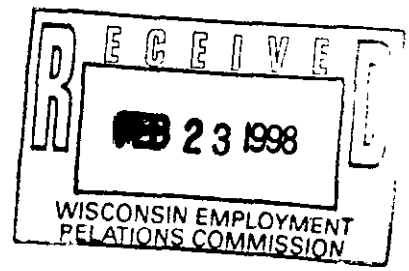
BEFORE THE ARBITRATOR



In the Matter of the Arbitration Between

OCONTO HIGHWAY EMPLOYEES, LOCAL 779
AFSCME, AFL-CIO

and

OCONTO COUNTY

Case 146
No. 54689
Int/Arb-8061

Decision No. 29084-A

Appearances: For the Union David A. Campshire
Staff Representative

For the City Dennis W. Rader, Esq.
Godfrey & Kahn,

Before: Fredric R. Dichter, Arbitrator

DECISION AND AWARD

On June 3, 1997, the Wisconsin Employment Relations Commission, pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act, appointed Fredric R. Dichter to serve as arbitrator to issue a final and binding award. The matter involves an interest dispute between AFSCME, Local 779, hereinafter referred to as the Union and Oconto County, hereinafter referred to as the County. A hearing was held on August 26, 1997 at which time the parties presented testimony and exhibits. Following the hearing the parties elected to file extensive briefs and reply briefs. Those briefs have been received by the arbitrator. The arbitrator has reviewed the exhibits and briefs filed by the parties in reaching his decision.

ISSUES

The parties reached agreement on most of the items to be included in the successor agreement. All the tentative agreements are incorporated into this Award. The following are the outstanding issues:

UNION OFFER:

Status Quo on all outstanding issues

COUNTY OFFER:

Longevity
Employees hired on or before December 31, 1996 shall remain under the current longevity program. New employees hired on or after January 1, 1997 shall receive longevity on the following table:

$200 annually after 5 years of service
$275 annually after 10 years of service
$350 annually after 15 years of service
$425 annually after 20 years of service

Article X- Insurance, Add the Following Language:

Upon retirement of an employee pursuant to the Wisconsin Retirement System the employee, spouse or dependent(s) or surviving spouse and dependent(s) of employees who have died during the course of their employment with the County will be eligible to participate in the County's health and dental program until the employee or spouse is eligible for Medicare or other group coverage. The County shall contract with an insurance carrier which provides benefits to retirees, however, if no insurance carrier will cover retiree, the County shall not be responsible to provide insurance benefits for retirees. The total premium for these coverages will be the responsibility of the retiree or spouse.

The employee, at his/her option, may elect to use their own funds while employed or accumulate unused sick leave or vacation upon retirement for payment of health and dental insurance at group rates through a VEBA to the extent allowable by law. The VEBA shall be made available to employees upon the County's updating of its computer payroll software program to make such a plan technologically possible.

The sick leave bonus to be paid out each year may be paid into the VEBA plan.

Article XX- Miscellaneous, add the following language:

The County shall pay each unit employee (excluding those employee who are provided coverall under this subsection) One Hundred ($100.00) clothing/shoe allowance per year.

BACKGROUND

Oconto County has a population of approximately 32,000. The County is located in Northeast Wisconsin. It adjoins Marinette, Forest, Brown, Shawano, Langlade and Menominee Counties. There are several bargaining units in the County. One of those bargaining units consists of employees in the Highway Department. That is the unit involved in this dispute. At the time of the hearing, there were 41 employees in this unit.

The parties have negotiated numerous agreements over the years. Their bargaining relationship goes back to, at least, the early 1970's. In the 1972-4 agreement, the parties added longevity to their agreement. It had not been provided previously. The new provision granted longevity to employees with at least 5 years of service. Longevity was calculated by taking total payroll for the year and dividing it by the number of months the employee worked during the year. 2% of that figure was then multiplied by the number of years of service that the employee had. Accordingly to testimony from the Union, longevity was proposed by the County. The Union had sought step increase, instead. The 2% figure was increased to 3% in the 1975-6 contract. That provision remained unchanged through the 1995-6 agreement.

