ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between CITY OF MARINETTE (Firefighters) And MARINETTE FIREFIGHTERS, LOCAL 226 INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO	**Decision No. 30771-A** Case 92 No. 62466 MIA-2534

Impartial Arbitrator

William W. Petrie
217 South Seventh Street #5
Post Office Box 320
Waterford, Wisconsin, 53185-0320

Hearing Held

July 29, 2004
Marinette, Wisconsin

Appearances

For the Employer	GODFREY & KAHN, S.C. By John Haase, Esq. 333 Main Street, Suite 600 Post Office Box 13067 Green Bay, WI 54307-3067
For the Association	INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS By Patrick A. Kilbane 5th District Field Service Rep. 6847 East County Road Milton, WI 53563

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the City of Marinette, Wisconsin and the Marinette Firefighters Association, with the matter at issue the terms and conditions of a two year renewal labor agreement covering January 1, 2003 through December 31, 2004. After the parties had failed to reach full agreement in their contract negotiations, the Association on June 12, 2003, filed a petition with the Wisconsin Employment Relations seeking final and binding interest arbitration pursuant to Wisconsin's Municipal Employment Relations Act. After an informal investigation by a member of its Staff, the Commission issued certain findings of fact, conclusions of law, certification of results of investigation and an order requiring arbitration on January 22, 2004, and on March 4, 2004, it issued an order appointing the undersigned to hear and decide the matter.

A hearing took place in the City of Marinette on July 29, 2004, and both parties received full opportunities to present evidence and argument in support of their respective positions, and each thereafter closed with the submission of post-hearing briefs and reply briefs, after which the record was closed effective October 26, 2004.

THE FINAL OFFERS OF THE PARTIES

In the two final offers, hereby incorporated by reference into this decision, the parties propose as follows:

(1) The *Employer's final offer* contains the following proposed changes.

(a) Replacement of paragraphs a-i of *Article 14*, entitled Hospitalization Plan - Insurance, with language agreed upon by the parties, effective January 1, 2004.

(b) Creation of a Health Reimbursement Account for each full-time employee enrolled in the City's health insurance plan, with Employer contributions in the amounts of $250 per year for single plan and $500 per year for family plan participants, effective January 1, 2004.

(c) Modification of Appendix A - Wages to provide for the following across-the-board wage increases: 1.5% effective January 1, 2003; and 2.35% effective January 1, 2004.

(2) The *Association's final offer* proposes the following described changes.

(a) Replacement of paragraphs a-i of *Article 14*, entitled Hospitalization Plan - Insurance, with language agreed upon by the parties, effective January 1, 2004.

(b) Creation of a Health Reimbursement Account for each full-time employee enrolled in the City's health insurance plan, with Employer contributions in the amounts of $350 per year for single plan and $1,100 per year for family plan participants, effective January 1, 2004.

(c) Modification of the existing dental insurance to provide a City contribution of 75% of the premium costs for either single or family plans, with an employee contributing 25% of these costs, effective January 1, 2004.

(d) Modification of Appendix A - Wages to provide for the following across-the-board wages increases: 3.3% effective December 31, 2003; and 2.85% effective January 1, 2004.

THE ARBITRAL CRITERIA

Section 111.77(6) of the Wisconsin Statutes provides that the Arbitrator shall give weight to the following arbitral criteria in reaching a decision, selecting the more appropriate final offer, and rendering an award in these proceedings:

"a. The lawful authority of the 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 these costs.

d. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(1) In public employment in comparable communities.

(2) In private employment in comparable communities.

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

f. The overall compensation presently received by the employees, 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.

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

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

THE POSITION OF THE ASSOCIATION

In support of the contention that its final offer is the more appropriate of the two final offers, the Association emphasized the following summarized, principal considerations and arguments.

(1) That the *primary external comparables* for these proceedings should consist of the cities of Allouez, DePere, Kaukauna, Sturgeon Bay and Two Rivers, which cities were selected and used in the parties only prior interest arbitration.[1]

(a) The cities proposed by the Employer, Antigo, Kaukauna, Merrill, Rhinelander, Sturgeon Bay and Two Rivers, were not used by the parties for comparison purposes during negotiations, and the City of Antigo had been dismissed by Arbitral Michelstetter in his earlier decision.

(b) In the other arbitrations in which the employer has been involved, no consistent set of comparables has been utilized.[2]

(c) Even if the Employer recommended comparables are determined to be adequate, the Employer has not submitted enough information on the overall wages and benefits packages of their firefighters, to appropriately compare them with Marinette; in this case, it uses only the base wages, longevity, pension contributions and the costs associated with health and dental insurance.

(d) The Union has provided a more extensive examination of its recommended comparables, as required by the statutory criteria.[3] The Union proposed comparables are close to Marinette in average number of firefighters per population, average net county tax rates, average tax rate per $1,000 of assessed valuation, and per capita personal income.[4]

(2) That arbitral consideration of *the internal comparables* favors selection of the final offer of the Union in these proceedings.

(a) None of the six bargaining units in the City of Marinette have settled during these proceedings. Three of these units are in final and binding arbitration, the Employer had made the same wage offer to each, and the Union's wage offer is the most affordable, due to the 12/31/03 effective date of its proposed 2003 wage increase.[5]

---

[1] Citing the *decision of Arbitrator Stanley Michelstetter* in International Association of Fire Fighters, Local 226 -and- City of Marinette, Decision No. 27642-A (April 12, 1994).

[2] Citing the contents of Employer Exhibit 31.

[3] Citing the contents of Union Exhibit 2 and Employer Exhibit 11.

[4] Citing the contents of Union Exhibits 4, 5 and 7.

[5] Citing the contents of Employer Exhibit 57.

(b) The City Employees, Police and Firefighters have all agreed to the Employer's new PPO plan and have included this language in their final offers, with the only issue remaining the level of Employer funding of the Health Reimbursement Accounts (HRAs).[6] The City Employees unit has proposed HRA at the level of $400 for single and $1,000 for family plan participants, the Police unit at levels of $500 and $1,250, respectively, and the Union final offer herein proposes $350 and $1,100, respectively, all of which are relatively close.

(c) The City Employees, Police and the Union have all included the same offers regarding dental insurance, i.e., an increase in Employer paid dental insurance premiums from 45% to 75%.[7]

(3) That the position of the Union is favored by arbitral consideration of the *overall level of compensation criterion*.

(a) Four of the five comparables urged by the Union provide *Dental Insurance*, three provide coverage equivalent to that provided by Marinette, Marinette pays less per month than two of the four and more than the remaining two, and in three of the four Marinette Firefighters pay more for dental insurance.[8]

(b) In the areas of *Health Insurance*, two of five comparables offer a traditional plan and three offer a PPO plan: average monthly premium contributions for family plans average $79.95, and firefighters here have agreed to pay $56.50 per month for family plans with the institution of the 5% premium co-pay; average out-of-pocket expenses for the PPO family plans is $600 in-network and $934 out-of-network, and the Union here proposes $400 in-network and $1,400 out-of-network, while the Employer offers $1,000 in-network and $2,000 out-of-network.[9] Although the Employer relies upon a recent history of increases in family plan health insurance costs, the implementation of the new PPO plan reduces recent increases.[10]

(c) All of the comparable cities offer *retiree health insurance*, and the average benefit is significantly higher than that received by Marinette Firefighters.[11]

(d) All of the comparable cities have *sick leave benefits*, and while their annual accrual rate is competitive, Marinette Firefighters have a 26% lower than average maximum accrual of sick leave, and a lower than average annual cash payment for employees who do not use any sick leave.[12]

---

[6] Citing the contents of Employer Exhibit 36.

[7] Citing the contents of Employer Exhibits 3, 13 and 16.

[8] Citing the contents of Union Exhibit 17 and Employer Exhibit 54-A.

[9] Citing the contents of Union Exhibit 18.

[10] Citing the contents of Employer Exhibit 33.

[11] Citing the contents of Employer Union Exhibit 19.

[12] Citing the contents of Union Exhibit 20.

(e) Marinette Firefighters have *fewer vacation days* over a 25 year career, than the average among the comparables.[13]

(f) Marinette Firefighters receive *lower annual cash payments for holidays*, than the average among the comparables.[14]

(g) Marinette Firefighters with 20 years of service, receive *annual payments for longevity*, significantly higher than the comparables.[15]

(h) Marinette Firefighters may elect to receive compensatory time in lieu of cash overtime at the rate of time and one-half for hours worked, with the number of hours of compensatory time capped at 480, of which 240 hours may be cashed out each calendar year.[16]

(i) Marinette Firefighters receive an *annual $550 uniform allowance*, which is $205 above the average of the comparables.

(j) Marinette Firefighters receive either *cash payments or compensatory time for attendance at required or approved schooling and training*, as do the comparables.[17]

(k) In consideration of fringe benefits as a whole, Marinette Firefighters receive about $2,430 less in wages and benefits each year, than the average of the comparables.

(4) That the various impasse items in these proceedings are described below.

(a) That the *wage increases* proposed by the City and the Union provide 3.85% and 6.15% lifts during the term of the agreement, but their costs do not significantly differ because of the effective dates of the Union proposed wage increases.

(i) That when the 2003 wage increase cost is added to 2004, thus correcting the Union's exhibit, the total cost differential between the two final wage offers is $5,551.74.[18]

(ii) That the Employer's calculations and data listed in its exhibits are based upon a 40 hour workweek and 2,080 hours per year, rather than a 56 hour workweek and 2,912 hours per year, thus overstating hourly rates by approximately 40% per year.[19]

---

[13] Citing the contents of Employer Union Exhibit 21.

