BEFORE THE ARBITRATOR

In the Matter of the Petition of

THE LABOR ASSOCIATION OF WISCONSIN, INC.

To Initiate Arbitration
Between Said Petitioner and

WASHINGTON COUNTY (DEPARTMENT OF SOCIAL SERVICES)

Case 115
No. 55804 INT/ARB-8324
Decision No. 29363-A

Appearances:
Mr. Patrick J. Coraggio, Labor Consultant, The Labor Association of Wisconsin, Inc., on behalf of the Union.
Davis & Kuelthau, S.C., Attorneys at Law, by Mr. Roger E. Walsh, on behalf of the County.

ARBITRATION AWARD

The Labor Association of Wisconsin, Inc., hereinafter referred to as the Association, and Washington County, hereinafter referred to as the County or Employer, having, between October 9, 1997 and November 21, 1997, met on three occasions in collective bargaining in an effort to reach an accord on the terms of a new collective bargaining agreement to succeed an agreement, which by its terms was to expire on December 31, 1997. Said agreement covered all regular full-time and regular part-time professional employees working twenty (20) or more hours per week employed by the Washington County Department of Social Services, excluding supervisory, confidential and managerial employees. Failing to reach such an accord, the Association, on November 21, 1997, filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting the latter agency to initiate arbitration,

pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act, and following an investigation conducted in the matter, the WERC, after receiving the final offers from the parties on May 7, 1998, issued an Order wherein it determined that the parties were at an impasse in their bargaining, and wherein the WERC certified that the conditions for the initiation of arbitration had been met, and further, wherein the WERC ordered that the parties proceed to final and binding arbitration to resolve the impasse existing between them. In said regard the WERC submitted a panel of seven arbitrators from which the parties were directed to select a single arbitrator. After being advised by the parties of their selection, the WERC, on May 26, 1997, issued an Order appointing the undersigned as the Arbitrator to resolve the impasse between the parties, and to issue a final and binding award, by selecting either of the total final offers proffered by the parties to the WERC during the course of its investigation.

Pursuant to arrangements previously agreed upon, the undersigned conducted hearing in the matter on August 12, 1997, at West Bend, Wisconsin, during the course of which the parties were afforded the opportunity to present evidence and argument. The hearing was not transcribed. Initial and reply briefs were filed and exchanged, and received by October 16, 1997. The record was closed as of the latter date.

Once impasse was reached in negotiations, the County, effective May, 1998, discontinued dues deductions for fair-share and later in June, 1998, notified the Union that it would not arbitrate any grievances during the contract hiatus.

THE FINAL OFFERS

The Association's Final Offer

The 1996-1997 collective bargaining agreement shall continue on into 1998-1999 with the following modifications.

1. The tentative agreements reached by the parties on October 22, 1997 and on November 18, 1997 attached hereto as Appendix A and Appendix B.

2. ARTICLE XII - INSURANCE Section 12.01. Rewrite lines 7 through 26 on page 22 and lines 1 through 11 on page 23 to read as follows: "Section 12.01 - Health Insurance. After six (6) months of employment with the County, all full-time employees shall be eligible to participate in the Group Health Insurance Program duly adopted by the County Board of Supervisors. The six (6) month waiting period shall not apply to reinstated (re-employed) employees. Employees who participate in the Group Health Insurance Program offered by the County shall contribute ten percent (10%) of the premium toward the cost of the single or family insurance plan. The employee contribution rate shall be calculated on the renewal medical deposit rates ($202.99 for the single plan and $485.14 for the family plan in 1998).

3. ARTICLE XXVII - DURATION Section 27.02. Delete the existing language and rewrite to read as follows:

"Either party wishing to reopen negotiations for a successor agreement shall notify the other party, in writing, on or about September 1st in the last year of the Agreement. The parties shall then mutually agree to a date to exchange proposals and commence bargaining.

In the event that the parties do not reach a written successor agreement to this Agreement by the expiration date of this Agreement, the provisions of the Agreement shall remain in full force and effect during the pendency of negotiations and until a successor agreement is executed; provided, however, that this Agreement shall not have a duration of more than three years."

4. APPENDIX A Page 48. Delete the ($0.15) per hour overrate amount paid to Social Worker Dries conditioned on the Association wage offer as set forth below:

Effective 1-1-98 - 3.0% across the board
Effective 7-1-98 - 1.0% on Step 7 only
Effective 1-1-99 - 3.0% across the board
Effective 7-1-99 - 1.0% on Step 7 only

The County's Final Offer

The provisions of the 1996-1997 Agreement between the County and Local 609, LAW, shall be continued in a new two year Agreement to be executed by the parties, except as modified by the Tentative Agreements dated October 22, 1997 and dated November 18, 1997, and by the following:

1. Section 12.01 - Change the monthly health insurance premium caps as follows:

   Effective 1/1/98: Single - $156.00; Family - $390.00
   Effective 1/1/99: Single - $162.00; Family - $410.00

2. Wages: Effective January 1, 1998 - 3.0% to all rates
   Effective July 1, 1998 - 1.00% increase to Step VII rates only
   Effective January 1, 1999 - 3.0% to all rates
   Effective July 1, 1999 - 1.00% increase to Step VII rates only

   Also delete the special $.15 per hour overrate amount for Dries.

