ARBITRATION OPINION AND AWARD

In the Matter of Arbitration

Between

CITY OF MARINETTE
(Police Patrolmen & Sergeants)

And

MARINETTE POLICE DEPARTMENT
EMPLOYEES' ASSOCIATION, LOCAL 230

Decision No. 30872-A
Case 93 No. 62566 MIA-2537

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	LABOR ASSOCIATION OF WISCONSIN, INC. By Thomas A. Bauer Labor Consultant 206 South Arlington Appleton, WI 54915

BACKGROUND OF THE CASE

This is a *statutory interest arbitration proceeding* between the City of Marinette, Wisconsin and Marinette Police Department Employees Association, Local 230, with the matter in dispute the terms of a two year renewal labor agreement running from January 1, 2003, through December 31, 2004. After they had been unable to reach full agreement in their negotiations, the Association on June 25, 2003 filed a petition with the Wisconsin Employment Relations Commission seeking final and binding interest arbitration pursuant to the Municipal Employment Relations Act. Following an informal investigation by a member of its staff, the Commission issued certain *findings of fact*, *conclusions of law*, *certification of the results of investigation* and an *order requiring arbitration* on April 1, 2004, and on May 5, 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, at which time both parties received full opportunities to present evidence and argument in support of their respective positions, and both thereafter closed with the submission of comprehensive post-hearing briefs and reply briefs, after receipt of which the record was closed by the undersigned effective September 24, 2004.

THE FINAL OFFERS OF THE PARTIES

In their final offers governing the terms of a two year renewal agreement, 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 Section 1, Paragraphs a-j, with the following:

"**Health Insurance**:

The Employer shall maintain the current Blue Cross/Blue Shield health insurance plan through December 31, 2003. The current level reimbursements for out-of-pocket expense such as deductible and co-pay will remain in place through December 31, 2003. Effective January 1, 2004, the Employer shall provide the Blue Cross/Blue Shield PPO health insurance plan. The PPO will include all covered procedures and benefits contained in the current plan, except the artificial insemination coverage and the 4th quarter

carryover feature of the current plan.

The Blue Cross/Blue Shield PPO shall have an employee co-pay of 0% in-network and 20% out-of-network, with a deductible of $500 single, $1,500 family. The maximum annual employee out-of-pocket expense for single plan participants shall be $500 in network and $900 out of network; for family plan participants the maximum out of pocket expenses shall be $1,500 in-network and $2,500 out-of-network. The employees shall be responsible for the cost of all deductibles and co-pays. The lifetime maximum shall be $2,000,000.

The City will pay 95% of the cost of the health insurance premium and the employees shall be responsible for 5% of the total monthly premium.

The City shall have the right to change insurance plans upon providing the Union with 60 days' notice of its intent to change, provided the new plan provides equal or better benefits.

Health Reimbursement Account ('HRA') The City will fund a Health Reimbursement Account for each full-time employee enrolled in the City's health insurance plan, in the following amounts: $250 per year for the single plan participants and $500 per year for family plan participants."

(b) Modification of Appendix A - Wages to provide for the following across-the-board wages 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) The addition of the following language to Section 9 of Article 9, entitled HOURS OF WORK, OVERTIME, AND PREMIUM PAY:

"The work shift hours shall be as follows:

Day Shift	-	6:30 AM to 3:00 PM
Afternoon Shift	-	2:30 PM to 11:00 PM
Night Shift	-	10:30 PM to 7:00 AM
Power Shift	-	To be determined by the Chief of Police

Shifts shall be selected by seniority for six (6) months, and then the selection process shall begin again based on seniority. Shift assignments can not be altered to prevent the payment of overtime."

(b) The addition of the following provisions to Article 11, entitled HEALTH INSURANCE, wherein the parties have already provided for the adoption of a Blue Cross/Blue Shield PPO plan.

"a. Deductible $500 (S); $1,500 (F);
b. Employees participating in the single and family health plans shall contribute 5% of the cost of premiums for 2004, effective on the signing date of the successor agreement.
c. The Employer shall provide a Health Reimbursement of $500 (S) and $1250 (F);
d. **DENTAL INSURANCE:** Employer pays 75% of premium;

employees pay 25%."

(c) Modification of Appendix A - Wages to provide for the following across-the-board wages increases: 3.0% effective January 1, 2003; and 3.0% 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 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."

POSITION OF THE ASSOCIATION

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

(1) That a section by section comparison of the position of the parties against the statutory criteria favors selection of the final offer of the Association in these proceedings.

