

BEFORE THE ARBITRATOR

In the Matter of an Interest Arbitration Between

**LA CROSSE COUNTY DEPUTIES ASSOCIATION,
WISCONSIN PROFESSIONAL POLICE ASSOCIATION**

and

LA CROSSE COUNTY

**Case 227
No. 71523
MIA-3092
Decision No. 33888-A**

Appearances:

Mr. Richard Terry, Executive Director, RWT Strategies, LLC, 6111 Rivercrest Drive, McFarland, WI 53558, appearing on behalf of the Association.

Mr. Robert B. Taunt, Personnel Director, La Crosse County, 400 4th Street North, Room 2190, La Crosse, WI 546001-3200, appearing on behalf of the County.

ARBITRATION AWARD

The Union and Employer named above are parties to a collective bargaining agreement which expired on December 31, 2011. The parties filed an interest arbitration petition with the Wisconsin Employment Relations Commission, and a member of the Commission's staff conducted an investigation which reflected that the parties were deadlocked in their negotiations. The parties submitted their final offers to the Investigator by June 21, 2012. On July 3, 2012, the Commission issued an Order appointing the undersigned to serve as the Arbitrator. A hearing was held on September 12, 2012 in La Crosse, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The parties completed filing briefs on October 27, 2012.

FINAL OFFERS OF THE PARTIES

County's Final Offer

Insurance:

13.01 All currently enrolled employees under this Agreement shall be provided an option to continue under the county's Group medical, hospital and major medical plan and eligible new employees may elect coverage under the same plan. ~~Said plan will provide for same, or substantially the same, level of benefits previously provided for the duration of this Agreement.~~ In addition, eligible employees, as established by the carrier, shall be given the option to participate in a County Group Dental Health Plan, pursuant to the terms of the plan, when such plan is made available by the County, during the term of this Agreement.

The carriers of either plan shall be determined by the county and any credits resulting from providing such coverages shall accrue to the County.

13.02 Effective with the January 2012 premium for February 2012 Coverage, the County will contribute up to a total amount set forth below as "employer" amount to the month premium of the County's employee health and dental plans. The employee will bear the cost in excess of the county's contribution for the option selected, designated "employee" amount.

Family	Employer	Employee
1.Franciscan Skemp PPO Deductible	\$1,584.90	\$176.10
2.Gundersen Lutheran PPO Deductible	\$1,584.90	\$176.10
3.Dental	\$ 70.87	\$ 21.13
Single		
1.Franciscan Skemp Deductible PPO	\$ 647.10	\$ 71.90
2.Gunderson Luther Deductible PPO	\$ 647.10	\$ 71.90
3.Dental	\$ 25.75	\$ 7.25

The premium for 2013 will depend on the plan design selected by the County. The premium will be shared by employer and employee in the same proportions as in 2012.

~~The PPO plans require a 100 deductible per person, \$300 family maximum, with 10% employee co-insurance in-network and 30% employee co-insurance out of network for the next \$2500 of expenditures.~~

~~All employees participating in the group health plan shall comply with those cost containment features set forth in the County employee health benefits plan. There shall be two (2) options for employees to choose their level of participation in the health plan.~~

~~13.02.2 ——— Franciscan Skemp PPO — managed care~~

~~13.02.3 ——— Gunderson Lutheran PPO — managed care~~

~~Annually in the month of November, employees shall have the option to transfer between the plans. This is not an open enrollment but an opportunity to switch to a different health plan option for the next year. The coverage option selected would be effective February 1 of the following year.~~

~~Maintenance Drug Co Pay will be 2 co pays for a 100 day supply, but must be filled by mail order. Ordering a 90 day supply through a pharmacy will require 3 co pays. Effective January 1, 2009, a three tier formulary drug plan will be effective. The current \$10 co pay for generic shall remain and there will be a \$25 co pay for formulary brand drugs and \$45 co pay for non-formulary drugs.~~

~~Effective January 1, 2009, County drug plan will cover prescription birth control bills as part of the three tier formulary plan.~~

1303. All eligible employees wishing to participate in the Group Life Insurance and Weekly Income Protection Plan must do so within thirty (30) days of employment and the County and the Employee shall share the premium equally. The County reserves the right to initiate a new Group Life Insurance plan during the term of this Agreement, limited to only that the life coverage shall not be less than that currently provided.

Design and Selection of Health Care Coverage for Public Safety Employees: Act 32 prohibits employers from bargaining collectively with public safety employees with respect to the “design and selection” of health care coverage plans by the municipal employer for public safety employees and the impact of the design and selection of the health care coverage plans on the wages, hours, and conditions of employment of the public safety employee.