The parties agree there are two issues in dispute: health insurance premium contributions and duration (reopener and dues deduction).

BACKGROUND

At the hearing on August 12, 1998, each party presented one witness.

The Association's witness, Judy Mylly, Senior Social Worker and President of the Association, testified that the reason for the Association's health insurance premium proposal is to provide

stability to the employees' premium contribution which is now lacking under the "cap" system. She reasoned that under their (Association) proposal employees would know that their contributions would be a constant 10% of the premium from year to year. Also, Mylly testified that the change is needed because members have the feeling that they have no input or control over the "caps" because the County shows very little, if any, flexibility in negotiating health insurance with the Association. She testified that usually they have to take whatever the Highway employees' union negotiates because historically the Highway employees' union settles first.

With respect to the two changes in the duration clause, Mylly testified that (1) the Association's proposal of exchanging initial proposals simultaneously, would "start the parties off on equal footing," and (2) the proposed continuance of the contract until a successor agreement is reached prevents the County from discontinuing dues deduction and refusing to Arbitrate grievances during the hiatus.

The County's witness, Gary Moschea, Director of Human Resources, testified that "caps" have been in existence since 1986 and has proved to be a good system of payment because it forces both sides to look at the insurance issue every couple of years as opposed to the Association's proposal which locks in contributions. Further, he pointed out that four of the six represented units have agreed to continue the present "cap" system.

With respect to the duration clause proposed change, Moschea testified that the current exchange procedure has worked well and therefore no change is needed. As to the dues deduction issue and the Employer's discontinuance of same during hiatus, Moschea reasoned that the impact of same is reduced because as he understands it, once the Arbitrator issues his award the dues deductions requirement would be effective retroactively.

POSITIONS OF THE PARTIES

Association's Position

The Association argues that the statutory criterion of lawful authority, stipulations of the parties, interests and welfare of the public, and cost-of-living index are not determinative factors in this case and do not dictate a finding against the Association's final offer.

With respect to the "comparability" criterion, the Association argues that said comparables favor the Association. In this regard the Association notes that while wages are not in issue it is nevertheless the fact that the wages received by the social workers in Washington County are well below the wages received by their counterparts in the comparable counties of Dodge, Fond du Lac, Ozaukee, Sheboygan and Waukesha and is well below what Washington County pays other non-unionized employees who work for the County with similar educational backgrounds and responsibilities. Judy Mylly, Association President, testified that there are other employees who work for the County in the same building who are not unionized that have the same educational background and do similar

work for higher pay. The Association claims it has been trying for years to get the pay of the unionized social workers up to the pay of the non-unionized social workers and although they have gained some ground, they are not close. However, the Association reasons that in this round of negotiations their priority was not to get equal pay for equal work, but instead to try to correct the inequity in how health insurance is handled and to try and eliminate the frustration that the Association members are going through because the County refuses to collect fair share monies and proceed to grievance arbitration.

The Association argues that it has a valid reason for its proposed changes in Article XII - Insurance, Section 12.01 and Article XXVII - Duration, Section 27.02 - Reopening Date.

With respect to the duration clause and reopening date, the Association contends that there is a valid and compelling need to modify the current language found in Section 27.02 - Reopening Date.

First of all, it is argued, the language that is currently in the collective bargaining agreement strongly favors the Employer; something not contemplated by the statutes. The Wisconsin Statutes contemplate an open meeting to exchange proposals and discuss their rationale. Under the current language in the contract, the Association is required to give contract changes to the County no later than August 15th and the County then has 30 calendar days to review the Association's proposals and make counter demands, a situation, the Association argues, which is not conducive to

starting negotiations on a level playing field and strongly favors the Employer contrary to the intent of the statute. Further, it is argued, the County now have mutual exchange provisions in their agreement with their Highway and the Parks Department units. It is argued that in the interest of fair play, the Association's proposal should be accepted as far more reasonable.

Secondly, the Association claims that the County has decided to use the expiration of the agreement as an excuse to terminate collecting dues pursuant to Article IV - Dues Deduction-Fair Share. The County's unilateral move to stop taking dues deduction is, according to the Association, an attempt to frustrate the membership. Certainly this cannot be a cost savings to the County. The Association argues that the County has to reprogram their computers or have their payroll department change from the status quo, thereby incurring possible additional cost as well as additional work hours to reformat the payroll. By having the Association members pay union dues, local dues and their dental insurance premiums out of their own checkbooks, pressure is being applied by the County which does not create a favorable work environment. The Association avers that selecting the Association's final offer will put the collective bargaining process in Washington County on a more even keel and promote labor stability.

