STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Interest
Arbitration Between

WALWORTH COUNTY (SHERIFF'S DEPARTMENT)

and

WALWORTH COUNTY DEPUTY SHERIFFS ASSOCIATION

Case 158
No. 61079
MIA – 2462
Dec. No. 30435-A

APPEARANCES:

James R. Koram, Esq., Von Briesen & Roper, S.C., on behalf of Walworth County

Richard E. Reilly, Esq., Gimbel, Reilly, Guerin & Brown, S.C., on behalf of the Walworth County Deputy Sheriffs Association

## BACKGROUND

On April 5, 2002, the Walworth County Deputy Sheriffs Association (hereafter "the Association") filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting the Commission to initiate final and binding arbitration pursuant to Sec. 111.77(3) of the Wisconsin Municipal Employment Relations Act (MERA) for the purpose of resolving an impasse between it and Walworth County (Sheriff's Department) (hereafter "the County") with respect to negotiations leading toward a new collective bargaining agreement beginning January 1, 2002 covering wages, hours and conditions of employment for law enforcement personnel employed by the County.

On August 7, 2002, following investigation and report by a member of the WERC, the WERC found that an impasse existed within the meaning of Sec. 111.77(3) of the MERA and ordered that compulsory final and binding interest arbitration pursuant to that statute be initiated for the purpose of issuing a final and binding award to resolve the impasse. On August 27, 2002, after the parties advised the WERC that they had chosen the undersigned, Richard B. Bilder of Madison, Wisconsin, as the arbitrator, the WERC appointed the undersigned as impartial arbitrator to issue a final and binding award in the matter pursuant to Sec. 111.77(4)(b) of the MERA.

The undersigned met with the parties on November 8, December 6 and December 9, 2002 at Walworth County facilities in Elkhorn, Wisconsin, to arbitrate the dispute. At the arbitration hearings, which were without transcript, the parties were given a full opportunity to present evidence and oral arguments. Post-hearing briefs and reply briefs were submitted by both parties, the last being received by the Arbitrator on March 3, 2003.

This arbitration award is based upon a review of the parties' evidence, exhibits and arguments, utilizing the statutory criteria set forth in Sec. 111.77 of the MERA.

## ISSUES

The parties have reached agreement on various matters. The issues which have not been resolved voluntarily by the parties, and which have been placed before the Arbitrator, as reflected in the parties' Final Offers, are as follows:

1. Length of Contract

The Association proposes a two-year contract, from January 1, 2002 to December 31, 2003.

The County proposes a three-year contract, from January 1, 2002 to December 31, 2004.

2. Wage Rate Increases

The Association proposes that the rate schedule be increased 3% effective January 1, 2002 and 3% effective January 1, 2003.

The County proposes that the rate schedule be increased as follows: 2.0% effective January 1, 2002; 1.0% effective July 1, 2002; 3.0% effective January 1, 2003; 1.0% effective upon the first day of the month following receipt of the Arbitrator's award; and 3.0% effective January 1, 2004.

3. Health Insurance

The Association proposes that health insurance benefits continue with the same coverage in effect for the 1999-2001 contract, with the employees to continue to contribute 5% of the annual premium. (Retirees to continue on the same insurance plan as well.)

The County proposes the following:

- Health insurance benefits are changed effective the first day of the month following receipt of the Arbitrator's award as summarized on the schedule attached hereto (3-tier benefits). The County will pay for full-time employees the full premium for the standard PPO. All employees shall be enrolled in the

standard PPO, unless the employee selects one of the extended coverage options. If an option is selected, the employee shall pay the difference in premium between the standard PPO and the higher cost option.

- Each employee/retiree enrolled in the health plan shall have an annual choice period during which time they can transfer from one health coverage plan to another. The annual choice period does not apply to any person not enrolled in the plan. Any change in plan choice shall become effective on the following January 1st.

- The dental insurance premium is increased to $30.60 single; $76.00 family. The last sentence of the dental provision is amended to read: "The County agrees to cover 100% of the dental premium cost for the duration of the Agreement."

## DISCUSSION

Walworth County has, according to the testimony, over 800 employees, about 600 of whom are represented by one of six bargaining units and some 250 of whom are non-represented. (The testimony and evidence are somewhat unclear as to the exact numbers.) Four of these bargaining units are associated with AFSCME. The other two bargaining units – the Walworth County Deputy Sheriff's Association, and the Human Services Professionals unit – are independent. The Walworth County Deputy Sheriffs Association, which has filed the petition occasioning this interest arbitration, represents some 70 employees, primarily deputy sheriffs but also sergeants, engaged in law enforcement for the County. (Again, the testimony and evidence differ somewhat, indicating from 63 to 76 in the unit at different times.) The new contract terms proposed in the County's Final Offer to the Association, including its proposed new health insurance plan, are identical to those proposed to the other five County bargaining units, and each of these other bargaining units, as well as the County's non-represented employees, have accepted new three year contracts embodying these proposals.

