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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration

Between

DANE COUNTY

And

DANE COUNTY LAW ENFORCEMENT
OFFICERS ASSOCIATION

Case LXXXIV
No. 29510
MIA-664
Decision 20135-A

Impartial Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, WI 53185

Appearances

For the Employer

MULCAHY & WHERRY, S.C.
By John T. Coughlin, Esq.
P. O. Box 1110
Madison, WI 53701-1110

For the Union

Patrick J. Coraggio
WPPA/LEER Administrator
WISCONSIN PROFESSIONAL
POLICE ASSOCIATION
9730 West Bluemound Road
Wauwatosa, WI 53226

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between Dane County and the Dane County Law Enforcement Officers Association.

The parties' prior labor agreement expired at the end of 1981. After independent negotiations had failed to result in a renewal agreement covering 1982 and 1983, the Union filed a petition with the Wisconsin Employment Relations Commission on March 25, 1982, requesting final and binding arbitration, pursuant to Section 111.77 of the Municipal Employment Relations Act. The matter was preliminarily investigated, after which the Commission, on December 1, 1982, issued certain findings of fact, conclusions of law, certification of the results of investigation and an order requiring arbitration of the dispute. Thereafter, the Commission issued an order directing the undersigned to act as arbitrator, in accordance with the provisions of the Act.

In a written agreement dated April 5, 1983, the parties agreed to waive any arbitration hearing, and to submit the matter pursuant to the following agreed upon stipulations.

> "The members of the Wisconsin Professional Police Association Law Enforcement Relations Division, Dane County Local, are receptive to foregoing the municipal interest arbitration hearing pursuant to the petition that was filed, provided that the following stipulated facts will be presented to the arbitrator.
>
> 1. The transcript of proceedings regarding the arbitration between Dane County Local 65 and the County of Dane heard in front of Arbitrator Howard S. Bellman on the 10th day of November, 1982, will become part of the record in this proceeding. The transcript sets forth the position of the County. The testimony of Local 65 that is not in conflict with the remaining part of this stipulation will set forth the record for the Association.
>
> 2. The members of the Dane County Law Enforcement Officers' Association have received full paid (100%) health insurance premiums since 1969 through to the present time and the employee has not been required to make any contribution toward the premium.
>
> 3. Since 1969 the contracts have never been resolved prior to the expiration date, and during the period of time that existed between the expiration date of the contract and an agreement for a successor contract the County has never required the employees to pick up any increases in insurance premiums. This would apply to health and dental insurance plans.
>
> 4. The parties agree that they will exchange exhibits in person or by mail no later than Friday, April 22, 1983.
>
> 5. Parties further stipulate that they will file only one brief on the matter and that will postmarked to the arbitrator no later than Friday, May 6, 1983. The arbitrator will then provide opposing parties with a copy of the brief.
>
> Signed and dated this 5th day of April 1983.
>
> | COUNTY | FOR THE ASSOCIATION |
> |---|---|
> | /s/ John T. Coughlin
John T. Coughlin | /s/ Patrick J. Coraggio
Patrick J. Coraggio" |

Following the execution of the above agreement, the parties agreed to certain extension of time for the submission of appropriate exhibits and briefs. The following materials were submitted to the arbitrator in a timely manner, and were accepted into the record.

(1) The parties submitted a transcript of a hearing before Arbitrator Howard S. Bellman, which took place on November 10, 1982, between Dane County and Local Union #65 of the American Federation of State County and Municipal Employees Union. The transcript, consisting of

113 pages, was reported by Barbara A. Burns of Professional Reporting Service, Ltd., of Madison, Wisconsin.

(2) On April 25, 1983, the Employer submitted a package of forty-four separate Employer Exhibits in this matter.

(3) On April 26, 1983, the Association submitted a single comprehensive exhibit, consisting of six typewritten pages.

