and not contiguous and is not in the Waukesha County labor market. It has not historically been considered comparable by either the parties or arbitrators in decisions regarding Waukesha County. The Employer does not consider Milwaukee County comparable because its size and

organizational structure and the unique issues involved in servicing its highway make it separate and different and it has never been considered comparable for wage comparison purposes. The Employer does not consider the communities within Waukesha County as comparable. It points out that the employees' duties and responsibilities are often not the same as those of the Employer's employees. The Employer pointed out that employees in Oconomowoc and New Berlin are involved in non-traditional highway work such as landscaping, pruning trees, doing maintenance in buildings, doing playground work and maintaining their own vehicles. Employees in other communities work with water and sewer utility equipment. The Employer argues that arbitrators have decided interest arbitrations in Waukesha County and have accepted the contiguous counties in Comparable Group C as the proper comparables. It points out that in a recent interest arbitration involving the Employer and its deputy sheriff's bargaining unit, Arbitrator Krinsky held the appropriate comparables for the Employer were the same six contiguous counties in Comparable Group C. The Employer takes the position that the Union offered no support or data to indicate why communities in Waukesha County should be considered as comparable when they have never been considered comparable in the past and the parties have never agreed upon them as comparables in bargaining or in arbitration. It asserts that the only evidence in the record is that much of the work of the city, town and village patrol workers is unlike that of the Employer's highway department employees. It asserts that arbitrators generally do not disturb the comparables used historically by the parties and the general rule is that if the parties have used a particular set of comparables in the past, it is difficult to justify a change unless there have been some revolutionary changes in them. The Employer argues that it has maintained an internal consistency with the same across the board percentage wage increases over the years and every one of its bargaining units from 1986 through 1995 have settlements expressed in percentages and were uniform with only two exceptions. The Employer's current settlements reached with three other bargaining units include the same percentage increase offered to the Union.

The Employer's final offer for 1996, 1997 and 1998 puts it exactly in the middle of the comparable counties where it has historically been. Its proposal puts it in exactly the same position in 1996, 1997 and 1998 as it was in from 1992-1996 which was exactly in the middle of Comparable Group C. The rates that place those employees in the middle of Comparable Group C do not include the $.47 per hour heavy equipment premium that the Employer pays its employees when they are operating that equipment. In Ozaukee County the employees all have the same rate except the mechanics who get $.15 more an hour than the patrol worker. In Washington County, patrol workers, operators and laborer are paid at the same rate of pay. Converting the Employer's final offer to cents per hour amounts to an increase of $.41 in 1996. In 1997 the Employer's proposal amounts to $.42 compared with the Union's $.65 and in 1998 the Employer's proposal provides an increase of $.51

compared with the Union's $.65 per hour proposal. The Employer's three year final offer will take the average patrol worker rate from $13.60 per hour to $14.94 per hour which is an increase of $1.34 per hour over three years. The Union's final offer would raise the average hourly rate of $13.60 up to $15.55. The different in the Union's final offer compared to the Employer's final offer is 4.49% or an additional $105,327 per year. The Union's final offer would provide a lift over the next three years of 4.5% more than the Employer has given those units that have already settled. The Employer's final offer would provide an average increase of $5,366 for each employee during the contract term. The Union's final offer would provide an increase of $8,112 during the contract term. During the contract term, the Union's proposal would cost $227,918 more than the Employer's final offer. Washington County which is part of both Comparable Group A and Comparable Group C recently reached a voluntary settlement for a new contract for the period July 1, 1997 through June 30, 2000 that provided the same percentage increases offered by the Employer.

Cost of living is an important factor that the statutes specifically reference and which the arbitrator must consider. Most recent figures demonstrate that the Consumer Price Index went up 2.1% from May 1996 to May 1997. The Employer's final offer is well above the increase in the cost of living.

The Union offers no evidence to support a departure from the internal comparables other than the fact that the employees now use more wing plows and are responsible for more miles of highway per employee. The wing plows are not just something that has come on in the last three years. The Employer has been buying wing plows for a number of years and the Union certainly considered that factor when it reached an agreement on earlier contracts. The mere fact that the Employer is responsible for more miles of highway per employee does not necessarily justify a larger increase in pay. The new equipment enables the employees to look after more miles of highway and there is no basis for thinking that the Employer's highway patrol people do more work or are more productive than any of those in Comparable Group C.

