ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between RICHLAND COUNTY SHERIFF'S DEPARTMENT And LOCAL 2387, WISCONSIN COUNCIL 40, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO	Case 99 No. 49086 MIA-1812 Decision No. 28119-A

Impartial Arbitrator

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Hearing Held

Richland Center, Wisconsin
November 29, 1994

Appearances

For the Employer

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Richland County Sheriff's Department and the Richland County Sheriff's Department Employees' Union, Local 2387, Wisconsin Council 40, AFSCME, AFL-CIO, with the matter in dispute the annual wage increases to be applied each year during the parties' renewal labor agreement covering calendar years 1993 and 1994.

After their preliminary negotiations had failed to result in a complete agreement, the Union on April 9, 1993 filed a petition with the Wisconsin Employment Relations Commission requesting final and binding arbitration pursuant to Section 111.77 of the Municipal Employment Relations Act. After preliminary investigation by a member of its staff, the Commission on July 21, 1994 issued certain findings of fact, conclusions of law, certification of results of investigation and an order requiring arbitration, and on August 9, 1994 the undersigned was appointed to hear and decide the matter as arbitrator.

An arbitration hearing took place before the undersigned in Richland Center, Wisconsin on November 29, 1994, at which time both parties received full opportunities to present evidence and argument in support of their respective positions. The Employer and the Union thereafter closed with the submission of post-hearing briefs, after which the record was closed by the Arbitrator effective January 14, 1995.

THE FINAL OFFERS OF THE PARTIES

The final offers of the parties, hereby incorporated by reference into this decision and award, indicate that the single remaining impasse item is the amount of annual wage increases to be applied in each of the two years of the renewal agreement.

(1) The Employer proposes 3% across-the-board wage increase in 1993 and in 1994.

(2) The Union proposes 4% wage increases, in fixed dollar amounts based upon unit averages, in 1993 and in 1994.

THE STATUTORY CRITERIA

Section 111.77(6) of the Wisconsin Statutes provides that the Impartial Arbitrator must give weight to the following arbitral criteria in reaching a decision and in rendering an award in these proceedings:

(a) The lawful authority of the employer.

(b) The 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 proceedings with the wages, hours and conditions of employment of other employees generally:

(1) In public employment in comparable communities.

(2) In private employment in comparable communities.

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

(f) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused

time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

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

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

THE POSITION OF THE EMPLOYER

In support of the contention that its final offer is the more appropriate of the two before the Arbitrator, the County emphasized the following principal considerations and arguments.

(1) That the primary external public employer comparables in these proceedings should consist of the contiguous counties of: Crawford, Grant, Iowa, Sauk and Vernon.

(a) That each of the above was selected for use on the basis of geographic proximity, type of political entity and size.

(b) That each of the above has a rural, farm-based economy.

(c) That the Union seeks to expand the comparables to include Monroe County, which is not contiguous, and the Police Department of the City of Richland Center.

(d) That public and private sector employers generally recruit and compete for employees in the labor market in which they conduct operations. That proximity and economic well-being are primary considerations, an employer attempts to recruit those employees who will form a balanced and stable work force, and payment of competitive wages and benefits within a given geographic area contributes to the accomplishment of this goal.

(e) That a community's taxpayers are more concerned with the effects of wage and benefit levels within their own and neighboring communities, never before have they played such an important role in collective bargaining, and with the recent changes in the school district arbitration law and levy limits based upon counties, the Wisconsin citizenry has proclaimed that "enough is enough."

(f) That arbitral use of the County proposed comparison pool of contiguous counties is appropriate for various other reasons: each county naturally competes in the same labor pool of employees seeking jobs within the same general area; the various employees compete for the same goods and services and are influenced by the same variations in the labor market and the cost of living; and the proposed pool best indicates area economic conditions and appropriate wage levels.

(g) That the underlying bases for arbitral use of the County proposed comparison pool, have been utilized by other Wisconsin interest arbitrators.[1]

(h) That arbitral selection of the County's proposed comparables in these proceedings will serve as a reliable and constant foundation for voluntary settlements between the parties in the future.

(2) That the Union proposed inclusion of Monroe County and the City of Richland Center Police Department as primary comparables, is inappropriate.