ARTICLE XIV WISCONSIN RETIREMENT FUND

14.02 Revise the section to provide:

Effective on the dates given below, the County will pay the Employer’s share of the contribution rate for Deputy Sheriffs established by the Wisconsin Retirement System (WRS), and the remaining portion of the Employee’s share except as follows:

Total WRS (20.30%)	Deputies Pay	County Pays
Effective Jan 1, 2012	0%	20.30%

Effective January 1, 2013 Deputies pay an amount equal to the full employee share established by the WRS for Deputies, currently 5.9%, and the County pay the balance.

Any Employee of this bargaining unit hired after January 1, 2012 will pay the full amount of the employee contribution defined by the WRS, currently 5.9%.

ARTICLE XX CLASSIFICATIONS AND PAY GRADES

For those members of the Bargaining Unit on the payroll as of the date of ratification or award:

Effective 1/1/12 – 0.0%

Effective 1/1/13 – 2.0%

Association's Final Offer

Wages

Jan 1, 2012 – 1% pay increase ATB

Jan 1, 2013 – 1% pay increase ATB

Insurance

13.01 All currently enrolled employees under this Agreement shall be provided an option to continue under the county's Group medical, hospital and major medical plan and eligible new employees may elect coverage under the same plan. ~~Said plan will provide for same, or substantially the same, level of benefits previously provided for the duration of this Agreement.~~ In addition, eligible employees, as established by the carrier, shall be given the option to participate in a County Group Dental Health Plan, pursuant to the terms of the plan, when such plan is made available by the County, during the term of this Agreement.

The carriers of either plan shall be determined by the county and any credits resulting from providing such coverages shall accrue to the County.

~~The PPO plans require a \$100 deductible per person, \$300 family maximum, with 10% employee co insurance in network and 30% employee co insurance out of network for the next \$2500 of expenditures.~~

All employees participating in the group health plan shall comply with those cost containment features set forth in the County employee health benefits plan.

~~There shall be two (2) options for employees to choose their level of participation in the health plan.~~

~~13.02.2 Franciscan Skemp PPO managed care~~

~~13.02.3 Gundersen Lutheran PPO managed care~~

~~Annually in the month of November, employees shall have the option to transfer between the plans. This is not an open enrollment but an opportunity to switch to a different health plan option for the next year. The coverage option selected would be effective February 1 of the following year.~~

~~Maintenance Drug Co Pay will be 2 co pays for a 100 day supply, but must be filled by mail order. Ordering a 90 day supply through a pharmacy will require 3 co pays. Effective January 1, 2009, a three tier formulary drug plan will be effective. The current \$10 co pay for generic shall remain and there will be a \$25 co pay for formulary brand drugs and \$45 co pay for non~~

formulary drugs.

~~Effective January 1, 2009, County drug plan will cover prescription birth control bills as part of the three tier formulary plan.~~

13.02 ~~Effective with the January 2012 premium for February 2012 coverage, the County will contribute up to a total amount set forth below as “employer” amount to the monthly premium of the county’s employee health and dental plans. The Employee will bear the cost in excess of the County’s contribution for the option selected, designated “employee” amount. 90% of the total monthly premium of the County’s employee health for both the single and family plans offered, the employee will pay the remaining 10%. The employer will contribute 78% of the dental premium, the employee will pay the remaining 22%.~~

Family	Employer	Employee
1.Franciscan Skemp PPO Deductible	\$1,584.90	\$176.10
2.Gundersen Lutheran PPO Deductible	\$1,584.90	\$176.10
3.Dental	\$ 70.87	\$ 21.13
Single		
1.Franciscan Skemp Deductible PPO	\$ 647.10	\$ 71.90
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3.Dental	\$ 25.75	\$ 7.25

STATUTORY CRITERIA

The criteria to be given weight by the Arbitrator in rendering the award are set forth in Section 111.77(6), Wis.Stats., as follows:

(am) In reaching a decision, the arbitrator shall give greater weight to the economic conditions in the jurisdiction of the municipal employer than the arbitrator gives to the factors under par. (bm). The arbitrator shall give an accounting of the consideration of this factor in the arbitrator’s decision.

(bm) In reaching a decision, in addition to the factors under par. (am), 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 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 account in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public service or in private employment.

THE PARTIES' POSITIONS

The Association

The Association asserts that the economic conditions in La Crosse County are well able to support a finding for the Association under Section 111.77(6)(am), Wis.Stats. Using the Employer's costing exhibits #17 and #18, the total cost of the Association's offer in 2012 is \$17,090 greater than the Employer's offer. The real numbers are obscured by the Employer's cost/value Exhibit (#17). The Association's offer for 2012 costs the County \$20,234 over 2011 costs (wages cost \$15,716, rollups cost \$1,375, WERS costs \$3,143). The real new cost to the County in 2012 under the Association's final offer is \$20,234. In 2013 the new costs are \$15,873 for wages, \$1,389 for rollups and \$20,842 for WRS at 6.5% (slightly more due to the increase of WRS to 6.65%) for a total of \$38,104. The Association's offer for the two years will cost the Employer a total of \$58,338 dollars over the 2011 costs.

