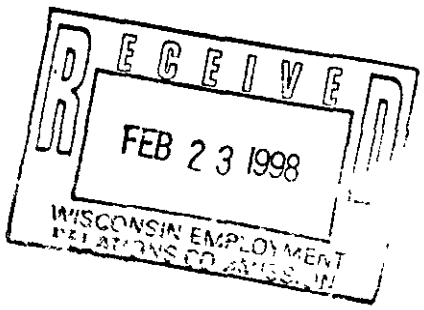

BEFORE THE ARBITRATOR

IRVING BROTSLAW

In the Matter of Interest Arbitration	)
Between	) Case No 148
	) No 54687 INT/ARB-8059
	) Decision No 29086-A
Professional Employees Union Local 778-D, AFSCME	)
	)
	)
And	)
	)
Oconto County	)

APPEARANCES

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I BACKGROUND

Oconto County is a municipal employer (hereinafter referred to as the "County") Local 778-D, AFSCME, AFL-CIO (hereinafter referred to as the "Union") is the exclusive bargaining representative of certain employees of Oconto County, including the following classifications Social Worker, Clinical Therapist, Public Health Nurse and Registered Nurse, Conservation Technician, Long-Term Support Worker, Juvenile Court Worker, Child Protective Intake Worker , DD Specialist, Supported Employment Specialist, Vocational Rehab Specialist, Case Manager, CSP Worker, and Foster Care Coordinator There is a total of 34 employees in the bargaining unit

Oconto County and Local 778-D have been parties to a collective bargaining agreement which expired December 31, 1996. On August 22, 1996 representatives of the Union and the County exchanged initial proposals on items to be included in a new collective bargaining agreement The parties met twice in an attempt to negotiate a successor contract

The County and the Union agreed on a number of matters,, but an impasse was reached over two unresolved issues, enumerated below They subsequently initiated a petition for arbitration to the Wisconsin Employment Relations Commission, hereinafter referred to as the "Commission." Investigator Karen J Mawhinney conducted an investigation on February 18, 1997, and determined the parties were at impasse The Commission, on May 1, 1997 issued an order requiring that arbitration be initiated for the purpose of resolving the impasse

On June 3, 1997 the undersigned was appointed 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 Oconto County, orthe total final offer of Local 778-D, AFSCME, AFL-CIO A hearing was held at Oconto, Wisconsin on August 19, 1997 At the hearing, testimony was given, and the parties submitted extensive exhibits in support of their respective positions (Exhibits submitted by the County are hereinafter referred to as "ER Ex", exhibits submitted by the Union are hereinafter referred to as "UN Ex"") Briefs, on behalf of the County and the Union, were submitted to the Arbitrator on November 14, 1997 Reference to the County's and the Union's briefs are hereinafter referred to as "ER Br" and "UN Br," respectively. The record was closed with the submission of reply briefs, by the Union and the County on December 19, 1997 and December 22, 1997 respectively, hereinafter referred to as "ER Reply Br" and "UN Reply Br "

II ISSUES AND FINAL OFFERS

The union's final offer consists of the tentative agreements reached between the parties, and the status quo with respect to all other matters The County's final offer consists of the tentative agreements, plus the following contract changes·

1 Article IV, Wages, add to subsection B the following

Employees hired on or prior to 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 basis

After 5 years $200 - annually
After 10 years $275 - annually
After 15 years $350 - annually
After 20 years $425 - annually

2 Article XVII, Insurance Hospital, Life and Dental, add the following as a new Section 5

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 retirees, the County shall not be responsible to provide insurance benefits for retirees The total premium for these coverages will be the responsibility of the retirees or spouse

The employee, at his/her option, may elect to use their own funds while employed or accumulated unused sick leave or vacation upon retirement for payment of health and dental insurance at group rates through a VEBA to the extent allowed 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

III STATUTORY CRITERIA

The parties have agreed to binding interest arbitration pursuant to Section 111 70(4)(cm), Wis Stats , as amended effective July 29, 1995 The criteria to be utilized by the Arbitrator in rendering the award are set forth in the Statute, as follows

7 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and give the greatest weight to any state law or directive lawfully issued by a state legislature or administrative officer, body or directive lawfully issued by a state legislator or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g ' Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd 7r.

7r ' Other factors considered ' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors.

a. The lawful authority of the municipal employer

b. Stipulation of the parties

c The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement

d Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities

e Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities

f Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment the same community and in comparable communities

g The average consumer prices for goods and services, commonly known as the cost of living

h The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received

I Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the defemination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment

IV A REVIEW OF THE ISSUES IN DISPUTE

The central issues in the instant case are longevity pay for future employees, and the ability of retired employees to participate in the County's group health and dental insurance plan, at group rates, but at their own expense, until an employee or spouse is eligible for Medicare or other group coverage

The County proposes to "grandfather" current employees under the existing longevity program, which provides an annual benefit , after five years of service with the County, equal to three percent (3%) of monthly earnings multiplied by years of service Employees hired after January 1, 1997 would receive longevity pay in accordance with the schedule referred to above

The ability of retired employees to participate in the County's group insurance plan would be "formalized," by adding to Article XVII of the collective bargaining agreement, a new Section 5, cited above Employees would continue to be responsible for the payment of their own premiums The County proposes to establish a Voluntary Employee Benefit Association (hereinafter referred to as a "VEBA") to help employees pay for the cost of health insurance upon retirement, through the contribution of their own funds while employed or by using accumulated unused sick leave or vacation pay

In testimony introduced at the hearing on August 19, 1997, in the exhibits introduced at the hearing, and in the briefs and reply briefs submitted by the County and the Union, the parties indicated that they wanted the Arbitrator to address the question of which counties comprise the appproriate comparables for the purpose of this interest arbitration They agree upon the inclusion of Forest, Door, Langlade, Marinette and Shawano Counties, and the Human Services

Board of Forest, Oneida and Vilas Counties as comparables They disagree with respect to the inclusion of Brown County (proposed by the Union), and Lincoln, Menominee and Oneida Counties (proposed by the County)

The County also wants the Arbitrator to rule upon the question of whether the "practice" of allowing retired employees to remain in the group insurance plan has been abolished by virtue of its having given proper notice to the Union of its intention to terminate the "past practice " (ER Br 5). The Union argues strongly that the instant interest arbitration case is the wrong forum for the resolution of this matter, e.g., whether a "practice" (retiree participation in the group insurance plan) previously existed, and whether it has been properly terminated It argues that there is substantial arbitral authority that the proper forum for the resolution of this issue would be the grievance procedure, and "rights" arbitration, not interest arbitration (UN Reply Br 1-5)

