IN THE MATTER OF THE INTEREST ARBITRATION

PROCEEDINGS BETWEEN

WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION,

Association,

and

ARBITRATOR'S AWARD
Case 74 No. 64324
MIA-2633
Decision No. 31340-A

BUFFALO COUNTY (SHERIFF'S DEPARTMENT),

Employer.

Arbitrator: Jay E. Grenig

Appearances:

For the Employer: Richard J. Ricci, Esq.
Weld, Riley, Prenn & Ricci, S.C.

For the Association: Thomas W. Bahr, Esq.
Wisconsin Professional Police Ass'n/LEER

I. BACKGROUND

This is a matter of final and binding interest arbitration pursuant to Section 111.77(6) of the Wisconsin Municipal Employment Relations Act for the purpose of resolving a bargaining impasse between the Wisconsin Professional Police Association/LEER Division ("Association" or "Union"), a labor organization, and Buffalo

County ("County" or "Employer"), a municipal employer. The Association is the exclusive collective bargaining representative of certain law enforcement personnel employed by the Employer.

On December 30, 2005, the Association filed a petition with the Wisconsin Employment Relations Commission requesting the WERC to initiate final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act. The petition alleged that an impasse existed between the parties in their collective bargaining. An investigation by a member of the WERC staff determined that an impasse within the meaning of Section 111.77(3) existed between the Association and the Employer. The parties thereafter submitted their final offers.

On June 21, 2005, the WERC issued an order appointing the undersigned as the arbitrator in this matter. The matter was brought for hearing before the Arbitrator on November 8, 2005, Alma, Wisconsin. Upon receipt of the parties' briefs, the hearing was declared closed on December 19, 2005.

II. FINAL OFFERS

A number of issues remain unresolved. With respect to health insurance, the Employer proposes, effective the second full month after the arbitration award, to increase the deductible from $100 to $250 per year for a single health insurance plan and from $200 to $500 per year for a family plan. Presently, employees hired before January 1, 2003, have a $100/$200 deductible, while employees hired on or after January 1, 2003, have a $250/$500 deductible. The Association proposes maintaining the status quo.

The Employer proposes a medical office visit co-pay of $15 per visit for all employees. Presently there is no office visit co-pay. The Association proposes maintaining the status quo.

The Employer proposes a drug co-pay of $10 generic and $20 brand name. It proposes to limit prescriptions to a 34-day supply. Presently employees hired before January 1, 2003, have a $5 generic/$10 brand name prescription co-pay, while employees hired on or after January 1, 2003, have the $10/$20 co-pay. The Association proposes maintaining the status quo.

The Employer also proposes an employee contribution of fifteen percent for all employees on the single plan. Presently the Employer contributes 100% for employees hired before January 1, 2003, and 90% for employees hired on or after January 1, 2003. The Association proposes maintaining the status quo.

With regard to wages, both parties propose to increase all wage schedules across the board by 3.0% effective January 1, 2005, and by 2.75% effective January 1, 2006. In addition, the Employer is proposing an additional twenty-five cents per hour to each clas-

sification wage rate at the 30th month step effective January 1, 2006, after the above wage increases.

Both parties propose a two-year contract commencing January 1, 2005, and ending December 31, 2006.

The Association proposed increasing from three to five the sick leave days an employee may use as personal time annually. The Association also proposes that at each year end any personal time days not used would revert back to the accrued sick leave bank and that there is no carry over from year to year of unused personal days. The Association also proposes eliminating language requiring employees to be at least 55 years of age at retirement in order to receive sick leave payment. The Employer proposes maintaining the status quo.

The Association also proposes making some changes in the language relating to work, removing antiquated effective dates. Although it has no opposition to these "housekeeping changes," the Employer proposes maintaining the status quo.

III. STATUTORY CRITERIA

(6) In reaching a decision the arbitrator shall give weight to the following factors:

(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 the costs.

(d) Comparison of the wages, hours and conditions of employment of the municipal 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.

IV. POSITIONS OF THE PARTIES

A. The Association

The Association claims its final offer serves the best interests of the citizens of Buffalo County by recognizing the need to maintain the morale and health of its law enforcement officers, thereby retaining the best and most qualified officers.

The Association views the comparison of the law enforcement officers employed by the Employer with other law enforcement officers employed by similar-sized sheriff's departments as the most relevant comparison in this proceeding. According to the Association, a majority of the employees in the comparable counties pays less than what the Employer is proposing that Association members pay for health insurance coverage. The Association asserts that bargaining unit members are already paying more toward health insurance costs than any other comparable County.