(2) That selection and implementation of the final offer of the Association is *well within the lawful authority of the City of Marinette.*[1]

(3) That *the stipulations of the parties* relative to the 2003-2004 renewal agreement impose no monetary burdens upon the City.[2]

(4) That the City has *the financial ability to meet the costs of the Association's final offer without negatively impacting the interests and welfare of the public.*[3]

(a) That the lack of ability to pay is an objectively provable fact, and the alleging party has the burden of proof on such an issue.[4]

(b) That the City has not raised the issue of inability to pay or even difficulty in paying for a new contract, and the City would have an additional cost of $2,790 in wages if the Association's final offer were selected. The issue of ability to pay is, therefore, a non-entity.

(5) The *final offer of the Association regarding wages is more reasonable and more in line with the appropriate external set of comparables.*[5]

(a) Application of *the external comparison criterion* to the two wage offers favors the position of the Association in these proceedings.

(i) The Association used the following external comparables: Marinette County, City of Peshtigo, City of Oconto and City of Oconto Falls.

(ii) The Employer has used the following external comparables: City of Antigo, City of Kaukauna, City of Merrill, City of Rhinelander, City of Sturgeon Bay and the City of Two Rivers.

(iii) The Association objects to the inclusion of the Employer proposed comparables, and the Association's comparables should be included in any comparison, in that the employees of the City of Marinette Police Department interact with the law enforcement agencies of Marinette County, City of Peshtigo, City of Oconto and the City of Oconto Falls, on a daily basis.

---

[1] Referring to <u>Section 111.77(6)(a)</u> of the Wisconsin Statutes.

[2] Referring to <u>Section 111.77(6)(b)</u> of the Wisconsin Statutes.

[3] Referring to <u>Section 111.77(6)(c)</u> of the Wisconsin Statutes.

[4] Citing *the decision of Arbitrator Arlen Christenson* in <u>Wis.Council of County & Municipal Employees, AFSCME -and- Marinette County Sheriff's Dept.</u> Dec. No. 11090-A (11/72).

[5] Referring to <u>Section 111.77(6)(d)(1)&(2)</u> of the Wisconsin Statutes.

(b) The Association's final wage offer for 2003 has an impact of $195,649 in *total wage compensation*, versus $192,859 for the Employer's offer, a difference of $2,790 between the two offers.[6]

(i) The average wage settlement for 2003, among the Association proposed comparables was 3%.[7]

(ii) The average wage settlement for 2003, among the Employer proposed comparables was 3.73%, and the average lift was 3.38%.[8] In either exhibit, its final 2003 wage increase offer of 1.5% is 1.88% to 2.2% below the averages for the external comparable groups.

(iii) The Association's wage proposal for 2003 is thus reasonable, based upon the external comparable wage increases in both the Association's and the Employer's proposed external comparables.

(c) The Association's wage offer for 2004 has an impact of $201,580 in *total wage compensation*, versus $197,391 for the Employer's offer, a difference of $4,189 between the two offers.[9]

(i) The average wage settlement for 2004, among the Association proposed comparables was 3%.[10]

(ii) The average wage settlement for 2004, among the Employer proposed comparables was 3.52%, and the average lift was 3.5%.[11] The Employer's final 2004 wage increase offer of 2.35% is 1.15% to 1.17% below the averages for the external comparable groups.

(iii) The Association's wage proposal for 2004 is thus reasonable, based upon the external comparable wage increases in both the Association's and the Employer's proposed external comparables.

(6) The Employer has not offered the Association a *quid pro quo* for the health insurance modifications in the second year of the agreement.

(a) Apart from wages, the City is proposing a reduction of its current 100% payment of single and family premiums to 95%, payment, with employees becoming responsible for 5% of such premiums, effective January 1, 2004.[12]

---

[6] Citing the contents of Union Exhibit 5(b).

[7] Citing the contents of Union Exhibit 5(d).

[8] Citing the contents of Employer Exhibit 56.

[9] Citing the contents of Union Exhibit 5(c).

[10] Citing the contents of Union Exhibit 5(d).

[11] Citing the contents of Employer Exhibits 57 & 59.

[12] Noting that the parties have agreed to the following changes: (1) employee co-pay of 0% in-network and 20% out-of-network, with a deductible of $500 single, $1,500 family; (2) the maximum annual employee out-of-pocket expenses for *single* plan participants to be $500 in network and $900 out-of

network, and $1,500 and $2,500, respectively, for *family* plan participants; (3) the employees responsible for the cost of all deductibles and co-pays; and (4) the lifetime maximum shall be $2,000,000.