The County and Association agree that the central issue here in dispute between them is whether their new contract to replace their old 1999-2001 contract should provide for a new so-called "3-tier" health insurance plan proposed by the County (hereafter referred to as "the 3-tier plan" or "the new plan"), or should instead provide for the continuation of the health insurance plan in effect for Association members under the 1999-2001 contract between the parties (hereafter, "the old plan"). Almost all of the parties evidence and arguments have been addressed to this health insurance issue. While the parties have submitted differing wage offers – the County's somewhat higher than the Association's – and proposed different terms for the duration of their contract – the Association proposes two years and the County three years – these do not appear to be matters of significant controversy between them. Consequently, the Arbitrator's discussion will be directed for the most part to the health insurance issue.

### 1. Development of the County's New Health Insurance Plan

Some background may be useful to understanding the parties' positions regarding the health insurance issue. The County's contracts with its various represented employees have long included provisions for health insurance benefits. During any given contract period, these benefit provisions have generally been substantially uniform among all County employees, including those who were non-represented. Exceptionally, in 1998, the Association and County agreed to an arrangement under which Association members would pay five percent of the cost of their health insurance premiums and would in return receive a somewhat larger wage increase than the other County employees – 2 ½ percent rather than 2 percent. (The testimony was that the four AFSCME represented units were, on principal, unwilling to agree to pay 5% of the cost of the health insurance premium.) However, except for the Association's agreement to pay this 5% cost of the premium, the County's health insurance plan has in the past otherwise been generally the same for all employees.

During the late 1990s the County, like many other employers, became increasingly concerned about the escalating cost of health insurance for its employees and hoped to develop, together with its employees, a health insurance plan which might better address this problem. Consequently, the County proposed in negotiations for its 1999-2001 contracts with its various represented employees including the Association, and each of them, including the Association, accepted, a contract provision reading:

> The Union agrees to participate in meetings with the County and the insurance consultant in a good faith effort to work towards plan design changes which will reduce health and dental insurance costs.

Following the conclusion of those 1999-2001 contracts, the County established a Joint Insurance Committee, composed of various County, union and non-represented members, working with an outside insurance consultant brought in by the County, to try to develop a mutually acceptable revised health insurance plan which might meet this objective of reducing health insurance costs. Subsequently, this Committee gathered suggestions, ideas and concerns of employees and prepared an early draft of a revised plan, which was distributed in late August 2000 to everyone involved in the process. A second series of meetings was held by the Committee to explain each part of the proposed program, which came to be referred to as the "3-tier" program because it contemplated a "basic" health insurance plan, available to employees without payment of any premium contribution, with two optional levels of added benefits which would be available to employees upon their payment of a share of premiums. Association officials and members generally participated in this process, and on November 1, 2000, the County held a special meeting with Association members and their spouses to explain and answer questions about the new plan. Following conclusion of this process, the County proposed the new 3-tier plan to all of its employees for the new post-1999-2001 contract negotiations.

On December 18, 2001, the Association presented its initial contract proposals to the County. In these proposals, it "agree[d] to the concept of the three-tier plan and will agree to reopen contract should a plan be finalized with the other unions", but proposed certain changes

in the plan. The County continued to bargain with the Association as well as the other bargaining units in the County. As indicated, the County ultimately, with minor modifications, reached agreement with each of the other bargaining units, other than the Association, as well as with the non-represented employees, on the new 3-tier health insurance plan, wage increase and 3-year contract duration proposed in the County's Final Offer to the Association reflected in this arbitration. However, the Association has refused to accept the County's Final Offer leading to the current impasse.

2. Differences Between the "Old" and "New" Health Insurance Plans

Much of the parties' evidence has related to a detailed comparison of the complex provisions of the old and new health insurance plans, as well as of the possible consequences of a change to the new plan for the Association's members. Each of the parties has presented, from its own perspective, a summary of what it considers these principal substantive differences.

The County, in its evidence and brief, stresses that the new plan will help control its health insurance costs by establishing incentives encouraging economically and possibly medically preferable choices by its employees and providing1 more access to preventive care, while still providing adequate health protection for most employees as well as a safety net for high medical users by allowing them to "buy up" to a higher benefit tier or option. The County summarizes these principal differences as follows:

1. *Deductible and Co-Insurance*. The new plan makes some changes in the deductible and co-insurance maximums for employees. The deductible for single employees moves from $100 under the old plan to $150 under the new plan; for family coverage, it moves from $300 to $450. As long as the employee uses in-network providers, the co-insurance level remains at 10% for covered services. However, the amount of services for which the 10% co-insurance applied is raised from $2,000 per member per year to $4,000 per member per year. This results in the maximum out-of-pocket for a single employee going from $300 under the old plan ($100 deductible plus 10% of the next $2000) to $550 under the new plan ($150 plus 10% of the next $4000). For an Association member taking family coverage, their maximum out-of-pocket would rise from $900 under the old plan to $1,650 under the new plan.

2. *Co-Payments for Certain Services*. The old health insurance plan does not require a flat dollar co-payment when certain services are accessed. Instead, the employee first satisfies an up-front deductible, then makes a co-insurance payment (normally 10% for in-network services) until a maximum out-of-pocket cost is met. Subsequent services are then fully paid by the County. The new plan introduces flat dollar co-payment amounts when an employee accesses certain types of medical services, irrespective of whether co-pays or deductibles have been met. A "big picture" summary was identified on County Exhibit 39, basically providing a $15 co-payment for a routine doctor's visit, a $25 co-payment if the employee went to a specialist for certain office services, a $50 co-payment if the employee utilized outpatient hospital services, and a $100 co-payment if the employee used emergency room services. There are a variety of "wrinkles" to these co-payments under the new plan. For example, where an

employee goes to the emergency room, and is subsequently admitted to the hospital for services, the co-payment for the emergency room is waived. In the same manner, the old plan requires a deductible and co-pay amount to be satisfied prior to receipt of such basic services as well-baby care, routine physicals, mammograms, vaccines and immunizations, and other preventive care services. Under the new plan, minimal flat fees are paid, or in some cases (such as vaccines and immunizations) no fees whatsoever are charged.