(a) That similar rationales for inclusion have been rejected by other Wisconsin interest arbitrators.

(b) That Monroe County and Richland County do not share the same labor market pool, by virtue of their geographical distance from one another.

(c) That geographic proximity was determined to have been of primary importance in another recent Richland County interest arbitration.[2]

(d) That the Union proposed inclusion of the Police Department of Richland Center is inconsistent with the rationales used in the decisions and awards of other Wisconsin interest arbitrators.[3]

(3) That the County proposed wage increases guarantee equitable increases within the bargaining unit.

(a) Under the County proposed increases, that wage rates will continue to fall within wage ranges of the comparables; that the rankings are relatively consistent with the use of either the Employer's or the Union's comparables.

(b) That the Union advanced comparisons are distorted somewhat by its incorporation of the maximum longevity step into its Sauk County data; that longevity should be either included or excluded for all comparables.

(c) That the wage comparisons offered by both parties show that unit employees have been in the median range of wages offered to comparable employees since 1992, which condition will be maintained with the selection of the final offer of the County.

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[1] Citing the following decisions and awards: Arbitrator Yaffe in School District of Mishicott, Dec. No. 19849-A (1983); Arbitrator Mueller in Kenosha County (Deputies), Dec. No. 25485-A, (1989): and Arbitrator Michelstetter used the Employer urged comparison selection criteria in Vilas County (Courthouse), Dec. No. 27896-A (1994).

[2] Citing the decision of Arbitrator Johnson in Richland County (Pine Valley Manor), Dec. No. 28017-A (1994), a copy of which comprises Employer Exhibit #61.

[3] Citing the decisions and awards of Arbitrator Gundermann in Winnebago County (Sheriff's Department), Dec. No. 19378-A(1982), and Arbitrator Krinsky in Waukesha County (Sheriff), Dec. No. 26513-A (1990).

(4) That the *stability of employment* of those in the bargaining unit support the selection of the final offer of the Employer in these proceedings.

(a) That the average service within the bargaining unit is over fourteen years, that of the twenty-six members of the unit only six are new hires who filled part-time positions, and the last time that the County advertised it received forty-eight applications for Deputy Sheriff.

(b) That the low turnover rate within the bargaining unit is indicative of the quality of wages and benefits paid to those within the unit.

(c) That the rationale of at least one Wisconsin interest arbitrator supports the position of the County in this area.[4]

(5) That arbitral consideration of the County's *superior benefits package* supports the selection of its final offer in these proceedings.

(a) That the normal give and take of bargaining on wages and benefits results in variations, which requires arbitral consideration of the *total compensation criterion*.[5]

(b) That examination of the total compensation packages among comparables, shows that Richland County Deputies enjoy superior benefits in the areas of longevity, maximum vacation allowances, employee contributions for medical insurance, dental insurance and uniform allowances.

(c) That the benefits package of those in the bargaining unit is head and shoulders above the comparables, which favors selection of the final offer of the County in these proceedings.

(6) That the final wage offer of the County exceeds the rate of inflation reflected in the Consumer Price Index.

(a) That the most valid measure of cost of living in these proceedings is the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).

(b) That cumulative changes in cost of living since the last time that the parties went to the bargaining table have been 7.4%, which is closer to the final wage offer of the Employer than that of the Union.

(c) That the wage increases provided to those in the bargaining unit have exceeded movement in the CPI.

(7) That the *interests and welfare of the public* do not support the wage demands of the Union in these proceedings.

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[4] Citing the decision of Arbitrator Fleischli in Marathon County(Health Department), Dec. No. 26030-A, (19990).

[5] Citing the following decisions and awards: Arbitrator Baron in Cassville School District, Dec. No. 27188 (1992); Arbitrator McAlpin in Lincoln County (Deputies), Dec. No. 26701-A (1991); and Arbitrator Michelstetter in Vilas County (Courthouse), Dec. No. 27896-A, 1994).

(a) That the economic adversities and budget restrictions placed on the County are relevant, if not controlling considerations.