The Association says that comparison of hourly base rates discloses that deputies in Buffalo County are paid a wage that is substantially below the average of other comparable deputies. The Association argues that that increased costs of health insurance coverage in the Employer's final offer makes the wage rate comparison even more offensive.

With regard to internal comparables, the Association claims that its members are already contributing substantially more toward health insurance premiums than either internal or external comparables. Noting that the Association voluntarily agreed to a collective bargaining agreement that provided for a two-tiered system of premium contributions—with employees hired after 2003 paying more, the Association says there is no compelling reason for requiring the same level of deductibles and co-pays across all the bargaining unit.

B. The Employer

The Employer asserts that it has meet the required burden of proof for its proposed final offer with respect to health insurance. The Employer says the health insurance changes represent an attempt to curb the escalating cost of health insurance claims paid from the Employer's self-funded insurance plan in order to reduce or eliminate losses in the Employer's health insurance reserve fund and to induce employees to become more cost conscious of their health care expenses by placing a higher cost on those who actually use the benefits. The Employer notes that it has increased health insurance premiums by almost 110% since 1995, yet its insurance reserve fund continues to lose money.

It is the Employer's position that its final offer represents a reasonable effort to reduce health insurance costs and to shore up the health insurance reserve fund. The Employer contends its proposal reflects an effort to induce all County employees to become more cost conscious when it comes to their health care and to become wiser consumers of health care benefits. According to the Employer, requiring contributions from all employees is well-accepted by arbitral authority.

Recognizing that internal comparables show that the Employer has agreed in all three collective bargaining agreements with the other bargaining units that the employer will pay 100% of the premium for single coverage and 80% of family coverage, the Employer argues that those contracts were settled in early 2004 before the Employer made the decision to seek a premium contribution for single coverage from all County employees. The Employer asserts that increasing employee costs for health care services is clearly an acceptable approach to reducing health care costs.

With respect to deductibles and co-pays, the Employer claims that employees hired prior to January 1, 2003, have the most advantageous plan provisions within the County, with the lowest cost drug co-pay for brand-name drugs. The Employer says that its position is overwhelmingly supported by the comparables.

The Employer's contends its final offer provides a reasonable quid pro quo for its proposed health insurance changes. The Employer also points out that some arbitrators have held that quid pro quo is not necessary when dealing with the rising cost of health insurance.

The Employer argues the Association has failed to justify its proposed increases in the use of sick leave for personal leave purposes. The Employer points out that the employees represented by the Association already receive more vacation than those in the external comparables.

V. FINDINGS OF FACT

A. The Lawful Authority of the Employer

There is no contention that the Employer lacks the lawful authority to implement either offer.

B. Stipulations of the Parties

While the parties were in agreement on many of the facts, there were no stipulations with respect to the issues in dispute. They have, however, reached agreement on a number of issues not in dispute here.

C. The Interests and Welfare of the Public and the Financial Ability of the Unit of Government to Meet these Costs

This criterion requires an arbitrator to consider both the employer's ability to pay either of the offers and the interests and welfare of the public. The interests and welfare of the public include both the financial burden on the taxpayers and the provision of appropriate municipal services. The public has an interest in keeping the Employer in a competitive position to recruit new employees, to attract competent experienced employees, and to retain valuable employees now serving the Employer. Presumably the public is interested in having employees who by objective standards and by their own evaluation are treated fairly.

The public has an interest in keeping the Employer in a competitive position to recruit new employees, to attract competent experienced employees, and to retain valuable employees now serving the Employer. Presumably the public is interested in having employees who by objective standards and by their own evaluation are treated fairly. What constitutes fair treatment is reflected in the other statutory criteria.

The record does not establish that the Employer lacks the financial ability to meet the costs of either final offer.

D. Comparison of Wages, Hours and Conditions of Employment

1. Introduction

The purpose in comparing wages, hours, and other conditions of employment in comparable employers is to obtain guidance in determining the pattern of settlements among the comparables as well as the wage rates paid by these comparable employers for similar work by persons with similar education and experience.

2. External Comparables

One of the most important aids in determining which offer is more reasonable is an analysis of the compensation paid similar employees by other, comparable employers. Arbitrators have also given great weight to settlements between an employer and its other employees. *See, e.g., Rock County (Deputy Sheriffs' Ass'n)*, Dec. No. 20600-A (Grenig 1984). The parties have utilized data from Clark County, Dunn County, Jackson County, Monroe County, Pepin County, Pierce County, and Trempealeau County. The Employer is limited to the lowest tax levy increase among the external comparables. Its population growth is the lowest among the comparables.