[14] Citing the contents of Employer Union Exhibit 22.

[15] Citing the contents of Union Exhibit 23.

[16] Citing the contents of Union Exhibit 24.

[17] Citing the contents of Union Exhibit 26.

[18] Citing the contents of Union Exhibit 14, and corrections thereto.

[19] Referring to the contents of Employer Exhibits 5-10, and to Article 8 of the labor agreement.

(iii) The Employer provided data also contains other errors: it lists a FICA cost of 7.65% for all employees of the Fire Department, but they are in the *Protective Service without Social Security* category of the Wisconsin Retirement System, and the City does not make this contribution; because of changes in the law in 1986, the City must make 1.45% contributions to the Medicare System only for the five employees hired after 1986, rather than the larger sum listed in its exhibits; the actual cost of the Union's 2003 wage increase proposal should be reduced to show that it applied to only a single day;

(iv) There has been a deterioration of the percentage wage increases and the wage rankings of the Marinette Firefighters, relative to the comparable cities between 1992 and 2004. That this is apparent under either the Union or the City proposed primary external comparables.

(v) While the Union has no problem with the Employer including longevity payments in its calculations, it is only one of many fringe benefits that must be examined to determine a complete wage and benefits package.

(vi) That the Employer's comparison, using wages, longevity and health insurance costs, incorrectly shows 2004 increases of 5.99% under its offer and 6.54% under the Union's offer; the actual cost increases from 2003 to 2004 should be 0.66% under the City's offer and 2.1% under the Union's offer.[20] That Marinette Firefighters are actually 6.09% behind the comparable average increase under the Employer's offer and 4.65% behind the comparable average increase under the Union's offer.

(b) That the *health reimbursement account funding* proposals of the parties should be considered in light of the following considerations.

(i) The Union seeks a funding level that is $100 higher for single plan participants and $600 higher for family plan participants than that proposed by the Employer.

(ii) That consideration of the total possible cost increases to employees for the PPO plan, under the final offers, must be considered in connection with this impasse item.[21]

(c) That the *dental insurance premium contribution levels* proposed by the parties should be considered in light of the following considerations.

[20] Citing the contents of Employer Exhibit 61-A.

[21] Citing the contents of Union Exhibit 15, pages 1-2.

(i) The Union proposes to increase the Employer share of monthly dental insurance premiums from 45% to 75%, and to apply the same contribution level for single coverage.[22]

(ii) The additional cost to the Employer would average $333.83 per year per employee, which is justified as a *quid pro quo*, despite the City's denial of the necessity for such a *quid pro quo*.[23]

(d) That while the Union does not believe that the Employer has any intention of not continuing to offer a Section 125 plan, it prefers to include language in the agreement to preserve this status quo.

(5) The arbitral consideration of *movement in the consumer price index* since 1994, favors selection of the final offer of the Union in these proceedings.[24]

(a) That cumulative wage increases since 1995 for Marinette Firefighters under the Employer's final offer would be 24.85%, and 27.15% under the Union's final offer.[25]

(b) That the history of wage increases during the above period have not been out of line with the CPI and, accordingly, that the Union's wage proposal for 2003 and 2004 is appropriate.

(6) That the *ability to pay considerations* relied upon by the Employer should not preclude adoption of the final offer of the Union in these proceedings.

(a) At the hearing Mayor Oitzinger testified to budget difficulties over the past few years, and referred to increased health care costs, reductions in shared revenues, increased personnel costs such as wages and pension contributions, and noted that 2004 had been a particularly difficult year with a projected deficit of nearly $1 million.

(i) He noted that the City Council had approached the problem with the goal of not raising taxes, had surveyed the public on how to solve the problem, had developed a plan that included employee layoffs, shifting hydrant fees, use of surplus monies, reducing capital spending, raising fees, and imposing lower health care costs on non-represented employees.

(ii) He added that the budget had been balanced without raising taxes, and that taxes had not been raised for three consecutive years.[26]

---

[22] Citing the contents of Union Exhibit 16.

[23] Citing the contents of Union Exhibit 8.

[24] Citing the contents of Union Exhibits 9 & 10.

[25] Citing the contents of Union Exhibit 11.

[26] Citing the contents of Employer Exhibit 76, page 3.

(iii) He testified to his concern about the City's ranking on municipal taxes, noted that it had gone from 4th highest in the state to 69th highest, among 190 cities in Wisconsin.

(iv) A graph showing Marinette Property Tax Mill History from 1998 to 2004, shows that the City has had a stable tax rate since 2000, the first year of a considerable rate reduction.[27]

(b) The Union is not unsympathetic to the Employer's concerns about its budgeting difficulties.

(i) It attempted to address its concerns by making an offer which did not cost significantly more than the Employer's offer, and agreed to accept the same health insurance plan imposed upon non-represented employees, except for the funding of the HRA; although proposing a higher level of funding for the HRA, this proposal is still a reduction in the amount of reimbursement for out-of-pocket expenses the Employer is paying on the present plan, and represents considerable cost savings.

(ii) In return for helping the City meet its budget crisis, however, it seeks an increase in the City's contribution rate for dental insurance as a appropriate *quid pro quo*.

(iii) While the Employer may feel that its goal of not raising taxes outweighs the cuts in the workforce necessary to achieve that goal, at some point it will have to address the reality of an approach, and it is in the best interest and welfare of the public to do so.

(iv) It urges that the Union has made a good faith effort to assist the Employer with its budgetary concerns by making affordable proposals in its final offer, and urges that the City has the ability to meet the costs of the Union's offer without severely impacting upon the budget.

(7) That the Employer should be required to provide a *quid pro quo* to justify the Union's agreement to changes in health insurance.

(a) That no negotiated internal pattern exists to support the City's contention that no quid pro quo is required in support of the changes in health insurance. While it has been imposed by the City upon its non-represented employees, none of the six bargaining units has agreed to the change without an accompanying *quid pro quo*.

(b) Where arbitrators are presented with proposals for a significant change in the status quo, they determine if the proposing party has demonstrated a need for the change, whether the proposal reasonably addresses the need, and, if so, whether the proposing party has provided an appropriate *quid pro quo?* [28]

---

[27] Citing the contents of Employer Exhibit 76, page 4.

[28] Citing the following principal arbitral decisions: *Arbitrator Malamud* in City of Verona (Police Department), Dec, No. 28066-A (12/94), and in D.C.

Everest Area School District, Dec. No. 26678-A (2/88); *Arbitrator Krinsky* in City of Plymouth (Police Department), Dec. No. 24607-A (12/87); *Arbitrator Bilder* in Lafayette County (Highway Department), Dec. No. 24548-A (10/87); and *Arbitrator Reynolds* in Adams County, Dec. No. 24579-A.

(c) It cited and discussed in detail various other arbitral decisions which it urged in support of its demand for a quid pro quo in these proceedings.[29]

(d) That while it does not have to be of equal value, a quid pro quo must be accorded the other party in cases such as the one at hand.

(8) That the arguments in support of the position of the Union in these proceedings are summarized as follows.

(a) The Employer proposed four significant changes in health insurance to the Union in the negotiations process: *first*, changing the present plan to a PPO plan; *second*, providing for employee premium contributions of 5%; *third*, increases in deductible amounts and co-payments; and, *fourth*, a reduction in the amount of reimbursement to employees for out-of-pocket expenses (Health Reimbursement Account funding). It maintained that the proposal was necessary to rein in escalating costs in health insurance and to ease other budgeting difficulties, it took the position that no quid pro quo was needed to make these changes, and it failed to offer one.

(b) The Union, not unsympathetic to the Employer's concerns, agreed to address changes in health insurance and the parties reached agreement on the first three proposed changes.

(i) The fourth change, while agreed to in principle, left the level of funding to arbitral determination.

(ii) The Union also insisted that a quid pro quo be made for the changes, and proposed that the Employer offset some of the new costs to the Union by picking up a greater share of the dental insurance premiums.

(iii) The Union did not seek a dollar for dollar offset, and the Employer will still realize significant savings from the present costs of health insurance by its ability to reduce monthly premiums and by shifting 5% of the costs to the employees, and reducing the offset for out-of-pocket expenses.

(iv) The Union is not proposing to change the status quo of the dental insurance, and it could be said that it has offered the Employer a substantial quid pro quo for the change in dental insurance premiums by accepting the changes in health insurance.

(c) The *Union's wage proposal* clearly demonstrates that it understood and dealt with the Employer's financial concerns

---

[29] Citing and discussing the following additional arbitral decisions: *Arbitrator Vernon* in Elkhart Lake-Glenbeulah School District, Dec. No. 26491-A (12/90); *Arbitrator Yaffe* in Hawkins School District, Dec. No. 26897-a (11/91); *Arbitrator Kessler* in Columbia County (Health Care Center), Dec. No. 28960-A (8/97); *Arbitrator Petrie*, the undersigned, in Town of Beloit (Police Department), Dec. No. 3022-A (4/97), and Town of Beloit (Waste Water, Road and Clerical), Dec. No. 30219-A (4/02); *Arbitrator Malamud* in Glidden School District, Dec. No. 27244-A (10/92); *Arbitrator Callow* in Village of Bayside (Police and Fire), Dec. No. 29456 (7/99); and *Arbitrator Torosian* in Oconto Unified School District, Dec. No. 30295-A (10/02).

at the bargaining table.

(i) It does not cost significantly more over the life of the agreement than the wage proposal of the City.

(ii) Its proposal will result in a higher lift at the end of the contract, thus preventing Marinette firefighters from falling further behind firefighters in comparable cities.

