STATE OF WISCONSIN
EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WASHINGTON COUNTY DEPUTY SHERIFF'S ASSOCIATION

To Initiate Arbitration Between

Said Petitioner and

WASHINGTON COUNTY

Case 117 No. 44848.

MIA-2147

Decision No. 29379

Milo G. Flaten,Arbitrator

ARBITRATOR'S DECISION AND AWARD

INTRODUCTION

This matter is authorized and governed by Wisconsin Statutes Sec. 111.77, sometimes referred to as "final and binding arbitration." Under the terms of that statute, a governmental employer and its collective work force negotiate to set the terms of its labor contract for a designated period. Those matters which cannot be agreed upon through bargaining are referred to arbitration for a final and binding decision and award. In these proceedings, "The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification," §111.77, Wis. Stats.

BACKGROUND

The County of Washington (hereafter the "Employer") is a municipal corporation organized and existing under the laws of the State of Wisconsin. The Washington County Deputy Sheriff's Association (hereafter the "Union") is the collective bargaining representative for all permanent civil service employees working for the Employer except supervisory employees.

During and up to early April 1998, the parties negotiated and bargained on the terms of the collective bargaining agreement between them (hereafter the "Contract") for the period starting January 1, 1998 and ending December 31, 1999. All of the provisions regarding wages, hours and conditions of employment were settled by the parties except two, that dealing with the health insurance premium and the matter of wages.

Following the requirements of the law, the parties submitted their final offers to the Wisconsin Employment Relations Commission and the matter was set for hearing in West Bend, Wisconsin. It was heard by Milo G. Flaten, an arbitrator selected by the parties from a panel of professional arbitrators provided by the Commission.

The hearing lasted about one day, following which the parties submitted written briefs to the arbitrator using an agreed-to schedule. Thereafter, the parties submitted written reply briefs as per their schedule.

During the period following the submission of briefs, the parties notified the arbitrator that further negotiations were again being conducted and that he should cease study and preparation of an award until further notice. After a lapse of time, the arbitrator was notified that the parties were still unable to reach a settlement and that he should once again prepare a decision and award based on the evidence previously presented at the hearing.

Appearing for the Employer was Attorney Roger E. Walsh of Davis & Kuelthau, S.C., Milwaukee, Wisconsin, and for the Union was Attorney Linda S. Vanden Heuvel of Vanden Heuvel and Dineen, S.C., Germantown, Wisconsin.

Health Insurance

In its final settlement offer, the Union seeks a contract provision wherein the Employer

would pay all but 10 percent of each Union employee's health insurance premium. The Employer's final proposal would have the Union employee pay $156 of the monthly health insurance premium during the year 1998, commencing January 1, 1998 and $162 per month for the year 1999, commencing January 1, 1999.

Both parties intend that their respective insurance plans would include the employee's family also to be covered if the individual so chooses. The Employer's proposal states further that if the 1998 health insurance premium exceeds $156 per month for a single employee, the employee and the Employer shall split the cost in excess of $156, or if the health insurance premium for family coverage exceeds $390 per month, the parties shall split evenly that which is over $390. In 1999, the Employer proposes that the single employee contribute $162 toward the premium and $410 for family coverage with anything in excess of that amount to be split evenly between the parties.

The Union takes the position that the Employer can well meet its contractual demand taking into consideration all of the statutory factors that are to be given weight by §111.77(6), Wis. Stats. Since the Employer cannot demonstrate evidence proving that one of those factors would not allow payment of its demand, the Union argues that the Employer's final offer is less reasonable than the Union's.

The Employer takes the position that the Union offered no proof to demonstrate that its monetary "cap-amount" method should change from that which it used in previous years. Therefore, the Employer declares, its final health insurance offer is the more reasonable.

Moreover, argues the Employer, it is a common practice in bargaining that the parties to interest arbitration disputes are impliedly bound to make mutual concessions sometimes referred to

as *"quid pro quo"* (Latin for "what for what," or "something for something"). Because the Union has not offered any such concessions to balance its demand to change the method of paying for health insurance, it does not meet the *"quid pro quo"* test, asserts the Employer.

The Union carefully analyzes the statutory items to be taken into account in §111.77(6) of the Statutes and applies each criterion to its final offer on the health insurance issue. The Employer likewise cites some of those statutory criteria. Neither side, however, mentions the "factor to be given greater weight," that being economic conditions in the jurisdiction of the municipal employer.

Wages

As would be expected, the emphasis shown on this issue by both sides is in comparables, both internal and external. That is, the parties stress that equivalent governmental entities which have already signed their collective labor agreements have done so in a manner most comparable to that party's final offer. Once again, however, the Union continues to stick to its previous assertion that its final offer more closely follows the list of factors to be taken into consideration by the Wisconsin Statutes. For instance, the Union asserts that the Employer has both the lawful authority and the financial ability to meet the demands of its final offer.