The County's offer, according to Employer exhibit #18, shows increased costs for 2012 over 2011 at \$3,144. For 2013, the costs would be \$31,432 for wages of 2%, rollups of \$2,750 and a reduction of \$131,451 for WRS. The results for two years would be an overall reduction of \$94,125.

The Association asks whether economic conditions in the County are so calamitous and desperate that they cannot afford a total two-year expenditure increase of \$58,338? Must the County reduce the disposable income of its law enforcement officers by four and a half percent? County Administrator Steve O'Malley testified that the County just completed a new 30 million dollar law enforcement center, not the usual fare for a poor county. The County has somewhere between 25 and 50 million dollars in reserve. The County ranks in the middle of its comparables for the median value of owner-occupied housing, and those counties have been able to pay their law enforcement personnel without devaluation of benefits such as WRS.

County exhibit #6 shows it is in the middle to top of its sets of comparables in equalized value. While the County is not the wealthiest county, it is not poor and economic conditions do not favor the County's offer.

The Association submits that the arbitral criteria under (bm) support its final offer. The first two, the lawful authority of the municipal employer and the stipulation of the parties, are not issues in this case. The interests and welfare of the public and the financial ability of the unit of government to meet the costs are addressed herein. The interests and welfare of the public are best served when public safety has well trained and fairly treated officers. It is in the public's interest to recruit competent employees and retain valuable employees. Arbitrator Grenig stated in the *Village of Osceola*, Dec. No. 33217-A (2011), that the "public is interested in having employees who by objective standards and by their own evaluation are treated fairly."

By trying to shift the cost of retirement benefits to employees, the County advances an argument that the cheaper, the better. The County may save some tax dollars in the short run, but the time will come when it will have to catch up. Disciplined, equitable, predictable wage adjustments without large peaks and valleys are in the public interest. While the economy has been weak, these employees should not be required through arbitration to take a substantial decrease in disposable income in order to save a financially secure employee from paying its law enforcement employees commensurate with other deputies performing similar duties in similar counties. Other employers in the comparables have faced similar, and some greater, economic challenges and yet have given their deputies modest increases without assailing WRS contributions.

The Association's wage lift is less than the average comparable lift and provides the same lift over two years as the County's offer. The County's demand for a full 100% (6.65%) WRS contribution is the dramatic difference between the parties. The County has no persuasive need to reduce its costs for 2012 and 2013 by over \$94,000 other than to add to its bank account. This is clearly a "willingness to pay" case and not an "inability to pay" case. As Arbitrator Hempe noted in the *City of Beaver Dam*, Dec. No. 31706-A, the unwillingness to pay is not a synonym for inability to pay.

Factor (d) requires a comparison of wages, hours and conditions of employees of employees involved with the wages, hours and conditions of employees of others performing similar services and other employees generally both in public and private employment in comparable communities. The Association and County do not agree on the external comparables, and the Association proposes as primary comparables Dodge, Eau Claire, Fond du Lac, Manitowoc, Marathon, Sheboygan, Walworth, Washington, and Wood counties. A secondary comparable set would be Jackson, Monroe, Trempealeau, Vernon, Jefferson, Ozaukee and St. Croix counties. In 1990, Arbitrator Bilder agreed with this list of counties as well as four contiguous counties that are considerably smaller in size than La Crosse County. The contiguous counties are Jackson, Monroe, Trempealeau and Vernon. In 1977, Arbitrator Kerman found that the comparables were Marathon, Sheboygan, Fond du Lac, Manitowoc, Dodge, Eau Claire, Wood, Washington, Walworth, Jefferson, Ozaukee, St. Croix and Monroe

counties. The County now seeks to add Jefferson and St. Croix counties and exclude Ozaukee County. The external comparables used by the Association in this matter should not be discarded or amended simply because the Employer knows that they support the Association's final offer.

The Association points out that the primary comparables show a wage pattern for 2012 and 2013 that is similar to, but greater than, the Association's final offer. The 2012 comparable average increase is 1.1%, compared to the County's 0% offer and the Association's 1% offer. While there are few settlements for 2013, neither the county's offer of 2% nor the Association's offer of 1% will exceed the 2013 pattern. In the secondary comparables, the 2012 average increase is 3%, and the 2013 average is 3.53% lift. Thus, even if the County were not seeking to subtract 6.65% in WRS benefits and this matter turned on wages, the County's offer is imprudent. Coupled with the reduction of the WRS take back, the County's offer sinks far below the comparables.

Regarding the WRS, seven of the nine primary comparables pay 100% of the employees' share of the WRS. Only Marathon (at 2%) and Fond du Lac (employer's responsibility capped at \$3500) counties require any contribution. This County would be the single entity requiring its employees to pay 100% of the employees' share. In the secondary comparables, there is a 7% cap in Trempealeau County, and other law enforcement personnel are not required to pay the employee share of the WRS except for employees hired after July 2011. The County's exhibit #16 shows that out of all law enforcement agencies across the State, there were 17 where employees contributed to the WRS, and the County admitted that some of them received a *quid pro quo*.