V. POSITION OF THE COUNTY

The County emphasizes the importance of the comparables chosen for this arbitration "Because this unit has never been to arbitration, the comparable pool utilized here will be used as a basis for future negotiations and arbitrations Therefore, it is extremely important that the most comprehensive and plausible group be selected by the Arbitrator " (ER Br. 20) With respect to the selecting the comparable communities, the County cites the follo factors utilized by Arbitrator Byron Yaffee in *School District of Michicot*, (Dec. No. 1 A, 2/83)

1 Similarity in the level of responsibility, the services provided by, and the training and/or education required of such employees

2 Geographic proximity

3. Similarity in size of the employer

It argues that in its selection of the counties of Door, Langlade, Lincoln, Marinette, Menominee, Oneida and Shawano as well as the Human Services Board of Forest, Oneida and Vilas Counties, it has correctly applied the criteria developed by Yaffee, above With respect to the inclusion of Lincoln, Menominee and Oneida counties, it cites Arbitrator Malamud's decision in Langlade County

> "Because Langlade is a strong comparable recognized in this unit's comparable pool by both the Employer and the Union, the County believes it supports the inclusion of those three counties in this interest arbitration " (ER Br, 24)

The County strongly opposes the inclusion of Brown County in the pool of comparables It points out that Brown County's comparability to Oconto County ends with the fact that it is contiguous to Oconto With respect to every other accepted measure of comparability, (population, per capita income, median value of housing, property values, unemployment rates, etc) the comparison fails "Brown County is close to seven times larger (than Oconto) in population; the County's full (property) value stated at $8,687,760,350 Is over six times Oconto's $1,225,880,960 " (ER Reply Brief, 3) In support of its position for Including Lincoln, Menominee and Oneida Counties in its proposed comparable pool, the County points out that Arbitrator Malamud concluded that Lincoln, Menominee and Oneida were comparable to

Langlade County, which both the Union and the County have agreed upon as a suitable comparable to Oconto (ER Reply Br, 6) By analogy, therefore, the aforementioned counties are comparable to Oconto "Because Lincoln, Oneida and Menomineee counties share a similarity with regard to population, size and financial make-up of Oconto County as well as the agreed-upon comparables in this dispute, they must be included in the comparable pool " (ER Reply Br, 7)

The County argues that it has not claimed "inability to pay" as a basis for its proposal regarding the change to the longevity program "The County is merely attempting to gain control on the escalating cost of its longevity benefit, which exceeds its comparables, and at the same time, allow its employees to receive another benefit (participation in the group insurance program upon retirement) which far exceeds its comparables "Simply because the County is not a poverty zone does not mean that the future cost explosion of the longevity benefit should not be addressed now" (ER Reply Br, 10)

The County agrees with the Union about the importance of retaining long-term, experienced employees which was the reason why the longevity provision was originally negotiated The County argues, however, that the best interests of the employees and the public will be served by allowing employees access to group insurance upon retirement.

> "The Union comments that the public is best suited if the County is able to retain qualified personnel. This is true. However, qualified personnel are likely to be employees who not only have devoted many years with an employer, but who are looking forward to retire in the same community in which they have worked As such, the issue of retainment directly focuses on the fact that qualified and dedicated

employees will be looking to retire in the near future To that end, they would in all likelihood prefer to have access to their employer's health and dental insurance due to the extreme cost of purchasing the insurance on their own " (ER Reply Br, 12)

In support of its proposal to amend the existing longevity program, the County argues that it is totally unique among the comparable counties, that its longevity benefit is the only one among the comparables which is based upon a percentage, not a flat dollar amount, that Oconto County's wage-related longevity is clearly inconsistent with the flat dollar longevity benefit provided by comparable counties, that even with its new modified proposal, the county's longevity program still ranks higher than any other county's longevity program

> "Even under its proposal, employees hired after 01/97 will receive a benefit which far exceeds that offered to other county employees who perform similar duties and responsibilities The new longevity proposal, along with the offer of retiree insurance and a VEBA plan, the county's offer must be seen as fair and reasonable " (ER Br, 39)

The county also argues that arbitrators have placed heavy emphasis on the issue of internal consistency It points out that it offered the same longevity and insurance proposals for its highway, courthouse, professional and sheriff units The latter, a unit of telecommunications and correctional workers represented by the Teamsters Union, agreed to the County's offer Non-represented employees were covered by the longevity pay and retiree health insurance benefits which form the basis for the instant arbitration case, by virtue of a resolution adopted by the Oconto County Board on November 7, 1996 (ER Ex 11, ER Br 44) The other units referred to above, which are represented by AFSCME, have proceeded to arbitration (ER Reply Br, 15) The County strongly denies, however, that it has made the "Lone Holdout" argument in support

of its case, as the Union implies

> "The fact of the matter is that there are four units in which the conditions of employment are going to be imposed by an arbitrator and the fact that the unions have stubbornly refused to agree to the County's reasonable proposals is not a basis for internal comparison " (ER Reply Br, 15)

The County recognizes that its proposal to amend the existing longevity pay plan represents a change in the status quo, that it has demonstrated a need for changing the status quo, and that its offer addresses that need. It further argues that because the comparables support a change in the longevity benefit, the need for a quid pro quo is diminished·

> "When determining whether to change a benefit previously provided to employees, arbitrators look to determine whether an adequate quid pro quo is offered by the parties proposing the change. However, if the comparables support the need for change, the necessity of a quid pro quo is diminished or even eliminated " (ER Br, 46)

While contending that the need for a quid pro quo is diminished by virtue of the comparables, the County argues that its insurance proposals represent a benefit which will eventually equal or exceed the cost of the current longevity program It's cost estimates are based on several assumptions

1 The County incurs extra costs by virtue of allowing retirees to remain on its health and dental insurance plans "The County was informed if retirees were removed from its insurance plans, the County would see a 7 5% decrease in premiums " (ER Ex 33, 33a)

2 The County estimates that the extra cost (not including the cost of premiums) of allowing retirees to remain on the insurance as $12,222 for 1997 Using that figure as a starting point, "the extra cost for allowing retirees access to the County's health insurance plan (in 2027) could be as high as $518.000 " (ER Reply Br, 25)