(4) On May 11, 1983, each party submitted a post-hearing brief in support of its position in this proceeding, after which the briefs were distributed and the record closed by the Arbitrator effective May 16, 1983.

THE FINAL OFFERS OF THE PARTIES

During the course of their negotiations, the parties substantially agreed to a renewal labor agreement covering the years 1982 and 1983, but were unable to reach agreement on language to appear in Section 13.01(a) of the Agreement, and covering the payment of group insurance premiums.

The final offer of the County of Dane consisted in material part of the following:

"Dane County proposes to delete the first sentence of 13.01 (a) and substitute in its place the following:

(a) The employer shall pay not to exceed the following dollar amounts toward monthly group health insurance premiums: fifty-four dollars and four cents ($54.04) for employees, one hundred fifty-two dollars and ninety-three cents ($152.93) for dependents, forty-six dollars and seventy-five cents ($46.75) for Medicare Plus and thirty-two dollars and forty-two cents ($32.42) for employees aged 65 and older who participate in Medicare. The employer shall pay not to exceed the following dollar amounts toward monthly group dental premiums: eight dollars and fifty cents ($8.50) for employees and twenty-two dollars and ninety-five cents ($22.95) for family. These employer payments shall be adjusted upward to reflect the full cost of any premium increase during the term of this 1982-1983 contract.

The remaining language of 13.01(a) would remain unchanged."

The final offer of the Dane County Law Enforcment Officers Association consisted of the following:

"In regards to the final issue of health insurance it is the Association's position that the language in question pertaining to Article XIII - Health & Welfare - Section 13.01, Sub A - Health and Accident Insurance, be continued into the 1982/1983 labor Agreement as listed."

THE STATUTES

The merits of the dispute are governed by the provisions of Section 111.77 (6) of the Wisconsin Statutes, which direct the Arbitrator to 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 employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes 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 employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

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

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

POSITION OF THE COUNTY

In support of its request for adoption of its final offer, the County presented the following principal arguments:

(1) It cited the significant recent increases in insurance premiums, suggesting that employee awareness of the cost of insurance coverage would be a major tool in combating future increases.

(2) It emphasized that the cost of health insurance premiums had outstripped other cost of living increases, and urged that the adoption of its proposal would make future negotiations on insurance premiums more effective and credible.

(3) It cited the tremendous and growing impact of insurance premiums costs upon the Dane County budget, and referenced various steps which have been tried by the County for the purpose of controlling these costs. It cited the fact that the County has had a health maintenance plan in effect since 1973, and argued that the major purpose of its proposal was to facilitate the education of employees in the positive effects of good health maintenance habits.

(4) It cited various sources in support of the conclusion that a lack of consumer awareness of the cost of health care, was a major factor in the continued escalation in the cost of such care. It urged that while the County is not proposing cost sharing, it is suggesting a significant effort to focus employee attention on the costs to the County of health care benefits.

(5) It cited the decisions of various Wisconsin Arbitrators who have selected final offers which entailed specific dollar premium contributions by employers; in this connection it specifically referenced excerpts from the decisions of certain specific arbitrators.

(6) It submitted that the record in these proceedings illustrate the fact that even those closest to the health insurance issue are either unaware or not fully aware of the cost of such insurance to the County. In this connection it cited the testimony of various members of the Insurance Committee.

(7) It emphasized that the Employer's final offer in this case was consistent with its posture in connection with other bargaining units in the County; it referenced the fact that several had already proceeded to arbitration, and that Arbitrator Kerkman had already issued one decision which adopted the final offer of the County.

(8) It urged consideration of the fact that the Employer would continue to pay 100% of the premium costs during the term of the 1982-1983 agreement, and that those in the bargaining unit would continue to be compensated at a very favorable level over the term of the renewal agreement. In this connection it cited an 8.0% wage increase for 1982, with an additional 7.5% increase in wages for 1983; it submitted that these figures exceed the cost of living increases, are excellent from a comparison standpoint and, in effect, amount to a buy-out on the minor language change in issue in these proceedings.