The Union also argues that since both parties' final offers exceed the cost of living, as determined by the consumer price index, this item listed as a factor to be given weight, should be disregarded.

To reiterate, it is in the area of comparables that both sides hang their hats. They each claim that comparisons of wages, hours and conditions of employment with other employees performing similar services, both within and without the Employer's county and in the private

sector more nearly match that which is contained in their respective offers.

A recitation which repeats the various points and counterpoints at this juncture would serve no useful purpose, so this observer will refrain from doing so. The arbitrator would be remiss, however, if he did not point out some important aspects of the final offers which actually agree with established principles.

For instance, the Union seeks to change the time-honored method of paying for the Union employee's health insurance from that of other employees in the Employer's county. The record shows that other units of government within the Employer's county have already agreed to continue with the Employer's "cap" method of payment. True, of the 547 employees who participate in the Employer's health care plan, only 150 are organized and can have a possible say in their health insurance contract. Yet, it is equally true that different internal bargaining units will only seek parity with each other and no more. In other words, they only want health insurance plans equal to other units of the Employer's workers.

It is often easier to justify quality or parity when one is dealing with health insurance than wages. For, after all, health insurance is protection against the cost of treating injury or disease regardless of where the worker is employed, whereas wages involves disparate duties and responsibilities.

The Employer has maintained the same administrative method of calculating premium cost-sharing for 13 years with the Union, with other bargaining units and with non-represented employees. It is questionable to this arbitrator's eye whether there is a compelling need for the percentage method proposed by the Union as opposed to the established "cap" system. It is also clear that arbitrators will require a party seeking a change to justify it only by strong evidence

establishing its reasonableness and soundness. This the Union has not done.

Thus, it appears clear to this observer that where the Employer dutifully increases the caps necessary to reflect cost increases and there is no compelling reason to change from the system currently used, the system should not be altered. This is especially true where the Union makes no concessions to justify upsetting the established practice or *quid pro quo*. At present, the Employer treats all workers the same regarding all the fringe benefits of health insurance, vacation, holidays and contribution to the Wisconsin Retirement System. It would really be asking for future trouble, not to mention bad feelings, conflict and poor morale if it changed now with one of its bargaining units.

With regard to wages, the same rationale could apply. However, because of the vast difference in duties and responsibilities, a system of uniform application for all employees is more difficult to apply. Nonetheless, it is important to note that six of the Employer's seven internal units have agreed to a 3-percent wage increase for 1998 and 1999. Only the Parks Department and Sanitation bargaining units will receive an additional 0.5 percent commencing on July 1, 1999. But, both of these bargaining units made a concession, agreeing to a 3-year contract, to obtain these deviations from the other contracts. Here, the Union demands an additional 1-percent increase without offering the Employer any similar concession. One could justifiably state that, to a certain extent, the Union is attempting to win an increase in wages through binding arbitration which other internal units obtained through voluntary negotiation.

Further, a favorable award at this late date above a pattern established earlier could penalize employees already settled and head to a helter-skelter batch of multiple interest arbitration awards with a single employer but with no consistency between them. Once again, if the Union

offered a concession to justify its requested deviation, it might entitle it to favorable consideration, *quid pro quo*.

The examination of external comparables is also valuable to an arbitrator. But care must be exercised not to compare apples to oranges. The comparison offered by the Union which is based on mostly individual *municipalities* rather than *counties* is of little value. The five contiguous counties, however, do present an appropriate comparison group. This comparison is supported by awards from interest arbitrators in six previous Washington County cases. When the wages paid in this case are compared to those in contiguous counties, it can be seen that the Employer's county is right in the middle, despite a per capita personal income which is $65 below the group's average.

Under the Employer's final offer, the maximum rates for Patrol Officers will remain third highest in the comparison group. The Employer's Investigator I also will rank third among the six comparables in salary. This is to be expected, based on its wealth rating. The Employer's offer would compensate the new position of Investigator II at a rate above all the six external comparables.

While the Employer's final offer will still maintain the county's same wage position among comparables, the Union's final offer awards an increase that is higher than any wage increase gained through collective bargaining in the comparable counties which the arbitrator deems appropriate.

DECISION

The Employer's offer to grant a wage increase that maintains the Union's relative position with other Washington County bargaining units, as well as its standing among the appropriate

external comparables, is very reasonable. When the Employer's reasonable wage offer is coupled with the Union's demand for a change in the way the contribution for health insurance is made without any real reason or concession for doing so, the Employer's final offer is the more reasonable of the two.

AWARD

It is the arbitrator's award that the Employer's final offer is to be incorporated into the 1998-99 two-year collective bargaining agreement between the parties along with prior provisions already negotiated and provisions of the expired contract to which the parties have agreed will remain unchanged.

Dated February 19, 1999.

Milo G. Flaten, Arbitrator