In the Matter of an Interest
Arbitration Between

ADAMS COUNTY
(Sheriff's Department)

and

Case ID: 504.0002
Case Type: MIA
Dec. No. 37773-B

ADAMS COUNTY
DEPUTY SHERIFFS'ASSOCIATION,
WPPA/LEER, Local 355

APPEARANCES:

Robert West, Consultant, appearing for the Association.

Weld Riley, S.C., by Mindy K. Dale, Attorney, appearing for the County.

ARBITRATION AWARD

Adams County, hereinafter County or Employer, and the Adams County Deputy Sheriffs' Association, WPPA/LEER, Local 355, hereinafter Association or Union, reached impasse in their bargaining for a collective bargaining agreement to be effective January 1, 2018. The parties submitted their final offers to the Wisconsin Employment Relations Commission. The parties selected Douglas V. Knudson to hear and resolve their bargaining impasse. The hearing was held on December 17, 2018. The parties were present with their respective representatives and were afforded full opportunity to present evidence. Final post-hearing briefs were received from the parties on February 22, 2019.

BACKGROUND:

The parties were unable to reach a voluntary settlement for a successor agreement to their agreement for 2015-17. On October 17, 2018 the County filed a petition to initiate arbitration

pursuant to Section 111.77(3) Wis. Stats. After the close of the investigation, the parties submitted final offers on the one remaining issue in dispute, as specified below. Both parties' final offers provide for a three-year collective bargaining agreement covering the period January 1, 2018 through December 31, 2020. The parties selected the undersigned as the arbitrator.

The County's final offer:

Amend Article 9-Health and Welfare-Section 1 as follows:

Section 1- Health Insurance: For those hired prior to January 1, 2006, the County shall pay ~~up to 90%~~ 87.5% of ~~towards~~ the monthly premiums for employees eligible for the family plan and single plan in 2018 and 85% of the monthly premiums for employees eligible for the family plan and single plan in 2019 and thereafter. The County shall pay 85% of the premium for employees eligible for the family plan and single plan hired on or after January 1, 2006…

The Association's final offer:

The Association offers no change to Article 9, Section 1, which read as follows in the 2015-2017 Agreement:

Section 1: For those hired prior to January 1, 2006, the County shall pay up to 90% towards the monthly premiums for employees eligible for the family plan and single plan. The County shall pay 85% of the premium for employees hired on or after January 1, 2006.

PERTINENT STATUTORY LANGUAGE:

Section 111.77(6)

(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:

1. The lawful authority of the employer.
2. Stipulations of the parties.

3. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

4. 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:
a. In public employment in comparable communities.
b. In private employment in comparable communities.

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

6. 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.

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

8. Such other factors, not confined to the foregoing, which are normally or traditonally 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 UNION:

Numerous arbitration awards have specified that a party proposing to remove or modify a previously agreed-upon practice in a collective bargaining agreement must show: a compelling need for the change; support in the comparables for the change; and, a *quid pro quo* offered for the change.

111.77 (6) (am) requires that the economic conditions of the County must be given more weight than the other criteria set forth in 111.77(6)(bm). The County has shown no compelling economic necessity for the change. The economic impact of the proposed change on the budget is miniscule. This factor renders all other data irrelevant and not supportive of the offer of either party. Moreover, the Union's offer best protects the interests and welfare of the public by retaining well trained and fairly treated officers.

Internal comparables are not applicable since the final offers of the parties are nearly identical. Further, due to the very nature of their duties, there is a significant difference between law enforcement employees and other municipal employees.

External comparables are not applicable since the final offers of the parties are nearly identical.

Overall compensation is not an issue, since the parties have agreed on all other economic issues.

An attempt to accelerate the expiration of a "grandfather clause" diminishes the value of the original agreement to include such a clause in the collective bargaining agreement. The County's attempt to take away a unique benefit from seven employees was included in two tentative agreements both of which were rejected by the bargaining unit employees. The employees were not willing to alter the status quo by removing the "grandfather clause" made a part of the contract in 2006. The two votes rejecting the tentative agreements were an exercise of democracy by the Union and should not be the basis to allow the County to alter the status quo through arbitration after failing to do so through bargaining.

The County has not provided a *quid pro quo* for the change it has proposed herein.

POSITION OF THE COUNTY;

The parties reached a tentative agreement twice during their negotiations. The Union members rejected both tentative agreements. The County's final offer on health insurance is identical to the health insurance language included in both tentative agreements reached by the parties. The Union's final offer backtracks from both of the tentative agreements and maintains the health insurance language from the prior collective bargaining agreement. There is arbitral precedent for a presumption of reasonableness in a proposal where the parties reach a tentative agreement containing the proposal that later becomes an issue in arbitration. Such supports a finding that the County's final offer is reasonable and therefore should be selected by the arbitrator. While the Union characterizes the rejection of the two tentative agreements as Union democracy at work, that argument does nothing to rebut the presumption of reasonableness of the County's final offer.