3 The above estimate assumes that annual premium costs would increase by 10 6% per year, which represents the average annual increase in premium costs experienced by the employer from 1985 to 1997. (ER Ex 34)

Employer Exhibit 35A is a graphical representation that the extra cost of providing retiree insurance and the difference between the cost of the current and the proposed longevity plans intersect in about the year 2019 After that year, according to the County, the extra cost of providing insurance to retirees outweighs the difference in the cost of the longevity plan (ER Br, 41-42) The County argues, on the basis of these cost projections, that "it deserves a trade-off " (ER Reply Br, 21)

> "It will automatically get one (no retiree payment requirement) if the Union prevails anyhow so why not allow current employees the benefit of longevity and retiree insurance and new hires the benefit of the highest longevity benefit in the comparable pool as well as access to County health and dental insurance upon retirement?" (ER Reply Br, 22-22)

The foregoing refers to the County's contention that it has unilaterally terminated the "practice" of allowing retirees to participate in its group insurance plan by virtue of its letter to the Union dated October 29, 1996 (ER Ex 28), and that adoption by the Arbitrator of the Union's final offer would preclude retirees from access to the plan

VI POSITION OF THE UNION

The union argues that most of the criteria enumerated in Section 111 70(4)(cm), Wis Stats, particularly subd 7 and 7g, are not relevant to the instant case

> "According to those criteria, arbitrators are to consider a number of factors and to give 'greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer.' However, that factor is not relevant to the instant case The County has not entered any evidence into the record which indicates it is operating under any such state-imposed expenditure or revenue restrictions " (UN Br, 4)

Having identified what it describes as the "non-relevant" criteria, the union proceeds to discuss those factors that are, in varying degrees, pertinent to the instant case, , which include external comparables, local economic conditions, the interest and welfare of the public and ability to pay, internal comparisons, external public sector comparisons, cost-of-living and other collective bargaining factors (UN Br, 4) Some of the arguments raised by the Union, relative to these criteria, are referred to in this section of the decision

The Union argues that Brown County should be included in the pool of comparables Its contention is based on the fact that Oconto and Brown Counties share a common border, and that there is a strong commuting pattern into and from Oconto County, 525 and 3115 persons respectively. (UN Ex 36) It also points out that "although Brown in much more populous and property wealthy than Oconto, the value of property per resident is almost the same " (UN Br, 9)

Conversely, the Union opposes the inclusion of Lincoln, Menominee and Onedia Counties in the pool of comparables, arguing that the County is "cherry picking" (UN Reply Br, 18) It believes that the County is relying upon fractured logic, e g., that "because Arbitrator Malamud's award in *Langlade County Professionals* (Dec No 21806-A, 3/95) utilized Lincoln, Menominee and Oneida Counties, and because Langlade is a strong comparable recognized in this unit's comparable pool by both the Employer and the Union, the County believes it supports the inclusion of those three counties in this interest arbitration" (UN Reply Br, 18)

Its opposition to the inclusion of Menominee is based on its unique status, e g , that 97 4% of Menominee County's land is held in "trust" by the Menominee Tribe Citing a decision by Arbitrator Friess in which he ruled that "there seems to be, at least using traditional analysis, no county comparable to Menominee," (*Menominee County, Human Services*, Decision No 27336-A, 4/93), the union argues that "the evidence is overwhelming, Menominee is simply not comparable to Oconto" (UN Reply Br, 20).

With regard to the longevity issue, the Union argues that local economic conditions do not support the reduction of a previously negotiated benefit, and that in fact, economic conditions in Oconto County are favorable

> "In this case, there is absolutely nothing in the record regarding the local economy to support the county's proposal to drastically reduce the longevity payments to new hires Property values increased by 11 6% (1995-96), and by 14 9% in 1997, the value of manufacturing property increased by 11 6% There is no evidence on record to show a poor economy, such as high unemployment rates, declining property values or significant plant closings" (UN Br, 10)

The union believes that neither the interests and welfare of the public, nor ability to pay,

supports the county's offer In particular, it points to the fact that the current longevity plan was effective as of the parties' initial working agreement in 1980-81, as a way of reducing turnover It is highly critical of the County's attempt to impose the new longevity pay plan on the coattails of its having accomplished the same objective for non-represented employees

> "So in essence, having accomplished its original goal of eliminating turnover as a problem by voluntarily bargaining a longevity plan, the county is now attempting to significantly reduce the longevity plan through the arbitration process It appears that, from the county's perspective, the bargained longevity plan is working too well, since the multiplier for calculating longevity increases with each year of service " (UN Br, 11)

The union cites a decision by Rose Marie Baron in which the arbitrator, facing a similar situation, ruled that a mere assertion of a burden, without a showing for example, of an inability to pay, is not persuasive:

> "Even though Sheboygan County has shown that it is the leader among comparables in its longevity program and would prefer not to maintain that position, it has not produced any evidence that it cannot fund the program * * * Applying the standard cited above to the facts of this case, the arbitrator is not convinced that the County's desire to minimize its costs for longevity rises to the level of a compelling need If it were necessary to raise taxes to cover the costs of this program, such need might be assumed, however, this is not the case in Sheboygan County " (*Sheboygan County Institutions*, Dec No 28422-A, 1/96).

The union further argues that "internal comparisons" favor the union's offer, pointing out that at the close of the record in this case, three of the county's other four bargaining units had the same longevity plan, and that those three units are also involved in the interest arbitration process over longevity

> "The lone unit that voluntarily accepted the county's longevity proposal is comprised of correctional officers and telecommunications workers in the Sheriff's Department, and is easily the smallest unit in the county To find that a solitary small bargaining unit established a pattern for reducing longevity would be akin to the tail wagging the dog " (UN Br, 13)

In the opinion of the union, the members of the Correctional Officers/Telecommunications unit believed the package the county was offering in trade for its longevity plan was acceptable The other four units, including the one involved in the instant arbitration case, did not feel the county offered an adequate quid pro quo, and that those units should not be forced to accept a benefit cut back because of a voluntary settlement of a single minority unit " (UN Reply Br, 18)

While acknowledging that Oconto County's longevity plan is greater than that of the comparables, the union argues that bargaining history and the level of other benefits must also be considered, e.g , that other counties have more generous benefits than Oconto in areas other than longevity pay, which are the result of the give and take of collective bargaining