The Association heads off an argument by the County regarding internal settlements and notes the significant difference between law enforcement personnel and other general municipal employees. Arbitrators have found that law enforcement personnel may be considered independently from other internal bargaining unit comparisons. Deputies' responsibilities, duties and dangers are similar to protective service employees in the external comparables. That is why deputies have different arbitral criteria under the law and why the comparables under Section 111.77(6), Wis.Stats., refers to employees performing similar services in public and private employment.

Additionally, the Legislature did not include a change that mandated law enforcement personnel have the same reduction in WRS contributions as it mandated for those covered by Wis. Stats. 111.70. This Employer seeks to insert itself in the place of the Legislature to demand of these employees that which the Legislature did not seek. The Legislature passed legislation that made the WRS payment by this and other employers not available to new hires in law enforcement. They carved out current law enforcement employees for the employees' share of the WRS.

The Association states that the County is asking for a large and painful reduction in the real income of the deputies. An advanced deputy at step 4 would lose \$2370 in earnings during

the term of the contract. The County offered nothing for reducing the employees' real income by 4.65%. The County has not provided a *quid pro quo* for a change in the *status quo* of the WRS contribution. The Association has proposed a change in the insurance *status quo* by changing the dollar amounts paid for insurance to a percentage, but calls the change *de minimus*. However, the 2% wage offer of the County cannot be considered to be a *quid pro quo* in exchange for a benefit reduction of 6.65% resulting in a 4.65% reduction in compensation. The Association argues that the County has not demonstrated that its WRS proposal addresses any need without undue adverse effect on the employees. The County's proposal is inconsistent with the comparables and the Employer has not offered a valid *quid pro quo*.

The Association claims that the CPI also supports its offer. The CPI for the months of January through July of 2012 rose above 1% in all those months. The Association's offer is more in line than the County's with a 0% increase. The Association finds no extra benefits in the areas of insurance, vacation, uniform allowance or sick leave.

The County

The County asserts that the time for all of its public safety employees to contribute to the WRS will never be better than now. To delay the implementation will make future conversion more difficult for employees, create confusion among staff, create pay inequity, create problems for advancement and problems for public safety supervisors. The Association's proposal of *status quo* is inconsistent with the trend in Wisconsin.

The County notes that Arbitrator Michelstetter in his 2000 decision of *La Crosse County*, Dec. No. 29742-A, adopted the comparable counties of Dodge, Eau Claire, Fond du Lac, Manitowoc, Marathon, Monroe, Sheboygan, Walworth, Washington and Wood. Two years later, Arbitrator Krinsky adopted the Michelstetter comparables and noted that once comparables have been established, they should continue to be used unless there are important reasons to change them. County Exhibit #6 provides demographic data on counties with plus or minus 25% population compared to La Crosse, which is the methodology used by the County for 28 years and how Arbitrator Michelstetter established the comparables, except for Monroe as a contiguous county. Manitowoc and Wood are now less than the 25% standard, but Jefferson and St. Croix are appropriately within the standard. Ozaukee has never been included because of a per capita adjusted gross income almost double that of La Crosse and other comparables. Based on new census data and a significant population change in the 12 years since the Michelstetter award, the County submits that its list is preferred over that of the Association.

The County submits that its deputies have wages that are at or above hourly wages for police and deputies across the State, according to the UW-Madison Extension. The Association's 1% wage offer acknowledges that economic times are tough. The net effect of both the Association and County pay proposals is similar if not the same over the duration of the contract.

Turning to the internal comparables, the County has shown a history of union contract pay increases with an 8 year 100% consistency among 8 union groups and non-union employees in terms of wages and benefits. The only deviation was in 2012 when the deputies failed to agree to pay the employee portion of the WRS. The 2% wage increase received by all other employees for 2012 coincided with their payment of the WRS employee share. Since the deputies retained the 5.9% of income not spent on the WRS, the County's offer does not include an additional 2% wage increase in 2012. The County asks that the Arbitrator acknowledge this super internal consistency when considering that the WPPA offer destroys benefit equity between employees of the County and encourages other groups to delay settlement and to seek special or different benefits. The contracts for 7 other bargaining units, including WPPA represented telecommunicators, were all voluntary settlements, and the unions engaged in free collective bargaining as permitted prior to the effective date of Acts 10/32. The employees all agreed to pay the employee share of the WRS beginning in 2012. Also, management and elected officials joined in the internal pattern.