(9) That in comparing employer contributions per employee for combined health and dental insurance premiums for 1982, as between the fifteen largest counties in Wisconsin, Dane County ranks third, and pays an average of 32.9% more than the average contributions by other counties. It urges that in light of the very favorable coverage in the County, the need for fuller employee appreciation of the costs is appropriate.

It cited various other advantages enjoyed by those in the bargaining unit, including insurance which is effective very early in the employment relationship, the existence of an HMP plan with no maximum coverage limitations, full payment for office visits, full payment for prescriptions after a $2.00 deductible, and dental insurance benefits.

(10) It urged that consideration of both external and internal comparisons favored the adoption of the final offer of the County. In this connection it referenced the fact that various other counties either express their insurance commitments in a flat dollar amount and/or pay less than 100% of the cost of family coverage; it also emphasized that all other employee groups in Dane County have only 90% of the family premium paid by the County.

(11) It urged that the Union's argument relative to future shifts in bargaining power, are unsupported by the bargaining history of the parties; in this connection it argued that percentage or dollar contribution limits in other units have not resulted in the Unions being leveraged in past negotiations, also pointing out that the County historically has made premiums increases retroactive to the effective dates of each new agreement.

POSITION OF THE ASSOCIATION

In support of the adoption of its final offer, the Association presented a variety of arguments, relating each argument to certain of the arbitral criteria referenced in the Act.

(1) It submitted that the County had the lawful authority to accept and abide by the final offer of the Association, also referencing the fact that no issue was raised with respect to this criterion during the prior course of negotiations.

(2) It submitted that the stipulations of the parties, including agreements reached during preliminary negotiations, were not in issue; it argued that this criterion should not have an impact upon the outcome of these proceedings.

(3) It argued that consideration of the interests and welfare of the public criterion significantly favored the adoption of the final offer of the Association; in this connection it emphasized the following points.

   (a) That the Association's offer would best maintain the morale of the officers in the bargaining unit, and would tend to result in retaining the best and the most highly motivated officers.

   (b) It submitted that the officers in the bargaining unit come into daily contact with officers from municipalities throughout Dane County, arguing that these municipalities should provide the most persuasive comparisons for use in these proceedings. In this connection it emphasized that the ten largest cities and villages in Dane County all have the same insurance premium benefits as have those in the bargaining unit; specifically it referenced the fact that all these communities pay 100% of the single and family health insurance premiums for officers.

   It also referenced the fact that Rock County and Jefferson County are contiguous with Dane County, and submitted that both counties pay the full insurance premiums for their officers.

   (c) It urges that no financial ability to pay question has been raised in these proceedings, also referencing the fact that the short term financial costs of both final offers are identical.

(4) It argued that the position of the Association was supported by consideration of comparisons with comparable communities throughout the State of Wisconsin and within Dane County.

   (a) In the above connection it emphasized that it was merely attempting to maintain its historical relationship with other comparable departments and with co-employees of the County, rather than attempting to gain additional benefits or concessions.

(b) It urged that the primary comparables should consist of eighteen of the largest counties within the State of Wisconsin and the ten largest cities and villages in Dane County.

In the latter connection it submitted that six of the eight contracts provide that the employer will pay the full insurance premium, with the City of Madison in arbitration on the same issue; the remaining two cities do not have collective bargaining agreements. It submitted that the substantial majority of the eighteen largest counties pay the full costs of insurance premiums.

(5) It argued that the overall level of compensation criterion was not applicable under the current final offers of the parties.

(6) It submitted that various changes have taken place during the pendency of the proceedings, and that consideration of this criterion favored the adoption of the final offer of the Association.