Employee premium contributions in the comparable counties range from none (two counties) to 15% (Clark County). (Clark County has a two-tiered approach—15% for employees hired since the ratification of the 1998-99 collective bargaining agreement and nothing for employees hired prior to that date.) The median employee contribution is 8.0%, and the average employee contribution is 7.6%. The Employer's final offer would result in an employee contribution slightly closer to both the median and the average than the Association's. However, if the contribution rate of Clark County employees hired before the ratification of the 1998-99 collective bargaining agreement is used, the Association's final offer is slightly closer to the contribution rates in the comparable counties.

The employers in all the comparable counties except Pierce County have either agreed to or proposed changes in health insurance. In Clark County the parties voluntarily agreed to increase the deductibles from $100/$300 to $200/$600 in 2005 and to increase the office visit co-pay from $15 to $20 in 2005. In Dunn County, deductibles increased from $150/$450 to $175/$525 and office visit co-pay increased from $20 to $25 in 2005. In 2006, Dunn County deductibles increased to $200/$600 and office visit co-pays increased to $30. Jackson County increased its deductibles from $100/$300 to $250/$500 and increased prescription co-pays from $5/$10 to $10/$20. Clark County and Monroe County are proposing changes in health insurance coverage through interest arbitration.

With respect to leaves of absence, the record shows that employees represented by the Association receive more vacation that the employees in the external comparables. Employees represented by the Association receive a total of 1,416 hours of vacation during their first ten years of employment with the County—more than any of the external comparables.

3. Internal Comparables

In addition to the deputies, there are three other groups of County employees who have collective bargaining agreements—Courthouse, Highway, and Human Services (Professionals). These bargaining units have settled their contracts for 2004-2006. For these groups, the Employer pays 100% of the single premium and 80% of the family

premium. The Employer and the Human Services (Paraprofessionals) bargaining unit are arbitrating their 2005-06 contract. As of January 1, 2005, nonrepresented County employees contribute 15% of the health insurance premium. None of the other bargaining units have agreed to the in-network deductibles and co-pays proposed by the Employer here.

The Employer agreed in 2004 to increase from three days to five days the days of sick leave a Courthouse employee could use for personal days. The Human Services Professionals agreed to the same in their 2004-06 agreement. Instead of additional personal days, the Association agreed to increase the maximum sick leave accumulation from 90 days to 120 days in the 2003-04 contract. None of the other bargaining units can accumulate 120 days of sick leave; they are limited to 90 days of accumulated sick leave.

E. Changes in the Cost of Living

The governing statute requires an arbitrator to consider "the average consumer prices for goods and services, commonly known as the cost of living." While a number of arbitration awards suggest that changes in the cost of living are best measured by comparisons of settlement patterns, such settlements, do not reflect "the average consumer prices for goods and services." Despite its shortcomings, the Consumer Price Index ("CPI") is the customary standard for measuring changes in the "cost of living." Settlement patterns may be based on a number of factors in addition to changes in the "average consumer prices for good and services."

F. Overall Compensation Presently Received by the Employees

In addition to their salaries, employees represented by the Association receive a number of other benefits. While there are some differences in benefits received by employees in comparable employers, it appears that persons employed by the Employer generally receive benefits equivalent to those received by employees in the comparable employers.

Employees represented by the Association are entitled to eleven holidays per year at any time during the year with the approval of the Employer. In 2004, all employees in the bargaining unit elected to cash out a portion of their holidays instead of taking the time off. When a member of the bargaining unit elects to take a day off, the Employer must pay another employee overtime to provide the required coverage; the absent deputies' shifts must be filled.

G. Changes During the Pendency of the Arbitration Proceedings

The parties have not brought any changes during the pendency of the arbitration hearings to the Arbitrator's attention.

H. Other Factors

This criterion recognizes that collective bargaining is not isolated from those factors comprising the economic environment in which bargaining takes place. *See, e.g., Madison Schools*, Dec. No. 19133 (Fleischli 1982). Good economic conditions mean that the financial situation is such that a more costly offer may be accepted and that it will not be automatically excluded because the economy cannot afford it. *Northcentral Technical College (Clerical Support Staff)*, Dec. No. 29303-B (Engmann 1998). *See also Iowa Village (Courthouse and Social Services)*, Dec. No. 29393-A (Torosian 1999) (conclusion that employer's economic condition is strong does not automatically mean that higher of two offers must be selected or, conversely, a weak economy automatically dictates a selection of the lower final offer).