The County has also refused to proceed to grievance arbitration pursuant to Article XXIV - Grievance Procedure due to the fact that the parties have failed to reach a successor

agreement. Here again, it is argued, the County's refusal to proceed to contract grievance arbitration is merely an attempt to frustrate the members of the Association. Association President Mylly testified that currently there are three grievances pending, one dealing with funeral leave, one with discipline and a third one regarding the discontinuance of dues deduction/fair-share. All three grievances are in limbo because the County has taken the position that they will not proceed to grievance arbitration until the contract dispute is resolved. This, it is argued, is a serious matter which cannot be condoned by the Arbitrator. The grievance procedure is negotiated by the parties to be an amicable resolution to alleged contract violations.

In conclusion, the Association claims its requested change in Article XXVII - Duration is reasonable, promotes fairness and is more equitable to both parties.

With respect to its premium contribution proposal, the Association argues that it has substantial external support. It is argued that a review of Association Exhibits 500 through 508 reveals that Washington County's current formula for employee contributions has no comparison.

Further, the Association points to the County's representative, Mr. Gary Moschea, testimony that the County sets the premium rates and employee contributions well in advance to proposing them to the Association. Mr. Moschea testified further that the County was not willing to negotiate over this issue due to the fact that the rates are unilaterally established and non-

negotiable. As a result, the Association claims, the County refused to discuss the issue during the negotiations process which left the Association with little recourse other than attempting to bring about the change through the arbitration process.

As to a "quid pro quo" for the proposed change, the Association argues that it has made sacrifices in benefits and is not pursuing areas where a legitimate argument exists to increase their benefits, which should be viewed as a quid quo pro by the Arbitrator. For example, the Association membership does not receive overtime at the rate of time and one half for hours worked outside of their normal work schedule. According to the Association, the testimony of the Association witness and the Association exhibits point out very clearly that all of the comparable counties pay their social workers overtime at the rate of time and one-half and all of the County's employees who are unionized receive time and one-half for work exceeding their normal work day. It is argued that the social workers, in addition to receiving sub-par benefits, also have asserted that they are willing to pay 10% of the premium to put some stability into their premium sharing. By offering to pay 10% in 1998, the employees taking the family plan have agreed to pay more money towards health insurance premiums than what is requested by the County, another portion of the quid pro quo for changing the contract. County witness Mr. Moschea testified that the third party administrator hired by the County, along with himself, review the experience rate of the insurance program and set the rates sometime in March or

April. The Association argues that once the rates were set by the County there is no flexibility in changing them and consequently, the unions are told to take it or leave it; no bargaining takes place.

The Association points out that in 1991, the County wanted to establish an employee contribution for County employees taking the single plan. The unions were against having single plan participants pay part of the premium. The case went to arbitration and the arbitrator found that even though a sufficient quid pro quo was not offered by the County to the union, the arbitrator felt that because of the overwhelming comparables that it was an appropriate final offer and thus the County received, through arbitration, an employee contribution from the single plan participants. (Morris Slavney 8/20/91, Decision No. 26764-A)

Here, the Association argues, after reviewing Association Exhibits 501 and 506, it becomes clear that the Association's final offer is more in line with the comparables. It also becomes evident that if the Association pays 10% of the premium, the County would be the beneficiary of the Association's final offer. Indeed, if employees were to pay 10% of the family plan premium in 1998, the employee would contribute more toward the premium under the Association's offer than under the County's convoluted system.

Finally, it is argued, the above exhibits along with the testimony of Association witness Mylly demonstrate that the Association's proposal is not designed to reduce or eliminate the employee's contribution. The Association's proposal was designed

to provide consistency to the employee's contribution while still maintaining a fair and equitable contribution from the employees for their health coverage. In the past they have been subjected to the County's unilateral imposition of premiums with no flexibility in bargaining and subjected to erratic premium contributions based on experience and the whim of Washington County. The Association points out that it is not just the social workers who are making an attempt to change the status quo on insurance premiums. Other unionized employees are also unhappy with the County's rigid position and inflexibility in negotiating health insurance. Two other unions besides the social workers are taking exception to the County's rigid policy and inflexible bargaining posture when it comes to health insurance: the Deputy Sheriff's Association and the Correctional Officers and Dispatchers Association. Additionally, the Association contends, the external comparables more than support the Association's position on health insurance premiums.

The Association claims that its final offer regarding the employee's monthly contribution for health insurance is merely an attempt to bring Washington County's premium contribution practices into line with the comparable counties. No other County has the formula for insurance premiums that is used in Washington County.