(a) It cited five other recent arbitration proceedings in which the County has sought the same change in insurance premium payment language; submitting that dicta from the decision of Arbitrator Kerkman favored the position of the Association, as did the decisions of Arbitrators Krinsky and Mueller, with the decision of Arbitrator Bellman pending at the time of the briefs in this proceeding.

(b) It submitted that the County has not substantiated the need for a change in the status quo, urging that the undersigned adopt the same rationale utilized by the above referenced arbitrators.

(7) It submitted the following additional arguments in support of the suggested conclusion that the County had failed to persuasively support its request for a change in the status quo.

(a) Despite the testimony of various county witnesses, that the purpose of the requested change was not to educate the officers in the bargaining unit as to group insurance costs.

(b) That the real purpose of the proposed change on the part of the County goes beyond education, and also includes the desire to put the Union at a disadvantage in future contract years, after the 1982-1983 contract expires. In support of its position in this respect, it cited the recent decision of Arbitrator Krinsky.

(c) That the current Insurance Advisory Committee provides an excellent method for the employer and the employees to discuss, communicate and educate each other regarding health insurance matters.

(d) It submitted that the increasing cost of health insurance benefits have been taken into consideration by the parties in past negotiations.

FINDINGS AND CONCLUSIONS

Preliminarily, it may be helpful to emphasize the role of the interest arbitrator in proceedings such as these. Despite the various criteria spelled out in the Wisconsin Statutes, it must be recognized that interest arbitration is far from an exact science; the arguments, exhibits and statistical information submitted by the parties cannot be formularized and applied in such a manner as to arrive at the "correct" decision in a particular case. The interest arbitration process is, in reality, an attempt to reach the same decision that the parties would have reached had they been able to negotiate to a mutually satisfactory conclusion. This factor is rather well described in the following extract from the book by Elkouri and Elkouri: 1./

"In a similar sense, the function of the 'interest' arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:

'Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination upon considerations of policy, fairness, and expediency, of what the contract right ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations - they have left to this board to determine what they should by negotiations, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men have agreed to?...To repeat, our endeavor will be to decide the issues, as upon the evidence, we think reasonable negotiations, regardless of their social or economic theories might have decided them in the give and take of bargaining...' "

In any attempt to apply the above principles to the dispute at hand, it should be kept in mind that an interest arbitrator will normally be extremely reluctant to overturn established benefits and/or will be equally reluctant to add new benefits or to innovate, unless the statutory criteria are rather clearly met. The reluctance of interest arbitrators to disturb existing provisions, or benefits contained in prior agreements was also described as follows by the Elkouris: 2./

"Arbitrator may require 'persuasive reasons' for the elimination of a clause which has been in past written agreements. Moreover, they sometimes order the formalization of past practices by ordering that they be incorporated into the written agreement.

In arbitrating the terms of a renewal contract, one arbitrator would consider seriously 'what the parties have agreed upon in their past collective bargaining, as affected by intervening economic events ***' The past bargaining history of the parties, including the criteria that they have used, has provided a helpful guide to other 'interests' arbitrators."

The normal role of the interest arbitrator, including a marked reluctance to plow new ground or to modify past practices, is also well described in the following excerpts from a frequently cited interest arbitration decision by Arbitrator John Flagler: 3./

"In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of the extraordinary pressures which led to the exhaustion or rejection of their traditional remedies.

The arbitrator attempts to accomplish this objective by first understanding the nature and character of past agreements reached in a comparable area of the industry and in the firm. He must then carry forward the spirit and framework of past accomodations into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to either party that which they could not have secured at the bargaining table."

While a theoretically stronger case can be made for innovation in public sector interest arbitration than in private sector disputes, there is nothing in the record to suggest to the Arbitrator that he should depart from the more traditional approach to interest arbitration in the situation at hand.