Article VII, of the 1995-6 agreement is entitled "Vacation and Sick Leave." Section 7 of that Article addresses payment upon

termination of employment. It states, in pertinent part that:

> Upon termination of employment by retirement under the Retirement Act of the State of Wisconsin, or death, the employee shall receive all wages, accrued vacation and unused sick leave in case or in credit toward group health insurance premiums up to the employee's eligibility for Medicare...

No retirees have availed themselves of the opportunity to take the money as a credit. All have taken cash.

Retirees have been able to participate in the County Health Plan. The parties stipulated that "the practice of the County providing County health insurance at employee cost to retirees has been in effect since at least the late 1970's." The County on October 29, 1996 sent a letter to the Union notifying it of its intent to discontinue the practice, but indicated its willingness to incorporate this practice into the contract. The Union responded to that letter. It stated that it was its position that such action by the County would violate the terms of the Section 7. The parties disagree as to what Section 7 requires. This Section was unchanged in the tentative agreements of the parties.

The parties have reached voluntary settlements in all previous negotiations. The present dispute is the first time that these parties have had to go to interest arbitration. It is not the first time that the County has been to interest arbitration. There have been four previous arbitrations. Two of those arbitrations involved AFSCME units.

APPROPRIATE COMPARABLES

Both parties have included Door, Marinette, Forest, Langlade

and Shawano in their list of comparables. Those Counties will be included in the list used here. The Union also seeks to add Brown County to the list. The Employer opposes the inclusion of Brown County.

As noted earlier, this is the first interest arbitration for this bargaining unit. It is unclear whether the parties ever used a list of comparables as part of their negotiations in the past. There is nothing in the record to demonstrate which Counties, if any, the parties have voluntarily used before. Arbitrators generally attempt to follow the pattern established by the parties or by other arbitrators absent new circumstances. This arbitrator has adopted that course in other cases. This is done to avoid comparable shopping by the parties, and to provide some guidance to the parties for future negotiations. There appears to be no pattern established by these parties.

What happens when no pattern has been established by the parties or by an arbitrator for these parties?[1] It is certainly helpful to look to see what other arbitrators have done when addressing interest disputes in different bargaining units in this County. While not binding, such information is certainly entitled to some weight. The list of comparables has not been the same in

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[1] The County has argued that a precedent has been set for these parties by virtue of arbitrations in other bargaining units. I have examined the cases cited by the County. Each of those cases involved subsequent arbitrations between the same parties. Both the Union and Employer had been involved in the earlier case, not just the Employer. While AFSCME was a party in other cases, this Local and this bargaining unit's employees were not. Since this case involves different parties, those cases are distinguishable from this case.

all of the other four arbitrations involving the County. However, Brown was not included in any of them. Interestingly, AFSCME did not suggest Brown in either of the two other cases in which it was involved. One cannot help but wonder why Brown is so much more relevant in this case than it was for the Courthouse and County services units. The latter might be considered professional, and that <u>might</u> play a role in the choice. There is no similar distinction that can be made for the Courthouse employees.[2] Past arbitration precedent in other units, even though not binding, favors the County.

Brown County is contiguous to Oconto. As the Union noted, a large number of residents of each County works in the other County. In addition, the per capita property values are close to the same in both Counties. Some of the arbitrators that have heard cases in the comparable Counties have included Brown in their comparable list. All of these facts would seem to support inclusion. On the other hand, Oconto's population is only slightly over the average of the other comparables, absent Brown. Brown's population is over six times larger. The total property value of the property in Oconto is just over $1.2 million. The average without Brown is $1 million. The total property value for Brown is over $5 million.

This arbitrator has often heard cases where comparables have been proposed or used by the parties that include both large and small governmental bodies. Not all comparables are always the same

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[2] The Union did argue that the number of miles of roads in both Counties is about the same. I do not find that to be a sufficient difference to explain this inconsistency.

size. There are certainly arguments that can be made for including these larger Employer's with much smaller ones. The general make-up of the economy or the degree of reliance on each other might warrant inclusion. Thus, I would certainly not say Brown should be excluded simply because it is so much larger. Under certain circumstances, the factors traditionally considered might demonstrate inclusion to be appropriate.