The County objects to the Association's proposal to seek a change in the design of the insurance plans. The plans show premiums paid by the employer and employee in dollar amounts, which serves several purposes. It eliminates any questions if employees were required to calculate from a percentage, and the employees need not look beyond the four corners of the document to understand the premium. It is also educational for employees to see that large dollar amount of the employer's contribution of their behalf for this expensive benefit. The County contends that because the Association does not change the employees' share of insurance, this proposal pertains to plan design and is a prohibited subject of bargaining. Moreover, the Association did not bargain over this change to a percentage but submitted it only at the end of mediation in the final offer. Act 32 makes it clear that the design of health care coverage plans by the municipal employer for public safety employees is no longer a subject of bargaining. The County also objects to the Association's proposal for dental premiums that not only changes from dollars to percentage but also increases the share paid by the employer. This change was not bargained during any session or during mediation and was submitted only in the final offer. The Association offers no *quid pro quo* and shows no need for these changes.

The County reviews the comparison of overall compensation, noting first that the average pay for police and sheriff's patrol officers is at or above the state wide average. For health insurance, the deductible for most counties is 2½ or more times greater than La Crosse. The County's premium is substantial, and in most comparables, the employee share is greater than the share here of 10%. This is a superior benefit by comparison. The dental benefit is also superior with employees paying 22 or 23% of the plan, where half of the comparable counties and three out of four contiguous counties provide 50% or no benefit for dental. The parties agreed to modify the vacation accumulation, and this was a proposal brought forward by the County to bring deputies in line with the same benefit shared by most other County employees. The same is true to a tentative agreement splitting deductions from pay checks.

The County asserts that the Association's position of *status quo* on the WRS is not

tenable for the future. Acts 10 and 32 provide that all new public safety employees hired after the effective date of Act 32 must pay the full general occupation employee share of the WRS. The language of the Association's final offer omits this change, which is required by law. Its proposal states that the County will make the full contribution for deputies, when in fact the new hires would not be following contract language. The leadership of the WRRRA recognizes that public safety employees will be asked to contribute and that it is unlikely that an arbitrator would allow them to avoid such a result, as shown in its newsletter. The trend across the State among WPPA and other public safety employee bargaining units is to reach voluntary agreements for employee contribution to the WRS, and the number continues to grow, with a recent settlement in the Village of Mount Pleasant. Moreover, the County submits that its proposal puts all deputies on the same net wage and benefit structure, contributing the employee share of the WRS. The Association's proposal creates pay disparity between co-workers, contrary to the principle of equal pay for equal work. This has a disparate impact on women and minorities who are likely to be newly hired after 2011 and may have a chilling effect on the County's ability to hire women. Overall in the County, 70% of employees are females but among deputies, only 12% are females. This benefit has a disparate impact in favor of a gender and while possibly legal, it is not good policy.

The County notes that Acts 10 and 32 were characterized by the Governor as "tools" for local government to achieve savings for local budgets. Except for this unit and their supervisors, all County employees are contributing to WRS without a *quid pro quo*. This strong internal pattern is significant reason to have the last group of deputies contribute also without a *quid pro quo*. Even with all employees including deputies contributing to the WRS, the savings of approximately \$1,100,000 does not match the program funding cuts by the state, which are approximately \$1,428,000. The County finds that this is no time for *quid pro quos* or there would be no savings anyway. Arbitrators do not usually require a *quid pro quo* for the last bargaining unit to fall in line with internal comparables on the same benefit.

The County believes that now is the best time to convert to the employee contribution to the WRS. The CPI is low and deputies will not have to cope with a large upswing in consumer prices. Also, the health and dental insurance is at 0% increase for 2012 and 2013. Due to the levy limits and the proportionate share of the tax levy consumed by public safety, the County would need to look inside the Sheriff's Department to find savings if the deputies do not contribute to the WRS. If the County has to increase health insurance deductibles, it would cost the deputies additional amounts long after they finally make the employee contribution to the WRS.

The County states that the economic conditions in the County are not rosy. The 2012 budget shows the 0% levy limit and stagnant property values, meaning the tax rate rises while the levy is cut. There are State budget cuts of \$1.4 million and over revenue losses in excess of \$1.5 million. The falling CPI affects the value of goods and services sold in the La Crosse area. The La Crosse County Workforce Profile shows area wages are lower for all categories. County government wages are 20% below state averages, yet deputies are on a par with state wide averages for public safety. County Exhibit #12 shows a lack of job growth in the state, the local

housing market sluggishly gaining ground, the County continuing to experience peak foreclosures, and the single unit building permits continues to remain low.

Other exhibits show that there are layoffs and outsourcing at the Trane Company, the third largest employer in La Crosse. The State lagged more than 115,000 jobs behind employment levels before the recession. A tentative pact for Dane County shows deputies would cut take home pay in 2013 and contribute half of their share (3.325%) to the WRS and all of it (6.65%) in 2013. Muskego police will pay half of their WRS employee share in midyear 2012 and the full share in 2013. The Association did not dispute the difficult economic situation of La Crosse County, although it found that the County has reserve accounts. The use of reserve funds for routine wage and benefit expense is not fiscally responsible or a sustainable practice. The County analyzes the costs of the proposals as the Association's proposal costing \$234,431 over two years and the County's cost for two years is a savings of \$1,399.