In considering the statutory criteria and the above factors, therefore, it is clear that any Wisconsin interest arbitrator has the basic responsibility to adopt the final offer which best reflects the settlement which the parties would have adopted through voluntary negotiations, had they been able to do so. In so doing, the neutral should be reluctant to disregard or cast aside comparisons historically used by the parties, and he should not readily set aside or modify practices or benefits previously agreed upon by the parties, and incorporated into the prior agreements. Summarized simply, the undersigned has the responsibility for innovating and/or looking beyond past comparisons and past practices only where a very persuasive case has been made for disregarding or for departing from past agreements of the parties.

Although all of the statutory criteria referenced in Section 111.77(6) are subject to arbitral review in these proceedings, the parties particularly addressed considerations and arguments falling within the following areas:

(1) The comparison criterion, as referenced in sub-paragraph (d);

(2) The interests and welfare of the public criterion as referenced in sub-paragraph (c);
(3) The cost-of-living criterion as referred to in sub-paragraph (e);
(4) Certain other considerations which are provided for in sub-paragraph (h).

The Comparison Criterion

Without unduly belaboring the point, it is fair to say that comparisons are the most widely used and the most persuasive of the various statutory criteria. This is not surprising in light of the fact that comparisons are normally widely used and quite persuasive in face-to-face negotiations. Generally speaking, each of the parties to an interest arbitration proceeding moves to the hearing with the various comparisons which they find most favorable to their respective points of view, and the case at hand is no exception.

(1) The Employer cited health and dental insurance premium costs in the fifteen largest counties in Wisconsin, citing a high ranking and significantly higher average premium contributions in Dane County. It additionally referenced various Counties which express their commitments in flat dollar amounts or percentages less than 100%, and emphasized the fact that substantially all other Dane County employees pay 10% of their family coverage health insurance premiums.
(2) The Association urged comparison with the insurance premium practices of various Dane County municipalities with respect to their officers, and it also cited the practices of Jefferson and Rock Counties which are adjacent to Dane County.

As referenced above, the most persuasive comparisons are those which the parties themselves have found persuasive in past negotiations. While other Dane County employees are not fully reimbursed for all health insurance costs, this factor apparently existed at the time that 100% employer contributions were adopted by the parties. Additionally, there is nothing to show that the other counties urged for comparison purposes by the Employer have even been given significant attention by the parties in their past negotiations.

If the Employer were introducing evidence that significant changes were taking place at the negotiations and/or arbitration tables during 1982-1983, and that various comparable employes had begun to pay less than 100% of health insurance premiums as a result of collective bargaining, such evidence would be most persuasive in these proceedings. To the contrary, however, the Employer is citing previously existing practices in other jurisdictions, which practices have existed side by side with the 100% insurance premium payment for Dane County Officers since 1969.

The Employer also cited the excellent levels and types of insurance protection currently available for those in the bargaining unit, urging the inference to be drawn that some measure of relief from the exceedingly high costs of such coverage would be appropriate. No comprehensive inter-employer comparisions of insurance coverage were argued by the Employer, however, and there was no major argument based upon the overall level of benefits. Accordingly, the excellent current levels of health, medical and dental insurance coverage negotiated in the past by the parties, cannot be assigned determining importance in this dispute.

On the basis of the above, the undersigned has concluded that no persuasive case has been made for arbitral adoption of the previous practices of other employers, particularly in light of the fact that the parties themselves have not found these comparisons persuasive in their past negotiations; the same conclusion has been reached with respect to comparisons with other Dane County employees.

What then of the various arbitral comparisons urged by the parties? Either or both of the parties cited dicta from certain earlier decisions, and certain interest arbitration decisions during the current time frame. The undersigned agrees with the basic thrust of these decisions, and particularly notes the reluctance of the neutrals to disturb pre-existing practices. It must be concluded that a review of comparative arbitral decisions favors the position of the Association in the matter at hand.

The Interests and Welfare of the Public

Although no ability to pay question exists, and despite the fact that there is no difference in the relative costs of the two proposals for 1982 and 1983, the Employer emphasized financial considerations in support of its position. It cited the spiraling cost of group medical and dental insurance, and emphasized the growth in the percentage of the county government budget which is necessary to meet these costs. It emphasized the need for cost containment in health care, and cited employee education as the basic thrust of its proposal.