I am not persuaded that those factors normally utilized (size, proximity, and duties) favors including Brown by a sufficient amount to warrant disregarding the fact that Brown has never been used by any unit in the County. Were I the first arbitrator involved in any case in the County, whether to include or exclude Brown would be a close call. Given the history, however, I cannot find adequate reason to disregard that history. There are no unique factors about this unit that warrants different treatment. I shall not include Browne.[3] The comparables shall be those suggested by the Employer.

POSITIONS OF THE COUNTY

The Arbitrator should find that the County gave timely notice of its intent to change a past practice. A substantial body of arbitral law holds that while a party cannot discontinue a practice during the term of an agreement, it may do so at the end of the

[3] It should be noted that the inclusion or exclusion of Brown in this case in actuality changes little. The longevity payments that it gives is a flat dollar amount and that amount is similar to that given by the other comparables. Its provisions on health insurance for retirees is also in line with what the other do.

agreement. The notice given by the Employer was timely given, and effectively ended the practice of allowing retirees to participate in the County health plan. Contrary to the Union's assertion, there is nothing in the parties collective bargaining agreement that requires the County to make available its health plan to retirees. Article VII, Section 7 does not require that. The Union proposed amending the insurance Article of the agreement on two previous occasions. They proposed "All insurance premiums to be paid for retired employees until eligible for Medicare." The proposal was rejected by the County. The Union in making that proposal recognized that the current language did not give retirees the right to participate in the insurance plan, otherwise why would it have made the proposal.

In the alternative, should the Arbitrator find that the language gives retirees the right to participate, he should find that this right would end when vacation and sick leave credits ran out. That is, at most, 14 months.

No employee has ever taken payment in the form of a credit. That is true because under I.R.S. Regulations the value of the leave is immediately taxable upon retirement. The Employer has proposed a VEBA to address that problem. Under the VEBA, after-tax dollars are paid into a fund. The interest earned on that fund is tax-free. Employees could not only deposit leave at retirement, but could also deposit into the VEBA leave in excess of the maximums accruals allowed under the contract.

The Employer has proposed codifying the right for retirees to

participate in the County health insurance plan and the right to contribute to a VEBA. It would be far better from the Union's point of view to have the right codified in the agreement, rather than having to rely upon a practice. If the Union is wrong in its assertion that current language grants the retirees the right to participate, then the Union loses if its offer is selected. Finding for the Union would also likely lead to extensive litigation between the parties. Such an outcome should be a factor considered by the Arbitrator. There is also considerable cost to the County by allowing retirees to participate. The premiums that the County pays for all its employees is effected by the participation of the retirees. The rates are higher as a result of their inclusion. This additional cost is more than the cost that would be incurred if the County kept the current longevity rates.

The discontinuance of the practice of allowing retirees to participate in the health insurance plan of the County effectively eliminated any claim that this practice is the current status quo. This makes the Employer's offer to incorporate the practice into the agreement and to provide for the VEBA a very substantial concession. It is, in essence, granting a new benefit.

The external comparables do not require those counties to provide health and dental coverage for its retirees. The current longevity program offered to this bargaining unit's employees is unique among comparable counties. None of them offer a plan as generous as the one currently given. All pay a flat dollar rather than a percentage. The amount given to County employees is

substantially higher then the flat dollar amount given by others. The only other County that had given a percentage discontinued longevity for new employees altogether in their most recent agreement. The County proposal while it would clearly give less than the current level, would still place the County at the top of the comparables for longevity. No comparable County would pay an amount as high as is proposed here. Externals favor the County proposal.

One of the County's other bargaining units has accepted a proposal similar to that made here. The non-represented employees are also under the terms of the proposal. The County has made the same proposal to its other bargaining units. The internal comparables favor the County.

The County recognizes that it is seeking to change the status quo. The County has demonstrated a need for the change. Many arbitrators have held that where the comparables support a change, the necessity for showing need and for a quid pro quo is diminished. That is the case here. However, even if the Arbitrator finds that a quid pro quo is required, the Employer proposal has provided it. The longevity proposal, the insurance proposal and the clothing allowance more than serve as a quid pro quo.

POSITION OF THE UNION

The Act requires an arbitrator to give the greatest weight to any Law or directive that limits expenditures of the Employer. There was no evidence of any such limitation offered here. This

factor does not affect the outcome in this case.