In conclusion, the County submits that the Association's final offer is flawed in that it proposes benefit design change – a prohibited subject of bargaining – with the proposal to change health insurance premium from dollars to percentage with no impact on premium, which is illegal to implement. The Association's final offer is not in compliance with Acts 10/32 because of an absence of language regarding new employees having to pay the WRS employee share would result in the County payment of such contrary to statute. The County's final offer is more appropriate considering economic conditions in the jurisdiction.

DISCUSSION

Comparables:

First, the comparables should be the counties of Dodge, Eau Claire, Fond du Lac, Jefferson, Manitowoc, Marathon, Monroe, Sheboygan, St. Croix, Walworth, Washington and Wood. Except for Jefferson and St. Croix, the list is the one used by the parties and Arbitrators Michelstetter and Krinsky in 2000 and 2002 respectively. The Association proposes to use Jefferson and St. Croix as a secondary comparable and the County adds both of them to the regular pile. Thus, both parties have recognized that Jefferson and St. Croix counties are of some use in looking at comparables and therefore should be included. This Arbitrator agrees with Arbitrator Michelstetter's rejection of Ozaukee County as a comparable for the same reasons and it should be excluded from consideration herein. (St. Croix may suffer from some of the same elements as Ozaukee, but anytime the parties agree on a comparable, far be it for the arbitrator to ignore it.) The County would not use Wood and Manitowoc based on drops in population. However, Manitowoc's population is over 80,000, which is close to the populations of Jefferson and St. Croix at 84,000. Wood County's population is close to 75,000, lower than all of the other comparables with the exception of Monroe County, which has only 45,000. Thus, Wood and Manitowoc counties are properly left in the pool of comparables as earlier established. Population is not the only factor – if it were, Ozaukee would be in the pool and Monroe would out. The other contiguous counties of Vernon, Jackson and Trempealeau continue to have small populations and little in common with La Crosse County (in terms of

economics for this proceeding) except for geographical location. The 12 main comparables should be sufficient for the parties' purposes without looking at secondary comparables and/or the 3 smaller contiguous counties.

Greater Weight under Sec. 111.77(6), (am), Wis.Stats:

County Administrator Steve O'Malley testified about the economic conditions of the County during the hearing. The County's gross expenditures for 2012 amount to more than 134 million dollars. About 22% of the budget is supported by the tax levy (excluding sales tax) and the courts and public safety take about 34.5% of the levy, more than any other part of the County's services. With a 0% levy limit imposed and property values stagnant, the County has a decline of .67% in equalized value, so the tax rate rises while the levy is cut. O'Malley noted that the decline in equalized value is not as bad as some other counties. However, he pointed out that the State budget cut was more than 1.4 million and other revenue losses more than 1.5 million. For example, five years ago, the County used to get about 2.7 million dollars from interest on investments from cash flow, and now it only gets about \$400,000 due to lower interest rates.

Between those losses and the State budget cuts, the County has 3 million less for its 2012 budget. O'Malley noted that the Governor said he has given the counties and cities the "tools" to solve those losses. Even if everyone paid the employee share of the WRS, it would not make up for the budget cuts and revenue losses. The total amount of savings if all employees paid the employee share of the WRS is 1.1 million.

The County has an interesting view of the cost and value of its proposal. It uses a figure of value of \$95,870 to the unit for the County not taking away something the unit already has – the employee share of the WRS paid by the County. In fact, that's why the County left a 0% wage increase in the year 2012, even though other bargaining units received 2% in both 2012 and 2013. The Association's costing method is the more correct way of analyzing the differences in the costs of the final offers. The Association's offer for the two years will cost the Employer a total of \$58,338 dollars over the 2011 costs, and the County's offer for two years would be an overall reduction of \$94,125.

The other bargaining units agreed to extend their contracts before the budget repair bill became law and agreed to pay the employee share of the WRS in 2012. The County believes that if it continues to pay the deputies' share of the WRS, it would have to make other budget cuts in the Sheriff's Department or other departments. Salary and fringe benefits consume most of the Department's 4.6 million dollar budget. O'Malley stated that the County has a significant reserve fund but that it is for emergencies and not for salaries and fringe benefits, and that if the County's offer should not prevail in this proceeding, cuts would be made rather than draw down from reserve funds. O'Malley noted that the County has not asked that the employee share of the WRS be paid by the bargaining unit members for 2012 and it was able to do that based on attrition, not the reserves. Two deputies and one office manager's positions were open. Although there are only 25 FTE positions in the bargaining unit in issue here, there

are 107 FTE's in the Sheriff's Department and 1137 total in the County. The number of FTS's is down 110 from 2008 overall in the County while the Sheriff's Department retains about the same number or 1 more. The County agrees that its average wage for all County employees is lower than the average wage report for all private and public employees, and that it always has been low.