(iii) The Employer has provided insufficient data about the total wage and benefit packages of the firefighters in its recommended cities.

(d) The Section 125 plan issue should be found in favor of the Union. It is not a new issue between the parties, but merely an inclusion of a long standing practice of the Employer to offer a Section 125 plan to employees.

(e) The Union does not urge that the Employer has attempted to impose too much too fast with its health insurance changes. It does offer, however, that it has failed to offer the requisite *quid pro quo* for such changes, which will cause further deterioration of the status of its firefighters with those in other cities.

(f) The Arbitrator must select the final offer of one of the parties, and has the burden of determining which of the offers is closest to what they would have or should have agreed to during the negotiation process.

(i) The Employer's final offer addresses its financial concerns, but does so to the extent that it is overly detrimental to the Union.

(ii) The Union's final offer also addresses the financial concerns of the Employer but does so in a manner that attempts to maintain the present standing with the comparables.

(iii) It submits that the Union's final offer is the fairest, and that it most closely resembles the settlement that should have been reached at the bargaining table.

On the basis of all of the above, the Union asks that the Arbitrator select its final offer in these proceedings.

In its *reply brief*, the Union emphasized, reemphasized and expanded upon the following, generally described considerations.

(1) That it is fully aware that the Employer faced a decrease in revenues going into negotiations, but its woes are significantly self-imposed, in that it had not raised taxes in three years and with property taxes accounting for a large percentage of its revenues it has capped its revenue stream, and it now finds itself in arbitration in three of its bargaining units and with no voluntary agreements reached with the remaining three.

(a) The Union accepted the Employer's changes in health insurance, and presented it with an affordable final offer that should have satisfied its demands at the bargaining table.

(b) Its final offer is the most affordable of the three final offers currently involved in arbitration.

(2) The Union provided a synopsis of three critical issues: *first*, the Health Reimbursement Account; *second*, the dental insurance; and, *third*, the wage rate adjustments.

(a) In connection with the *Health Reimbursement Account issue* it generally urges as follows.

(i) The health plan changes are merely a cost shifting from the Employer to its employees, and nothing in the changes actually reduces the cost of health care.

(ii) The Employer offer setting the level of funding for HRA family plans at $500 does little to offset increased costs. Even the Union proposed HRA family plan contribution of $1,100 shifts costs to employees in significant amounts.

(iii) The Union's final offer is not an additional cost to the Employer, but merely a difference in the amount of costs shifted to the employees; the Employer is going to save significant amounts of money even under the Union's final offer.

(b) In connection with *the dental insurance issue*, it generally urges that the Union's proposal would both equalize the premium contribution rate between single and family coverage, and provide the requisite *quid pro quo* for the health insurance changes.

(c) In connection with *the wage rate adjustments* issue, it generally urges as follows.

(i) As noted above, the Employer must accept a portion of the blame for its budget woes.

(ii) The Employer has presented a final wage offer which asks the arbitrator to give it what it couldn't get at the bargaining table.

(iii) The Union's final offer absolutely takes budgets into consideration, as it provides the Employer with a near zero wage increase cost for 2003, in addition to future savings in health insurance costs; it made its wage request in terms of percentage increases in line with external comparisons.

(iv) While the Employer urges that the Union seeks to gain too much, the health insurance changes, coupled with a sub-par wage increase and no quid pro quo is financially devastating to the Union.

(3) In addressing *the composition of the primary intraindustry comparables*, it reiterated and reemphasized various arguments already dealt with in detail.

(4) It reviewed and compared virtually all currently existing fringe benefits on the basis of the Employer urged intraindustry comparables, including *dental insurance*, *health insurance*, *retiree health insurance*, *sick leave*, *vacations*, *holidays*, *longevity*, *overtime*, *uniform allowances* and *education/training*.

(5) It revisited the matter of wage comparisons, submitting that Marinette firefighters are losing ground under either the Union proposed or the Employer proposed comparables.

(a) In reviewing the wage comparison data submitted by the Employer it submits as follows.[30]

(i) The maximum annual salary of the Marinette firefighters in 2001, $38,763.41, was $2,543.778 over the average of the Employer proposed comparables and ranked at the top of this group; in 2002 this maximum annual salary was $39,538.68, $1,716.88 above the comparables and ranked number three in the group.[31]

(ii) The maximum annual salary of the Marinette firefighters offered by the Employer for 2003, $40,131.76, would be $815.27 over the average of the Employer proposed comparables and would retain the third ranking in the group. The Union's final offer, $40,843.46, would represent a salary $1,526.97 over the average comparables, and would return them to the second ranking; it would, however, reduce the amount above the average by approximately $200, even though the Union's offer did not take affect until 12/31/03.[32]

(iii) The maximum annual salary of the Marinette firefighters offered by the Employer for 2004, $41,074.86, would be $127.07 over the average of the Employer proposed comparables and would drop them to fourth ranking in the group. The Union's final offer, $42,007.50, would represent a salary $1,059.71 over the average comparables, a drop of about $500 in such excess, and would keep them at the second ranking.[33]

(b) The Employer's own data, therefore, shows how detrimental its final offer is to the Union, and illustrates why it wants to add longevity benefits to the Marinette firefighters' salary and to ignore all other fringe benefits. At the rate proposed by the Employer Marinette firefighters will be at the bottom of the list in another three years, but this pattern must stop.

---

[30] In the latter connection, referring to revised Employer Exhibits 58, 59 and 60-A, submitted with its initial brief.

[31] Citing the contents of Employer Exhibit 58.

[32] Citing the contents of Employer Exhibit 59.

[33] Citing the contents of Employer Exhibit 60-A.

(6) It characterized the Employer's *quid pro quo* based arguments as inconsistent, essentially reemphasized arguments previously discussed, and discussed in detail its reliance on an arbitral decision particularly emphasized in the City's initial brief.[34]

(7) It submitted that the Employer's arguments based upon internal consistency are misplaced, in that there is no negotiated internal pattern for it to rely upon.

(8) It emphasized that the undersigned must select one of the final offers in its entirety, must consider all the statutory criteria, and must decide which will be given the most weight. In so doing it urges that the Union has presented the relevant data needed to reach a decision, has applied arbitral standards in a consistent manner, and has presented the fairest final offer. Accordingly, it asks that the Union's final offer be selected in these proceedings.

THE POSITION OF THE CITY

In support of the contention that its offer is the more appropriate of the two final offers, the City emphasized the following principal considerations and arguments.

(1) Implementation of the Association's final offer would place unjustifiable pressure on the City's already wavering budget.

(a) Section 111.77 of the Wisconsin Statutes requires that the Arbitrator consider the budgetary impact of the two final offers, in that the impact of the local municipal employer's budget certainly falls within the guidelines of the "interest and welfare of the public" criterion. With declining state aids and attendant budget cuts, Marinette can no longer pay any salary demand without recognizing its impact on the local budget.

(b) At the hearing, Mayor Oitzinger highlighted the budget crisis, including the real need for controlled spending, how the Union's final offer impacts this equation, and the City's initial projection of a $1 million deficit for 2004. He additionally noted that if the Association's proposal were implemented, the City would be faced with the need to make additional cuts elsewhere in the system. The City is not, however, making an *inability to pay* argument.

[34] Referring to the *decision of Arbitrator Krinsky* in Whitefish Bay School District, Dec. No. 27513-A (7/93).

(c) It cites various Wisconsin interest arbitration decisions in support of the above referenced considerations.[35] Marinette has not proposed the extreme wage freezes presented in the cited cases, but rather has offered modest wage increases and generous total package increases in its contract negotiations, and has employed other cash saving mechanisms in order to avoid a budget deficit.

(d) If the Association's final offer is selected, the City will have to determine what additional cuts need to be made, in order to absorb the costs into the budget, as Mayor Oitzinger's testimony confirmed, quite simply that the dollars are not there.

(2) The City proposed comparable pool is more relevant than those communities proposed as comparable by the Association.

(a) The history of interest arbitration proceedings between the City of Marinette and its various bargaining units, was considered in framing its recommendation.[36]

(b) In the single prior arbitration between the City and the Firefighters Association, Arbitrator Michelstetter selected a comparable pool only "...for the purposes of this award."[37] It was troublesome that he used the Village of Allouez and the City of DePere, as both communities are part of the Green Bay metropolitan area.

(c) The traditional criteria considered by arbitrators and parties in determining the makeup of primary internal comparables were utilized in determining that the Cities of Antigo, Kaukauna, Merrill, Rhinelander, Sturgeon Bay and Two Rivers should be the primary external comparables.[38]

(3) The Association's proposed *levels of single and family health reimbursement generate continued Employer health care costs that are far greater than the comparable average*.

(a) One of the most troubling components of the Association's final offer is its proposed *levels of employer contributions to each employee's Health Reimbursement Account (HRA)*. This issue, coupled with wages, were the major stumbling blocks in the contract negotiations process.

(i) The HRA is a plan intended to quality under Section 105 of the Internal Revenue Code.[39] Employees are able to take advantage of tax-free health care benefits offered under the plan, with the City contributing a specified amount each year to each employee's account.

---

[35] Referring to the decisions of *Arbitrator Gil Vernon* in Sheboygan Water Utility, Dec. No. 21723-A (1985), and *Sherwood Malamud* in City of Beloit - Bus Drivers, Dec. No. 22374-A (1985).

[36] Citing the contents of Employer Exhibit 20.

[37] Citing the contents of Employer Exhibit 31.

[38] Citing the contents of Employer Exhibits 20, 21, 24 and 26 and Union Exhibits 12 and 13.

[39] Citing the contents of Employer Exhibit 38, page 3.