3. *Psychiatric and Chiropractic*. Another change in the health insurance program proposed by the County relates to psychiatric benefits. The State of Wisconsin mandates that a certain level of psychiatric benefits be maintained by all health plans. Both insurance consultants testified that the psychiatric benefit is a high cost item in most health insurance plans (even though it is not frequently used), and that inpatient hospitalization for psychiatric problems is declining as the preferred method of treatment. In Walworth County, the old plan exceeds the state mandated level of benefits, providing inpatient care to a maximum of 60 days. The new plan meets the state-mandated level of benefits, which caps the number of inpatient days at 30. Another difference between the plans is in the area of chiropractic benefits. Under the old plan, an employee desiring chiropractic services throughout the course of the year, has to pay all of the cost of those services until the deductible is met, then 10% of those costs until the maximum out-of-pocket limit was reached. However, none of the chiropractic visits would be covered unless a specific injury had occurred. Under the County's proposed plan, no injury or treatment plan is required. Rather, the employee can access chiropractic services at his own discretion, provided he pays $20 per visit. This $20 is independent of any deductibles or co-insurance limits. However, the maximum plan payment for these services is $600 per person per year.

4. *Drug Card*. The final area of distinction between the new and old plan relates to the co-pay on drugs, commonly known as the drug card. The old plan requires the employee to pay $5 towards a generic prescription, and $10 for any name brand drug prescription. The total amount an employee could be required to pay per year was $200 for an individual, and $500 per family. The new plan retains the $5 co-pay on generic drugs, but increases the employee's share of the prescription from $10 to $15 for a lengthy list of name brand drugs on a "formulary" list maintained by the insurance administrator, which list, according to the County's testimony, covers the overwhelming majority of all prescriptions used by employees. In a small number of cases, where a new brand name drug is not yet on the formulary list, the employee may be called upon to pay 20% of the cost, or $50, whichever amount is lower. The maximum amount an employee may be called upon to pay for prescriptions in any one year is also capped under the new plan at $1,000 per person.

The Association, in its evidence and brief, stresses in particular that the new plan, since it provides no maximum for co-payments per visit, involves unpredictable overall out-of-pocket costs for Association members, in contrast to the old plan which provides such a maximum limit. More specifically, the Association emphasizes the following differences between the two plans:

Under the old plan, which still applies to Association members pending conclusion of a new contract, Association members pay a premium each month. In 2002, this annual amount

was set at $253.80 for an individual, $649.20 for a family. Association members are not required to pay a co-payment each time they visit a doctor. The only co-payment involved in the plan is one for prescription drug purchase. In 2002, this co-payment was $5 for generic drugs, $10 for brand. In addition, the Association members have a $100 per-person deductible that they must pay each year. Once a member has paid for services up to this amount, his or her insurance pays 90 percent of the cost of medical service.

Additionally, Association members are protected by a $300 individual annual maximum out-of-pocket amount or a $700 family annual maximum out-of-pocket amount. This out-of-pocket figure represents an absolute maximum amount that users will pay each year for health care services. Each member's deductible and any additional 10 percent yearly contribution in co-insurance to health care service costs will never exceed this amount (with the exception of the variable co-payments for prescription drugs). Thus, each member can ascertain the maximum amount that he or she will pay for health insurance coverage and health care services under the current plan: one must simply add together the annual premium and maximum out-of-pocket amount.

As indicated, from the Association's point of view, the lack of an absolute maximum amount in the "3-tier" plan imposes an unpredictability of health care costs for Association members, causing concern for individuals and families that are frequent health care users. Under the new "standard" plan proposed by the County, Association members would be required to pay a per-visit co-payment each time they use health care services. The amount of this co-payment differs among care providers, and ranges from $15 to $25. An emergency room visit would cost the user $50 under the County's plan. The prescription drug co-payment would rise under the new plan as well. Users would pay $5 for generic drugs, $15 for brand drugs on the "plan list," and the lesser of 20% or $50 for brand drugs not on the list. A large percentage of common brand drugs are not on this list. Accordingly, Association members could pay up to $600 per year for a brand drug that is not on the standard plan list.

Under the old or current plan, Association members would pay $180 for that same prescription drug. Under the new plan, after a member met his or her $150 deductible, he or she would still be responsible for payment of out-of-pocket costs that exceed the current plan. An individual would have an out-of-pocket annual maximum cost of $550 and a family would have one of $1650.

3. Positions of the Parties

Each of the parties contends that, under the statutory criteria set forth in Sec. 111.77(cm) of the MERA, the Arbitrator should find in favor of its proposal as the most reasonable. The County has addressed each of the statutory factors, and particularly the factor of internal comparability, seriatim and in considerable detail. The Association has directed its arguments principally to what it argues is the potential adverse impact of the new health insurance plan on its members, especially those who are likely to be high users of medical services, although it has also addressed several statutory factors, such as the factor of external comparability of wages, at

some length.