VI. ANALYSIS

A. Introduction

While it is frequently stated that interest arbitration attempts to determine what the parties would have settled on had they reached a voluntary settlement (*See, e.g., D.C. Everest Area School Dist. (Paraprofessionals)*, Dec. No. 21941-B (Grenig 1985) and cases cited therein), it is manifest that the parties' are at an impasse because neither party found the other's final offer acceptable. Realistically, if the parties reached a negotiated settlement, the final resolution would probably be the result of compromise and the outcome would be contract provisions somewhere between the two final offers here. The arbitrator must determine which of the parties' final offers is more reasonable, regardless of whether the parties would have agreed to that offer, by applying the statutory criteria.

B. Health Insurance

The evidence shows that the Employer has experienced, as have other private and public sector employers, dramatic increases in health insurance costs. This creates a major financial problem for both employers and employees, with no satisfactory solution in sight. In the meantime, employees in the public and private sectors are assuming an increased portion of the costs through co-insurance, deductibles, and co-pays.

Unfortunately, there are no simple solutions. Arbitrators have recognized that employees and employers must share the burden of increase health insurance costs. In *Elkhart Lake-Glenbeulah School Dist.*, Dec. No. 26491-A (Vernon 1990), Arbitrator Vernon wrote:

> In this case, the Arbitrator finds that there is substantial intrinsic appeal to the idea that employees—given the extremely high and accelerating cost of health insurance—should, to some degree, share in the cost. This is not because it helps lower the cost of health insurance. There is no conclusive

> proof of this. It is because, as the District argues, health insurance costs are such a major problem that it deserves to be mutually addressed. It raises consciousness as to this problem and directly gives employees a stake in addressing it. It shouldn't be lost that employees have always had a stake indirectly in the cost of benefits. The rising cost of benefits in general always impacts on the amount of the pie which can be sliced into direct wage payments. However, with health insurance fully paid, it is too easy to ignore it, to accept it as a given, and to take it for granted.

While cost sharing is inescapable, arbitrators have recognized that ways must be found to contain and control these costs. In *Kenosha County (Jail Staff)*, Dec. No. 30797-A (Weisberger 2004), Arbitrator Weisberger wrote:

> In this area of rapidly escalating health costs, which are producing a spreading crisis throughout our nation, it is not unreasonable to expect that all County employees, including members of this bargaining unit, will absorb some of the increases for their health care. It is also not unreasonable that the County wishes its employees to be covered by a health plan that promotes turning patients into knowledgeable and cost-conscious consumers of health care services. Whether this consumerism approach will become a significant key to controlling future health care costs is yet to be determined but steps taken in this direction hold out some promise.
>
> In light of rapidly rising costs for health care services and prescription drugs the County's effort to enlist assistance from all its employees to help control this large—and rapidly escalating—County budget item is a common route taken by many public as well as private sector employers who continue to provide the bulk of funding for these key job benefits. (Given the costs involved, it is no longer appropriate to consider this benefit a "fringe benefit.") Given the very high cost of health care . . . the County would be remiss if it failed to explore seriously ways to contain at least some of its rapidly rising health care expenditures.

See also *Village of West Salem*, Dec. No. 26975-A (Johnson 1992) (current trend is in direction of greater contributions by employees to cost of health insurance plans); *Village of Fox Point (Public Works)*, Dec. No. 30337-A (Petrie 2002) (one of possible various approaches directed to partial control of escalating health insurance costs is adoption of reasonable level of employee contribution to insurance premiums).

Some arbitrators have held that a party proposing a change in the status quo is required to offer justification for the change and to offer a quid pro quo to obtain the change. *See, e.g., Middleton-Cross Plains School Dist.*, Decision No. 282489-A (Malamud 1996). Arbitrator Malamud explained:

> Where arbitrators are presented with proposals for a significant change to the status quo, they apply the following mode of analysis to determine if the proposed change should be adopted: (1) Has the party proposing the change demonstrated a need for the change? (2) If there has been a demonstration of need, has the party proposing the change provided a quid pro quo for the proposed change? (3) Arbitrators require clear and convincing evidence to establish that 1 and 2 have been met.

A number of arbitrators have concluded that the undisputed economic impact of rising health insurance costs has reduced the employers' burden of establishing a traditional quid pro quo where health insurance benefits are at issue. In *Village of Fox Point*, Dec. No. 30337-A (Petrie 2002), Arbitrator Petrie stated:

> [T]he spiraling costs of providing health care insurance for its current employees is a mutual problem for the Employer and the Association . . . . 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 modify negotiated benefits or advantageous contract language.