A report from an economics professor at UW-La Crosse shows lack of job growth in the State, the housing market continues to sluggishly gain ground, La Crosse continues to have peak foreclosures although there is some decline of foreclosures in the region, building permits remain low although there is a little increase in selling prices. The County is not doing any better than the State. The region's largest manufacturer and the third largest employer in La Crosse is the Trane Company, and in 2011 it was laying off about 100 employees. While some sectors are coming back, state-wide employment remains 115,000 below the recession levels.

Regarding the greater weight factor – the economic conditions of the jurisdiction – the County suffers from the same conditions as counties and other parts of the State. In the recession that has had long lingering effects, there has been a downturn in manufacturing and lowered values in housing with little or no new growth in the housing and construction industry. The County has recognized that some counties have greater problems than La Crosse. However, all public sector employers have to try to keep its expenses down. While the Governor promised to give them the “tools” to deal with State budget cuts (1.4 million in La Crosse), the public employers did not get all of the “tools” since the Governor and Legislature refused to make public safety employees part of the hammer. (“Tools” is a euphemism for the States's taking away benefits, lowering employees' paychecks, and saving public employers money which was then to make up for the loss of state shared revenue.) Even if the deputies contribute to the WRS, the shortfall from the State and other losses of revenues such as interest income would not change the County's financial situation in any significant manner. The Arbitrator agrees with the County that salaries should not come out of reserve funds since they are ongoing expenses. However, the County has the ability to meet the costs of the Union's final offer without much trouble in the total scheme of its 100 million plus budget. Thus, the Arbitrator has given greater weight to the economic conditions in the jurisdiction and has found that the other factors under Sec. 111.77(6)(bm) will determine which party will prevail.

Insurance proposals:

While this case is really about the WRS contribution, there is an insurance change in the final offers that should be addressed. The Association's final offer changes the *status quo* from dollar amounts to percentages, keeping the percentages in line with the dollar amounts except for a small change in the family dental. The Association's offer for dental is to have employees pay 22%, and currently, the dollar amounts mean that employees on single plans pay 22% and employees on family plans pay 23%. The difference amounts to less than \$25 a year if all employees were on the family dental plan.

However, the County is correct in that the Association is changing the *status quo* without showing a need to do so, without bargaining over it, and without offering a *quid pro quo*. The County's offer on insurance is clearly preferred over the Association's offer on this issue.

The County also raises an objection that the Association's final offer is flawed in that it proposes benefit design change – a prohibited subject of bargaining – with a proposal to change the health insurance premium from dollars to percentage with no impact on premium. The parties asked that the Arbitrator take judicial notice of a recent case called *Wisconsin Professional Police Association v. Wisconsin Employment Relations Commission*, Case No. 12CV1123, Dane Cty. Cir. Ct., (Judge Colas, 10/25/12). In that case, the court found that the allocation of deductible costs between employer and employee is not part of the design of the insurance plan. This is a different issue than the allocation of premium costs. Arbitration is not the correct forum for determining what proposals are plan design changes. The time to object to what a party perceives to be a prohibited subject of bargaining is before the final offers are certified, and the County has experienced and sophisticated personnel and negotiators that know this.

Wages & WRS:

The parties' offers are extremely close on wages. The County offers a 0 and 2% in 2012 and 2013, and the Association offers a 1% each year. In both cases, the employees will see no more than a 2% lift. There is no clear preference on the issue of wages alone.

Wages, of course, do not stand in isolation because everything in this case hinges on the employee share of the WRS. The County offer is for a zero in the first year because the Union retained the WRS benefit. The County believes that the Union has enough for the first year, despite the fact that other units got 2% in that comparable year. However, the Union was entitled by law to retain the WRS benefit where the other units were not able to do so by law.

The County has a very strong argument about its internal pattern. The Arbitrator acknowledges that the County has a long history of pay and benefits that have been consistent among 8 union groups. Prior to Act 10 and 32, this would have been very significant and probably the most relevant factor with regard to benefits. Many public employers worked hard for a long time to see that their lowest and highest paid employees all received the same level of benefits, something that everyone found equitable. However, when the Legislature took away the WRS benefit from general employees and purposefully kept it for public safety employees, it changed this scheme of equity between bargaining units or employees of the same employer. As Arbitrator Hempe noted in *City of Mequon(Police)*, Dec. No. 33818-A (11/12):

Unfortunately, the Mequon internal comparables (like the police) became innocent victims in a situation that neither group played any role in creating. Equally unfortunate, as this case demonstrates, is that one of the perverse results of Acts 10

and 32 appears to encourage division between separate groups of public employees that are employed by the same employer, as well as between disgruntled employees and their employer. Hopefully, future bargaining ingenuity or new state legislation, or both will offer happier, well-balanced alternatives.