Lastly, it is the Association's position that when reviewing which final offer is more reasonable, the Arbitrator must take into consideration the overall compensation level of benefits received by the employees. It is agreed that a review of Association

Exhibits 800 through 807 clearly establish that the benefit level received by the Washington County professionals is below average when compared to both the internal and external comparables. In comparing overtime, vacation, holidays, sick leave, WRS and longevity, it is argued by the Association that the overall compensation presently received by the Washington County professional employees is low when compared to both the internal and external comparables.

Based on all of the above, the Association argues its final offer is more reasonable and, therefore, should be selected by the Arbitrator.

County's Position

Health Insurance

It is the Employer's position that the internal comparables provide compelling support for the County's proposal. It is argued the "cap" amount method provided in the County's final offer has already been agreed upon in voluntary settlements with four of the County's seven bargaining units. All four of these bargaining units have agreed to the same "cap" amount proposed by the County here for 1998 and 1999. In addition, the Employer points out, the same "cap" amount has been established for all the County's non-represented employees. In terms of the number of employees who are covered under the "cap" amount method proposed by the County (County Exhibit 4), there are 150 in settled units, 96 in unsettled units and 301 among the non-represented.

It is argued that since 1986, over 12 years ago, all County employees, including those covered by collective bargaining contracts, have accepted the "cap" method to determine the County/ employee contribution to the health insurance premium. In addition, there has been a history of internal bargaining units agreeing to the same level of caps.

It is also argued by the Employer that in this regard it is claimed that the use of the "cap" amount method, rather than percentage co-pay is both widespread and of longstanding duration within the internal comparables and that if the Association were to prevail in this arbitration, it would be the first, and only, bargaining unit to break ranks on this important issue.

Mr. Moschea testified that one reason for the "cap" amount method was that it guarantees that the matter will be looked at every two years or so in negotiations; and that the use of the "cap" amount method offers a tangible incentive to employees to control unnecessary usage in that the use of the "cap" amount method is a more "sensitive" instrument for encouraging responsible usage, and for discouraging unnecessary employee usage.

Finally, in support of its health cap position, the Employer contends that arbitration authority supports maintaining internal consistency. The Employer avers that one of the most important aids in determining which offer is more reasonable is the settlements between an employer and its other employees. According to the Employer, the great weight of arbitral authority recognizes the use of internal comparables in circumstances such as this. In

this regard, the Employer cited many interest arbitration awards favoring internal comparables. Representative of the cases cited is the following:

> Arbitrators have given great weight to settlements between an employer and its other bargaining units. See Brown County, Dec. No. 20455-B (Michelstetter, 1983); Manitowoc County, Dec. No. 19942-B (Weisberger, 1983); Milwaukee County, Dec. No. 20562-B (Fleischli, 1983); City of Brookfield, Dec. No. 19573-B (Rice, 1982); City of Oconto, Dec. No. 19800-B (Monfils, 1982).
>
> The frustration of a union's being locked into an established pattern of settlement is understandable, but, in the absence of compelling circumstances, late settlements above a pattern established earlier penalize employees involved in voluntary negotiations. This is destructive of the collective bargaining system and discourages voluntary settlements. Professional Staff of the Marinette County Department of Social Services, Dec. No. 22574-B (Grenig, 1985).

Finally, it is argued, where a party proposes a major change in the status quo, that party must accompany that proposed change with a significant quid pro quo:

> As a general rule the arbitrator believes that a party which offers to make a substantial change in benefits, or in contract language, must offer a quid pro quo. Without the presence of a meaningful quid pro quo, it is the arbitrator's view that the change should not be made through arbitration, but rather should be the result of bargaining between the parties. Salem Joint School District No. 7, Dec. No. 27479-A, at p. 29 (Krinsky, 5/93).

Here, the Employer claims the Association has offered absolutely no quid quo pro for its proposed change in the status quo.

Clearing, it is argued, arbitral authority supports the County's final offer.

Duration/Reopener

The Employer argues that the Association's proposal radically rewrites the provisions of Section 27.02 (Reopening Date), but the Association offers nothing by way of tangible argument in favor of its unwarranted proposal. It is argued that the operation of the current provision on reopening is clear and logical, and has stood the test of time. It calls for the Association to submit its proposals for future contracts "on or before August 15 in any year of termination of this Agreement."

On the other hand, it is argued that the Association's proposal is badly flawed. In particular, the wording of the proposed provision, in calling for notification "on or about September 1st," is unacceptably vague. The lack of a clear cut date, the Employer contends, threatens to inject into future negotiations a threshold dispute regarding the timeliness of notification. The current provision, requiring that proposals be submitted on or before the specified date (August 15) is clear, and therefore clearly superior.

Another flaw, according to the Employer, in the Association's proposal is that it could telescope the negotiation process into an unduly short period. This certainly could make it more difficult to reach agreement before the end of the contract term. Under the current schedule, the Association is to submit its initial proposals on or before august 15, an the County must make its response, and its initial proposals, within a month of receipt. This ensures that the parties know each other's concerns and

opening positions, at latest, by September 15, some three and a half months before the end of the contract term. By contrast, the Association's proposal starts the process two weeks (or more) later, beginning with the mere notification of the intent to reopen the agreement. Only then, it is argued, will the parties even begin to consider a date when proposals will be exchanged.