(b) The Association's final offer proposes the effective date for the 5% sharing of premiums to be *the date of signature of the renewal agreement*.

(c) The 2004 health insurance premiums are $425.42 for single, and $1,150.23 for family plan participants.[13]

(i) In exchange for its wage proposal the Association has made substantial movement in health insurance by agreeing to pay 5% of the single and family premium, as well as assuming responsibility to pay deductibles that were previously reimbursed in full by the Employer.

(ii) *Single plan employees* will assume a monthly premium of $21.27 per month or $255.24 annually, a wage impact of 12¢ per hour in 2004, thus reducing the Employer proposed wage increase from 2.35% to 1.8%, and the Association proposed wage increase from 3.0% to 2.4%[14]

(iii) *Family plan employees* will assume a monthly premium of $57.51 per month or $690.12 annually, a wage impact of 33¢ per hour in 2004, thus reducing the Employer proposed wage increase from 2.35% to 0.7%, and the Association proposed wage increase from 3.0% to 1.3%[15]

(iv) When the cost of employee insurance contributions is deducted, the Association's final wage offer is more in line with the external wage settlements.

(d) Interest arbitration is normally not the place to obtain major changes in benefits, particularly where there was no evidence presented by the employer of any prior attempt to obtain such changes at the bargaining table and where no *quid pro quo* has been advanced in support of such proposal.[16]

(e) The comparable communities used by the Association and the Employer show annual wages increases for 2003 and 2004 of 3% or more.

(i) The Employer has offered wages increases of 1.5% for 2003 and 2.35% for 2004, and is proposing employee responsibility for back health care premiums if its final offer is selected by the Arbitrator.

(ii) The Employer has offered no *quid pro quo* for its proposed major change in health insurance, and as the proponent of change it had the responsibility of establishing a need for the change accompanied by an appropriate *quid pro quo*.

(7) The Association's final offer maintains the bargaining unit's out-of-pocket costs.

---

[13] Citing the contents of Employer Exhibit 7.

[14] Using data extracted from Employer Exhibits 5, 6, 7 and 8.

[15] Using data extracted from Employer Exhibits 5, 6, 7 and 8.

[16] Citing *the decision of Arbitrator Edward Krinsky* in Salem Joint School District No. 7, Dec. No. 27479-A, pages 12 and 29.

(a) It asks that the City fund an HRA for each full-time employee enrolled in the City's health insurance plan, in the amounts of $500 per year for single plan participants, and $1,250 per year for family plan participants.

(i) Under the previous insurance coverage the Employer reimbursed 100% of the employee's deductibles on a monthly basis.

(ii) The objective of the Association is to maintain 100% reimbursement for single plan participants, and 83% reimbursement for family plan participants.

- Its final offer would require family plan participants to pay the $250 deductible annually, or 12¢ per hour or 0.6%.

- The Union's 3.0% wage offer for 2004, with the costs of insurance and deductible contributions deducted, would be reduced to a 0.7% increase.

(b) The City's final offer would fund an HRA for each full-time employee, in the amounts of $250 per year for single and $500 per year for family plan participants. The single plan participants would be required to pay a $250 deductible annually, and the family plan participants $1,000 annually.

(i) Its final offer, with the cost of insurance contribution and deductibles factored in, would effectively reduce its proposed 2004 wage increase for *single plan participants* from 2.35% to 1.1%.

(ii) Its final offer, with the cost of insurance contribution and deductibles factored in, would effectively reduce its proposed 2004 wage increase for *family plan participants* from 2.35% to *minus* 4.0%.

(8) The Association's final offer requires all dental insurance participants to pay toward their premiums.

(a) As part of the *quid-pro-quo* for the insurance changes, the Association proposes that the Employer modify the dental insurance language to reflect that the Employer pay 75% of the premium for single and family rates, and that the employees pay 25% of the premiums.

(b) The current plan provides that the Employer pay the entire premium for single plan employees and 45% of the premium for family plan participants.

(i) The 2003 *family premium* was $127.45 per month, and the *single premium was* $41.91 per month, increasing to $132.29 and $41.91 per month, respectively, for 2004.[17]

(ii) If the Arbitrator selects the Association's final offer, the increased cost to the Employer for assuming additional costs for family dental insurance equates to 1.0%, and its additional costs for single insurance equates to 0.3%.

(c) The Association's offer in this area is reasonable as part

---

[17] Citing the contents of Employer Exhibits 5, 6, 7, & 8.

of the quid pro quo for the Employer's proposed changes in health insurance benefits.