The County now seeks to change this inequity where general employees pay their share of the WRS contribution but deputies do not. The Arbitrator feels compelled to give some deference to the statutory scheme that changed everything, taking away bargaining rights and benefits for general employees while leaving them in place for public safety employees. Surely the Legislature has some purpose for doing so. Only a complete cynic would say it was purely political. The Legislature even had a chance in May of 2011 to rectify the inequities regarding the WRS when State Representative Ziegelbauer introduced a bill that would have prohibited employers paying – on behalf of public safety employees – the employee share of the WRS, but this did not pass the Legislature. The Arbitrator has to recognize the dual scheme created by the Governor and Legislature in these types of interest arbitration awards. This means the internal comparables – general employees without bargaining rights who were forced to pay the employee share of the WRS – have less weight than they had in the past when arbitrators recognized internal consistency in benefits as being desirable. Clearly, the Legislature meant to protect public safety employees on the WRS issue in a manner that it did not for general employees.

This is not to say that in a certain cases, internals do not count or are not to be given weight. It only means that internal comparables do not carry as much weight as they have in the past before Act 10 and 32 when looking at such things as the WRS and insurance where the law made changes for general employees and exempted public safety employees. An employer may still obtain the WRS concession through bargaining or arbitration. I think that in arbitration, the employer needs to put a *quid pro quo* on the table, as well as show a need for the concession. The employer needs to show support from the external comparables as well.

While the County argues that all other County employees are contributing to the WRS without a *quid pro quo*, that was due to operation of law and not bargaining or arbitration. The County believes this is no time for a *quid pro quo* or there would be no savings. However, for the reasons stated above and to give proper deference to a new legislative scheme, this Arbitrator believes that a *quid pro quo* has to be offered for an arbitrator to take away that which the legislature refused to take. As Arbitrator Hempe noted in *City of Mequon*:

The doctrine of *quid pro quo* still serves the fundamental, salutary purpose of stabilizing the collective bargaining process by balancing demands for what could otherwise be uncompensated take-backs of contractual benefits. While the need for a *quid pro quo* may be reduced when a pattern of external comparables exists, or when the issue involved is a mutual problem shared by the parties, that if unresolved portends dire consequences for each, the instant matter falls into neither niche.

So, the first question is whether the County has shown a need for the WRS concession.

Arguably, it has done so where all of its employees except for the deputies are contributing the employee share of the WRS. There is, after all, no equity where the highest paid employees enjoy a big benefit that the lower paid employees do not. The County may be correct when it states that the Association's position of *status quo* on the WRS is not tenable for the future. Public safety employees hired after the effective date of Act 32 must pay the full general occupation employee share of the WRS by law. While the Association failed to make that clear in its final offer, the parties have a clause in 16.01 that says should any provision be found to be in conflict with any Federal or State laws, that provision shall be renegotiated and the rest of the provision remain in force, and the parties agree to abide by all State and Federal laws. This would mean that should the County hire a new deputy or bargaining unit member during the term of this contract, mainly during 2013, the parties would agree to the State law requiring that new hires pay the employee share of the WRS. So while it might have been preferable for the Association to make the duty of new hires clear in the contract, it is not a fatal flaw. The Association has acknowledged that new hires will pay it in its supporting documents and brief.

The County does not claim that it has offered a *quid pro quo* and believes it should not have to where this is the last bargaining unit to fall in line with its other bargaining units. The County acknowledges that the times are changing, and they certainly are. The Arbitrator has noted above that she believes that due to the legislative scheme that divides these groups, the public employer has to resort to obtaining concessions by hard bargaining or *quid pro quo's* and the strength of external comparables. In this case, there is no *quid pro quo* in place in exchange for a considerable concession on the WRS.

The external comparables do not favor the County. Of the 12 external comparable county group, most have no employee contribution to the WRS. Two of them – Marathon and St. Croix – have employees contributing to the WRS. Fond du Lac County caps its payment at \$3500 for the employee share. While the County points out several settlements around the State with public safety employees paying the employee share of the WRS, those are not in the comparable group. And while the Association would be wise to see the writing on the wall – the WRS contribution coming its way – at this point in time, most of the external comparables by far favor the Association's position.

Accordingly, with a lack of a *quid pro quo* and a lack of external support for the County's position on the WRS, the Arbitrator has no basis upon which to accept the County's final offer. My review of the other statutory factors adds nothing to this case. The Association's final offer is accepted and should be incorporated into the successor collective bargaining agreement.

AWARD

The Association's final offer is selected and shall be incorporated into the parties 2012-2013 collective bargaining agreement.

Dated at Elkhorn, Wisconsin, this 26th day of December, 2012.

Karen J. Mawhinney, Arbitrator