The Employer asserts that the lack of a clear deadline in the Association's proposal, together with delay and consequent telescoping of the period for negotiations, are obvious drawbacks. The agreement, it is argued, would be worse, not better, for the Association's badly thought out proposal. The current duration/reopener provision, which the Association seeks to rewrite in its entirety, has been part of the parties' agreement since at least 1977 (County Exhibit 21). It has worked. There is no reason to change it now.

It is also the Employer's position that internal comparables support maintaining the status quo.

In this regard, the Employer claims that all of the internal comparables specify a date certain when proposals are to be made and responded to. Five of the seven provide for the bargaining unit to make initial proposals first. None allows for an exchange of initial proposals as late as that possible under the Association's proposal here, and so none would compress the negotiations period as much as the Association's would.

With respect to external comparables, it is the Employer's position that they also support maintaining current language.

According to the Employer, of the six municipalities in the external comparison group, four (including Washington County) provide for an initial submission by the bargaining unit. Five of the six municipalities currently require the submission of initial proposals by a date certain. Similarly, only one of the six external comparables (Fond du Lac County) has a clause that even remotely resembles the Association's demand for automatic continuation of the contract pending negotiations, but even that provision has an escape clause, which the Association's proposal omits.

The Association's "automatic extension" plan, it is argued, is just as foreign to the comparison group as it is unheard of among the County's internal comparables. Of the six municipalities, five (including Dodge, Ozaukee, Sheboygan, Waukesha and Washington County) have absolutely no provision to extend the contract terms beyond its expiration (County Exhibit 22). Only Fond du Lac even addresses automatic continuation, but with an important proviso missing from the Association's demand:

> This Agreement shall remain in full force and effect during the period of negotiations, except that in the event either party desires to terminate this agreement, written notice must be given to the other party not less than ten (10) days prior to the desired termination date which shall not be before [December 31].

Thus, in a negotiations year, Fond du Lac can terminate the contract and so easily avoid automatic continuation, effective January 1, simply by sending written notice to the Union not later than December 21.

The Employer argues that the Association's proposal is unsupported and unjustified by external comparisons. It should be rejected.

Finally, the Employer avers that there are no other grounds for changing the status quo language. Testifying for the Association, Ms. Mylly explained that the Association's rationale for its proposal on having mutual exchange of proposals is that both parties start out on equal footing. But it is hard to see how the current system is materially any different. In particular, on cross-examination, she admitted that the Association's initial proposal contained a statement that the Union reserves the right to add, subtract or modify its proposal. According to the Employer, Ms. Mylly admitted she understood that the Association could add proposals to its original submission. In fact, one of the issues the Association added during the course of negotiations was its proposal to discard the longstanding use of the "cap" amount method of determining the County/employee contributions to the health insurance premium cost, and to replace it with a scheme in which employees pay a flat percentage of the health insurance premium.

Nor, it is argued, is there any serious issue regarding the temporary expiration of the collective bargaining agreement. As noted above, none of the internal comparables has a continuation clause, as demanded by the Association. Equally important, the Association can show no hardship or prejudice from the temporary lapse of the contract. While the County has exercised its right to discontinue deductions of Association dues (Association Exhibit 4),

Mr. Moschea stated in his testimony that the fair-share arrangement would have retroactive effect back to January 1, 1998. According to the Employer, the Association loses nothing under the present arrangement.

In conclusion, the Employer exclaims "If it ain't broke, don't fix it" applies here, with particular force. First, the existing contract language, far from being "broken," is working quite well. Unlike the Association's proposals, the County claims its proposals have stood the tests of time and experience with the instant bargaining unit, among the other internal bargaining units and across the external comparison group. Equally important, the Association's proposals "fix" nothing. In fact, the Association's untested, vague and flawed proposals would create brand new problems, both in practice and in contract interpretation.

The Employer argues that this is not a close case. The County's proposal is clearly reasonable, and demonstrably successful. The Association's is not. The County's position should prevail.

Association's Reply Brief

Insurance

The Association takes issue with the Employer's claim that the insurance "cap" is negotiated and thus allows parties to address the matter every two years, or so. This it is argued is contrary to Mr. Moschea's testimony to the effect that the County sets the insurance rates and then does not move.

Further, the Association contends that there is no factual support for the Employer's claim that "caps" are more sensitive for encouraging responsible usage and, in fact, the Association's straight percentage contribution offers the employees a better chance of estimating their future costs. Also, while Employer argues that internal comparables alone support their position, the Association notes that there are two other bargaining units presently in arbitration and that "caps" are a key issue in those arbitrations. The Employer, the Association argues, further fails to recognize that there is a total lack of external support for the "cap" method. Thus, the Association argues, it has no recourse but to seek change through arbitration.