> "Just as Oconto County has negotiated a longevity plan greater than that of the comparable counties, some of the comparable counties have bargained other benefits more generous than the norm or not provided by Oconto. Marinette County pays 100% of the group health and dental insurance plans and provides a far more lucrative call time benefit. Brown County provides casual days, short and long-term disability plans, and 95% of the health and dental plans. In addition, virtually all of the proposed comparables receive compensation at time and one-half for working overtime Oconto Professionals do not. Obviously, the Union placed a different value on overtime pay than did the comparables, just as it did longevity pay Collective bargaining is a process of give-and-take. Without knowledge of what the possible trade-offs were in each case, it is difficult to draw the conclusion that a benefit should be significantly reduced or eliminated simply because it is greater than the average " (UN Br, 19)

The union points out that it agreed to reductions in overtime compensation provisions as part of the collective bargaining process, in exchange for other benefits, not specifically identified In its opinion, the benefits negotiated constituted an appropriate quid pro quo With regard to

longevity pay, a valued benefit which the County wants to change, no such quid pro quo has been established Neither, in its opinion, does "the cost-of-living criterion support the county's proposal to reduce longevity for new hires," since the agreed-upon wage increase is right on target Rather, "the other factors " criterion is most significant in this case (UN Br, 21, 24), and that as the party seeking to alter the status quo, the County has the burden of proof of demonstrating that it has offered an appropriate quid pro quo in exchange for changing the longevity pay provision.

In the union's opinion, neither the County's proposal to permit retirees to remain in the group insurance plan, which would formalize a long-standing past practice, nor the establishment of a VEBA, constitutes an acceptable quid pro quo for amending the longevity pay provision for new hires It believes that the language proposal regarding retirees would simply clarify language contained in the current agreement, and that any disagreement regarding the continued ability of retired employees to participate in the County's health insurance plan should be resolved in the proper forum, which is the grievance/arbitration procedure The VEBA, in its opinion, is of little value to current or prospective employees, since it will involve no employer contributions, would require *after-tax* contributions by employees; and would not be implemented until the County is able to upgrade its computer payroll software program to make such a plan technologically feasible:

> "In exchange for gutting the current longevity plan, the County is offering something the Union believes it already has (retirees right to continue health insurance at its own cost) and something it positively has no interest in (VEBA plan) (UN Br, 28)

Finally, the union argues that the County's proposal would result in the establishment of a two-tiered benefit package. "For example, after 20 years of service, employees hired in October

of 1996 would potentially receive a longevity payment of $5,810 Whereas, an employee hired three months later, in January of 1997, would take home a longevity payment of $425 The $5,384 difference in longevity payments between those workers would likely lead to friction and jealousy, hardly the building blocks for good morale and a stable workforce " (UN BR, 28-29) The County, in its reply brief, points out that the union's example cited above was actually based on an employee with 30, not 20 years of service (ER reply br, 26)

VII DISCUSSION AND CONCLUSION

The parties' original petition for interest arbitration cited two unresolved issues the County's proposal to amend the existing longevity pay provision of the existing collective bargaining agreement, and to provide for retiree health insurance, at their own expense, by including specific language to that effect in the new agreement, and by establishing a VEBA to help employees fund the cost of their health insurance post-retirement, until they become eligible for Medicare or other insurance coverage. The Union strongly argues that amendment of the longevity program represents the loss of an important, tangible benefit, which requires a quid pro quo in the form of a benefit of equivalent value. In its opinion, the insurance options referred to above are not an appropriate quid pro quo

The County cites the cost of including retirees in its health insurance program, and offers considerable statistical support for its argument that the current longevity program is far more generous than those provided by any of the comparables (ER EX 19-23) It contends that its

offer represents a benefit of substantial value, whose cost will eventually eclipse any savings resulting from substituting its proposed longevity plan for the one currently in effect

The County has asked the arbitrator to rule on the question of whether the inclusion of retirees in the group insurance plan has been terminated because it is a "practice," unsubstantiated by contract language, and whether acceptance by the arbitrator of the Union's final offer means retired employees would no longer be able to participate in the group health insurance plan In its reply brief, the Union argues that the "practice" of including retirees in the County's group health insurance plan is well established. , and is supported by the same practice in effect by the comparable counties. The Union further argues that the instant interest arbitration case is not the appropriate forum for the resolution of this issue

The arbitrator has carefully reviewed all of the evidence submitted to him by way of testimony, exhibits, briefs and reply briefs, and has considered the arguments raised by the parties as part of the process of constructing this decision Reference will made to some, but not all of the data and statistics provided by the parties in the documents referred to above

1 The comparables

The selection of appropriate comparables for the purpose of interest arbitration is a complex, important responsibility, which every arbitrator undertakes with a certain degree of trepidation, because of the inherently unscientific nature of the process There are objective criteria to consider, and under most circumstances, the parties make an honest effort to select comparables which meet the usual standards of comparability, such as population, per capita income, levels of employment and unemployment, full property values, total property taxes collected, the number of employees in the bargaining units being compared, etc

Obviously, the parties may engage in "cherry picking." e.g., an attempt to include comparables which support their respective positions In the instant case, the parties have agreed to include as comparables Forest, Door, Langlade, Marinette and Shawano counties, and the Human Services Board of Forest, Vilas and Oneida counties They disagree with respect to the inclusion of Brown County (proposed by the Union), and Lincoln, Menominee and Oneida counties (proposed by the County)

As noted above, the County argues that with the exception of geographical proximity, and the possible exception of commuting patterns, Brown County's far greater population, property base, median value of housing and per capita income precludes its consideration as a comparable in the instant case On the other hand, it claims that Lincoln, Menominee and Oneida counties are very similar to Oconto, with respect to the variables cited above (ER Reply Br, 1-9)

The Union argues that Brown County properly belongs in the pool of comparables, by virtue of its geographical proximity to Oconto, identifiable commuting patterns on the part of

employees between the counties, economic similarities between Brown and Oconto, and the strong economic influence which Brown County exerts on Oconto It points out that neither Lincoln nor Oneida are adjacent to Oconto, but were proposed by the County because they were included in a previous arbitration decision involving Langlade County, in which Oconto was one of the comparables The Union opposes the inclusion of Menominee, because of its dissimilarity to Oconto, and because "it is undeniably a different breed of animal than any other county in the state" (UN Reply Br, 14-21)