A. The County. The County presents a detailed analysis of what it considers the most relevant statutory factors listed in the MERA, almost all of which it contends support its position that its Final Offer is the most reasonable. The County argues in particular that considerations of internal comparability strongly support selection of its Final Offer. It points out that all of the other separate bargaining units in the County, in arms length transactions, after carefully analyzing all the factors reflected in the list of statutory criteria, have found the new health insurance plan, together with the County's wage offer and proposed 3-year contract, to be reasonable and have concluded contracts accepting the County's offer. The County stresses that, if the Association's proposal were accepted, the County would for the first time be required to administer two different health insurance plans – the old plan for the relatively few Association members and the new plan for all other County employees – as well as two different wage scales and contract terms, involving significant additional costs to the County and possible perceptions of inequity among the County's employees. The County also notes that its proposal for a 3-year contract not only conforms to an established pattern of 3-year contracts between the County and its various unions, but that, in view of the delay in concluding this contract, acceptance of the Union's 2-year contract proposal would require that the parties almost immediately return to bargaining on a further contract. The County argues, citing a number of awards, that arbitrators have generally regarded internal comparability, especially on issues of health insurance and the quid pro quo for the health insurance changes, as a dominant factor in interest arbitration.

More broadly, while the County concedes that some Association members with significant health issues will have more out-of-pocket costs under the new health insurance plan, it believes it is also the case that many Association members will reduce their out-of-pocket costs. The County points out that, under the new plan, all Association members will be saving their current 5 percent premium co-pay "off-the-top" under the new plan, irrespective of their level of usage of the health insurance benefits. Moreover, the County's more generous wage proposal will help compensate particular Association members for any increased out-of-pocket costs they may experience under the new plan due to unusual medical situations. The County further argues that, in view of the delay in settling on a new post-2001 contract, Association members have continued to be covered by the old plan for more than a year of whatever may be the term of the new contract; consequently, even if the County's proposal is accepted, the result will be that the Association members' coverage under a new contract will in effect be "split" between the old and new plans. Finally, the County contends that the Association's relatively high pay and high educational level makes the Association's members at least as well able to manage the transition to the new plan as the members of other County units, who have found the new plan acceptable.

The County also argues that the County's new health insurance plan is both fair and more reasonable from a public policy point of view. It believes that the new plan addresses the recognized problem of escalating health insurance plan by asking that employees accessing health services share some responsibility for the cost of decisions they make. In its 1999-2001 contract the Association agreed to work towards a plan design which would help reduce such insurance costs. The County developed such a plan in careful consultation with its employees

and under procedures which took their concerns and suggestions into consideration. Consequently, the County urges that it is not unfair to ask the Association members to accept the plan which all other County employees have found fair and acceptable. The County argues, citing various arbitral awards, that arbitrators have generally agreed that employees have an obligation to make cost-effective choices when utilizing health insurance services as long as the employer is not excessive or unreasonable in its expectations.

Finally, the County argues that, apart from the health insurance issue, its higher wage offer will better maintain the County's leading position as regards wages among comparable counties, thus helping to retain the high quality and low turnover of the County's enforcement personnel, and its 3-year contract offer will award what will otherwise be an immediate need for the parties to return to subsequent contract negotiations.

B. The Association. The Association contends its Final Offer is the more reasonable, focusing largely on the issue of the fairness to its members of the County's proposed change in health insurance. The Association argues that only the old health insurance plan adequately protects the Association's members from the potentially high insurance costs which it claims are inherent in the County's proposed new 3-tier plan. The Association accepts the County's claim that routine care under the new plan could be less expensive for an employee with a generally healthy family, which only visits the doctor once or twice a year. However, it claims that this scenario does not describe an average family in the Association, whose members have multiple children who have multiple colds and earaches. It emphasizes that it is more interested in protecting its members from the high health care costs associated with such ongoing medical conditions and major surgeries, which have a clear potential to cost more under the new plan. It believes that the old plan, with its low annual deductible and maximum out-of-pocket amounts, coupled with no co-payment costs for doctor visits, is preferable in that it provides both ample coverage for routine care and comprehensive protection for high volume users and those with major medical conditions. It stresses that the Association members are willing to shoulder the costs they currently incur for routine health maintenance in order to continue to benefit from the knowledge that they will be protected should any serious malady strike their families.

While the Association does not address all of the statutory factors in detail, it argues that, as regards external comparability of health insurance, the health insurance plans of the eight counties comparable to Walworth County are closer to the old plan than to the County's proposed new plan, suggesting that the bargaining units in those counties have taken views similar to those of the Association. The Association also contends that it was not bound by its 1999-2001 contract to accept a new health insurance plan but only to participate in the process of trying to develop such a plan, which it has done, and that there is no precedent requiring it to accept the County's proposal simply because other County bargaining units have found it acceptable.

As regards the wage issue, the Association argues that the County's higher proposed wage increase is not substantial enough to outweigh the potential costs to Association members of the County's proposed reduction in their health care coverage. Consequently, Association

members are willing to receive a less significant wage increase to maintain the health care coverage under the old plan, which they regard as critically important to protecting their families. Moreover, the Association argues that its more modest wage proposal is still sufficient to maintain and not erode the County's favorable wage position vis-a-vis enforcement personnel in other comparable counties, while at the same time helping to compensate the County for the increased cost of maintaining the old health insurance plan for Association members.