The Act next requires an arbitrator to give greater weight to local economic conditions. There is no evidence that there is anything about the economy of the County that would require the reduction in longevity proposed here. Property values have increased by over 11% in 1996 and by 14% in 1997. This is greater than the average for the State. This factor does not affect the outcome in this case.

Internal comparables favor the Union. Only one bargaining unit has agreed to the County proposal. All the others have rejected it. The fact that the non-represented employees are under the provisions of the proposal is irrelevant. They had no choice. This unit is not a lone holdout that warrants imposing the Employer proposal upon it. It is in line with what almost every other bargaining unit in the County is doing. No internal pattern has been established.

The current longevity plan is more generous than the longevity offered by any of the comparables. However, the current plan was voluntarily bargained by the parties. There has been no bargaining history offered as to what took place in the other jurisdictions. What did they accept in lieu of higher longevity? Why did Shawano agree to eliminate longevity? None of this is known. There are benefits in the contracts of the other Counties that are not in this County's. The County contends that external factors favor the County. They do not.

The County is seeking to change the status quo. It must show

a need for the change and that it has offered a sufficient quid pro quo for the change sought. The burden of proof is upon the County. The County has not shown that a need exists. The fact that the longevity plan is greater here than elsewhere does not demonstrate a need. Arbitrators have rejected such a argument in other cases. Even if a need was demonstrated, the County has not offered the requisite quid pro quo. The County states that its proposal for retirees is codifying a practice that it has discontinued. The Union believes that the current language gives the retirees the right to participate. Who is correct is not an issue that this Arbitrator can address. It is a matter for a rights arbitrator in the future. An interest arbitrator does not have authority to interpret current language.

The County is offering to give retirees a right that they have had for over 25 years. That does not constitute a quid pro quo. In addition, the right is not unrestricted under the Employer proposal. If an employee is eligible to participate in any other group plan, they are ineligible under the County plan. The County proposal does not even give that which the County claims it gives.

The offer of a VEBA is also conditional. The County computers must be updated before the plan can be implemented. There is no assurance that will occur before this agreement expires. The full tax savings of the plan are dependent upon subsequent negotiations between the parties that could make the contributions mandatory and thus, enable the contributions to meet I.R.S. requirements. Those negotiations have not, and probably will not occur. The Union has

indicated that it has no interest in the VEBA, and does not intend to negotiate additional provisions concerning the VEBA. The alleged benefit derived from this plan is purely speculative.

The $100 clothing allowance would not be received by approximately 25% of the bargaining unit. The annual cost of the proposal to the County is $3200. Such amount cannot be considered a sufficient quid pro quo as to permit the discontinuance of longevity as it currently stands.

DISCUSSION

The Statute requires an arbitrator to give greatest weight to "any state law or directive lawfully issued" which "places limits on expenditures that may be made." There is no contention that there are any such limitations here. After considering this factor, I do not find that it is relevant to my determination in this case. The Statute next requires an arbitrator to give greater weight to "local economic conditions." Neither party contends that the local economy of the County is such that this factor comes into play. This factor is not controlling in this case.

The Statute lists several other factors to be considered. The Union contends that COLA supports its position. COLA is most often used to determine whether a proposed wage increase is proper. The Employer in this case seeks to eliminate longevity. I do not find that COLA is a factor in that determination.

The Employer proposes Changing the Status Quo

As noted, the Employer seeks to change the longevity proposal.

There is no disagreement that this is a change from the status quo. The parties generally agree upon the principles to be applied when a party seeks to change that status quo. They both cited the basic principles in their briefs and do not dispute what they are. Arbitrator Malamud stated them in D.C. Everest, Dec. No. 24678-A:

> Where arbitrators are presented with proposals for a significant change to the status quo, they apply the following mode of analysis to determine if the proposed change should be adopted (1) Has the party proposing a change demonstrated a need for the change? (2) If there has been a demonstration of need, has the party proposing the change provided a quid pro quo for the proposed change? (3) Arbitrators require clear and convincing evidence to establish that 1 and 2 have been met.