See also Pierce County (Human Services), Dec. No. 28186-A (Weisberger 1995) (where employer has shown it is paying increased health-care costs, its burden to provide quid pro quo for health care changes is reduced significantly); *Marquette County (Highway Dept.)*, Dec. No. 31027-A (Eich 2005) (same); *City of Marinette*, Dec. No. 30872-A (Petrie 2004) (same); *City of Onalaska*, Dec. No. 30550 (Engmann 2003) ("So it goes almost without saying that, with limited budgets caused by cutbacks in state aid and decreases in other revenues, a municipal employer can easily show that it has a legitimate problem of paying the increased and skyrocketing cost of health insurance premiums."). Other parties have explored wellness programs and incentives for using health insurance wisely. *See, e.g., Milwaukee Bd. of School Directors*, Dec. No. 31105 (Grenig 2005) (although the parties could not reach agreement, they explored a number of creative solutions to the health insurance problem that are described in the award).

Other arbitrators have not required any quid pro quo for changes in health insurance benefits. *See, e.g., Pierce County (Sheriff's Dept.)*, Dec. No. 28187-A (Friess 1995) (comparative tests contained in the statutory criteria are sufficient burden of proof for implmentation of changes in health insurance premiums through arbitration); *Walworth Co. Handicapped Children's Educ. Bd.*, Dec. No. 27422-A (Rice 1993) (rising health insurance premiums alone alter the status quo and negate any presumption that the prior contract arranges for paying health costs should carry over to the successor agreement); *Cornell School Dist.*, Dec. No. 27292-B (Zeidler 1992) (where comparables indicate a change may be in order, the concept of quid pro quo does not prevail).

The external comparables support an employee contribution toward single health insurance coverage. Six of the seven external comparables require an employee toward single coverage. While the internal comparables that settled in 2004 do not require contributions for single coverage, the undeniable trend is toward requiring employee contribution for single and family coverage. Continued health insurance coverage without some employee contribution and without provisions controlling or reducing costs is no longer a reasonable option. *Milwaukee Bd. of School Directors*, Dec. No. 31105 (Grenig 2005). See also *Kenosha County (Jail Staff)*, Dec. No. 30797-A (Weisberger 2004) ("Given the very high cost of health care . . . the County would be remiss if it failed to explore seriously ways to contain at least some of its rapidly rising health care expenditures.")

The Employer's final offer of an additional 25 cents an hour to the top step of the wage schedule provides adequate quid pro quo, if any is required, for the employer's proposed health insurance changes.

For the foregoing reasons, it is concluded that the Employer's health insurance final offer is more reasonable than the Association's.

C. Leaves of Absence

According to the record, County employees in the bargaining unit represented by the Association receive more vacation than the employees in the external comparables. These employees receive a total of 1,416 hours of vacation during their first ten years of employment with the County—more than that received by employees in any of the external comparables.

In addition, these employees may take up to eleven holidays annually. If an employee does not take a holiday during the year, the employee receives a cash payout at the end of the year. All deputies in the sixteen-member bargaining unit elected to cash out a portion of their holidays in 2004 instead of taking the time off.

It is true that the Employer has agreed to increase from three days to five days of sick leave that employees in three of the other bargaining units may use as personal time off. However, in the prior contract, the Association elected to increase the maximum sick leave accumulation to 120 days from 90 days in lieu of receiving an increase in the number of personal days. No employee in the other County bargaining units can accumulate 120 days of sick leave; those employees are limited to accumulating 90 days of sick leave. Thus, internal comparability does not justify an increase in personal days.

In light of the available vacation and holiday time, the deputies' election to cash out holidays instead of taking the time off suggests there is not a need for additional holidays or personal time. Furthermore, because of the need to replace bargaining unit em-

ployees who take a day with an employee working overtime, the Association's final offer represents a not insignificant cost to the Employer.

The Association offers no compelling justification or rationale for its proposal eliminating the contract language requiring employees to be at least 55 years of age at retirement in order to receive sick leave payment.

For the foregoing reasons, it is concluded that the Employer's final offer with respect to leaves of absence is more reasonable than the Association's.

VII. AWARD

Having considered all the applicable statutory criteria, all the relevant evidence and the arguments of the parties, it is concluded that the Employer's final offer is more reasonable than the Association's final offer. The parties are directed to incorporate into their collective bargaining agreements the Employer's final offer.

Executed at Delafield, Wisconsin, this eighth day of February 2006.

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Jay E. Grenig