Finally, as to the length of contract issue, the Association argues that there has not been a historical pattern of three-year contracts in Walworth County, that past contracts have ranged from one to three years, and that under the circumstances its two-year proposal is more reasonable.

4. Statutory Criteria

Sec. 111.77(6) requires the Arbitrator to consider various listed factors in deciding which of the parties' Final Offers is more reasonable. As indicated, the County has addressed a number of these in considerable detail. The Association, while addressing some factors such as external comparability, has focused its argument more particularly on the broader factor of the comparative equity of the old and new health insurance plans. The statutory factors which appear most relevant to this matter are the following:

(1) Interest and welfare of the public and financial ability of the County to meet costs. The County argues that, while the County will not be forced into bankruptcy by paying the Association's Final Offer, its offer is more consistent with these statutory factors. It points out that taxpayers in the County have the second lowest per capita income among all the relevant comparables; that health insurance costs are absorbing a growing share of County expenses with a resultant erosion in the quality of other County services; that the County has shown fiscal responsibility in controlling its expenses and securing the fiscal viability of its health insurance fund; and that its cost-cutting efforts include a reduction in County employment (although not employment in the Sheriff's Department). In the County's view, allowing the sheriff's department employees to continue to receive a set of health insurance benefits out of line with everyone else in the County, and thereby requiring the County to shoulder a substantial amount of additional costs, is not in the interests and welfare of the public.

The Association generally argues that acceptance of its offer and continuation of the old health insurance plan is within the financial ability of the County and will better maintain the morale and stability of employment of the County's law enforcement unit.

While the Arbitrator does not regard this factor as of controlling weight in this arbitration, he agrees with the County that the rising costs to taxpayers of health insurance coverage for the County's employees is a matter of significant public fiscal concern, potentially impacting on the provision of other public services, and that the County's evidence is persuasive to the effect that it has acted responsibly in trying to control health insurance and other costs. Consequently, the Arbitrator views this factor as somewhat favoring acceptance of the County's

offer.

(2) Internal Comparability. The County argues that the factor of internal comparability, in particular, strongly supports its Final Offer. It stresses that all of the five other County bargaining units, representing nearly 600 employees, as well as the additional 250 non-represented employees, have all accepted the County's proposed health insurance plan and the three year wage package that goes along with it. The four AFSCME units accepted only the standard plan, while the Human Services Professionals opted to give their members a choice to "buy up" to more comprehensive plans, a choice also available to non-represented employees; however, all of those groups have, as their base plan, the same one proposed by the County. The County also points out that having uniform contracts and a single health plan for all County employees has been the usual "status quo" in the County. Finally, the County points to the awkwardness and additional cost of requiring it to administer several different contracts and health plans, involving different terms, wages and health benefits, and notes that arbitrators have, in particular, strongly preferred uniformity among plans in the health insurance area for a variety of reasons.

The Association concedes that other County unions and non-represented employees have accepted contracts embodying the new health insurance plan and other terms in the County's Final Offer to the Association. However, it challenges the County's assertion that there has always been uniformity among its employees in the County's health insurance plans, noting that under the old health insurance plan, the Association has itself had a somewhat different arrangement than other bargaining units, since its members have been paying five percent of the premium. It also notes that, while it agreed under the 1999-2001 contract to and did in fact participate in seeking to develop a new health insurance plan, it never committed to accepting such a new plan simply because other bargaining units agreed to do so.

The Arbitrator agrees with the County that the factor of internal comparability strongly favors its proposal. The fact that all of the other bargaining units and non-represented employees have accepted contracts embodying the new health insurance plan and other terms contained in the County's Final Offer tends to demonstrate its reasonableness; it is unlikely that all of these other employees would have accepted contract terms they believed were unreasonable or unfair. Moreover, the County's arguments for the need for uniformity in its contracts with its employees, particularly as regards its health insurance plan, are, in the Arbitrator's opinion, persuasive. As the County points out, acceptance of the Association's Final Offer would require the County to administer, not only a contract for the Association differing from those with other County units as to duration and wage increases, but, more significantly, two separate health insurance plans – the old plan for the some 70 members of the Association and the new plan for all of the almost 800 other County employees. The potential awkwardness, administrative burden, additional costs, and perceptions of unfairness which might be involved by such a situation are evident. Finally, as the Arbitrator views the evidence, the historic pattern of internal agreements in the County indicates substantial uniformity as to both the duration of contracts, the wage increases provided, and the provision of health benefits. While it is true that the Association in its 1999-2001 contract uniquely agreed to pay five percent of the premium

cost of its health insurance benefit, in exchange for a unique wage increase for Association members at that time, its members remained otherwise covered by the same health plan and benefits as the other County units and non-represented employees. However, in view of the importance the Arbitrator accords to this factor, it will be further discussed in his subsequent "overall Assessment" of the parties' arguments.