(9) The Association's final offer relating to identifying workshifts, and providing that shifts cannot be altered to prevent the payment of overtime is reasonable.

(a) It proposes two modifications: *first*, to identify the current hours worked by employees; and *second*, to prevent the altering of work shift assignments to prevent the payment of overtime.

(b) The language identifying the work shifts and requiring shifts to be selected by seniority every six months reflects the current practice of the Department, and only clarifies the current practice and the hours of the parties.

(i) The language establishes the regular workweek and work hours of employees for pay and overtime purposes, and places no limits on management rights nor bars management from altering work schedules due to emergencies, nor does it limit the establishment of additional shifts or non-standard work hours.

(ii) The Association submits that the proposal has no financial impact, and, thus, no negative impact upon the Employer.

(c) The part of the Association's proposal objected to by the Employer is that providing that "Shift assignments cannot be changed to prevent the payment of overtime."

(i) Article 9, Section 1 of the agreement currently provides that its provisions "...are intended to provide a base for determining the number of hours of work for which an employee shall be entitled to be paid overtime rates..."

(ii) The Association's proposal is reasonable in that it prevents the Employer from manipulating the work schedule of employees to avoid the payment of overtime.

(10) Arbitral consideration of the *Cost of Living criterion* favors the position of the Association in these proceedings.

(a) If the Arbitrator considers the Association's final wage increase offer of 3.0% increases each year with prior wage increases, the average increases for the past five years would be 2.4%, as compared to average CPI increases of 2.52%.[18] The Association wage proposal, therefore, would lag behind the CPI by 0.12%.

(b) If the same calculations above are made utilizing the City's final wage increase offers of 1.5% and 2.35%, its wage proposal would lag behind the CPA by 0.55%.

(c) Arbitral consideration of the cost-of-living criterion, therefore, favors the position of the Association in these proceedings.

---

[18] Citing the contents of Union Exhibits 6(a)&(b).

In summary and conclusion, the Association submits that application of the statutory criteria to their final offer, as shown above, establishes that its is the more reasonable of the two final offers, and urges that it be selected by the Arbitrator in these proceedings, and ordered implemented by the parties.

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."

(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.

(c) It cites various Wisconsin interest arbitration decisions in support of the above referenced considerations.[19]

(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.[20]

---

[19] 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).

[20] Citing the three arbitration decisions addressed in Employer Exhibit 19.

(b) 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.[21]

(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) Under the old health plan the yearly insurance premium per family health care participant nearly doubled between 2001 and 2004.[22]

(i) The current 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, and the employee family out-of-pocket maximums are $2,500. But 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 is no employee premium contribution. The City's cumulative cost 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.[23]

(ii) While its health care premium, *alone*, is competitively priced, the nature of the benefits received under it has proven to break the budget; the City had full justification for seeking relief, and some was achieved in the current round of contract negotiations.

(b) The new health plan - BC/BS PPO Plan - and employee 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, even though its costs remain above average.[24]

(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.[25]

---

[21] Citing the contents of Employer Exhibits 20, 22, 25, 29 & 30 and Union Exhibit 9(b).

[22] Citing the contents of Employer Exhibit 32.

[23] Citing the contents of Employer Exhibits 39, 43 & 45.

[24] Citing the contents of Employer Exhibit 41.

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

(c) 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. The City's costs continue to exceed the annual average of the comparables by nearly $1,000 per employee, which excess would reach $1,678.28 per employee under the Union's final offer.[26]

(v) None of the comparables provide any type of HRA, and there is no support for the additional HRA contribution sought by the Union in addition, implementation of the Union's final offer would generate in-network employee costs significantly lower than those being absorbed by comparable employers.[27]

(vi) 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.

(d) 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.[28]

(ii) Acceptance of the Association's final offer in this

---

[26] Citing the contents of Employer Exhibits 44, 47 & 48.

[27] Citing the contents of Employer Exhibit 48.

[28] 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 & 28285-A (1995); and *Arbitrator Daniel J. Nielsen* in Dane County, Dec. No. 25576-A (1989).

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.

(iii) 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 and proposed language changes for the work shifts are significant changes in the parties' *status quo* language.

(a) The Association proposed language change and increase in the City's dental insurance contribution, is unsupported by the existence of any compelling need for either change.

(i) A review of arbitral *status quo/quid pro quo* standards supports the position of the City in these proceedings.[29]

(ii) Pursuant to the above, 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.[30]

(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 current premiums are significantly higher than any other external community is charged for full dental coverage.[31]

(d) All of the city's internal units receive the same employer percentage contributions as what is provided for in this bargaining unit.[32]

(6) The Association has failed to prove that a change in the work schedule language is necessary.