The Association argued that modification of the health care premium language, and the future implications of such a change would adversely impact upon officer morale and turnover; such changes, it urged, would negatively serve the interests and welfare of the public.

The Arbitrator has carefully reviewed the arguments urged by the Employer, and it is impossible to disagree with the need for careful control of all costs of government, including personnel costs. Additionally, it cannot be denied that education of the health care consumer is an important tool in the control of the spiraling costs of medical care. It does not logically follow, however, that the means of achieving consumer awareness is through modification of the language of the 1982-1983 collective agreement, as recommended by the Employer; in this connection it must be emphasized that while the Employer is not proposing less than 100% in Employer premium contributions for 1982 and 1983, the suggested change in language could well facilitate such a change in future negotiations. The education of those in the bargaining unit relative to health insurance costs could be achieved through a variety of techniques and procedures other than that proposed by the Employer, which techniques would not have the potential for disadvantaging either of the parties in future contract negotiations. If the parties elect to negotiate a change in health care premium payment practices in the future, it should normally result from the give and take of contract negotiations, and not from the residual impact of prior interest arbitration decisions which were intended to be unrelated to any modification in the benefits structure.

The Employer has persuasively argued the need for cost containment in the group medical and dental insurance program, and it is a subject matter that the parties undoubtedly will and should jointly pursue in their future negotiations. The Arbitrator simply cannot agree that failure to adopt the Employer's recommendation for a change in Section 13.01 (a) at this time, will eliminate the ability of the parties to engage in effective and credible negotiations on the subject in the future.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that various of the Employer's arguments grounded in the interest and welfare of the public have merit, but they do not persuasively support the requested change in insurance premium payment language for the 1982-1983 labor agreement.

The Cost-of-Living Criterion

The Employer emphasized the spiraling costs of medical services, which has translated into increases in health care insurance premium increases which have far outstripped increases in cost-of-living in general. The discussion of these costs implications upon government were also addressed in connection with the interests and welfare of the public criterion as addressed above.

Consideration of the implications of the cost-of-living criterion would normally extend solely to the final offers before the arbitrator and not to the potential implications of the offer upon future contract negotiations between the parties. Since adoption of either offer would entail the Employer's paying the entire cost of dental and health care insurance for the duration of the renewal agreement, the cost-of-living criterion does not significantly favor the adoption of either offer by the Arbitrator.

Miscellaneous Additional Considerations

Although the bargaining history criterion is not specifically addressed in the Act, it falls well within the general scope of coverage outlined in sub-paragraph (h) of the Act, and it is frequently argued by the parties both as an independent criterion, and in connection with various of the other specific criteria.

Both of the parties addressed the bargaining history in their stipulations and in their arguments. They agreed that the Employer had paid the full cost of health insurance premiums in the bargaining unit since 1969, agreeing also that renewal negotiations had never been completed prior to the expiration of the prior agreement. They also agreed that the Employer had always ultimately agreed to pick up any insurance premium increases on a retroactive basis.

The Employer cited the above bargaining history in support of the argument that it had no intention of reducing its commitment for the payment of health insurance in support of its good faith motivations in making the proposal in dispute in these proceedings; it emphasized that it was not proposing a benefits reduction, but rather a means of cost control. The Association cited the obvious difficulties inherent in dealing with prolonged negotiations after the expiration of an agreement, even though there is ultimate agreement relative to retroactivity.