One of the statutory factors for the arbitrator to consider is the overall compensation received by the employee. The Employer's proposal would provide wages, overtime and premium pay of $31,910 in 1996, $32,867 in 1997 and $34,018 in 1998. When the Employer's contributions to the retirement system and social security and health, dental and life insurance are considered, its total direct cost in 1996 would be $44,230 and in 1997 it would be $45,511 and in 1998 it would be $47,007.

The Employer's proposal of 3% in 1996, 3% in 1997 and 3.5% in 1998 is consistent with the internal and external comparables. The Union's proposal of a $.65 per hour increase in each of the three years of the new contract is far beyond the scope of the increase

given to any other bargaining unit in the internal or external comparables. The Employer's 1996, 1997 and 1998 settlements with the other settled units have been consistent with the Employer's final offer here. Implementation of the Employer's final offer would maintain it in the same middle ranking in Comparable Group C in 1996, 1997 and 1998 that it has historically held. The Employer's wage package is higher than the applicable cost of living which is running well below 3% per year.

In making his decision the arbitrator is required to consider and give weight to the statutory criteria. The parties did not cite several of the criteria listed at subparagraph (7)(r); namely, the lawful authority of a municipal employer, the financial ability of the unit of government to meet the cost of any proposed settlement and comparison of the hours, wages and conditions of employment of the municipal employees involved in the arbitration proceedings with wages, hours and conditions of employment of other employees in private employment in the same community and comparable communities. Another factor that is not a issue in this case is the "greatest weight factor" . The arbitrator is obligated to give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative law officer, body or agency that places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. No state law or directive has been cited by the parties as having any relevance to the question of which of their final offers should be selected. Subparagraph (7)(g) is the "greater weight factor" which directs the arbitrator to give greater weight to economic conditions in the jurisdiction of the municipal employer than any of the factors specified in subparagraph (7)(r). The Employer has a growing population, low unemployment, high per capita income and high per capita property taxes. It is clearly an area that is prospering. These facts do not persuade the arbitrator that one offer is preferable to the other. The Employer is economically able to meet the demands of the Union. The statute directs the arbitrator to consider comparison of wages, hours and conditions with those of other employees performing similar services and of other employees generally in public employment in the same community and comparable communities. The arbitrator has considered those factors and they support the Employer's position on most of the issues. The Employer's proposal follows a uniform pattern of increase that has been established by it with its other bargaining units and it is similar to the pattern followed by other municipal employers in Comparable Group C and even in Comparable Group A. Comparable Group A skews the average wage because of the wages paid by Milwaukee County and Kenosha County which are not part of Comparable Group C. The Union's proposal would destroy the relationships between the Employer's various bargaining units have been established through ten years of collective bargaining. It would depart from the pattern settlements that have been historically the rule in all of the collective bargaining agreements that the Employer has. Sometimes there are reasons for

breaking a particular bargaining unit out of a pattern and giving it higher wages and/or other benefits or contractual provisions that depart from the pattern. However, there is no evidence of such a situation here. The Union bases its case primarily on the fact that the Employer has seen an increase in interstate traffic and the fact that its highway department maintains more lane miles per employee than almost every other comparable county. Those factors do not indicate that the work of the employees has become any more difficult or has demanded higher skills than employees performing similar services for other public employers in the comparable counties. The Union also argues that the employees have had to master more advanced equipment in recent years and now uses nothing be winged trucks for snowplowing. The comparable counties use wing plows just as the Employer does and that has not been a basis for departing from the pattern established in the comparable group and changing their ranking in it.

The proposal that the Employer has made for a 3% wage increase in 1996, 3% increase in 1997 and 3.5% increase in 1998 is supported by its own internal settlements and by the pattern of increases given in Comparable Group C. The wage issue is the dominant issue in these proceedings and has more significance than any of the others. Accordingly, the arbitrator finds that the Employer's offer more closely adheres to the statutory criteria for selecting the final offer as set forth in section 111.70(4)(cm)7 of the Wisconsin Statutes.

It therefore follows from the above facts and discussion thereon that the undersigned renders the following:

AWARD

After full consideration of the criteria set forth in the statutes and after careful and extensive evaluation of the testimony, arguments, exhibits and briefs of the parties, the arbitrator finds that the Employer's final offer more closely adheres to the statutory criteria than that of the Union and directs that the proposal contained in Exhibit 2 and the stipulation of agreed upon items marked Exhibit 3 and attached hereto be incorporated into the collective bargaining agreement as a resolution of this dispute.