Employees are then able to get reimbursement from the plan for qualified expenses such as co-pay costs, deductibles or prescription drug costs. Unused amounts are rolled over into the next plan year with no accumulation limitations.

(ii) The Association proposes annual contributions of $350 for single participants or $1,100 for family participants, while the City proposes annual contributions of $250 or $500, respectively; the City proposal matches the HRA thresholds implemented on January 1, 2004, for non represented employees.[40]

(iii) In determining the adequacy of the above referenced annual HRA contributions, it is helpful to consider the old and the new health insurance plan designs, coupled with an analysis of employer and employee out-of-pocket expenses.

(b) The *old health plan* was a BC/BS Co-Pay $500 Deductible Plan.

(i) In 2001 the City was paying $7,670.16 per year for each family health plan participant in the BC/BS Co-Pay $500 deductible plan, an excruciatingly critical issue for the City; the issue, however, is compounded by the fact that these insurance premiums were not the whole story.[41]

(ii) The BC/BS co-pay $500 deductible plan requires a family front-end deductible of $1,500 along with an annual family co-pay of 20% of $5,000, with family out-of-pocket maximums costs at $2,500. The City reimburses employees for the full front-end deductible costs (up to $1,500) and 50% of the co-pay maximum (up to $500), and there has been no employee premium contribution. The City's cumulative cost, therefore, is the full premium plus the additional $2000 per family participant. In 2003, the City's full premiums were somewhat higher than the comparables, but it was paying more than the comparable averages because it was continuing to fund the premium costs for employees, and no other comparable employer provided a similar type of reimbursement program for deductibles or co-pays as the City.[42]

(iii) While its health care premium, *alone*, is competitively priced, the nature of the benefits received under the old plan cost the City $2,599.96 per employee more than the comparable average.[43]

(iv) On the above bases, the City had full justification for seeking relief, and some was achieved in the current round of contract negotiations.

(c) The *new health plan* is a BC/BS PPO Plan, with employee

---

[40] Citing the contents of Employer Exhibit 38, pages 3-4.

[41] Citing the contents of Employer Exhibit 33.

[42] Citing the contents of Employer Exhibits 40 and 44.

[43] Citing the contents of Employer Exhibit 46.

premium contributions.

(i) Securing the 5% employee premium contribution, coupled with the much needed changes in benefit design, were critical in containing the City's health care costs, and gaining a 5.4% premium below 2004 projections.[44]

[44] Citing the contents of Employer Exhibit 33.

(ii) The City was successful in acquiring agreements in each of its bargaining units to switch to the BC/BS PPO Plan, and it implemented the changes for its non-represented employees on January 1, 2004.[45] Unfortunately, however, the new plan has not yet been implemented for any union represented employees, and the City is thus still paying for the old BC/BS Co-Pay $500 Plan, at the high premium thresholds.

(iii) Employee premium sharing coupled with the much needed changes in plan design, were critical in containing the City's health care costs. These revised costs, however, are still slightly above average.[46]

(ii) Because those in the bargaining unit have enjoyed near zero dollar coverage for many years, the notion that a *quid pro quo* should be required for them is unfathomable.[47]

(d) The *health reimbursement account* - how much is necessary?

(i) The City offered the HRA as an opportunity for employees to offset some, not all, of the deductible costs attributable to the new health care plan; it should not be viewed as an opportunity for them to receive continued full funding for health care coverage.

(ii) While the new BC/BS PPO plan has higher co-pay maximums than what is required under the co-pay $500 plan, it must be remembered that they may not even reach the co-pay maximum thresholds; further, the new plan is a traditional PPO, with employees having the option to secure health care outside of the PPO network.

(iii) The City's final offer provides for a family HRA contribution of $500 or a 33% reimbursement of the in-network maximum family exposure, with the City's annual contribution made, regardless of the employee's co-pay costs, and any unused HRA contributions are rolled over to the next year.

(iv) The 5% employee contribution toward health care insurance premiums is demanded by a review of the external comparables. Under the City's final offer, inclusive of the $500 HRA, its health care costs continue to exceed the comparables by nearly $500 per employee, which would grow to an excess of $1,000 per employee under the Association's final offer.[48]

---

[45] Citing the contents of Employer Exhibit 36.

[46] Citing the contents of Employer Exhibits 42-A and 43-A.

[47] Citing *the decision of Arbitrator Edward Krinsky* in School District of Whitefish Bay, Dec. No. 27513-A (1993).

[48] Citing the contents of Employer Exhibits 48-A and 49-A.

(v) None of the comparables provide any type of HRA, there is no support for the additional HRA contribution sought by the Union, and implementation of its final offer would generate in-network employee costs significantly lower than those being absorbed by comparable employers.[49]

(vi) The Association's final offer fails to recognize the City's need for health care cost moderation, reflecting its unwillingness to take responsibility for the health care crisis that the City has faced over the past three years.

(vii) This round of bargaining has become protracted with the net result of the City receiving zero savings thus far from the changes in health benefit plan design with the unionized employees, in that it continues to pay for health care premiums under the old Co-pay $500 plan, while funding the $500 annual HRA costs.[50]

(e) The *health reimbursement account and the need for internal consistency*.

(i) The need for internal consistency in health insurance benefits supports selection of the final offer of the City.[51]

(ii) The City's non-represented employees have been contributing 5% of the health care premiums since January 1, 2004, and the City has also established an HRA for these non-represented employees.

(iii) No internal bargaining units have provided consistency in their HRA contribution demands.[52]

(iv) Acceptance of the Association's final offer in this proceeding, will encourage each and every one of the City's units to proceed to arbitration, even with issues as critical as health care coverage.

(v) The Association proposed HRA contributions, is self-centered and unreasonable, without regard to the desires of the other City employees, and out of touch with the realities of health care.

(vi) The City's final offer is more reasonable and equitable among each of the internal units.

(4) The Association's *cost shift for dental insurance coverage* is a significant change in the parties' *status quo*.

---

[49] Citing the contents of Employer Exhibit 49-A.

[50] Citing the contents of Employer Exhibit 34.

[51] Citing the following arbitral decisions: *Arbitrator Zel Rice* in Walworth County Handicapped Children's Education Board, Dec. No. 27422-A (1993); *Arbitrator Raymond McAlpin* in City of Oshkosh, Dec. No. 28284-A and 28285-A (1995); and *Arbitrator Daniel J. Nielsen* in Dane County, Dec. No. 25576-A (1989).

[52] Citing the contents of Employer Exhibit 36.

(a) A review of arbitral *status quo/quid pro quo* standards supports the position of the City in these proceedings.[53] Pursuant to the cited cases, the Union must establish the need for a change and convince the arbitrator of that need, and, thereafter, provide a *quid pro quo* to the City in exchange for the *status quo change*.

(b) The Association's final offer seriously deviates from the *status quo ante*, and should include some measured restraint as an appropriate *quid pro quo*, but it has failed to meet this requirement.[54]

(c) Implementation of the Association's final offer would make a major structural change in the economic relationship between the parties, a change which should not, in good conscience, be imposed through arbitration; this is particularly true, in that no *quid pro quo* has been advanced in support of such offer.

(d) The City's final offer preserves the economic relationship between the parties, and they are free to address the issue in the future.

(5) The Association has failed to provide *a compelling need for the increased dental insurance contribution*.

(a) The City currently pays 100% of the single dental coverage, and 45% of the family coverage; the Association is seeking a 75% contribution for both the single and the family dental premiums.

(b) The Union's proposal is without regard to either the City's current dental insurance costs or to consistency with other internal units.

(c) The City's calendar year 2004 monthly premium for *single coverage* is $42.91, and for f*amily coverage* is $1,323.29; and these monthly premiums are significantly higher than any other external community is charged for full dental coverage.[55]

(d) All of the city's internal units receive the same employer percentage contributions as what is currently provided for in this bargaining unit.[56]

(6) The City's final wage and benefit offer maintains the bargaining unit's historical ranking and its above average salary/longevity levels, regardless of which cluster of external comparables is used.

(a) Consideration of the *City's annual salary and longevity*

---

[53] Citing the following arbitral decisions: *Arbitrator Mary J. Schiavoni* in Columbia County, Dec. No. 28983-A (1997); *Arbitrator Sherwood Malamud* in City of Verona Police Department, Dec. No. 28066-A (1994), and in D. C. Everest Area School District, Dec. No. 24678-A (1988).

[54] Citing the decision of *Arbitrator Frederick Kessler* in Webster School District, Dec. No. 2333-A (1986).

[55] Citing the contents of Employer Exhibit 54-A.

[56] Citing the contents of Employer Exhibits 13 to 19.

payments support its position in these proceedings.

(i) Clear data is available among the *City proposed comparables* for 2001, 2002, 2003 and 2004, and its exhibits outline the minimum and maximum annual salaries for the firefighter classification, including the maximum longevity.

(ii) The Association provided only the maximum annual wage rate data for its comparable pool for 1992, 2002 and 2004. It thus conveniently ignores the lucrative longevity position that this bargaining unit enjoys.

(iii) Examination of the firefighter classification confirms the City's position that while its wage rate increases during the contract may be below average, the wages to be earned by those in the bargaining unit will remain solidly within the average for the other communities.

(iv) The City's final offer keeps the unit's maximum annual salary and longevity benefits significantly above the comparable average.[57]

(v) The Association's contention that wage rates must increase with the intensity of the comparables, but this ignores the above average costs for health care benefits and the stressful budget dilemma that the City has faced over the past two years.

(vi) The City's final offer provides for a successful compilation of wage rate increases while not undermining the basic integrity of the budget.