---

[29] 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).

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

[31] Citing the contents of Employer Exhibit 51.

[32] Citing the contents of Employer Exhibits 11 to 18.

(a) Its offer adds language that will be at odds with the current provisions in Article 9, Section 6, but it has failed to propose modification of this section.

(b) Chief Skorik confirmed that while parts of the Union proposal would codify current practices, but would rob management of needed flexibility.

(c) Restriction of the City's ability to alter shift assignments would interfere with the occasional reallocation of shift assignments for such purposes as getting the work done, and accommodating school or training needs and court appearances.

(d) The Union failed to prove a need for its proposed status quo change, the proposed change would impact on costs, it has failed to provide an appropriate quid pro quo, and it should not be allowed to gain such a restrictive provision through the arbitration process.

(7) The City's final wage and benefit offer maintains the bargaining unit's historical ranking and its above average salary/longevity levels.[33]

(a) The City's annual salary and health insurance costs make this bargain one with overwhelming consequences.

(b) 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.[34]

(c) The wage and health insurance settlement pattern among the comparables is 4.29% in 2004, the City's final offer is 4.41%, and the Association's 4.64%.[35]

(d) 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.

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

(9) 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.

(b) The Police Association, however, is seeking a higher wage adjustment than the Firefighters, the largest HRA contribution, greater dental insurance contributions, and a

---

[33] Citing the contents of Employer Exhibits 55-57 and Union Exhibits 5(b) & (d).

[34] Citing the contents of Employer Exhibit 58.

[35] Citing the contents of Employer Exhibits 55-57.

significantly restrictive work shift proposal. Its final offer will 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 disrupt the economic status quo, with a total lack of a *quid pro quo* for any or all of the items contained therein.

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

(1) That the City does not have the financial ability to meet the costs of the Association's offer without negatively impacting upon the interests and welfare of the public.

(2) The Association's final offer regarding wages is not reasonable.

(3) The City does not have to offer a quid pro quo for the health insurance modification that both parties have already agreed upon.

(4) The time has come for employees to pick up a reasonable portion of the out-of-pocket health care costs.

(5) The Association's dental insurance proposal does not meet the *status quo* and *quid pro quo* threshold.

(6) The Association has not provided any justification or a *quid pro quo* for its work shift change.

In summary and conclusion it urges that the parties have presented widely divergent final offers covering *wage rate increases*, *health insurance* and *dental insurance benefits*, and contractual provisions *infringing upon management's right to schedule its employees*: the City's offer is fair, its 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 does not understand that the existing pie cannot be made any bigger: the decrease in its shared revenue budget has pressured the City's budget; 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.

FINDING AND CONCLUSIONS

In the case at hand the parties principally differ on certain *cost elements of group medical insurance and dental insurance, the funding of individual employee health reimbursement accounts,* the *general wage increases* to be applicable during the term of the two year renewal agreement, and upon *language changes* in Article 9, Section 9. In arguing their respective cases either or both emphasized the following principal *statutory arbitral criteria*: the *necessity for an adequate quid pro quo in certain situations involving proposed changes in the status quo ante; certain external and internal comparisons; cost of living;* the *interests and welfare of the public* and the *ability to pay;* the *overall compensation presently received* by those in the unit; and *other factors normally or traditionally considered.* The undersigned will preliminarily discuss each of the various statutory criteria in conjunction with the various impasse items, and will apply the criteria and select 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

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*.[36]

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

---

[36] These *quid pro quo* criteria fall well within the scope of Section 111.77(6)(h) of the Wisconsin Statutes.

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*."[37]

(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 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. ...

---

[37] See the *decisions of the undersigned* in Village of Fox Point, 30337-A (11/7/02) pp. 21-22, and in Mellen School District, Dec. No. 30408-A (3/21/02), pp.
39-40.

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."[38]

(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.[39]

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.[40] This escalation in the costs of health insurance, constitutes the requisite

---

[38] See the *decision of the undersigned* in Algoma School District, Case 18, No. 46716, INT/ARB-6278, pg. 25 (11/10/92)

[39] See the *decisions of the undersigned* in Town of Beloit, Dec. Nos. 30219-A and 30220-A (4/25/02), pp. 13-14.

[40] See the contents of City Exhibit #32, depicting escalation in the monthly cost of family health insurance premiums from $569.91 per month in 1999 (the year prior to the negotiation of the predecessor, 2000-2002 agreement), to $1,189.43 per month in 2004.

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.