Dated at Sparta, Wisconsin, this 16th day of October, 1997.

Zel S. Rice II, Arbitrator

TEAMSTERS "GENERAL" LOCAL UNION No. 200
Affiliated with the
International Brotherhood of Teamsters

SEB BUSALACCHI, President — FRANK BUSALACCHI, Secretary-Treasurer

November 21, 1996

Exhibit 1

Marshall L. Gratz, Arbitrator
4449 N. Maryland Ave.
Shorewood, WI 53211

Dear Marshall:

Per our phone conversation, enclosed please find a revised final offer for the employees of the Waukesha County Highway Department, who are represented by Teamsters "General" Local Union No. 200. I would ask that the County respond with a final offer as soon as possible so that you may close out the investigation and proceed to the arbitration process as soon as possible.

Very truly yours,

TEAMSTERS "GENERAL" LOCAL UNION NO. 200

Lee A. Wenker
Business Representative

LAW/dh

Enclosure

cc: Marshall Berkoff w/enc.
Joe Cifaldi w/enc.
James Richter w/enc.
Union Stewards w/enc.

Milwaukee Office 6200 West Bluemound Road, Milwaukee, WI 53213 Phone (414) 771-6363 Fax (414) 771-5850 Milwaukee (800) 272-3934
Mailing Address P O Box 2073 Milwaukee, WI 53201-2073
Fond du Lac Office W7215 Melody Lane Fond du lac, WI 54937-8826 Phone (414) 922-2880 Fax (414) 922-3190
Fond du Lac (800) 524-1152 — Wisconsin Residents Only

FINAL OFFER OF

TEAMSTERS "GENERAL" LOCAL UNION NO. 200

TO

WAUKESHA COUNTY (HIGHWAY DEPARTMENT)

NOVEMBER 21, 1996

The provisions of the 1994-1995 Agreement are to be continued for a three (3) year term, except as modified by the Tentative Agreements reached by the parties and the following:

1. **ARTICLE 11.01 PROMOTIONS, TRANSFERS, DEMOTIONS**

Delete "other than entry level jobs (Wage Level I and II)."

2. **ARTICLE 11.06 PROMOTIONS, TRANSFERS, DEMOTIONS**

Modify language to provide that demotions shall be treated the same as a promotion as outlined in 11.02.

3. **ARTICLE 15.05 WISCONSIN RETIREMENT FUND**

Change: Six and Two-tenths percent (6.2%) to full employee's share effective January 1, 1996.

4. **ARTICLE 18.07 SICK LEAVE**

18.07 Add: In the event of the death of an employee, the benefits of this Section shall be payable to the employee's beneficiary or estate.

5. **ARTICLE 26.01 DURATION**

Three (3) year Agreement.

6. **WAGE SCHEDULE**

Sixty-five Cent ($.65) increase to all classifications for each year of the Agreement. Effective dates to be 12/30/95; 12/28/96 and 12/27/97.

Daniel M. Finley
County Executive

Norman A. Cummings
Director

Waukesha COUNTY

DEPARTMENT OF ADMINISTRATION

March 19, 1997

Exhibit 2

Marshall L. Gratz, Investigator
Wisconsin Employment Relations Commission
4449 N. Maryland Avenue
Shorewood, WI 53211

RE: Waukesha County - Highway Department (Teamsters)
Case 144 No. 537168
Int/Arb - 7901

Dear Mr. Gratz:

As a follow-up to our telephone conversation of Tuesday, March 18, 1997, I have enclosed a modified Final Offer for Waukesha County. The previous Final Offer submitted by the County did not contain the position on increasing the drug co-pay for several of the HMO plans. The County proposal is now included in the attached Final Offer.

If you have any questions concerning the attached document, do not hesitate to contact me.

Sincerely,

James H. Richter
Labor Relations Manager

Enclosures
cc: M Berkoff, Michael, Best & Friedrich

Human Resources Division
1320 Pewaukee Road
Waukesha, Wisconsin 53188
Phone: (414) 548-7044
Fax. (414) 896-8272

WAUKESHA COUNTY FINAL OFFER
TEAMSTERS LOCAL 200 - HIGHWAY DEPARTMENT
Contract - March 19, 1997

1. All tentative agreements as previously agreed and all provisions of the 1994-95 contract as modified by the arbitration award and stipulation changes.