(3) External Comparability. The parties appear in agreement that the counties comparable to Walworth County for purposes of this arbitration are the following: Dodge, Jefferson, Kenosha, Ozaukee, Racine, Rock, Washington and Waukesha. Each of the parties has presented evidence as to the comparable wages, health insurance plans and benefits, and other benefits in these other counties, each arguing that this evidence supports its Final Offer.

The County contends that, as regards wages, Association members are currently the highest paid deputy sheriffs in any of the comparable counties, that the County's Final Offer will maintain them in that position, and that the Association's Final Offer would drop them to the third position in 2003 or possibly even lower in 2004. It argues that maintaining this leading position as to wages is important not only to the Association members but also to the County and the public, since the County's high wage rates compared to other comparable counties helps ensure low turnover and attract the highest quality candidates; in contrast, the Association's lower wage offer would erode this position. As regards health insurance benefits, the County contends that under either Final Offer, the Association members will remain competitive with law enforcement personnel in comparable counties, with either offer leaving the County in about the fourth or middle position among its comparables. As regards other benefits, such as its clothing allowance, number of vacation days, longevity pay, and sick leave accumulation and conversion on retirement, it presents an array of data which it believes establishes that Association members receive highly favorable benefits as compared with other comparable counties. As proof that it provides a highly competitive wage and benefit package to its employees, the County points out that, between 1997 and 2002, not a single employee quit employment with the Sheriff's Department. As regards comparability with the private sector, the County argues that, while relevant data is difficult to obtain, the evidence and testimony it has presented, unrebutted by the Association, establishes that the new health insurance plan contained in its Final Offer is closer to that offered in the local private sector than is the old plan.

The Association contends that its Final Offer is supported by a comparison with other comparable counties. It argues that its proposed wage increases will place its members in line with their comparables in other counties, retaining the County's second position in this respect; it challenges the County's claim that the County's offer would place the County in the leading position. The Association further points out that its health insurance proposal will continue to place the Association only in the midrange of comparable counties in this regard, arguing that all of the other counties provide either better or equally good plans, particularly with respect to protecting employees from the payment of excessive out-of-pocket health costs.

In the Arbitrator's opinion, as regards the issue of wages, the factor of external comparability tends to favor the County's proposal. The Arbitrator believes that the County's

higher wage offer is more likely to maintain the County's present highly competitive position vis-a-vis enforcement units in comparable counties and thus better retain the quality of its own enforcement personnel. However, as regards the issues of health insurance, the Arbitrator is not persuaded that the factor of external comparability clearly militates in favor of either one or the other party's offer; the various insurance plans are diverse, complex, dependent on the extent of need for medical services, and difficult to compare. Consequently, the Arbitrator cannot with confidence say that either the old or the new plan is more reasonable from the standpoint of comparison with those of comparable counties.

(4) Cost of Living. The County argues that this factor strongly favors its Final Offer. It points out that the Consumer Price Index has stayed generally below 3% over the last several years, and that the County's offer of a 2%/1% split in 2002, an extra 1% lift in return for acceptance of the new health insurance plan, plus 3% in each of the remaining two years of the proposed contract, exceeds that level of inflation. Moreover, according to the County's costing data, its total package Final Offer represents increases of 6%, 5.67% and 5.44% over the three years, well in excess of the CPI. It contends that the Association's Final Offer, using the same costing methodology, is over 1% higher than that each of these years. The Association has not addressed this issue in any detail in its brief.

The Arbitrator agrees with the County that this factor somewhat favors its proposal.

(5) Total Compensation. The County contends that the increase in the total compensation of Association members embodied in its Final Offer, as indicated above, also favors acceptance of its Final Offer. It argues, more particularly, that the wages offered by the County historically, and in the pending Final Offer, would permit the Association members to retain their leadership position among the comparables on wages alone; the health insurance benefits offered are competitive under either party's Final Offer; and the "extra" benefits provided by the County are among the highest in relation to those of comparable counties. Moreover, it points out that job security, continuity and stability of employment in the Sheriffs Department is extremely high; no one has quit or been fired for the last five years.

The Arbitrator agrees with the County that this factor somewhat supports its proposal.

(6) Changes in the Above Factors and Other Factors Normally Taken Into Consideration. The County argues that the Arbitrator should take into account the fact that its proposed new health insurance plan reflects broad current trends in the health insurance industry, including employers shifting more costs to workers, efforts to ensure that employees use their insurance to pay for only necessary care, and efforts to steer employees to less expensive, though equally effective, facilities. The County also calls the Arbitrator's attention to the economic cost to it of the passage of time between mediation and decision in this case and the conclusion of a new contract; it notes that, with some 70 Association members still on coverage under the old health insurance plan during the pendency of this matter, it has had to pay over $8000 per month in extra costs – costs over what it would be paying if the new plan was in effect – for every month that goes by.

The County also urges the Arbitrator to take into consideration the fact that, under the 1999-2001 contract, the Association promised to negotiate in good faith for plan design changes which would reduce health insurance costs, but, in the County's view, failed, in contrast with all of the other bargaining units to do so. It also again points out that, in terms of quid pro quo, while some Association members may have higher out-of-pocket cost under the new health insurance plan, all employees in the unit will receive the 1% wage lift, all will stop paying the 5% premium share they have previously been paying and most will get preventive care at a lower cost than under the old health insurance plan.

The Arbitrator believes that the question of the broad reasonableness and equity of the County's proposed new health insurance plan is certainly at issue in this matter and will also be further discussed in the Arbitrator's assessment which follows.