The Comparison Criteria

In the absence of either statutory or agreed-upon prioritization of the various arbitral criteria, interest arbitrators normally find *comparisons* to be the most frequently cited and most important of such criteria, and the most persuasive of these are normally the so-called *intraindustry comparisons*.[41]

[41] 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*.

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.[42] 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.[43] While the primary intraindustry comparables proposed by the Union are *geographically proximate* and fall within the *same labor market*, Marinette County has approximately three and one-half times the population of the City of Marinette, and the cities of Oconto, Peshtigo and Oconto Falls, with populations of 4,538, 3,218 and 2,638, respectively, are significantly smaller than both the City of Marinette and the average populations of the comparables urged by the Employer.[44]

In considering the *general wage increase comparisons* between the City of Marinette and the six other comparables, it is apparent that the City has not offered fully competitive wage increases in either 2003 or 2004. The six primary comparables had average wage increases of 3.13% in 2003 and 3.00% in 2004, as compared to City proposed average wage increases of 1.5% and 2.35%, and Union proposed increases of 3.0% each year.[45] As conceded by the City in its post-hearing brief, while these wage increase comparisons clearly favor

---

[42] See the contents of Employer Exhibit #19, and copies of the various arbitral decisions included in Section F of the Employer's exhibits.

[43] See the contents of Employer Exhibits 22, 24, 25 & 26, which compare these cities on the bases of their *populations*, *distances from the City of Marinette*, *2003 equalized valuations*, *2004 AGI per tax return* and *2003 effective full value tax rates*.

[44] See the contents of Union Exhibit #9(b) and Employer Exhibit 22.

[45] See the contents of Employer Exhibit 59.

the wage increase component of the final offer of the Union, the undersigned is faced with multiple impasses items in these proceedings.

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 $17.94 per month higher for single, and $116.38 higher for family coverage, than the comparables. For 2004, with the implementation of the changes agreed upon by the parties, its net monthly health insurance premiums in 2004, would be $7.50 per month lower for single, and $54.93 higher for family coverage than the comparables; the major change during 2004, of course, being the parties' acceptance of 5% employee premium contributions for either single or family coverage.[46]

The parties differ in the following respects, however, in proposed 2004 revisions to the agreed-upon BC/BS PPO plan.[47]

(1) In connection with the agreed upon creation of a Health Reimbursement Account for employees, the City proposes an annual *HRA reimbursement* in the amount of $250 per employee while the Union proposes $500 per year.

(2) The City proposes annual City costs for *in-network options*, of $5,006.80 for single and $13,362.08 for family plans, while the Union proposes $5,256.80 for single and $14,112.08 for family plans, differences of $250 and $750 per year, respectively.

(3) The City proposes annual employee costs for in-network options of $500.32 for single and $1,676.92 for family plans, while the Union proposes $250.32 for single and $926.92 for family plans, differences of $250 and $750 per year, respectively.

(4) The City proposes annual City costs for out-of-network options, of $5,0006.80 for single and $13,362.08 for family plans, while the Union proposes $5,256.80 for single and $14,112.08 for family plans, differences of $250 and $750 per year, respectively,

(5) The City proposes annual employee costs for out-of-network options, of $900.32 for single and $2,676.92 for family plans, while the Union proposes $650.32 for single and $1,926.92, differences of $250 and $750 per year, respectively.

---

[46] See the contents of Employer Exhibits 39, 40, 41 &42.

[47] See the contents of Employer Exhibit #44.

The average cumulative 2004 employer contribution for family plan health insurance premiums is $12,433.80 for the primary external comparables. These 2004 costs to the City of Marinette would be $13,362.08 under the City's offer, and $14,112.08 under the Union's final offer.[48] The City's final offer would thus exceed the comparables by $928.28 per year per employee, and the Union's final offer would exceed the comparables by $1,678.28 per year per employee. The principal basis advanced for the Union's higher proposal in this area was its perceived need for a significant *quid pro quo* to offset the negotiated changes in the health insurance changes, primarily the acceptance of employee contributions to the insurance premiums for such coverage.[49]

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 their consideration of the *primary external comparables*. The Union proposed additions beyond this basic change, however, could only be supported if they fell within the scope of an *appropriate quid pro quo* which, as noted above, is simply not the case in these proceedings.

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; the Union's final offer proposes that the City pay 75% of the family premium for dental insurance. Either final offer contemplates single and family insurance contributions greater than the average costs incurred by the primary external comparables and, thus, application of the external comparison criterion does not alone support the Union proposed increase in Employer premium contribution. The Union proposed improvement in dental insurance could only be supported if they fell within the scope of an *appropriate quid pro quo* which, as noted above, is simply not

---

[48] See the contents of Employer Exhibit #47, which figures 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.