2. Article 15.01 - Hospital and Surgical Insurance

   Modify prescription drug co-pay for the following HMO plans to $5.00: CompCare, HUMANA-WHO, PrimeCare

3. Article 15.05 - Wisconsin Retirement Fund -- Modify percentage on County contributions of employee share from 6.2% to 6.5% on a prospective basis following ratification of contract by both parties.

4. Article 16.01 (b) - Floating Holidays -- Change eligibility dates for floating holidays from January 1 and July 1 to February 1 and June 1

5. Article 23.05 - Mileage -- Modify the mileage reimbursement amount on a prospective basis following ratification of the contract by both parties.

   1997 - $0.30
   1998 - $0.32

6. Carpool Incentive - (Prospective only) -- Employees using personal vehicles for Department authorized work-related purposes who transport other employees will be eligible for an additional mileage allowance as follows:

   3-4 people in a vehicle - .10 cents per mile;
   5-6 people in a vehicle - .20 cents per mile;
   7+ people in a vehicle - .30 cents per mile.

7. Article 25.01 - Time For Negotiations -- Delete Section 25.01 (A) and add:

   (A) Submission of Union demands by August 1
   (B) Submission of County's counter proposal or answer by September 1.

8. WAGES

   1996 - 3% (12/30/95)
   1997 - 3% (12/28/96)
   1998 - 3.5% (12/27/97)

Dated March 19, 1997

For Waukesha County

VR/RG0N5SQS

STIPULATION OF AGREED UPON ITEMS
March 10, 1997
Waukesha County Highway Department
Teamsters Local 200

1. Article 5.02 - Modified Fair Share - delete 2.02 and add:

   "No employee will be denied membership because of race, color, religion, sex, national origin, disability, age, sexual preference, or marital status. This article is subject to the duty of the Wisconsin Employment Relations Commission to suspend the application of this Article whenever the Commission finds that the Association has denied an employee membership because of race, color, religion, sex, national origin, disability, age, sexual preference, or marital status."

2. Article 7.01 - Grievance Procedure - Step 2 and Step 3 change time limits from five (5) working days to ten (10) working days. Change "Director of Human Resources" to "Director of Administration."

3. Agreement and Article III - Recognition and Bargaining Units - change union designation to "Teamsters General Local Union No. 200 of the I.B. of T."

4. Article 14.04 - Wages - revise to provide as follows:

   "All employees shall be paid every other Friday. If the regular payday falls on a holiday, pay checks will be available on the preceding work day."

   "During this agreement, payday may be changed from every other Friday to every other Wednesday."

   Payroll Cycles* Pay day may be changed from every other Friday to every other Wednesday. The County will implement the change by splitting the third pay check in a month with three (3) pay checks. The change to take effect if the County chooses to implement the change.

   Upon implementation of the Wednesday pay day, the County will provide for union dues to be deducted from the first pay check of the month and employee contributions on health and dental insurance from the second pay check of each month.

   *This section is for explanation and procedure only.

5. ARTICLE XV INSURANCE AND WISCONSIN RETIREMENT FUND

15.01 Hospital and Surgical Insurance

A. The County will provide a Point-of-Service hospital and surgical insurance plan and will also offer Health Maintenance Organization (HMO) plans as an alternative. Each plan specifies eligibility requirements and enrollment procedures. The County has the right to select a different health insurance carrier or administrator providing the coverage is substantially equivalent and there is no lapse in coverage. Any change in insurance benefits must be bargained with the union.

B. No change.

C. Regular Full-Time Employees The County will pay ninety-five percent (95%) of the cost of a single or family HMO or Point-Of-Service (POS) plan. Eligible employees will pay five percent (5%) of a single or family HMO OR POS plan.

D. Regular Part-Time Employees The County will pay forty-seven and one-half percent (47-1/2%) toward the cost of a single or family HMO or POS plan. Eligible employees will pay fifty-two and one-half percent (52-1/2%) of the cost of a single of family HMO or POS plan.

E. No change

F. No change

Waukesha County

3-17-97
Date

T. A. Wenker
Teamster's Local 200

March 11, 1997
Date