Statistical evidence relating to the economic characteristics of the counties in dispute, provided by the County and the Union, are provided below

County	Population	Family Income	Median Value of Housing	Per Capita Income
Brown	212,448	$35,900	$62,600	$16,609
Lincoln	28,396	27,100	43,200	12,506
Oneida	33,853	26,800	52,900	14,204
Menominee	4,074	24,000*	Na	Na
Oconto	31,992	25,300**	43,200	12,629

* Estimated
** 1989 estimated; incorrectly reported as $12,629 in County Reply Brief

Source: ER Reply Brief, 2,6; UN Ex, 37-43C (based on County Economic Profiles, WI Dept. of Development)

The County's argument against including Brown County in the list of comparables is valid Geographical proximity and commuting patterns aside, Brown and Oconto are strikingly dissimilar with respect to the economic variables normally used with respect to the selection of comparables The population of Brown is far larger, its 1990 median family income is substantially greater, and its manufacturing base far eclipses that of Oconto (in 1987, there were 315 manufacturing establishments in Brown, versus 70 in Oconto) Brown County is also the site of a major sports franchise, while Oconto, to the best of this arbitrator's knowledge, has no professional sports team. This comment is not offered facetiously By any objective standard, the Green Bay Packers are a major "industry," generating many millions of dollars in revenue, a factor which further supports the County's argument that Brown County's is not a suitable comparable The County is also correct when it argues that "proximity is not the sole factor when determining comparability "

In arguing against the inclusion of Menominee as a comparable, the Union quotes Arbitrator Friess (*Menominee County , Human Services*, Dec No 27336-A, 4/93), in which he observed that "there seems to be, at least using traditional analysis, no county comparable to Menominee." he Wisconsin Department of Development's County Economic Profile observes that there is some controversy about the political status of the Menominee Indian Reservation

> "The Census Bureau recognizes Menominee as a county in their tabulations, while some other governmental sectors aggregate Menominee's information with that of Shawano County, on the southern border of the reservation. For example, the Bureau of Economic Affairs provides Shawano's data with Menominee included and does not disclose any information for Menominee as a separate county " (UN Ex 43B)

With the exception of geographical proximity, there are very few similarities which would justify its inclusion in the pool of comparables. Menominee's population is approximately 13% of Oconto's Total property taxes levied by Menominee in 1989 were $1,344,939, compared with $22,912,202 by Oconto County. In 1987, Menominee had 8 manufacturing establishments, compared with 70 in OcontoCounty

The same arguments which the County uses to barring Brown County from the pool of comparables apply with equal validity to excluding Menominee Accordingly, this arbitrator must conclude that its inclusion as a comparable would be inappropriate Oneida and Lincoln, while not a perfect "fit," share many similarities to Oconto. The population of Oconto, Lincoln and Oneida is 31,992, 28,396 and 33,853 respectively; their estimated median family income is $25,300, $27,100 and $26,800 respectively; and their per capita income is $12,629, $12,506 and $14,204 respectively Octonto has 70 manufacturing establishments, compared to 73 in Lincoln and 54 in Oneida. (UN Ex 42, 43a, 43c) But their physical distance from Oconto, and several other differences, means they are best suited as "secondary" comparables

In summary for the purposes of the instant case, it is the opinion of the arbitrator that the counties jointly agreed upon by the parties (Forest, Door, Langlade, Marinette and Shawano Counties, and the Human Services Board of Forest, Oneida and Vilas Counties) constitute the appropriate *primary* comparables, and that Lincoln and Oneida counties are appropriate *secondary* comparables.

2 Termination of the "past practice"

The issue of "trading" contractual language allowing retired employees to participate in the County's group health and dental insurance plan and the establishment of a VEBA to help employees pay the premiums, in exchange for an amended longevity pay plan, is complicated by the County's insistence that the arbitrator must rule that the "practice" of allowing retirees to participate in the county's health insurance plan was terminated.

> "The county effectively abolished the past practice with respect to allowing retirees to remain on its group health and dental insurance plan Because the union did not offer to provide the benefits to its employees, and because the county provided the proper notification of the discontinuation of the practice, the arbitrator must find the practice is no longer in effect." (ER Br, 5)

The County contends that if the Union prevails, there will be no contract language guaranteeing retiree insurance, and that there is a strong possibility that litigation, by employees and /or the Union is likely to follow The substance of the County's argument is that retiree participation in group health insurance was a practice which was unilaterally terminated It conveyed this action to the Union by means of a letter to David Campshure, dated October 29, 1996 (ER Ex 28) It further argues that its final offer to the Union, which includes a proposal to formalize the "practice" by way of contract language, constitutes a new benefit, and hence a major part of the quid pro quo for amending the longevity pay plan

The importance of this issue to the County is demonstrated by the fact that it devotes a substantial portion of its brief to supporting its position that employers can terminate an accepted practice by giving proper notice at the end of a contract term. (ER Br, 3-18) It includes

the following quote from Elkouri and Elkouri, *How Arbitration Works*, 4th Edition, pp 447-448

> "An impressive line of arbitral decisions holds that a practice which is not subject to unilateral termination during the term of the collective agreement is subject to termination at the end of the term by giving notice of intent not to carry the practice over to the next agreement, after being so notified, the other party must have the practice written into the agreement to prevent its discontinuance." (ER Br, 3)

The County cites offers several arbitration decisions which support its position, including *Standard Oil* (Marvin Feldman, 78 LA 1333, 1336, 1982), *Douglas Oil Company* (Guild, 49 LA94, 96, 1967); and *St. Paul School District* (Thomas P Gallagher, 95 LA 1236, at 1242-43, 1990) At least two of the citations referred to above seem to apply to private sector contracts, to which interest arbitration statutes are generally inapplicable

The County further argues that its obligation to provide retirees access to its group insurance plan is limited by contract language, specifically Article XV, Section H, which allows retiring employees to use accumulated sick leave for the payment of insurance at the group rate (ER Br, 6), It points out that

> "By contract, retired employees have the option of receiving cash for any unused vacation and sick leave or applying the value of accumulated leaves towards the payment of health and dental insurance premiums Article XVI, page 9, calls for a maximum of 30 vacation days to be applied toward the payment of insurance premiums." (ER Br, 7)