Duration

The Association denies that their duration proposal is badly flavored as claimed by the Employer. The Employer argues that under the Association's offer the response date is not definite and therefore the Association could telescope the negotiations process into an unduly short period, but the Association argues that the Employer can avoid such a situation because it also has the ability to reopen negotiations. It is the Association's contention that plain and unambiguous language of their proposal makes moot the Employer's concerns.

The Association takes issue with the Employer's claim that there is no need to change the current language. It argues that the Association's proposal is the direct result of the Employer decision to discontinue deduction of Association dues and its

failure to arbitrate several grievances because of the lapse in the agreement between the parties. Said action by the Employer, it is claimed, is a severe departure from the past and is being used as a weapon against the Association. It is for this reason, the Association argues, its proposed change is necessary.

Based on the above, the Union argues for the selection of its final offer.

Employer's Reply Brief

The Employer claims that bargaining history supports the County's position. The results of bargaining was that all but two issues, including across-the-board wage increases and special wage adjustment to the top step wage rates were settled by mutual agreement. The only two issues not resolved are the Association's proposals to alter longstanding status quo.

In this regard, the Employer argues that the Association claim of its quid pro quo for its changes to status quo are not convincing because they all deal with claimed concessions made in past bargaining and no quid pro quos are in the instant agreement. This, the Employer argues, is absurd. The Association claims it is language in areas of wages and certain benefits but such claims, according to the Employer, are not relevant here because all such issues have been settled in this negotiation.

With respect to its discontinuance of dues deduction and arbitration, the Employer argues that this is their legal right and cannot be viewed as a weapon. The Employer points out that it waited four months after expiration before it discontinued dues

deduction. Further, it is argued that even under the Association's proposal continuance of dues deductions and arbitration is only good for three years because under Wisconsin law contracts cannot exceed three years. Thus, after three years the Employer could discontinue dues and arbitration regardless of the Association's proposal herein.

Insurance

The Employer points out that there is only a small cost difference between the parties' final offers. Thus, it is argued, it is hard to conclude that the contract's current provision is unsatisfactory. Contrary to the Association's contention, the Employer argues that both parties' positions subject employees to uncertainty, not just the Employer's. Further, it is argued, the "cap" system is an effective means of keeping usage down.

The Employer, contrary to the Association, argues that the most important comparables are internal comparables and not external. While two other bargaining units are in arbitration is not relevant, according to the Employer, unless or until one or more obtains a change. Here there is no change. Far more relevant, it is argued, is that no other Union or group has broken ranks on this provision and obtained any other method of calculation. Contrariwise, it is argued, 61% of County employees in bargaining units and 85% overall have agreed to the continuance of the current "cap" system.

Based on the above, the Employer argues that its final offer is more reasonable than the Association's.

DISCUSSION

The statutory criteria applicable herein is the following:

111.70(4)(cm)7

7. "Factor given greatest weight." In making any decision under the arbitration procedures authorized by this paragraph, the Arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The Arbitrator or arbitration panel shall given 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. Stipulations of the parties.

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

d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

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

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

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

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

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

The Arbitrator, in applying the above criteria, must determine which offer is more reasonable based on the evidence presented. It should be noted at the outset, however, that there is very little cost difference between the two final offers. The one issue, Duration/Reopener, is strictly a language item and in the second, Insurance Premium Contributions, the parties' final offers are very close in cost. (In fact, the Association's proposal costs $138 more in the first year.) Thus, the parties do not find criteria 7., 7g., 7r. a., b., c., f., g. and i. to, individually or collectively, outweigh the remaining criteria.

Further, of the two issues, the parties agree that the determinative issue in the instant case is the health insurance premium payment issue. Thus, while the Duration/Reopener issue highlights a philosophical difference between the parties concerning the exchange process in initiating bargaining and what the parties' obligations should be upon expiration of their agreement, neither proposal is one that the other party cannot live with without much problem. This is not to say that each doesn't feel strongly that their proposal is the more reasonable, but only that the health insurance premium payment issue is much more important in comparison.

With respect to the health insurance premium issue, it is the Association that seeks a change. The current method of premium payment and distribution is one that is referred to as a "cap" system. That is to say that a "cap" amount is negotiated and the County pays the full amount of the premium cost up to the "cap" amount, and that any premium cost above the "cap" amount is shared equally by the Employer and the employees. This system has been in effect, uninterrupted, since 1986 for all represented and non-represented employees of the County. The Employer's final offer proposal would increase the cap for single coverage from its 1997 level of $150 to $156 in 1998, and further increase it to $162 in 1999. Family coverage caps would increase from $350 to $390 in 1998, and up to $410 in 1999. The Association proposes to change the method of contribution from a "cap" method to a set percentage premium cost sharing method with the Employer paying 90% and the employee 10% of the premium cost.