The parties disagree as to the application of the above principles to the facts of this case. The Employer believes that the internal and external comparables support its case, and that this negates any requirement that a need be shown. It then argues that the need for a quid pro quo is diminished or eliminated under those circumstances. The Employer cited numerous cases that it believes support its position. The Union disagrees with the County and maintains that all the prongs of the test must be met or the change cannot take place.

Must a Need be Established

The first step in my analysis must be to determine whether the comparables favor the County as it contends. If they do, does the County still have to show a need for the change? If the comparables do not support the change, there is no disagreement from the parties that the principles enunciated by Arbitrator Malamud apply, including the requirement that the County establish a need for the

change.

Internal Comparables

The Employer has made the same proposal regarding longevity to every bargaining unit. One unit has voluntarily accepted the change. Three others are involved in interest arbitration. The non-represented employees had the same longevity plan imposed upon them.[4] The Employer declares that since one unit accepted the change and because it has uniformly made the same proposal to the others, this proves that the internal comparables favor its position. I do not agree. Arbitrator Krinsky had a case with similar facts. Few of the bargaining units had accepted the proposed change. Many units were in arbitration. Arbitrator Krinsky concluded that:

> The internal comparables do not provide support for the County's argument that the arbitrator should compel this bargaining unit to accept the County's proposals. Perhaps there is a pattern of acceptance of the County's proposal which is in the process of being established, but there is not yet a pattern at this time." Columbia County

That is precisely the situation here. Therefore, I do not find that the internal comparables favor the County. They may some day, but today is not that day.

External Comparables

Oconto is the only County that provides for longevity as a percentage of wages. All others pay a flat dollar amount, except

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[4] Most arbitrators have given little weight to the fact that non-represented employees have the same terms as are proposed, because they had no choice in the matter. I agree with that line of cases. It is the collectively bargained provisions that are much more telling, and which are of value in analyzing the internal comparables.

Shawano which now has no longevity at all. The other comparables pay less in total dollars for longevity. The reason that the other Counties did not initially pay longevity in the same manner that this County chose to is unknown. Did the employees get some other benefit instead of higher longevity? Did those Counties pay more in base wages, instead of longevity? What went into the bargain for the others when longevity was negotiated? This Arbitrator in Sheboygan County, Dec. No. 1942 found that there is an interrelationship between wages and longevity. When one looks at the total wages paid by the County, including longevity and compares them to the total wages, including longevity of the comparables, it is apparent that the wages paid by the County are not out of line. Oconto is near the average even with the longevity payments that it presently makes. Thus, comparing longevity alone does not tell the full picture. Arbitrator Baron in Sheboygan County, Dec. 28422-A, was faced with the same problem posed here. Should a more generous longevity plan be changed? She noted that without knowing all that went into the bargain, one could not simply say that the longevity paid by the County was out of line. I agree with her rationale.[5] I cannot conclude that the longevity

[5] The County contends the burden is upon the Union to show what the others got in lieu of longevity when the provision was first negotiated. I disagree. If every other comparable changed the benefit recently, I would agree that the party seeking to maintain the status quo would need to demonstrate that some quid pro quo was offered to the others that is not offered by this Employer. Such would distinguish the comparables from the proposal involved in the dispute. Where the differences existed when the matter was first negotiated, I believe it is incumbent upon the party seeking to make the change to show why it did what it did, and why the others did what they did.

paid here is out of line without knowing what went into the bargain in the first place. The fact that the total wages paid are near the average would seem to weigh against the argument of the Employer that the external comparables favor its position.

As far as can be determined from the record, when longevity was negotiated by the County as a percentage of wages, all the other jurisdictions, except Shawano, were granting longevity in flat dollar amounts. The external comparables favored the County when it first negotiated longevity, yet the County voluntarily agreed in negotiations to do it differently. Despite the fact that others were paying longevity as a flat amount, Oconto agreed to pay longevity as a percentage. The County is now asking this arbitrator to change the bargain it made when it first agreed to longevity. It is generally well settled that changes are best made at the bargaining table rather than in interest arbitration.