(vii) Reliance on the annual salary data outlined in Union Exhibits 12 and 13 is misleading in that they do not include longevity earnings; when the longevity data contained in Union Exhibit 23 is reviewed, however, it shows maximum longevity in the bargaining unit would be $1,700 per year above the average of the Union proposed comparables, under the Association's final offer.

(b) Consideration of the *City's annual salary and health insurance costs*, favor its position in these proceedings.

(i) The City has incurred far greater costs for health insurance coverage than the comparables, due, in part, to its 100% premium contributions and also because it has funded nearly 100% of the deductible and co-pay costs that employees have incurred under the old BC/BS $500 Plan.

[57] Citing the contents of Employer Exhibits 58 through 60-A.

(ii) The 2003 annual salary maximum thresholds under either final offer are above average. Because of Marinette's exorbitantly high health insurance costs in 2003, above average payouts of $2,599.96, the City's final salary and health insurance offer exceeds the comparable average by $4,364.18, and the Association's final offer is $5,097.23 above the comparable average.[58]

(iii) The City's final wage offer in 2004, realigns closer to the comparable average, and its final health insurance offer continues above average payouts. Cumulative 2004 salary and health insurance costs under the City's final offer will be $1,289.28 above the comparable average; the Association's final salary and health insurance offer exceeds the comparable average by $2,849.90.

(iv) Both recruiting and staff retention in the City evidence the quality of its wages and health insurance package.[59]

(v) The Union is simply seeking too much at a time when the budgetary crisis must be controlled. The City's final offer provides an extremely healthy salary and health insurance benefit package that is wholly competitive with the external comparables.

(7) The City's final economic offer is consistent among its bargaining units and seeks to maintain a relatively consistent pattern of internal settlements.

(8) The Association is attempting to gain too much in this bargain.

(a) Nearly all the City's bargaining units are the same size, and no one has more bargaining strength than the others.[60]

(b) The Association, however, is seeking a *two year wage adjustment higher than that sought in the police bargaining unit*, it is seeking the *second largest HRA contribution* sought by any union, and is also seeking a *higher City contribution to dental insurance*. Its final offer would cut to the core of the City's budget.

(c) While the health insurance coverage was the most important issue for the City, it has yet to feel any relief because of differences in the HRA contributions.

(d) Chaos would result from attempting to implement the varying levels of HRA contributions.

(e) Adoption of the Union's final offer would require additional budget cuts, and would require too great a commitment of resources within the confines of the 2004 budget.

(f) Adoption of the Union's final offer would disrupt the economic

[58] Citing the contents of Employer Exhibit 61-A.

[59] Citing the contents of Employer Exhibit 64.

[60] Citing the contents of Employer Exhibit 12.

status quo, with a total lack of a *quid pro quo* for any or all of the items contained therein.

In summary and conclusion it notes that the parties have presented widely divergent final offers covering *wage rate increases*, *health insurance* and *dental insurance benefits*. It submits that *the City's offer* is fair: it maintains the units wage ranking among the comparables; its wage, health and dental insurance "*package*" maintains above average benefits for the bargaining unit employees; and its final offer is an economic necessity for the City right now. *The Association's offer* does not recognize that the existing pie cannot be made any bigger: the decrease in its shared revenue budget has pressured the City's budget, and it is unreasonable to assume that it will have to make additional cuts to accept the Association's final offer; its final offer undermines its budget and implements a seriously deficient final offer; unfortunate as it may be, the Association is using the interest arbitration process to gain much more than what the City would ever accept at the bargaining table; and, it is trying to achieve these improvements without a single *quid pro quo* to the City.

Based upon the record evidence, hearing testimony, and each party's respective briefs, the City requests arbitral selection of its final offer in this proceeding.

In its *reply brief*, the Employer emphasized, reemphasized and expanded upon the following, generally described considerations.

(1) That the Employer's proposed change in the external comparable group is necessary given the economic divergence that has occurred since the original 1994 Michelstetter award.

(2) That the Union's final wage offer still generates substantially higher salary costs than the City's final offer.[61]

(a) That its total package calculations show differences between the two final offers of nearly $26,000.[62]

[61] In this area it corrected and resubmitted copies of revised Employer Exhibits 5 through 10.

[62] Citing the contents of revised Employer Exhibit 10.

(b) That the total lift of the Union's two year wage offer should be 6.247%.[63]

(c) The Union urges that the wage cost difference of the two final offers is $5,551.74, versus the Employer's calculation of $4,900.56.[64]

(3) That the Union's wage settlements seek payback for their own prior voluntary settlements.

(a) While it is true that the City's offer is slightly lower than the current prevailing wage settlement pattern, the size of its offer is dictated by economic considerations within the City's budget. Both final offers, however, retain the previous wage ranking among the comparables.

[63] Citing the contents of revised Employer Exhibit 9.

[64] Citing the contents of revised Employer Exhibit 10.

(b) Firefighters receive a maximum of 3% of their base monthly salary times the number of years of service after completing seven years of service, and the addition of this benefit keeps these employee's salaries above the comparable average.[65]

(4) The external comparables do not support the Union's dental insurance proposal.

(5) Although the City is not required to offer a *quid pro quo* for the health plan changes, the HRAs provide enough of an offset if a quid pro quo were required.

(a) Cost sharing for health insurance has become standard, and continued expectation of dollar-for-dollar payback for changes in order to maintain a lid on skyrocketing insurance premiums is extremely troubling.

(b) Health benefits are a mutual concern, as are the costs of such plans, and the parties have crafted a health benefit which allows moderate premium increases with the necessary offset for related benefit design changes.

(c) The additional "health compensation" sought by the Union is simply unnecessary and, if awarded, would create potential unequal treatment among other City units.

FINDINGS AND CONCLUSIONS

In the case at hand the parties differ on three basic impasse items: *first*, the size and implementation schedule for *general wage increases* during 2003 and 2004; *second*, the level of Employer funding for single and family plan participants in connection with the agreed upon creation of *health reimbursement accounts*; and, *third*, the level of Employer contribution to the monthly premiums for the preexisting *dental insurance program*. In arguing their respective positions the parties emphasized a variety of considerations including the perceived necessity for a *quid pro quo* in these proceedings, the *composition of the primary intraindustry comparables*, and the *application of the remaining statutory criteria*, in the final offer selection process in these proceedings. Each of these considerations will be addressed below, prior to selecting the more appropriate of the two final offers.

The Necessity for Quid Pro Quos in Certain Situations Involving Proposed Changes in the Status Quo Ante

[65] Citing the contents of revised Employer Exhibit 60-A.

When unilateral demands for significant modification or elimination of previously negotiated wages, hours or terms and conditions of employment arise *at the bargaining table*, the proponent of change is normally faced with the need to provide an *adequate quid pro quo*, in support of such proposals.[66] The application of this principle was discussed by the undersigned, as follows, in the recent decision involving the City's Police Department bargaining unit:

> "If an employer, for example, has proposed elimination or reduction of a previously negotiated benefit, its arbitral approval is generally conditioned upon three determinative prerequisites: *first*, that a significant and unanticipated problem exists; *second*, that the proposed change reasonably addresses the underlying problem; and, *third*, that the proposed change is normally, *but not always*, accompanied by an otherwise appropriate *quid pro quo*.
>
> In addressing the disagreement of the parties relative to the presence of an adequate *quid pro quo* in the case at hand, the undersigned notes recognition by certain Wisconsin interest arbitrators, including the undersigned, that some types of proposed changes in the *status quo ante* directed toward the resolution of *mutual problems*, may require either none or a substantially reduced *quid pro quo*.
>
> (1) A *reduced quid pro quo* has been required by the undersigned, as follows, in some situations involving medical insurance premium sharing:
>
> 'What next of the disagreement of the parties relative to the sufficiency of the Employer proposed quid pro quos? In this connection, it is noted that *certain long term and unanticipated changes in the underlying character* of previously negotiated practices or benefits *may constitute significant mutual problems of the parties which do not require traditional levels of quid pro quos to justify change*. In the case at hand, the spiraling costs of providing health care insurance for its current employees is a *mutual problem for the Employer and the Association,* and the trend has been ongoing, foreseeable, anticipated, and open to bargaining by the parties during their periodic contract renewal negotiations. In light of the *mutuality of the underlying problem,* the requisite *quid pro quo* would normally be somewhat less than would be required to justify a *traditional arms length proposal to eliminate or to modify negotiated benefits or advantageous contract language*.' [Citing therein the decisions of the undersigned in Village of Fox Point, Dec. No. 30337-A (11/7/02) pp. 21-22, and in Mellen School District, Dec. No. 30408-A (3/21/02), pp. 39-40.]
>
> (2) A situation where *no quid pro quo* was required, arose in connection with a proposed future reduction in the period within which a school district would continue to pay full health insurance premiums for early retirees:
>
> 'What, however, of the situation where the costs and/or the substance of a long standing policy or benefit have substantially changed over an extended period of time, to

[66] This *quid pro quo* requirement falls well within the scope of Section 111.77(6)(h) of the Wisconsin Statutes.

the extent that they no longer reflect the conditions present at their inception? Just as conventionally negotiated labor agreements must evolve and change in response to changing external circumstances which are of mutual concern, Wisconsin interest arbitrators must address similar considerations pursuant to the requirements of Section 111.70(4)(cm)(7)(j) of the Wisconsin Statutes; in such circumstances, the proponent of change must establish that a significant and unanticipated problem exists and that the proposed change reasonably addresses the problem, but it is difficult to conclude that a bargaining quid pro quo should be required to correct a mutual problem which was neither anticipated nor previously bargained about by the parties. ...