The Arbitrator in the instant case, like so many before him, is firmly convinced that in cases where one party is seeking to make significant changes in existing language or benefits (status quo), the interests of the parties and the public is best served by imposing on the moving party the burden of establishing (1) a compelling need for the change, (2) that its proposal reasonably addresses the need for the change, and (3) that a sufficient quid pro quo has been offered. In each case the sufficiency and weight to be given to each element must be balanced.

The rationale for tests and criteria, as set forth above, is simple. Stability in labor relations is essential for a good working relationship between the parties. The Municipal Employment Relations Act seeks to promote stability as a matter of good public policy by promoting collective bargaining and peaceful resolution of impasses through interest arbitration. Therefore, any major changes proposed in existing language negotiated by the parties must be for compelling or demonstrated need or else left for voluntary negotiations by the parties and not imposed by an arbitrator.

The Association argues that there is compelling need for its insurance premium proposal because it (1) provides employees stability with respect to what they can expect to pay in insurance premiums from year to year, and (2) because the Employer, in essence, refuses to bargain insurance with the Association and, instead, stands firm with what has been negotiated first with one of the larger units, usually the Highway unit.

With respect to its first justification, the Association argues that the current system is erratic and unpredictable in determining the employee premium contribution and that in the last twelve years the percentage paid by employees for the family plan has ranged from a low of 8.2% to a higher of 13.5% and for the single plan from 4.3% to 14%. The Arbitrator notes, however, that while going to a percentage method of distributing the cost of insurance premiums does make the employee <u>percentage</u> contribution predictable, it does not eliminate the unpredictability of the

dollar amount contribution. Thus, even with the Association's proposal there may very well be significant changes in premium contribution in any given year. The real question is whether there is a compelling need for the percentage method proposed by the Association given the history of the "cap" system. The following is a comparison of the amount of premiums paid, yearly, by employees since 1988 under the current "cap" system and what they would have paid under the Association's proposed 90%/10% sharing:

YEAR		PREMIUM	CAPS	EE CONTR.	90%/EE 10% SPLIT
1988	F	$190.00	$200.00	0	19.00
	S	$ 85.00		0	8.50
1989	F	$250.00	$210.00	$20.00	25.00
	S	$105.00		0	10.50
1990	F	$275.00	$230.00	$22.50	27.50
	S	$115.00		0	11.50
1991	F	$297.01	$250.00	$23.51	29.70
	S	$124.20	$110.00	$ 7.10	12.42
1992	F	$317.92	$275.00	$21.46	31.79
	S	$132.95	$115.00	$ 8.98	13.30
1993	F	$360.52	$295.00	$32.76	36.05
	S	$150.77	$120.00	$15.39	15.08
1994	F	$402.06	$320.00	$41.03	40.21
	S	$168.16	$130.00	$19.08	16.82
DSS-PROF*	F	$393.86	$320.00	$36.93	39.39
	S	$164.72	$130.00	$17.36	16.47
	* WENT TO ST. MANDATE MENTAL HEALTH & INCREASED DEDUC. TO $150				
1995 Non U/DSS 609**	F	$469.28	$350.00	$59.64	46.93
	S	$196.26	$144.00	$26.13	19.63
	** $150 DEDUCTIBLE/ST MANDATE MENTAL HEALTH				
ALL OTHER	F	$278.85	$350.00	$64.43	27.89
	S	$200.27	$144.00	$28.14	20.03

LOCAL 150/200: ST. MANDATE MENTAL HLTH & $100 DEDUCTIBLE
DSS 809, COCOA, DEP SHER ASSOC: $150 DEDUCTIBLE (MENTAL HEALTH-INP 30 DAYS)

1996	F	$454.33	$350.00	$52.16	45.43
	S	$190.12	$144.00	$23.06	19.01
	ALL GROUPS MOVED TO THE PPO AND DRUG PROGRAM IN APRIL OF 1996, COUNTY BOARD BEGAN PAYING 25% OF FULL PREMIUM				
1997	F	$432.76	$370.00	$31.38	43.28
	S	$181.08	$150.00	$15.54	18.11
1998 Assoc. F.O.	F	$485.14	90%		$48.51
	S	$202.99	90%		$20.30
ER F.O.	F	$485.14	$390.00	$47.57	48.51
	S	$202.99	$156.00	$23.70	20.30

(Association Exhibit No. 506)

An analysis of the above indicates that 7 out of the 10 years employees would have paid more in premiums under the 90%/10% split than under the current "cap" system. The average monthly premium for a family plan paid under the "cap" method was $30.03 while under the 90%/10% would have been $34.41. Thus, employees under the 90%/10% split would have paid more over a ten-year period. 1/ Also, for most years there really isn't a substantial difference in terms of stability when comparing dollar amounts. Two years, however, stand out. Premiums did increase substantially from 1994 to 1995 under the "cap" method: $22.71 for the family plan and $8.77 for the single plan. Under the 90%/10% split, premiums would have increased only $7.54 for the family plan and $3.16 for the single plan. On the other hand, premiums from 1996 to 1997 substantially decreased under the "cap" system by $20.78 family and $7.52 single. Under the proposed 90%/10% split, the decreases would have been significantly less, $2.15 family and $.90 single. Further, in 1998, premiums under the Association's proposal will

1/ The results for a single plan are similar.

actually be slightly higher than the current system for the family plan, $48.51 versus $47.59 and slightly less for the single plan, $20.30 versus $23.50.