It also offers several examples of how the value of accumulated leave (sick leave and vacation) translate into months of health care premiums (ER Br, 8) A problem facing this arbitrator is that a careful reading of the article cited (XVI , page 9) of the current agreement

fails to demonstrate any reference to the applicability of *vacation pay* to the purchase of health insurance upon retirement In its reply brief, the Union points out that "the Agreement does not even allow employees to apply accumulated vacation to insurance premiums at retirement " (UN Reply Br, 21) It would appear that the County has confused the language of the current agreement with the language it *proposes* to include in Article XVI in the 1997-1999 agreement

The County acknowledges that no retired employees have ever used their accumulated vacation and sick leave to fund insurance premiums during retirement because of the inherent tax disadvantages, e g , because the money used to pay premiums would be after-tax dollars According to the County, this problem would be partly alleviated by the VEBA which it proposes to establish (ER Br, 30)

The Union is equally aware of the importance of the termination issue But it contends that it would be inappropriate for this arbitrator to rule on the termination of a practice, because "interest arbitrators do not have the authority to act as a rights arbitrator " (UN Reply Br, 1) In support of its position, the Union cites decisions by Arbitrator Joseph Kerkman in *Elroy-Kendall-Wilton School District*, (Dec No. 25631-A, 2/89; by Arbitrator Kerkman in *Mayville School District* (Dec No. 25459-A, 2/89), and by Arbitrator Sherwood Malamud in *Weston School District* (Dec No. 22429-A, 9/85. It quotes Arbitrator Kerkman regarding the Association's argument that he should rule in favor of reverting to the original insurance carrier, Blue-Cross-Blue Shield, after the District decided to self-insure. He felt the decision to self-insure was unwise, given the small size of the District, but did not believe that interest arbitration was the proper forum for the resolution of this issue

> "Those decision, however, are for forums other than the instant arbitration, and if the Association is to prevail in its endeavor to restore WEAIT and Blue Cross-Blue Shield as the insurance carriers for health and dental insurance they will have to so in those forums " (*Mayville School District, supra.)*

The Union further argues that "the possibility of a future grievance and arbitration should not influence the outcome of this case," and should not militate against the Union's final offer " (UN reply br, 10)

The citations offered by the Union and the County regarding this issue indicate that arbitrators are divided on the authority of interest arbitrators to rule on the termination of a "past practice " The County points out that arbitrators, including Kerkman (*Elroy-Kendall-Wilton School District , supra),* have argued that arbitrators should avoid decisions which are likely to generate litigation. (ER Br , 15)

The arbitrator in the instant case agrees with the County about the importance of avoiding decisions which may result in litigation.. But it is important to note that the same paragraph quoted by the County about the importance of avoiding litigation concludes with Arbitrator Kerkman's observation that "this is not to say that an unreasonable Employer offer should be adopted merely because litigation might ensure (sic) later It follows, then, that the offer of the Employer must be examined to determine whether it is unreasonable on its face " (ER Br 15)

Divided arbitral decisions and the controversy surrounding the County's contractual authority to terminate retiree participation in its group insurance plan notwithstanding, the central issue in this case remains the change in the status quo with respect to the the longevity pay plan,

and whether retiree participation in the group health insurance plan constitutes an adequate quid pro quo

This arbitrator is aware of the importance which the parties attach to this issue But he disagrees with the County's contention that he *must rule* on this issue in the context of the instant interest arbitration case, Instead,, the arbitrator determines that the termination issue should be resolved by a "rights" arbitrator if it is handled as a grievance relating to the interpretation of the collective bargaining agreement, or by the courts, if the issue is eventually adjudicated via the judicial process *The Union, for its part, is aware of the potential disability of prevailing in this case, and is free to pursue the remedies referred to above if retiree participation in the group health insurance plan is terminated.*

3 The Quid Pro Quo and Related Issues

Their different approaches to the resolution of the impasse notwithstanding, the Union and the County seem to agree, in varying degree, that the need for a quid pro quo has been established They *disagree* about whether retiree participation in the County's group insurance plan and the establishment of a VEBA constitute an *adequate* quid pro quo for amending a longevity plan which is more generous than those offered by any of the comparables

While the parties agree that the "Other Factors" criterion is most significant in this case (UNBr, 24, ER Br, 23), both make extensive reference to the "three pronged test" for justifying changes to the status quo set forth by Arbitrator Malamud in *D.C. Everest*) Dec No 24678-A, (2/88) and *City of Verona* (*Police Department*), Dec. 28066-A (12/94)

1 "Has the party proposing the 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 county denies that it is claiming " inability to pay" as its rationale for wanting to amend the longevity plan. It argues that it is merely attempting to gain control of the escalating cost of its longevity benefit, which exceeds its comparables, and that it has clearly met the three-pronged test promulgated by Arbitrator Malamud (ER Reply Br, 10)

The County argues that *need* has been established, pointing out that "only 10 years into the future, the cost of the benefit will more than double, from its 1997 cost of $21,059 to $54,170 in 2007, and that by 2027, these costs could be as high as $191,227" (ER Reply Br, 21, ER Ex 35), and that by proposing a flat dollar longevity benefit which allows new employees to maintain the same rank as grandfathered employees hold among the comparable benefit plan offered by the external counties,

> "The "need" component has, therefore, been diminished if not eliminated, and the arbitrator need only concern himself with whether a significant quid pro quo has been offered in exchange." (ER Reply Br, 23-24)

The County argues that it has offered a significant quid pro quo, in the form of guaranteeing retired employees the right to participate in the County's group health insurance plan until they are eligible to participate in Medicare, and by establishing a plan (VEBA) which would help employees accumulate funds to pay the cost of the insurance premiums It points out that the cost of including retirees in its group insurance plan is significant, possibly increasing to as much as $518,000 by the year 2027. In support of this estimate, it cites a 7.5% decrease in

overall premium costs if retirees are not included in the plan, and a projected 10 6% annual increase in premiums, based on its experience between 1986 and 1997 (ER Reply Brief, 25, ER Ex 32A)

The union believes that amending the longevity pay plan requires a quid pro quo of equivalent value in exchange It does not believe that the inclusion of specific contract language guaranteeing retired employees the right to participate in the group health insurance plan, which it believes employees already have by virtue of past practice, and the establishment of a VEBA, meet Malamud's three pronged test, particularly since "no employees have retired from this bargaining unit since 1992." (UN Reply Brief, 21)