The parties agreed upon the ten year maximum period of Employer payment of unreduced health care premiums for early retirees in the late 1970s, but the meteoric escalation in the cost of health insurance since that time has exceeded all reasonable expectations, and the immediate prospect for future escalation is also significantly higher than could have been anticipated by either party some twelve or thirteen years ago. In short, the situation represents a significant mutual problem, and it is clearly distinguishable from a situation where one party is merely attempting to change a recently bargained for and/or a stable policy or benefit for its own purposes.' [Citing therein the decision of the undersigned in Algoma School District, Case 18, No. 46716, INT/ARB-6278 (11/10/92), pg. 25.]

(3) Two decisions in which employer proposed medical insurance changes were determined to require an appropriate *quid pro quo*, indicated in part as follows:

'In applying the above described principles to the situation at hand, it must be recognized that while there have been continuing increases in the cost of medical insurance since the parties earlier negotiations, this trend was ongoing, foreseeable, anticipated and bargained upon by the parties in reaching the predecessor agreement covering January 1, 1998 through December 31, 2000; indeed, the letter of agreement and the medical insurance reopener clauses were the *quid pro quos* for the medical insurance changes then agreed upon by the parties, which the Employer is now seeking to eliminate. While it is entirely proper for the Employer to have continued to pursue this goal in these proceedings, the record falls far short of establishing that its current final offer falls within the category of proposals which need not be accompanied by appropriate quid pro quos.'[Citing therein the decisions of the undersigned in Town of Beloit, Dec. Nos. 30219-A and 30220-A (4/25/02), pp. 13-14.]

In applying the above described considerations to the group medical insurance impasse items in these proceedings, the undersigned must recognize that those in the bargaining unit have enjoyed excellent, fully paid health insurance for an extended period of years, and the current monthly cost of family health insurance premiums is far in excess of what could reasonably have been anticipated by the parties either *when they initially agreed to provide employees with fully paid medical insurance premiums*, and/or *when they last went to the table and renewed this commitment*; indeed, between the year preceding the immediate predecessor agreement and these proceedings, the monthly costs of family health insurance premiums have more than doubled.

> This escalation in the costs of health insurance, constitutes the requisite *very significant problem*, and the parties agreed upon insurance changes, constitute *a reasonable approach to the problem*. Due to the nature and mutuality of the underlying problem, however, it is clear to the undersigned that *no significant quid pro quo requirement* has been created by the parties' acceptance of the Blue Cross/Blue Shield PPO form of medical insurance, accompanied by 5% employee insurance premium contributions."[67]

Without unnecessary elaboration the undersigned will merely recognize that the above discussion and application of the *quid pro quo* arbitral criterion have equal application to these proceedings.

The Composition of the Primary Intraindustry Comparables

What next of the disagreement of the parties relative to the identity of the primary intraindustry comparables?[68] Urging deference to arbitral history, the Union urges utilization herein of the cities of *Allouez, DePere, Kaukauna, Sturgeon Bay and Two Rivers* as the primary comparables, those selected when the City and the Firefighters last went to interest arbitration in 1994.[69] The City, pointing out the limited intended scope of Arbitrator Michelstetter's 1994 decision, referring to other interest arbitrations involving the City of Marinette, and comparing various characteristics of its broader recommended group, proposes arbitral use herein of the cities of *Antigo, Kaukauna, Merrill, Rhinelander, Sturgeon Bay and Two Rivers*.

---

[67] See the *decision of the undersigned* in City of Marinette (Police Patrolmen & Sergeants) -and- Marinette Police Department Employees Association, Local 230, Decision No. 30872-A (11/27/04), at pages 15-18. (footnotes omitted)

[68] The terms *intraindustry comparisons* derive from their long use in the private sector, but the same principles of comparison apply in public sector impasses, in which case so-called intraindustry comparisons normally consist of *similar units of employees performing similar services and employed by comparable units of government*.

[69] See the *decision of Arbitrator Stanley Michelstetter* in International Association of Fire Fighters, Local 226 -and- City of Marinette, Decision No. 27642-A (April 12, 1994).

Arbitrators will not normally disturb parties' past identification and ongoing use of a specific group of primary intraindustry comparables when one party to the process unilaterally attempts to change the composition of such a group. Arbitrator Michelstetter's well reasoned 1994 decision, however, was specifically limited in its intended application to the negotiations impasse then before him, and there is no evidence that the parties had continued to utilize the primary intraindustry comparables then temporarily utilized by him; indeed, the Union noted in its initial brief that "In all of the other arbitrations in which the Employer has been involved there is no consistent set of comparable cities."[70] Since a similar determination was required of the undersigned in the contemporaneous Police Department arbitration, and in the absence of any appropriate basis for different external comparables in these proceedings, I conclude, as described below, that the same set of primary intraindustry comparables should be utilized in these proceedings.

> "Although the City of Marinette has gone to interest arbitration on several past occasions over an extended period of years, there has been no definitive arbitral identification of the makeup of the primary intraindustry comparables applicable in those proceedings. On the basis of the proposals and the data provided by the parties, in addition to particular review and consideration of the 1994 and 1997 decisions of arbitrators Stanley H. Michelstetter and John C. Oestreicher, the undersigned has determined that the primary intraindustry comparables to the City of Marinette should consist of those recommended by it in these proceedings (*i.e.* the cities of Antigo, Kaukauna, Merrill, Rhinelander, Sturgeon Bay and Two Rivers). In addition to the recommendations and/or usages of Arbitrators Michelstetter and Oestreicher, these cities compare reasonably well on the bases of the evaluations urged by the Employer."[71] The comparisons referenced therein included populations, distances from the City of Marinette, 2003 equalized valuations, 2004 AGI per tax return, and 2003 effective full value tax rates.[72]

Without unnecessary additional elaboration, therefore, the undersigned has determined that the *primary intraindustry comparables* to the *City of Marinette*, consist of the cities of *Antigo, Kaukauna, Merrill, Rhinelander, Sturgeon Bay* and *Two Rivers*.

---

[70] See the Union's *initial brief* at page 3.

[71] See the *decision of the undersigned* in City of Marinette (Police Patrolmen & Sergeants) -and- Marinette Police Department Employees' Association, Local 230, Decision No. 30872-A (11/27/04), at pages 18-19. (footnotes omitted)

[72] These considerations are addressed in Employer Exhibits 21-30 in these proceedings.

The Significance of the Primary Intraindustry and the Internal Comparison Criteria in the Arbitration of Wages

It has been widely and generally recognized by interest arbitrators for decades, that *comparisons* are normally the most frequently cited, the most important, and the most persuasive of the various arbitral criteria in the arbitration of wages, that the most persuasive of these are normally *intraindustry comparisons*, and that this criterion normally takes precedence when it comes into conflict with other arbitral criteria, including an impaired ability to pay. These considerations are well addressed as follows, in the still highly respected book by the late Irving Bernstein:

> "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the Union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill...Arbitrators benefit no less from comparisons. They have the appeal of precedent...and awards, based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.
>
> * * * * *
>
> "a. *Intraindustry Comparisons*. The intraindustry comparison is more commonly cited than any other form of comparisons, or, for that matter, any other criterion. Most important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.
>
> * * * * *
>
> A corollary of the preeminence of the intraindustry comparison is the superior weight it wins when found in conflict with another standard of wage determination. The balancing of opposing factors, of course, is central in the arbitration function, and most commonly arises in the present context over an employer argument of financial adversity."[73]

The normal weight traditionally accorded *primary intraindustry comparisons* and the matter of *actual versus professed inability to pay* in public sector interest arbitrations, was authoritatively and presciently addressed by Arbitrator Howard S. Block, in part as follows:

> "**Ability to Pay: The Problem of Priorities**
>
> Nowhere in the public sector is the problem of interest arbitration more critical than in the major urban areas of the nation. Municipal governments are highly dependent, vulnerable public agencies.

[73] See Bernstein, Irving, The Arbitration of Wages, University of California Press, Berkeley and Los Angeles (1954), pages 54, 56 and 67. (footnotes omitted)

> Their options for making concessions in collective bargaining are at best limited, and are often nullified by social and economic forces which command markets, resources, and political power extending far beyond the city limits. City and county administration are buffeted by winds of controversy over conflicting claims upon the tax dollar. On the federal level, the ultimate source of tax revenues, the order of priorities between military expenditures and the needs of the cities are a persistent focus of debate. On the state level, the counterclaims over priorities in most states seem to be education over all others.
>
> * * * * *
>
> ...How does an arbitration panel respond to a municipal government that says, 'We just don't have the money'?
>
> Pioneering decisions of interest neutrals have assigned no greater weight to such an assertion than they have to an inability-to-pay position of private management. An arbitration panel constituted under Michigan's Public Act 312 rejected an argument by the City of Detroit which would have precluded the panel from awarding money because of an asserted inability to pay. What would be the point of an arbitration, the panel asks in effect, if its function were simply to rubber-stamp the city's position that it had no money for salary increases? What employer could resist a claim of inability to pay if such claim would become, as a matter of course, the basis of a binding arbitration award that would relieve it of the grinding pressures of arduous negotiations? While the panel considered the city's argument on this point, it was not a controlling conclusion.
>
> Inability to pay may often be the result of an unwillingness to bell the cat by raising local taxes or reassessing property to make more funds available. Arnold Zack gives a realistic depiction of the inherent elasticity of management's position in the following comment:
>
> > 'It is generally true that the funds can be made available to pay for settlement of an imminent negotiation, although the consequences may well be depletion of needed reserves for unanticipated contingencies, the failure to undertake new planned services such as hiring more teachers, or even the curtailment of existing services, such as elimination of subsidized student activities, to finance the settlement.' "[74]