The County notes that its final offer maintains internal consistency by treating the seven officers covered by the grandfather clause the same as all of the County's other employees, including the other members of the bargaining unit. Traditionally, arbitrators have given internal wage and benefit patterns great weight in interest arbitration cases.

The County's proposed health insurance contributions are well supported by the health insurance contributions among the external comparables. None of the external comparables pay a health insurance contribution as high as 90% and none of them pay two different premium contributions based on an employee's hire date. The Union provided no data to rebut the external comparables, but rather argued the external comparables really don't impact this issue because of the small number of employees involved.

When reaching the second tentative agreement, the County accepted the Union's counterproposal requesting a higher increase in wages while continuing to include the changes in premium contributions. It is disingenuous for the Union now to argue the County should have put more money on the table as a *quid pro quo* if it wanted the change. Further, arbitrators have long agreed that an overwhelming pattern of support among external comparables eliminates the need for an additional *quid pro quo.* Marquette County and Waushara County are two of the accepted external comparables. Both of those counties eliminated bifurcated premium contribution systems in 2015 without offering a *quid pro quo.*

The County argues that its final offer is supported by the "greater weight" criterion. The County is not asserting an inability to pay. However, the County has low incomes, high taxes and high unemployment. Even so, the County's offer exceeds the applicable CPI for 2018. Conversely, the Union presented no economic data or evidence to support a finding that the greater weight criterion favored its offer.

DISCUSSION:

The one issue in dispute between the parties regarding their 2018-2020 collective bargaining agreement is the amount to be paid toward their health insurance premiums by the seven (7) employees who were hired prior to January 1, 2006.

There are twenty-four (24) members in the bargaining unit. Twenty (20) of those members are enrolled in the County's health insurance plan. Seven (7) of the twenty (20) were hired prior to January 1, 2006. The language of the 2015-2017 collective bargaining agreement states that employees hired prior to January 1, 2006 will pay 10% toward their monthly health insurance premiums for the family plan and the single plan and that employees hired after January 1, 2006 will pay 15% toward their monthly health insurance premiums for the family plan and the single plan. Said language was first included in the 2005-2006 agreement between the parties and has been in all subsequent agreements, including the 2015-2017 agreement.

During the negotiations for their 2018-2020 agreement the parties reached a tentative agreement that included increases in the employee contribution for the monthly health insurance premium from 10% to 12.5% in 2018 and then to 15% in 2019 for those seven (7) employees hired prior to January 1, 2006. The tentative agreement included wage increases of 1.00% on January 1 and 0.75% on July 1 in each of the three years covered by the contract. The Union membership rejected that tentative agreement. Subsequently, the Union made an offer that included the County's phased-in health insurance language for the grandfathered employees and raised the wage increases to 2% on January 1 in each of the three (3) years covered by the agreement. A second tentative agreement was reached when the County accepted that Union offer. The Union membership rejected the second tentative agreement.

The state of Wisconsin 2011-13 biennial budget added a new factor to the statutory criteria for public safety arbitrations. The new factor contained in Section 111.77(6)(am), Wis. Stats., reads as follows: "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). "

Section (am)

The Union's final offer exceeds the County's final offer by $15,695 over the three years of the contract. The County is not espousing an "inability to pay, but rather contends its economic conditions are comparatively worse than those in the comparables and fails to support even that small of an additional cost. Two prior interest arbitrations involving the County and the law enforcement bargaining unit utilized the following as external comparables; Juneau County, Marquette County, Waushara County and the City of Adams. Compared to those three counties, Adams County has the following rankings: the lowest median household income; third out of four both on the basis of per capita income and of adjusted gross income; tied for the highest percentage of persons living in poverty; and, third out of four in median value of owner-occupied housing. The County exhibits show it has low incomes, high taxes and high unemployment levels in comparison to both the comparable jurisdictions and the state averages. The County is the fourth slowest growing county among the 72 counties in Wisconsin. Even though the County acknowledged it can afford the Union's final offer, the County's economic conditions are a valid concern and do not support even the small increased cost of the Union's final offer.

Section (bm)

Section (bm) lists eight other factors an arbitrator is to consider. Of those, the arbitrator finds 3, 4(a), (5) and 8 to be relevant herein.

(3)

The financial ability of the County to pay the additional costs of the Union's final offer was discussed above. The Union contends that the County's offer does not serve the welfare of the public because it fails to treat the affected employees fairly. The Union believes the County's offer will harm the ability to attract competent experienced employees and to retain valuable employees. There was no evidence introduced in support of that contention.