Had the parties been successful in the past in completing their negotiations on a timely basis, perhaps the Employer's arguments relative to bargaining history would be more persuasive. Public sector negotiations frequently extend beyond the expiration date of the agreements, however, as they do not have the same immediate pressures as may be created upon the expiration of a private sector agreement. The statutory interest arbitration process is a substitute for the right to lockout or to strike, but is imperfect in a number of respects, not the least of which is the built-in tendency toward delay in reaching agreement. Illustrative of this fact is the current case where, despite the waiver of an arbitration hearing in this matter, the undersigned is writing a decision in July 1983, which will determine the rights of the parties retroactive to January 1982; since there are no immediate financial implications arising from the award, the impact of the delay is far less than might otherwise be the case.

While the course of the parties' future negotiations is speculative, the Employer's proposal, when coupled with consideration of the prospect for future delay in reaching agreement, contains much in the way of potential impact. Assuming for the sake of discussion that a flat insurance contribution was agreed upon for a two year agreement, which went one and one-half years beyond expiration before the matter was resolved, by the effective date of the renewal agreement, the Employer would have been continuing to pay a monthly premium that was in effect some three and one-half years before! Even where the Employer was predisposed to ultimately agree to retroactively paying any premium increases, the interim problems and pressures would be considerable. While the parties may ultimately agree upon some type of defined-premium approach in the future, it is hoped that they would do so on a give and take basis, across the bargaining table.

Finally, the Arbitrator will observe that there is nothing in the record which would persuasively support the inference that the wages increases already agreed upon by the parties for 1982 and 1983 were intended or agreed to constitute a buy-out for the Employer's requested change in insurance language.

Based upon the above, the Arbitrator has concluded that the parties' bargaining history favors the adoption of the final offer of the Association.

Summary of Preliminary Conclusions

As referenced in greater detail above, the Arbitrator has reached the following summarized preliminary conclusions:

(1) In applying the statutory criteria, an interest arbitrator has the responsibility to adopt the final offer which most closely reflects what the parties would have adopted through voluntary negotiations, had they been able to reach agreement. In so doing, an interest arbitrator should be reluctant to set aside, modify or discontinue practices previously agreed upon by the parties, and/or to abandon comparisons historically used by the parties.

(2) Consideration of the practices of comparable employers does not establish a persuasive basis for the adoption of the final offer of the Employer.

(3) An examination of the interest arbitration awards cited by the parties favors the adoption of the final offer of the Association.
(4) Consideration of the interest and welfare of the public criterion does not definitively favor the adoption of the final offer of either party.
(5) Consideration of the cost-of-living criterion for the duration of the two year renewal agreement does not definitively favor the adoption of the final offer of either party.
(6) Bargaining history considerations fall well within the coverage of Section 111.77(6)(h) of the Statutes. The bargaining history of the parties as projected into the future, favors the adoption of the final offer of the Association.

Selection of the Final Offer

After a careful consideration of the entire record before me, a review of all the statutory criteria, and in light of the preliminary conclusions referenced above, the Arbitrator has determined that the final offer of the Association is the more appropriate of the two final offers.

While various of the underlying considerations cited by the Employer were persuasive, it has simply failed to establish the necessary basis for arbitral modification of the long-standing and previously negotiated insurance premium payment provisions of Section 13.01(a) of the collective agreement.

1./ How Arbitration Works, Bureau of National Affairs, Third Edition - 1973. page 54. (footnotes omitted)

2./ Ibid. pages 788-789.

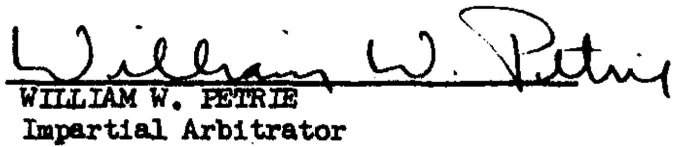
3./ 38 LA 666, 671

AWARD

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

(1) The final offer of the Association is the more appropriate of the two final offers;

(2) Accordingly, the Association's final offer, herein incorporated by reference into this award, is ordered implemented by the parties.



WILLIAM W. PETRIE
Impartial Arbitrator

July 25, 1983