The limited weight placed upon *unwillingness to pay*, as opposed to situations where operative limitations create an actual *inability to pay* in wage related interest arbitrations, are discussed in the following excerpts from the authoritative book originally authored by Elkouri and Elkouri:

> "In granting a wage increase to police officers to bring them generally in line with police in other communities, an arbitration board recognized the financial problems of the city resulting from temporarily reduced property valuations during an urban redevelopment program, but the board stated that a police officer should be treated as a skilled employee whose wages reflect the caliber of the work expected from such employees. The Board declared that 'it cannot accept the conclusion that the Police Department must continue to suffer until the redevelopment program is completed.' However, the board did give

---

[74] See *Arbitration and the Public Interest*, Proceedings of the 24th Annual Meeting of the National Academy of Arbitrators, Bureau of National Affairs, Inc., 1971, pages 169, 171-172. (footnotes omitted)

definite weight to the city's budget limitations by denying a request for improved vacation benefits, additional insurance, a shift differential, and a cost-of-living escalator clause. In another case involving police officers and firefighters, an arbitrator awarded a 6 percent wage increase (which he recognized as the prevailing pattern in private industry) despite the city's financial problems. He limited the increase to this figure, though a larger increase was deserved, in order to keep the city within the statutory taxing limit and in light of the impact of the award on the wages of other city employees.

In some cases, neutrals have expressly asserted an obligation of public employers to make added efforts to obtain additional funds to finance improved terms of employment found to be justified. In one case, the neutral refused to excuse a public employer from its obligation to pay certain automatic increases that the employer had voluntarily contracted to pay, the neutral ordering the employer to 'take all required steps to provide the funds necessary to implement his award in favor of the employees.'

Finally, where one city submitted information regarding its revenues and expenditures to support its claim of inability to pay an otherwise justified wage increase, the arbitrator responded that the 'information is interesting, but is not really relevant to the issues,' and explained:

> The *price of labor* must be viewed like any other commodity which needs to be purchased. If a new truck is needed, the City does not plead poverty and ask to buy the truck for 25% of it established price. It can shop various dealers and makes of trucks to get the best possible buy. But in the end the City either pays the asked price or gets along without a new truck.[75]

[75] See Ruben, Allan Miles, Editor in Chief, *Elkouri & Elkouri* HOW ARBITRATION WORKS, Bureau of National Affairs, Sixth Edition - 2003, pages 1434-1436. (footnotes omitted)

In comparing the wage increase components of the parties' final offers with those of *the primary intraindustry comparables*, it is apparent that the City has *not* offered fully competitive wage increases to its Firefighters in either 2003 or 2004. The six primary intraindustry comparables had wage increases averaging 3.16% in 2003 and 4.10% in 2004, as compared to City proposed wage increases of 1.5% and 2.35%, and Union proposed increases of 3.30% and 2.85% each year. On the basis of lift, therefore, the general wage increase components of both final offers fell below the intraindustry averages during the two year term of the renewal agreement, with the City proposed 3.85% in increases 2.48% below, and the Union proposed 6.15% in increases 1.11% below the intraindustry average of 7.26% in increases.[76] In addition to the disparities between the proposed wage increase percentages of the parties and the intraindustry average, is the fact that the Union proposed increase for 2003, with an effective date of December 31 rather than January 1, 2003, would apparently save the City $20,908.08 in 2003.[77]

The wage increase component of the City's final offer is fully consistent with increases granted to its non-represented employees, and with those offered in negotiations in its other bargaining units. Arbitral considerations of the *internal comparison criterion*, therefore, at least slightly favors selection of the wage component of the City's final offer but, as noted by the Union, no negotiated settlement has included the wage component of the City's final offer.

In applying the above determinations to the case at hand the undersigned has determined that application of the *intraindustry comparison criterion* strongly favors *the wage increase component* of the final offer of the Union, it clearly takes precedence over the *internal comparison criterion* which somewhat favors the wage component of the final offer of the City, and it would normally also take precedence over the Employer professed *impaired ability to pay* which fell short of an *actual inability to pay*.

---

[76] See the contents of revised Employer Exhibits 59 & 60-A.

[77] The amount saved was determined from data contained in revised Employer Exhibits 5 and 7.

The undersigned is, however, faced with *multiple impasses items* and multiple considerations in these proceedings, and is limited to selection of the final offer of either party *in its entirety;* accordingly, the various statutory arbitral criteria must be considered in conjunction with all of the impasse items prior to the final offer selection process.

The Significance of the Comparison Criterion to the Other Impasse Items

In next considering *the health insurance costs and coverage comparisons* between the City and the external comparables, it is apparent that its net monthly health insurance premiums in 2003 were a $11.37 per month less for single, and $71.70 per month more for family coverage, than the external comparables.[78] For 2004, with the implementation of the agreed upon changes, its net monthly premiums were anticipated to be $33.92 per month less for single, and $21.22 per month more for family coverage than the comparables, and the 5% employee contributions would be $8.71 and $18.06 per month less, respectively, than the comparables.[79]

On the above bases, it is clear that the parties' adoption of the basic BC/BS PPO plan with a 5% employee premium contribution was clearly supported by comparisons with the *primary intraindustry comparables*. The parties differ, however, in connection with the funding level of the agreed upon Health Reimbursement Accounts for employees, with the City proposing an annual HRA reimbursement in the amounts of $250 for single plan and $500.00 for family plan employees, and the Association proposing such reimbursement in the amounts of $350 for single plan and $1,100 for family plan employees. All sixteen of the participants in the program are family plan employees, which means that this component of the City's proposal would cost $8,000 per year and the Union proposal $17,600 per year, a difference of $9,600. The principal rationale offered by the Union in support of its proposal is that it involves not an *additional cost* to the Employer but rather a *lesser level of health insurance cost-shifting* to employees than the proposal of the Employer.

---

[78] Citing the contents of Employer Exhibits 40 and 41.

[79] Citing the contents of Employer Exhibits 42-A and 43-A.

The average cumulative 2004 employer contribution for family plan health insurance premiums is $12,876.74 for the primary external comparables. The 2004 costs to the City of Marinette would be $13,362.08 under the City's offer, and $13,962.08 under the Union's final offer.[80] The City's final offer would thus exceed the comparables by $485.34 per year per employee, and the Union's final offer would exceed the comparables by $1,085.34 per year per employee. Arbitral consideration of the intraindustry comparison criterion thus favors selection of the final offer of the City in this area.

[80] See the contents of revised Employer Exhibit #48-A, which data include the costs of the Employee HRAs provided for under the two final offers, a benefit not provided for by any of the primary external comparables.

In next considering the *dental insurance impasse item* it is noted that one of the six comparables offers no dental insurance plan, a second offers a plan at employee cost, and the remaining four offer forms of conventional dental insurance coverage. The Employer's final offer contemplates continuation of the prior dental insurance with it paying 100% of the single coverage and 45% of the family coverage, and the Union's final offer proposes that the City pay 75% of the premium for both categories of coverage.[81] Either final offer contemplates single and family insurance contributions greater than the average costs incurred by the primary external comparables, and arbitral consideration of the intraindustry comparison criterion thus favors the position of the City rather than the Union on this impasse item.[82]

As noted above in connection with the wage rate impasse item, the undersigned is faced with *multiple impasses items*, is limited to selection of the final offer of either party *in its entirety*, and must consider all of the statutory arbitral criteria prior to the final offer selection process.

The Significance of the Overall Compensation Criterion in these Proceedings

The *overall compensation presently received* by employees, including direct wages compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, continuity and stability of employment and other benefits received, are grouped together in Section 111.77(6)(f) of the Wisconsin Statutes, and its significance in these proceedings was argued by both parties.

As emphasized by the undersigned in various prior interest arbitration proceedings, it must be understood that while this arbitral criterion may be *initially used to justify the establishment of differential wages or individual benefits,* for example, it generally has *little to do with the*

---

[81] See the contents of Employer Exhibit 54.

[82] The principal basis advanced for the Union's higher dental insurance proposal was characterized as its perceived need for a significant *quid pro quo* to offset the negotiated changes in health insurance changes, primarily the acceptance of employee premium contributions.

application of general wage increases thereafter, which principle is well addressed as follows by Bernstein:

> "...Such 'fringes' as vacations, holidays, and welfare plans may vary among firms in the same industry and thereby complicate the wage comparison. This question, too, is treated below.
>
> * * * * *
>
> ...In the *Reading Street Railway* case, for example, the company argued strenuously that its fringes were superior to those on comparable properties and should be credited against wage rates.
>
> Arbitrators have had little difficulty in establishing a rule to cover this point. They hold that features of the work, though appropriate for fixing differential between jobs, should not influence a general wage movement. As a consequence, in across-the-board wage cases, they have ignored claims that tractor-trailer drivers were entitled to a premium for physical strain; that fringe benefits should be charged off against wage rates; that offensive odors in a fish-reduction plant merited a differential; that weight should be given the fact that employees of a utility, generally speaking, were more skilled than workers in the community at large; that merit and experience deserved special recognition; and that regularity of employment should bar an otherwise justified increase...
>
> The theory behind this rule is that the parties accounted for these factors in their past collective bargaining over rates.[83]

The overall level of compensation criterion might be utilized to justify a lower than average wage increase where there is an unusual or extraordinary benefit package which the parties have opted for in lieu of higher wages, but a long standing and very good medical and dental insurance package, for example, cannot alone justify lower than otherwise appropriate wage increases on an after-the-fact basis. Accordingly, *the overall compensation criterion* cannot be assigned significant weight in the final offer selection process in these proceedings.