One of the comparables did recently change its longevity. Shawano had paid longevity as a percentage. It did away with it in its entirety for new employees. The testimony at the hearing was that no quid pro quo was provided. That change now makes uniformity among the externals as to longevity. However, as noted, the others always paid as they do now. Therefore, how much weight do I give to the fact that the only comparable that was different is now in line with the others. Certainly, it is entitled to some weight. The question is whether the fact that one jurisdiction made the change is sufficient justification for the change proposed here, without regard to any of the criteria that normally must be met when one

seeks to change the status quo. While this one factor lessens to a limited degree the necessity that need be shown, it does not eliminate that need or change the requirement significantly.

Having found that the internals do not favor the County, and that the externals only slightly assist the County, has it shown an additional need in some other manner? Normally, only in unusual circumstances will an arbitrator do what the parties have not voluntarily agreed to do at the table. Something unforseen must arise that establishes a need that did not previously exist. What circumstances, if any, have arisen in this case that would justify this arbitrator imposing the new longevity upon this bargaining unit?

The County cited several cases to support its proposed change. Those cases dealt primarily with health insurance, and the rising costs of that form of insurance. The circumstances changed. Health costs increased beyond expectations. Because of this new circumstance, the arbitrators in those cases agreed to change a provision that had been voluntarily negotiated by the parties. At issue in those cases was the concept of cost sharing. A concept that had been adopted in recent years by most jurisdictions. They had not adopted that concept in the past. Do those cases lend support for the County here? I do not find that they do. The County knew precisely what it was giving when it agreed to longevity in its present form. It knew what those costs were. There were no surprises. The fact that it is now paying what it knew it would be paying does not, as the Union noted, present a present need for

change.

The County also points to an increase in health costs that are attributable, it alleges, to the inclusion of retirees in the health insurance plan. It introduced evidence that premiums would be less if it eliminated retirees from the insurance pool. Assuming arguendo that this is so, how does that impact upon longevity costs? The answer is that they do not. They simply stand as a set-off against the longevity costs. Increased insurance costs, not linked to longevity, do not establish a need to change longevity.

Has a need for the change in longevity been demonstrated by the Employer? The County did show one factor that does favor it. That is the change made in Shawano. It is also noteworthy that this change made all the external comparables longevity similar in that none of them pays longevity as a percentage. Because of that fact, I will go onto the next step and evaluate the Employer's proposed quid pro quo. If it has made a strong showing, that might be enough to support its proposed change.

The Quid Pro Quo being Offered

This case in many ways poses a most unique dilemma. Part of what the Employer is proposing in exchange for the revision of longevity is to codify the practice of allowing retirees to participate in the County health plan. It maintains that the contract does not require it to provide this benefit. It contends that this benefit was a past practice that had been provided, but that the Employer timely notified the Union of its intent to discontinue. It maintains that this right to participate will be

lost if the Union prevails. The Employer has asked this arbitrator to adopt its interpretation of the agreement and to conclude that the Employer is providing something new by making this proposal. It asks that this proposal be credited towards any needed quid pro quo.[6] The Union claims that the language in the current contract, which is unchanged in this agreement, permits the retirees to participate. It asserts that what the County is offering it already has under the contract. The Union then argues that this arbitrator has no authority to address this question. Questions of contract interpretation, it maintains, are for grievance arbitrators, not interest arbitrators, and only a grievance arbitrator can determine who is right.

In analyzing this issue, there is one fact that is critical. My decision, should it favor the Union, does not result in a change in the practice. Retirees still participate now. Before any change in that status could occur, the Employer would have to go ahead with its decision to end retiree participation. If and when that is done, a grievance will presumably be filed.[7] Even though such an

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[6] The Employer argues that its proposal is even more significant because none of the comparables make health insurance available to retirees like it does in its proposal. A review of the exhibits reveals that, in fact, most of the comparables allow retirees to participate in their health insurance plan, and many permit accrued sick leave or vacation to be used to pay premiums. The County is not, in actuality offering something that no one else has.

[7] The County has pointed to several cases where arbitrators considered the fact that their Decision may lead to future litigation. It argues that if extensive litigation would arise because of the decision, that this fact would favor a decision that had less impact. The Employer cited Arbitrator Kirkman to support its argument. Arbitrator Kirkman did discuss the effect of future

eventuality is likely, it is still this subsequent act by the Employer that brings about the change, and not my decision. While the Employer would not have the right to take that act were I to adopt its proposal, the fact remains that it is an act of the Employer and not the Arbitrator that will bring about the change. Consequently, the question of whether the contract does or does not require the Employer to continue to make health insurance available for retirees is a question that shall not be reached by me in this decision. Until action is taken, the retiree have that benefit. It then follows that since the proposal of the Employer regarding retiree participation does not change the status quo, the proposal cannot be given the credit towards providing the needed quid pro quo that the Employer asks it be given.