5. Overall Assessment

As the previous discussion indicates, the Arbitrator believes that, on balance, most of the relevant statutory factors – interest and welfare of the public, financial ability of the County, internal comparability, external comparability as regards wages, cost of living, and total compensation – tend to favor selection of the County's Final Offer rather than that of the Association. Only with respect to the factor of external comparability regarding health insurance plans does the Arbitrator believe that the parties' proposals are fairly equally balanced. However, several issues emphasized by one or the other party deserve fuller discussion.

First, the Association's principal challenge is to the reasonableness and equity of the County's proposed change from the old to the new health insurance plan. As previously discussed, the Association claims that, while routine care under the new plan could be less expensive for an employee with a generally healthy family, it would offer less protection and could be more expensive for those Association members who may be high volume users or experience major medical conditions. The County, on its part, concedes that some Association members with significant health issues may have more out-of-pocket costs under the new health plan, but argues that many Association members will reduce their out-of-pocket costs. The County also points out that, under the new contract, all Association members as a quid pro quo will not only save their current 5 percent premium co-pay but will also receive an additional percentage wage increase to compensate for any such increased costs. The County also notes that Association members are well-paid – on average the highest paid – of County employees and consequently are better able than other employees to absorb any unusual expenses if they should occur. Finally, the County contends that the need for public and other employers to address the problem of rising employee health insurance costs – in particular, by asking employees to help share more of these costs and by educating and inducing them to make most cost effective choices when utilizing health insurance services – has been widely recognized. The County argues that its attempt to respond to this problem has been "reasonable and measured".

The Arbitrator finds the County's position in this respect persuasive. While the Arbitrator recognizes the Association's concerns, he believes that the County has, as it contends, taken a "reasonable and measured" response to the widely-recognized problem of escalating health insurance costs. Thus, the County early secured commitments from its employees, including the Association, to seek to develop a new plan which would reduce such costs; it fully involved its employees, including the Association members, in the design of a new plan; it developed a plan which, in the Arbitrator's opinion, appears reasonable and consistent with trends in the industry; and it obtained approval of the new plan by all County employees save the Association members. As the County points out, at least several respected arbitrators have agreed that employees have an obligation to make cost-effective choices when utilizing health insurance services as long as the employer proposes a plan which is not excessive or unreasonable. See, e.g., *City of Waupun (Public Utility)*, Dec. No. 29465 (Michelstetter, 1999); *City of Whitewater (Professional/Clerical)*, Dec. No. 29537-A (Michelstetter, 1999); but see *Wittenberg-Birnamwood*, Dec. No. 29375 (Vernon, 1999).

It appears true, as the Association argues, that the new health insurance plan could involve somewhat higher out-of-pocket expenses than would the old plan if particular Association members had special medical problems which involved special problems and many medical visits. But, while the Association claims many of its members may be in this situation, its evidence to this effect is primarily anecdotal. Moreover, the evidence is persuasive that, under the new plan, many members with few or more routine medical needs are likely to be as well or better off than under the old plan. Moreover, as the County argues, all Association members will be better able to meet any increased out-of-pocket cost, should it occur, since they will all be receiving, as a quid pro quo for the change to the new plan, not only the cancellation of their 5 percent premium co-pay under the old plan but also an additional one percent pay increase – all of this on top of a wage scale that already places the unit's member amongst the highest in the County and their law enforcement peers in comparable counties. Finally, under the proposed 3-tier plan, it would in any case appear open to members having special health insurance needs to "buy-up" to a higher tier of coverage to reduce any such risks. Consequently, the Arbitrator is not persuaded that the change from the old plan to the new plan poses any unique unfairness for Association members as compared with other County employees.

Second, the County urges the Arbitrator to regard the statutory factor of internal comparability as, under the circumstances of this case, the most significant and weighty of the statutory factors and as thus especially strongly supporting selection of its Final Offer. The County contends that the fundamental question in this case is whether a wage and health insurance package accepted by every other County bargaining unit – nearly 600 County employees in all – as well as by the non-represented employees of the County, should also be accepted by the some 70 current members of the Deputy Sheriff's Association. It argues that arbitrators have generally agreed that an established pattern of bargaining among an employer's internal units is the single most important factor in evaluating the appropriateness of Final Offers, particularly as regards issues of health insurance, and that a pattern of such arms length, voluntary settlements in effect already takes into account all of the relevant statutory factors the Arbitrator is required to consider and in itself demonstrates the reasonableness of a proposal

conforming to that established pattern.

The County in its brief cites a number of arbitral decisions in support of its contention. For example, in *City of Appleton (Police)*, Decision No. 25636-A (4/89), Arbitrator Vernon stated:

> "In municipalities that have a number of different bargaining units, the internal pattern of settlements – if one exists – deserves a great deal of attention: this is well-established and the reasons have been well expressed by arbitrators across the state. A pattern of consistent increases agreed to by various bargaining units is a collective consensus of the appropriate influence all the various statutory criteria should have as a whole relative to the particular economic circumstances in any city. It is really a good yardstick for the proximate mix of all the factors as it subsumes all of them. As such, the internal pattern is more persuasive than any single other criteria."