[49] See the contents of Employer Exhibits 47 and 48.

the case in these proceedings.

It is next noted, despite the normal primacy of the *intraindustry comparison criterion*, that employers have significant and justified interests in *internal uniformity* in various areas, including wage increases and group medical and dental insurance coverage. Accordingly, arbitral consideration of the internal comparison criterion, while normally entitled to significantly less weight than the external comparisons emphasized in these proceedings, also clearly favors selection of the entire final offer of the City in these proceedings.

The Cost of Living Criterion

The importance of the cost of living criterion varies with the extent of movement in the applicable Consumer Price Index since the parties last went to the bargaining table. In recent years the relative stability in the index has reduced the significance of this criterion in the final offer selection process of interest arbitration.

In urging the applicability of this criterion in the case at hand the Union noted that the applicable CPI had increased an average of 2.52% during calendar year's 2000, 2001, 2002, 2003 and 2004, with the wage increases received in the first three years and those proposed by the parties for 2003 and 2004, resulting in average five year wage increases of 2.4% with adoption of the final offer of the Union, and 1.97% with adoption of the final offer of the Employer, thus favoring the wage component of the Union's final offer.[50]

In determining the weight to be placed upon the cost of living criterion, however, it must be recognized that the Union's argument relates to *wage increases* only, without regard to the remaining impasse items. While consideration of the cost-of-living criterion favors arbitral adoption of the Union's final wage offer, the Wisconsin interest arbitration process requires arbitral section of the final offer of either party *in toto*, rather than on an *item-by-item* basis.

The Interest and Welfare of the Public and the Ability to Pay Criteria

---

[50] See the contents of Union Exhibit 6(a).

The Employer presented testimony and supporting evidence comparing economic conditions in the City of Marinette with the comparables, explaining current budgetary problems within the City and, while not claiming *inability to pay*, has advanced persuasive evidence relating to the difficulty of paying for any additional costs associated with implementation of the final offer of the Union.[51]

The ability to pay criteria is *alone* determinative only in situations where an employer is bereft of the ability to generate additional funds and thus has an absolute inability to pay the cost of a particular final offer. As emphasized by the Union, there is no claimed *inability to pay* in these proceedings. While the Employer claimed *impaired ability* to fund the additional costs associated with implementation of the Union's final offer somewhat favors selection of its final offer, the weight placed on this criterion in these proceedings is significantly less than that accorded the other applicable statutory criteria.

The Union Proposed Additions to Article 9, Section 9 of the Agreement.

In support of the portion of its final offer which would *mandate shift starting times and hours*, *provide for seniority selection of shifts at six month intervals*, and would *specify that shift assignments not be altered to prevent the payment of overtime*, the Union offered the following major justifications:

(1) That the *first two components* of its proposal reflect the *current practices of the Department*, merely *clarify the terms of the agreement*, have *no financial impact or negative impact* upon the Employer, and merely *establish the regular workweek and work hours for pay and overtime purposes*.

(2) That the language barring *alteration of shift assignments to prevent the payment of overtime*, is needed to avoid Employer temporary manipulation of work schedules to avoid overtime, which frustrates the intended meaning of Article 9, Section 1 which already provides that its provisions "...are intended to provide a base for determining the number of hours of work for which an employee shall be entitled to be paid overtime rates..."

The City urges that, while the *first two components* of the Union's proposal do reflect *current and recent past practice*, management needs

---

[51] See the *testimony of Mayor Oitzinger*, and the contents of Employer Exhibits 63 to 75.

continuing flexibility in this area rather than being locked into specific shifts and hours. In connection with the *third component* of the offer it noted the impact and the costs, in a small department, upon such things as occasional reallocation of work due to *short term needs*, temporary alteration of shift assignments due to *training or school purposes*, the need *to accommodate officers' court appearances*, and the need to provide *coverage in the event of officer leaves*, and the resulting increase in overtime costs if such flexibility were lost. It submits that the limited number of such reassignments does not support a need for the Union's proposal, that no valid basis has been established for the proposed change, and that such changes should be gained at the bargaining table and not through the interest arbitration process.