> "The VEBA does not come close to being an adequate quid pro quo for the drastic reduction of longevity payments for new hires This is especially true in light of the following: without employer contributions, its benefits are minimal, there is a real possibility it will not be implemented during the term of this agreement, and the Union and its members have absolutely no interest in the plan " (UN Reply Brief, 23)

The union points out that the formula for calculating longevity payments uses fixed numbers, and has remained unchanged in this unit since 1980 The only figure that is sometimes unknown is the employee's hourly rate. Accordingly, the County knows, with relative accuracy, what the cost of the current longevity plan will be in the future. "It simply does not want to continue paying that cost." (UN Reply Br, 29) It further argues that "longevity is part of wages, and that the bargaining unit is not a wage leader, even when its admittedly more generous longevity payments are included " (UN Reply Br, 34), and that selection of the County's final offer would result in a "two-tier" wage system, which would generate morale problem among current and future employees

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The County contends that its longevity pay plan is substantially more generous than any of the comparables The Union counters that longevity pay must be viewed in the context of the entire wage and benefit package , that the benefit was freely negotiated by the parties as part of their initial agreement to meet a specific objective (reduction of turnover), and should not be amended as the result of this interest arbitration The County argues that it is entitled to relief from the high cost of its current longevity plan The Union counters that the bargaining history of the parties, and of the comparables, has not been adequately explored, and that elimination of the longevity pay provision would represent a substantial loss to the Union and its future members

The county's argument is largely predicated on the cost of the longevity pay plan, and the projected costs of allowing retirees to participate in the group health insurance plan Since total 1997 insurance costs for the 34 members of the bargaining unit was $174,592 32, the extra cost of allowing retiree participation in the plan, according to County estimates, was $12,222 00 Projecting 30 years into the future, the County predicts that the extra cost for allowing retirees access to the County's health insurance in that year could be as high as $518,000 " (ER Reply Br, 25, ER Ex 32A)

The cost of longevity pay is fairly predictable, the only unknown being the rate at which wage rates will change. The County's estimated cost of including retirees in its health insurance plan is based on two arguable assumptions· that premium costs would be 7.5% lower if retirees were not included, and that overall health insurance premiums will increase by 10 6% per year

The County projects 10 6% annual increases in health insurance premiums, based on its experience between 1986 and 1997 The average includes increases of 25 2% (1987-1988), 19 4% (1988-1989), 26 8% (1991-92); and 20.0% (1996-1997) (ER EX 34) These were the types of increases which led to health care "reform," which includes initiatives such as "managed care," and far greater employee participation in health maintenance organizations For the years 1993-1997, the average increase was 3 8% This includes a 20.0% increase in 1997, zero increases in 1993 and 1994, a 1 1% increase in 1994, and a 2 1% *decrease* in 1996 Excluding the years of extraordinarily high increases cited above, the average annual increase was 4 5%

The estimate of a 7 5% premium cost increase attributable to including retirees in the health insurance plan is based on a letter to Dennis Rader from the County's insurance carrier, dated February 5, 1997..(ER Ex 33) . The cost estimate may be correct However, the practice of allocating health insurance costs on the basis of demographic characteristics raises serious questions Group health insurance is predicated upon the principle of "spreading the risk" among all insured lives. It is undoubtedly true that older workers , particularly retirees, incur disproportionately high health care costs Applying the same logic, health insurance costs would be decreased by excluding, or by charging higher premiums, for persons who smoke or who are overweight; for women of child-bearing age; for persons who do not exercise regularly, or who engage in unhealthy life styles; or for persons who are genetically predisposed to certain types of diseases which are likely to result in high health care costs

With respect to the issue of *internal consistency*, both the County and the Union point out that the County's offer was accepted by the Correcional/Telecommunications unit, was imposed on non-represented employees by County Board resolution, and that other units are going to

arbitration over the same issue (longevity pay) There is a strong possibility that arbitrators in this and pending cases will reach different conclusions, but such results would not be fatal Rather, they would represent a variant of what Arbitrator Kessler's termed the " lone holdout" versus the "lone acceptance" theory in *Columbia County Health Care Center* (Dec No 53430, 8/97) , cited by the Union (UN reply Br, 15)

The County correctly observes that inclusion of retirees in its group health insurance plan is of considerable importance to employees who retire prior to becoming eligible for Medicare, and who might have difficulty buying health insurance on an individual basis It is also important to remember that the premium cost of such coverage is borne entirely by the employees, with no County contributions, and is contingent upon the County being able to contract with an insurance carrier which provides benefits to retirees Similarly, the VEBA proposed by the County would be funded by employee contributions, and is contingent upon the County's updating of its computer payroll software program to make such a plan technologically possible.

The question before the arbitrator, therefore, is whether the benefits proposed by the County are an appropriate quid pro quo for amending longevity pay plan The County argues that it has more than met Malamud's three-pronged test for amending an existing contract provision, particularly by its repeated reference to the fact that its longevity pay plan is far more generous than those paid by its comparables The Union, for its part, argues that the longevity pay provision has been in effect since the first agreement was signed in 1981, and that the County has not supported its case for amending a significant benefit

Wage or benefit differentials are an important component of comparability, but do not automatically favor a decision in favor of the party seeking to rectify them in interest arbitration In *Langlade County* (Dec No 21806-A, 03/95), the arbitrator was cognizant of the wage differentials cited by the Union for four job classifications (Social Worker, Forester, Registered Nurse and Public Health Nurse). But he pointed out that the differentials were the result of collective bargaining decisions reached by the parties; that during the term of the agreement (in calendar years 1992 and 1993), no slippage had occurred relative to the wage levels paid by comparable employers to their employees at each of these classifications, and that differences in relative wage standings did not justify his selection of the union's final offer which called for relatively large" inequity adjustments "

In the instant case, the County is seeking relief from the cost of a wage-related benefit (longevity) which is *clearly superior* to the comparables, arguing that retiree health insurance and a VEBA are benefits of equal value to its employees The Union disagrees, arguing that the longevity pay provision is a substantive contractual provision which has been in effect since the first contract was signed in 1981 The Union also argues that "comparability does not equal uniformity," as demonstrated by differences in wages and benefits among the external comparable selected by the parties.