The County is proposing to grandfather the current employees under the current longevity provision. This fact reflects positively on the Employer proposal. They are also proposing a new longevity plan that is higher than any comparable. These were some of the factors that persauded Arbitrator Tyson in Sheboygan County, Dec. No. 28416-A, to accept the Employer proposal.[8] He found these were important considerations in evaluating whether the quid pro

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litigation in his decision. However, he concluded that he still must first decide if the proposal being made is reasonable. If it was not, the fact that litigation might ensue does not turn an unreasonable position into a reasonable one. In this case, I must examine all of the criteria listed above to ascertain whether the Employer proposal is justified. A negative finding does not change merely because litigation might later occur.

[8] The County in that case also proposed an additional pay step as part of its quid pro quo. That is something that is absent in this case.

quo offered was enough. In my review, I am also cognizant of the fact that no current employee will suffer under the County proposal, and that the longevity proposed is greater than that of any of the comparables.

There are two aspects to the County's proposal for health insurance for retirees. One aspect addresses participation. That aspect was discussed above. The other addresses the VEBA. Under the VEBA, employees can make after-tax contributions to a trust that would cover medical payments after retirement until their trust account run out. As the Union notes, however, the right to use the VEBA does not necessarily begin with the adoption of the contract. The County computers must be adapted to allow this contribution. There is no indication when, if at all, that will happen. There is nothing to assure this arbitrator that the VEBA is a benefit, and that it is not illusory during this contract term. It might occur during the life of the agreement, but that cannot be said with certainty. I cannot simply assume that the necessary change to the computer will occur. As the County noted in its brief when discussing a different issue, I must take the proposal as it is written. The speculative nature of the proposal lessens dramatically its value to the employees.[9]

Along those same lines, I find that the County proposal is also weakened by the provision in the proposed Section that

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[9] The Union has stated that it has no interest in a VEBA. It is the bargaining representative for the employees. It questions the value of a VEBA to the employees. The County is offering something that the Union has indicated it does not want. Given that fact, attaching value to the proposal is debateable.

eliminates coverage if the employee is eligible for coverage "by other groups." The proposal does not require the group to have coverage similar to or better than the coverage available under the County plan. It states that if an employee is eligible for other group coverage, they are not eligible for coverage under the County plan. There is no limitation on the type of group to which this provision applies. If the employee is a member of AARP, do they lose out on County coverage regardless of whether they buy an AARP policy or not? There is nothing in the proposal to say no. As noted, I must take the proposal as written, and not as it may ultimately be read. This proviso, likewise, diminishes any potential benefit that might be derived from the Employer proposal.[10]

The Employer does offer a clothing allowance. That allowance will go to approximately three-quarters of the employees in the Unit. That proposal has a value. Given the small amount involved, the value is not great. The County acknowledges that this proposal standing alone is not sufficient.

When all of the above is tallied, despite the fact that current employees are exempted, and that the proposed longevity is better than that offered by others, I still do not find that the quid pro quo offered is enough for me to change the longevity provision that was voluntarily negotiated. This is especially so

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[10] The Employer also argues that creating a VEBA now will open the door to other possible benefits in the future. Again, since this is not part of the proposal, it is not something I can consider.

given the limited evidence supporting the first prong of the test, the need for a change. An arbitrator should attempt to give a result that would be closest to the result that would be reached in bargaining by the parties. I do not find that adopting the Employer proposal would do that. While there are times when an arbitrator must issue an award that changes the status quo, I do not find that facts of this case justify that action here. It is always best for the parties in future negotiations to address this matter themselves, as they did when they first negotiated longevity.

AWARD

The final offer of the Union together with the tentative agreements shall be incorporated into the parties agreement.

Dated; February 21, 1998

Fredric R. Dichter,
Arbitrator