Some past practices, either from the time of their initiation or long duration and implicit mutuality, have become enforceable as part of parties' *whole* agreements, and interest arbitrators may select final offers containing such otherwise enforceable past practices, without the type of justification normally required of other proposed language changes. In the case at hand, however, the past practices in issue have not apparently been the product of such *mutuality* and, accordingly, their arbitral acceptance must be otherwise justified. Chief Skorik testified to the ongoing need for flexibility in the start of officers' shifts and/or in their assignments to shifts, and confirmed that hours or shifts were changed simply to avoid the payment of overtime. The Union offered no testimony or other significant evidence to challenge this testimony, and it relied upon no other arbitral criteria in support of its proposal.

On the above bases the undersigned has concluded that evidence of record does not support the Union proposed modification of Article 9, Section 9 of the collective agreement.[52]

Finally it is noted that the undersigned finds that consideration of *the overall compensation criterion* does not definitively favor selection of the

---

[52] The considerations discussed above and leading to this conclusion, fall well within the scope of Section 111.77(6)(h) of the Wisconsin Statutes.

final offer of either party in these proceedings.[53]

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 principally differ on certain *cost elements of group medical insurance and dental insurance, the funding of individual employee health reimbursement accounts,* the *general wage increases* to be applicable during the term of the two year renewal agreement, and upon *language changes* in Article 9, Section 9.

(2) In arguing their respective cases either or both emphasized the following principal *statutory arbitral criteria*: the *necessity for an adequate quid pro quo in certain situations involving proposed changes in the status quo ante; certain external and internal comparisons; cost of living;* the *interests and welfare of the public* and *ability to pay*; the *overall compensation presently received* by those in the unit; and certain *other factors normally or traditionally considered.*

(3) The connection with the need for *appropriate quid pro quos* in certain situations, the undersigned finds as follows.

(a) 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*.

(b) 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 arbitral recognition 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*.

(c) 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*.

(d) The above 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*.

(e) 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

---

[53] See Section 111.777(6)(f) of the Wisconsin Statutes.

insurance premium contributions.

(4) In applying *the comparison criteria*, the undersigned finds as follows:

(a) In the absence of either statutory or agreed upon prioritization of the various arbitral criteria, interest arbitrators normally find *comparisons* to be the most frequently cited and most important of such criteria, and the most persuasive of these are normally the so-called *intraindustry comparisons*.

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

(c) In considering *general wage increase comparisons* between the City of Marinette and the primary intraindustry comparables, it is apparent that the City has not offered fully competitive wage increases in either 2003 or 2004, which favors selection of the wage component of the Union's final offer.

(d) In considering *health insurance costs and coverage comparisons* between the City of Marinette and the primary intraindustry comparables, the following conclusions have been reached.

(i) The parties' adoption of the basic BC/BS PPO plan with a 5% employee premium contribution was clearly supported by consideration of the *primary external comparables*.

(ii) The Employer *proposed level of contribution for employee HRAs* is closer to the primary external comparables, than that of the Union.

(iii) The Union proposed additions beyond the basic, agreed upon medical insurance changes are *not* supported by consideration of the primary external comparables.

(e) In considering *the dental insurance impasse item*, the final offer of the Employer is supported by consideration of the primary external comparables.

(f) Arbitral consideration of the *internal comparison criterion* clearly favors selection of the final offer of the Employer in the areas of *wage increases*, *medical insurance*, *employee HRA contributions*, and *dental insurance*.

(5) Arbitral consideration of the *cost of living criterion* favors selection of the wage component of the Union's final offer.

(6) Arbitral consideration of the *interest and welfare of the public* and its *impaired ability to pay*, somewhat favors arbitral selection of the final offer of the Employer.

(7) Arbitral consideration of proposed additions to Article 9, Section 9 of the agreement, does not favor selection of the Unions' proposal.

Selection of Final Offer

Interest arbitrators operate as an extension of the *contract*

negotiations process and their normal goal is to attempt, as nearly as possible, to put the parties into the same position that they might have reached at the bargaining table. In the case at hand, however, the number of impasse items and the above summarized application of the statutory criteria require that arbitral selection be limited to which offer is closest to that which might have been reached at the bargaining table. Despite certain criteria which favor *the wage increase component* of the final offer of the Union, it is clear that selection of the final offer of the Employer, *in its entirety*, is clearly favored by application of most of the statutory arbitral criteria. On the basis of a careful consideration of the entire record in these proceedings, including consideration of all of the arbitral criteria contained in Section 111.77(6) of the Wisconsin Statutes, the undersigned has concluded that the final offer of the City of Marinette is the more appropriate of the two final offers, 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 the City of Marinette is the more appropriate of the two final offers before the Arbitrator.

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

WILLIAM W. PETRIE
Impartial Arbitrator

November 27, 2004