The Significance of the Interests and Welfare of the Public Criterion

[83] The Arbitration of Wages, pages 65-66 and 90. (Included citation at 6 LA 860)

This factor has frequently been urged by Wisconsin employers in connection with claims of *financial adversity* under two principal sets of circumstances: *first*, where the record establishes an *absolute inability pay*; and *second*, where the selection of one of the final offers would clearly require a *significantly disproportional or unreasonable effort on the part of an employer*. This *financial adversity factor* has *alone* been accorded determinative weight in the final offer selection process, only where the record establishes an *absolute inability to pay*, *i.e.*, where an employer both lacks sufficient funds *and* the ability to raise sufficient funds to meet an otherwise justified final offer.[84] While the Employer has urged herein that its ability to pay is rendered more difficult by various considerations, it has not claimed an absolute *inability to pay*; accordingly, the undersigned finds nothing unique to the City of Marinette which would alone justify providing significantly lower than market wages or benefits to those in the bargaining unit.

On the above described bases the undersigned has determined that while the economic considerations advanced by the City in support of its position must be considered in these proceedings, the ability to pay component of the interest and welfare of the public criterion cannot be assigned *determinate weight* in the final offer selection process in these proceedings.

The Significance of the Cost-of-Living Criterion

The relative importance in interest arbitration of the cost of living criterion varies with the state of the national and the Wisconsin economies. During periods of rapid movement in prices, cost-of-living considerations may be one of the most important criteria in interest arbitration, but during periods of relative price stability, it declines significantly in importance. One important consideration to keep in mind in connection with cost-of-living considerations is that only CPI movement since the effective date of parties' last negotiated agreement is subject to arbitral consideration, because of the normal presumption that such settlement disposed of all prior wage and

[84] Note the earlier discussion of the greater weight normally accorded the *intraindustry comparison criterion* in the arbitration of wages, in situations involving employer *claims of financial adversity*.

benefits factors. The Union's arguments based upon movement in the CPI dating back to the mid-1990s are largely applicable to these proceedings.[85]

Due to the recent stability in the CPI, the undersigned has determined that cost-of-living considerations are not entitled to significant weight in the overall final selection process in these proceedings.

Summary of Preliminarily Conclusions

As addressed in more significant detail above, the Arbitrator has reached the following summarized, principal preliminary conclusions.

(1) In the case at hand the parties differ on three basic impasse items: the size and implementation schedule for *general wage increases* during 2003 and 2004; the level of Employer funding for single and family plan participants in connection with the agreed upon creation of *health reimbursement accounts*; and the level of Employer contribution to the monthly premiums for the preexisting *dental insurance program*.

(2) In arguing their respective positions the parties emphasized a variety of considerations including the perceived necessity for a *quid pro quo* in these proceedings, the *composition of the primary intraindustry comparables*, and the *application of the remaining statutory criteria*.

(3) Due to the nature and mutuality of the underlying problem, however, *no significant quid pro quo requirement* was created by the parties' acceptance of the Blue Cross/Blue Shield PPO form of medical insurance, accompanied by 5% employee insurance premium contributions.

(4) The *primary intraindustry comparables* to the *City of Marinette*, consist of the cities of *Antigo, Kaukauna, Merrill, Rhinelander, Sturgeon Bay* and *Two Rivers*.

(5) In determining the significance of the *primary intraindustry and internal comparables* to the *wage increase components of the two final offers* the undersigned finds as follows:

(a) That *comparisons* are normally the most frequently cited, the most important, and the most persuasive of the various arbitral criteria in the arbitration of wages, that the most persuasive of these are normally *intraindustry comparisons*,

[85] In a related observation, the Union's reference to alleged deterioration in firefighter wage rates dating back to 1992 is not relevant in these proceedings, because the interest arbitration process is not a vehicle for revisiting the propriety of such previously negotiated wages, hours and terms and conditions of employment.

and that this criterion normally takes precedence when it comes into conflict with other arbitral criteria, including an *impaired ability to pay*.

(b) The application of the *intraindustry comparison criterion* strongly favors *the wage increase component* of the final offer of the Union, it clearly takes precedence over the *internal comparison criterion* which somewhat favors the wage component of the final offer of the City, and it takes precedence over the Employer professed *impaired ability to pay*.

(c) The undersigned is faced with *multiple impasse items*, is limited to selection of the final offer of either party *in its entirety*, and must consider all of the statutory arbitral criteria prior to the final offer selection process.

(6) In determining the significance of *the comparison criteria to the other impasse items*, the undersigned finds as follows:

(a) Consideration of the *intraindustry comparison criterion* favors the *City proposed annual reimbursement levels for employee Health Reimbursement Accounts*.

(b) Since both final offers contemplate single and family dental insurance contributions greater than the average costs incurred by the primary external comparables, consideration of the *intraindustry comparison criterion* thus favors the *City proposed premium contribution levels for dental insurance*.

(c) As noted above in connection with the wage rate impasse item, the undersigned is faced with *multiple impasse items*, is limited to selection of the final offer of either party *in its entirety*, and must consider all of the statutory arbitral criteria prior to the final offer selection process.

(7) The *overall compensation criterion* cannot be assigned significant weight in the final offer selection process in these proceedings.

(8) While the economic considerations advanced by the City in support of its position must be considered in these proceedings, the *ability to pay component* of the interest and welfare of the public criterion cannot alone be assigned *determinate weight* in the final offer selection process in these proceedings.

(9) Due to the recent stability in the Consumer Price Index, the *cost-of-living criterion* cannot be assigned significant weight in the overall final selection process in these proceedings.

Selection of Final Offer

Arbitrators work as extensions of the collective bargaining process and their normal goal is to put the parties into the same position they would have reached at the bargaining table had they been able to agree upon a full settlement. In the case at hand, the undersigned finds the following considerations to be determinative.

(1) In their final offers the parties disagree on three impasse items: the percentage based *wage increases to be applied in 2003 and 2004*; the annual *levels of Employer contribution to employee HRA accounts* during 2004; and the *extent of Employer contribution toward employee dental insurance premiums* during 2004.

(a) As discussed above, the Union proposed *percentage wage increases for 2003 and 2004* were clearly and persuasively supported, principally by application of *the intraindustry comparison criterion*, normally the most frequently cited and persuasive of the various arbitral criteria, even when it comes into conflict with *impaired ability to pay* on the part of an employer. This conclusion is justified, even without consideration of the fact that the Union proposed effective date of its 2003 wage increase proposal, if implemented, would *save the Employer an estimated $20,908.08 during the first year of the agreement*.

(b) In connection with the *annual funding of HRA accounts*, the Union's proposal, if implemented, would cost the Employer $9,600 per year more than its proposal.

(c) The Union proposed *increase in the Employer's level of funding of dental insurance premiums*, would cost the Employer $6,667.42 per year more than its own proposal.

(d) While the second and third components of the Union's final offer are not supported by consideration of the *intraindustry or internal comparables*, their combined costs for 2004, fall below the savings which would be generated by December 31, 2003, effective date of the Union proposed 3.3% wage increase for 2003.

(2) With the above considerations in mind, it is clear to the undersigned that the most logical settlement the parties might have reached at the bargaining table, would have been *agreement to a conventional two year implementation of the Union's wage increase proposal*, *acceptance of the Employer proposed HRA funding*, and *rejection of the Union proposed increase in the Employer contribution level to dental insurance premiums*. Since the undersigned is limited to selection of the final offer of either party, *in toto*, however, no basis exists for arbitral establishment of such a settlement.

(3) The role of the arbitrator, within the framework of the two final offers, is to come as close as possible to the settlement they might have reached at the bargaining table.

(a) If these proceedings had involved a multi-year agreement for *future years*, the one year, $20,908.08 saving resulting from the Union proposed effective date of its 2003 wage increase proposal, would have been erased in the second year of such an agreement by virtue of the fact that the increases in Employer HRA and dental insurance premium contributions would be incurred in *each year* of such an agreement. The two year duration of the renewal agreement under consideration in these proceedings, however, ends on December 31, 2004.

(b) *If the Union's final offer is selected in these proceedings*, therefore, the $20,908.08 in savings attributable to the deferred implementation date of its proposed 2003 wage increase would exceed the combined, one time costs of the increased Employer HRA and dental insurance contributions, after which the parties could be returning to the bargaining table within a matter of days.

(c) *If the Employer's final offer is accepted in these proceedings*, its proposed levels of HRA and dental insurance contributions would have been retained, and the Union would be saddled with beginning negotiation with wage rates below the levels clearly justified by the application of the statutory arbitral criteria for 2003 and 2004. It is one thing to conclude that reasonable modification of a mutual problem in the area of health care insurance need not be accompanied by a significant *quid pro quo*, but quite another to determine that such health care insurance changes should be accompanied by a lower than otherwise justified wage or salary increase.

On the basis of a careful consideration of the entire record in these proceedings, including the above summarized considerations, and all of the statutory criteria contained in Section 111.77(6) of the Wisconsin Statutes, the undersigned has concluded that the final offer of the Association is the more appropriate of the two final offers, due to the specific circumstances described above, and it will be ordered implemented by the parties.

AWARD

Based upon a careful consideration of all of the evidence and arguments and a review of all of the various arbitral criteria provided in Section 111.77(6) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of Marinette Firefighters Local 226 is the more appropriate of the two final offers before the Arbitrator.

(b) Accordingly, the final offer of Local 226, herein incorporated by reference into this award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Arbitrator

December 21, 2004