Based on the above, it is clear that under the current "cap" system where the Employer increases the caps yearly, 2/ there is no compelling reason shown that a change from the current system to a percentage split of 90%/10% is needed. The Arbitrator understands the Association's desire for a set percentage split and the certainty it provides as to how future premium increases and total premiums will be split. The Arbitrator would be more inclined to go along with the Association's proposal if the Employer did not regularly adjust the cap amount to reflect increases. But here the Employer has been willing to fairly look at the impact of premium increases and make adjustments accordingly. The Employer has increased the caps every year the insurance premium has increased since 1988.

The Employer's final offer here for 1998 and 1999 increases the caps $20.00 each year for the family plan and $6.00 each year for the single plan. It may be true, as argued by the Association, that the Employer has not been very flexible at the bargaining table once the insurance premium issue has been settled with other larger units, but in the final analysis the Employer has been flexible in raising caps to help offset premium increases.

2/ The one year that the cap was not increased, 1996, the premium decreased $15 per month.

The Association, however, argues that its position is supported by external comparables. 3/ This is true in that 4 of the 5 comparables have a set percentage method of premium sharing, but, under the facts of this case as discussed above, external comparables alone are not enough to establish compelling need. In interest arbitration cases, especially those involving benefit issues, internal comparables must also be considered. Here the internal comparables favor the Employer. Four of the seven represented units have settled with the Employer's final offer adjustments to the current system. Thus, there are 150 employees in health plans in the Highway, Law 809, Samaritan, and Parks units. The unsettled units of Deputy Sheriffs, Correction/ Communication, and the instant LAW 609 unit represent 96 employees in health plans.

Moreover, no significant quid pro quo is offered by the Association for its proposed change. As stated earlier, the criteria (elements) required for changing the status quo must be balanced in each case based on the peculiar facts of each case. Thus, as the need for the proposed change decreases, the need for a quid pro quo increases and vice versa. Here, as discussed above, a strong compelling need has not been established and little quid pro quo has been offered. Sacrifices made in past years or benefits and wages not asked for in these negotiations do not constitute the type of quid pro quo contemplated for the type of change proposed herein.

3/ The parties agree that the appropriate comparables are the following counties: Dodge, Fond du Lac, Ozaukee, Sheboygan and Waukesha.

Under the facts of this case where the internal comparables 4/ favor the Employer, no compelling need has been shown other than external comparables, and no significant quid pro quo has been offered, the Employer's final offer must be viewed as the more reasonable.

Duration/Reopener and Dues Deduction

The Association makes some good arguments in support of its proposal, but the issue of duration/reopener and dues deduction, as recognized by the parties and as discussed earlier, is just not significant enough to outweigh the insurance issue.

Conclusion

Having considered the statutory criteria, the evidence and arguments presented by the parties, the Arbitrator, based on the above and foregoing, concludes that the offer of the Employer should be favored over the offer of the Association, and in that regard the Arbitrator makes and issues the following

AWARD

The Employer's offer is to be incorporated in the 1998-1999 two-year collective bargaining agreement between the parties, along

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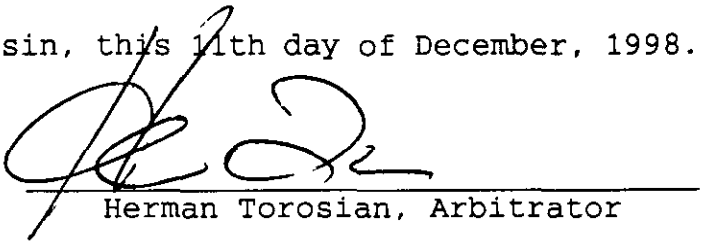
4/ It is generally recognized among arbitrators that internal as opposed to external comparables are given great weight in arbitration proceedings, especially when the issues involved are benefits. While various arbitrators have stated their reasons favoring internal comparables differently, they all show a concern for the negative effect on morale, equitable treatment of employees, the whiplash effect of multiple bargaining units, and the stability of the bargaining relationship, i.e., reluctance by unions to settle if they think that other units going to arbitration may obtain a benefit not attainable through voluntary settlement.

with those provisions agreed upon during their negotiations, as well as along with those provisions in their expired agreement which they agreed were to remain unchanged.

Dated at Madison, Wisconsin, this 11th day of December, 1998.



Herman Torosian, Arbitrator