It is true that current employees would be grandfathered This does not mean, however, that a decision in favor the County would not mean a loss for Oconto County employees, since a *prospective benefit* is of considerable importance to newly hired employees, especially professional employees. A longevity pay provision is similar to other contractual benefits tied to

length of service An employee with two years of service is entitled to two weeks of vacation under the current agreement; the same employee will be entitled to, and would undoubtedly look forward to, four weeks of vacation after 15 years of service (UN Ex 4, 9) By the same token, a newly hired employee earning $3,000 a month would certainly look forward to a longevity benefit equal to $900 on the 10th anniversary of his/her employment with the County (3% X $3,000 X 10)

The Union and the County approach the issue of a "two-tier" wage system from different perspectives. The Union argues that the reduction of the current longevity pay provision would result in employees with similar service records being paid differently The County indicates that under its proposal, the "wage gap" for a public health nurse with 20 years of service would decline from $1,736 to $429

> "Contrariwise, the County's proposal would provide less of a gap between the between these two employees who perform the same duties " (ER Reply Br, 30)

Neither the Union's nor the County's observations regarding the "two-tier" wage system are persuasive or relevant. It is hard to believe that reducing the "wage gap" by virtue of the County's offer would be viewed positively by a current or newly hired public health nurse Neither is it likely that the County's proposal would generate serious morale problems among its members, as the Union claims

Rhetorical differences aside, the issue in the instant case is the County's insistence that retiree participation in its group health insurance plan and the establishment of a VEBA are an adequate "trade-off" for securing financial relief from the cost of a liberal longevity pay plan The union is equally insistent that neither retiree inclusion in the health insurance plan, a benefit

which it believes employees already enjoy by virtue of a long-standing past practice, nor the VEBA, which it claims is of little or no interest to its members, represents an adequate "trade - off"

It is likely that the County has overstated the cost of retiree participation in its group health insurance plan, and its importance to prospective retirees No employees from Oconto County's professional unit retired between the years 1992 and 1997, and no retired employees from any of the bargaining units chose to take their unused sick leave accumulation and have it applied toward the payment of health insurance premiums (ER ex 26, 27) Furthermore, employees already enjoy a limited degree of protection under the Congressional Omnibus Reconciliation Act of 1985 (COBRA), which guarantees employees the right to participate in the group insurance plan by which they were covered during their employment, at their own expense and at the same premium rates applicable to active employees, for a maximum of 18 months following the termination of their employment Under the County's final offer, employees who retire "early" (e.g , before their 65th birthday), would be eligible to continue participating in the County's group health insurance plan, until they become eligible for Medicare or other insurance coverage.

The VEBA, if established, and the premium cost of retiree health insurance is paid for entirely by the employee, e.g., there are no County contributions Ostensibly, there might be some administrative costs associated with the implementation of the VEBA, which in turn is contingent upon the County being able to update its computer payroll software program to make such a plan technologically possible

The Union, therefore, is correct when it argues that the County is proposing to trade

several intangibles, which may or may not be of importance/interest to its members, for an established contract provision which benefits all employees with five or more years of service with the County

Malamud's three pronged test for justifying changes to the status quo includes (1) need, and, (2) whether, if there has been a demonstration of need, has the party proposing the change provided a quid pro quo for the proposed change? And finally, (3) that arbitrators need clear and convincing evidence to establish that (1) and (2) have been met (*D.C. Everest, and City of Verona, supra*).

In the instant case, the County argues that "need" has been established by virtue of the considerable costs associated with the current longevity pay plan It does not claim "inability to pay," or that the County is experiencing economic difficulties Most of the indices cited by both parties indicate that economic conditions in Octonto County are favorable Furthermore, it is hard to believe that the current longevity plan, which has been in effect since the inception of the collective bargaining agreement between the parties, has suddenly surfaced as a major cost problem. Rather, the County has demonstrated a *strong preference* for the amended longevity pay plan included in its final offer

Responding to the Union's argument that the County is "offering stale peanuts for a Thanksgiving turkey," the County counters that it is only asking for something in return for the free dinner the union has been enjoying every day for the past 20 years " (ER Reply Brief, 28) The comment is apparently a reference to the fact that the "practice" of allowing retirees to participate in the group health insurance plan was initiated in 1975. The County claims that "providing the

opportunity to stay on group insurance after retirement is as important to recruitment and retention for qualified personnel as a longevity benefit

> "If a 50-year old employee applies for work, it is obvious the opportunity for group insurance upon retirement is going to be far more significant than a longevity program " (ER Reply Brief, 13)

It is an interesting, but somewhat misleading argument, since the prospects for a 50-year old being hired into the professional unit are not strong This arbitrator also disagrees with the County's characterization of the quid pro quo it has offered For reasons outlined above, neither the VEBA nor contract language guaranteeing retirees the right to continue to participate in the County's group health insurance plan, at their own cost, meets the second of Arbitrator Malamud's three pronged test

Finally, the arbitrator must decide whether Oconto County's longevity pay plan, which is clearly superior to those offered by the comparables, compels a decision in favor of the County If the Union was asking for the 3% longevity pay provision as part of its final offer in a case which had proceeded to interest arbitration, this arbitrator's response almost certainly would have been negative

But implementation of a new benefit is materially different from the modification of an existing benefit He concludes that net the parties are free to negotiate wage or benefit provisions which are superior to or inferior to those paid by the comparbles, e g , that while comparability is an important criterion in interest arbitration, it does not compel an interest arbitrator to amend a long-standing benefit simply because it is better than ones offered by the comparables The minimum conditions for such an "exchange" would be a showing of need, and/or an offer of a

quid quo pro in the form of a benefit of equivalent value Neither a contractual provision formalizing the retiree inclusion in the group health insurance plan, a benefit which the Union, correctly or incorrectly, believes employees already enjoy by virtue of a long-standing past practice, nor the establishment of a VEBA, which the Union argues is of little or no interest to its members, constitutes an appropriate quid quo for significant change in the status quo proposed by the County

VIII AWARD

Based on the preceding discussion, taking into consideration all of the evidence submitted to me for my consideration, and applying the statutory criteria set forth at Sec 111 70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Arbitrator that the final offer of the Union is the more reasonable of the two final offers, and is hereby ordered to be implemented into the 1997-1999 collective bargaining agreement between the parties

Dated Feb 20, 1998

Irving Brotslaw, Arbitrator