4(a)

The Union takes the position that external comparisons are not applicable because the final offers of the parties are nearly identical. The undersigned does not agree. The sole difference in the final offers concerns a benefit common to all of the external comparables, i.e., the amount an employee

contributes to the premium for health insurance coverage. None of the external comparables currently have a bifurcated health insurance contribution system under which different premium contributions are based on an employee's hire date. Two comparables, i.e., Marquette County and Waushara County, previously had bifurcated contribution systems. Both of those comparables eliminated the "grandfathered" bifurcated contributions in 2015, without any *quid pro quo,* such as an extra wage increase. Neither do any of the external comparables provide a health insurance contribution as high as 90%. The external comparables are found to be relevant and to support the County's final offer.

(5)

The offers of both parties exceed the consumer price index for 2018.

(8)

In 2018 the County eliminated the bifurcated premium contribution for all of its non-represented grandfathered employees. Of the County's 233 non-represented employees, 176 were enrolled in the County's health insurance plan in 2018. 75 of the 176 employees transitioned from a 10% contribution to a 15% contribution on January 1, 2018. The County's final offer to the law enforcement employees incorporates the same elimination of the grandfathered premium contribution, but in two steps rather than in one step. Further, the law enforcement employees will receive larger wage increases than the County's non-represented employees received during the transition.

While the current statute (Section 111.77) does not contain a specific criterion requiring arbitrators to give weight to internal comparables, the statutory criteria for law enforcement arbitrations never included a specific reference to internal comparisons. Nevertheless, arbitrators frequently have discussed whether internal consistency in wage and benefit patterns should be considered in interest arbitration cases involving law enforcement units. Both parties cited interest arbitration awards in support of their respective positions as to whether internal comparables should be considered. The Union accurately notes that law enforcement employees perform substantially different tasks, require different training and are frequently exposed to dangers to their personal safety as compared to more general service employees and, it concludes

therefore, internal comparables are not always appropriate. The weakness in applying that argument to the instant matter is that a majority of the law enforcement employees herein already pay the same amount toward their health insurance premiums as all of the non-represented County employees now pay. Those law enforcement employees perform similar duties and experience similar dangers to their personal safety as do the seven employees who are grandfathered. The County's offer brings consistency in the amount paid toward health insurance premiums by all the law enforcement employees, as well as to the amount paid by the non-represented employees. Consequently, the undersigned believes internal comparisons are an appropriate consideration in this matter and the County's final offer is supported by the internal comparisons.

The Union argues that the bifurcated system was negotiated into the contract in 2006 and it should remain in the contract until there are no more grandfathered employees. The Union thinks the County's attempt to accelerate the expiration of the clause diminishes the value of and the basis for such a clause when it was initially negotiated. The arbitrator is not persuaded that a grandfather clause can never be renegotiated in subsequent contracts. Rather, such a clause is simply a part of the entire contract and can be reopened for negotiation like any other clause in the contract.

The arbitrator has reviewed the several interest arbitration awards cited by the Union, wherein the arbitrators in those cases looked to see if there was a *quid pro quo* offered or necessary when a change in the status quo was being sought. The Union argues the County failed to offer a *quid pro quo* for the elimination of the grandfather clause. That contention is not consistent with the bargaining history. After the Union membership rejected the first tentative agreement, the Union's bargaining team presented a new final offer to the County. Said offer included all of the items contained in the first tentative agreement, including the phased-in health insurance contribution language for the grandfathered employees, but with wage increases of 2% in each of the 3 years, rather than the increases of 1.00% on January 1 and of 0.75% on July 1 in each of the 3 years contained in the first tentative agreement. The County agreed to the Union's final offer. The larger wage increases in the second tentative agreement would appear to be a *quid pro quo* for the elimination of the grandfather clause. The Union membership rejected the second tentative

agreement. The membership may have considered the new wage offer to be an insufficient *quid pro quo* to achieve the change in the insurance language. Nevertheless, the increased wages offer did constitute a *quid pro quo.*

Both parties cited decisions in which arbitrators discussed the weight, if any, to be given to a rejected tentative agreement when selecting a final offer. The undersigned agrees with the opinions of numerous other arbitrators who concluded that a rejected tentative agreement is entitled to some weight as it is evidence the negotiators viewed the tentative agreement as a reasonable outcome to their negotiations. The existence of two rejected tentative agreements in this matter weigh in favor of the County's final offer.

In summary, the undersigned concludes that the economic conditions in the County, which factor is assigned the greater weight and is supported as well as all of the other relevant factors, require acceptance of the County's final offer.

Therefore, based upon the evidence, testimony, arguments and application of the statutory criteria contained in Section 111.77(6) Wis. Stats. to the facts of this dispute, the undersigned enters the following

AWARD

The County's final offer is selected and shall be incorporated into the parties' 2018-2020 collective bargaining agreement.

Entered this 18th day of March 2019.

Douglas V. Knudson
Arbitrator