The County points out that Arbitrator Torosian relied on that case, as well as the logic behind it, in awarding the employer's Final Offer in *City of Wausau (support/technical)*, Decision No. 29533-A (11/99). After quoting Arbitrator Vernon, Arbitrator Torosian explained that the five Labor Agreements in the City were virtually the same, and there was an historical and traditional internal consistency among those units on the issues of wages and health insurance, and, with particular attention to the issue of uniformity of health benefits, stated:

> "The need for uniform benefits in the area of health insurance is vitally important. Some municipal employees have as many as 15-20 collective bargaining units, each with its own Collective Bargaining Agreement. To allow each unit to alter its total package with respect to health insurance benefits and the level of premium contribution, if any, by its employees, would make the administration of a health insurance program more difficult and raise a fairness issue among its employees." (at p.130)

Arbitrator Torosian cites in support of his view other arbitration decisions including *Winnebago County*, Decision No. 26494-A (Vernon, 1991) ("significant equity considerations arise when one unit seeks to be treated more favorably than others"); *Greendale School District*, Decision No. 25499-A (Malamud, 1989) ("the employer demand for consistency in benefits as expressed through its Final Offer is accorded great weight by this Arbitrator"); *Dane County (Sheriff's Department)*, Decision No. 25576-B (Nielsen, 1989) ("In the area of insurance benefits, a uniform internal pattern is particularly persuasive. . . . External comparables will not generally have a great weight in disputes over the features of an insurance plan"); and *Columbia County (Healthcare)*, Decision No. 28960-A (Kessler, 1997) ("particularly in the administration of health insurance benefits, a government should be treating all of its employees the same"). See also, e.g., *City of Waupun*, Decision No. 29463-A (Grenig, 1999); *Sauk County (Highway Department)*, Decision No. 29516-A (Boyer, 1999); *City of New Berlin*, Decision No. 29683-A (Dichter, 2000).

The County also argues that the otherwise uniform acceptance of the County's proposed new health insurance plan, in place of the old plan, by all of the other County unions is persuasive evidence that there was a need for such a change, that the new plan reasonably addressed its need, and that the County has provided a sufficient *quid pro quo* for this change. Further, the County argues that Association members will in fact receive more of a quid pro quo for the change than will other County employees since they will no longer have to pay 5 percent of health insurance premiums, although they will continue to benefit from the past wage increase they received in 1998 in exchange for assuming that 5 percent insurance premium. Finally, the County argues that other arbitrators have indicated that there is a declining need for a quid pro quo as more and more unions voluntarily sign on to such a change, and that a "lone holdout" union should not be able to demand more than its fellow unions. Thus, in the *City of New Berlin*, Decision No. 29683-A (2002), Arbitrator Dichter, first points out that "many interest arbitrators have found that they are inclined to look towards internal comparables where a clear pattern of voluntary settlements exist. This is particularly true when the issue involves benefits", and goes on to note that, under the "lone hold out" concept "arbitrators are reluctant to reward a union that holds out when all others have argued to a provision, particularly where the issue in dispute concerns a benefit" (at p.18). See also *Columbia County Healthcare Center*, Decision No. 28960 (Kessler, 1997); *City of Oshkosh*, Decision No. 28284 (McAlpin 1995). And in *Pierce County (Human Services)*), Decision No. 28186-A (Weisberger, 1995). Arbitrator Weisberger stated:

> However, the County's emphasis on the fact that its health insurance proposal has been voluntarily accepted by all other County bargaining units (except the law enforcement unit represented by the Teamsters) is a forceful argument. The County's argument is particularly effective since it is made against . . . the County's related argument, supported by substantial arbitral authority, that increasing health care costs paid by an employer reduced significantly or even eliminate the usual burden to provide special justifications and a *quid pro quo*.

See also *Manitowoc County (Human Services)*, Decision No. 29441 (Roberts, 1999).

The Arbitrator finds himself fully in accord with the views of Arbitrator's Vernon, Torosian, Dichter, Weisberger and the other arbitrators cited by the County, and agrees with the County that, for the reasons well-expressed by these respected arbitrators, the factor of internal comparability deserves particular weight in this arbitration. Since, as previously indicated, the Arbitrator has already found that the factor of internal comparability strongly favors the County's proposal, this conclusion that the factor of internal comparability should be accorded particular weight in this arbitration serves to reenforce the Arbitrator's judgment that the County's Final Offer is, overall, the most reasonable and should be selected.

6. Conclusion

As indicated in the above analysis of the parties' proposals in relation to the relevant

statutory criteria, and in his overall assessment of this matter, the Arbitrator is of the opinion that the statutory factors preponderantly favor selection of the Final Offer of the County rather than that of the Association. Consequently, the Arbitrator concludes that, for the above reasons, the County's Final Offer is the more reasonable and should be selected.

## AWARD

Based upon the statutory criteria contained in Section 111.77(4)(cm)7, the evidence and arguments of the parties, and for the reasons discussed above, the Arbitrator determines that the Final Offer of Walworth County is the more reasonable, and directs that it, along with all already agreed upon items, and those terms of the predecessor Collective Bargaining Agreement which remain unchanged, be incorporated into the parties January 1, 2002 to December 31, 2004 Collective Bargaining Agreement.

Madison, Wisconsin
April 15, 2003

Richard B. Bilder
Arbitrator