(b) That various economic factors favorable to the County's position are reflected in the evidentiary record: that Richland County had the lowest overall *growth in equalized value* in the State of Wisconsin between 1989 and 1994; that the County's approximate 8% overall growth in equalized *value, compares with a statewide average of* 27.8%, and it is also the lowest among the primary comparables. That low increases in equalized values translates to smaller increases re property tax revenues to fund County operations.

(c) That during the past five years the citizens of Richland County have assumed a 25% increase in total property taxes, and that their full value effective rate or mill rate, at $35 per $1,000, is the highest among contiguous counties.

(d) That Richland County has the fifth highest tax rate ranking among Wisconsin's seventy-two counties.

(e) That the above property tax considerations are magnified by *the fact that the County's population has increased by only* one-quarter of one percent over the past three years.

(f) That the County's adjusted gross income per capita and its average family income figures support its position in these proceedings; that the latter figure is almost $9,000 below the state average, $2,500 below the average among comparables, and ranks 57th among the 72 counties in the State of Wisconsin.

(g) That per capita personal income is the second lowest among comparables and 20% of the County's income comes from transfer payments; that the County has the highest number of AFDC cases per 1,000 population among the contiguous counties.

(h) That the County's real estate is 39% agricultural, 41% residential and has a combined commercial/manufacturing base of only 11%.

(i) That the average national private sector wage increase in 1993 was 2.1%, versus the 3% per year wage increase offer of the County in these proceedings.

(j) That the tax rate freeze at 1992-93 levels means that any increase in the levy depends upon the equalized value growth of the County, which is the lowest in the State of Wisconsin.

(k) That the County has provided evidence of the poor condition of the local economy, a rural/farm economy which is struggling to meet its obligations. That Wisconsin interest arbitrators have frequently addressed the significance of the depressed rural economy.[6]

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[6] Citing the following decisions and awards: Arbitrator Yaffe in New Holstein School District, Dec. No. 22898-A (1986); Arbitrator Miller in Clintonville Public School District, Dec. No. 19768 (1983); Arbitrator Vernon in City of Sturgeon Bay (Utilities), Dec. No. 25549-B (1989); Arbitrator

(l) That the overall lack of economic prosperity in the County results in a taxpaying public with fewer resources to support employer wage increases, especially in light of the levy limits imposed by the legislature, support the County's offer of 3% wage increases in 1993 and 1994.

(m) That the interest and welfare of the public criterion clearly favors the County's offer and it should play a major role in the final offer selection process.

In summary and conclusion, that the evidentiary record supports the following preliminary conclusions: that use of the County proposed external comparables is appropriate; that the County's wage offer provides equitable and competitive wages when measured by external comparables and cost of living considerations; that the County provides a superior benefits package; that the general state of the County's economy, including high taxes, low property values, below average personal income, and county levy limits and budget constraints, favor the position of the County. That the final offer of the County should be selected by the Arbitrator in these proceedings.

POSITION OF THE UNION

In support of the contention that its final offer is the more appropriate of the two before the Arbitrator, the Union emphasized the following principal considerations and arguments.

(1) That only certain of the statutory arbitral criteria are material and relevant in the final offer selection process in these proceedings.

(a) That no evidence was advanced regarding the following arbitral criteria: the *lawful authority of the municipal employer*; the *ability of the County to pay for either final offer*; the *wages paid to law enforcement employees in the private sector*; *cost of living*; and *changes in circumstances during the pendency of the proceedings*. Further, that the *stipulations of the parties* do not tend to favor either party's final offer.

(b) That only the *interests and welfare of the public, public sector comparisons* with employees in comparable communities, the *present overall levels of compensation*, and *other factors normally taken into consideration* in voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise, are in issue.

(c) That the Union will principally focus upon *external intraindustry comparisons* in support of its position in these proceedings.

(2) That the Union proposed pool of external comparables should be utilized by the Arbitrator in these proceedings.

Gundermann in Cudahy Schools, Dec. No. 19635 1982); Arbitrator Fleischli, Madison Schools, Dec. no 19133 (1982); Arbitrator Vernon in DePere Education Association, Dec. No. 19728-A (1982); Arbitrator Gundermann in Cudahy Schools, Dec. No. 19635-A (1982); Arbitrator Mueller in South Milwaukee School District, Dec. No. 19668-A (1982); Arbitrator Mueller in Madison Area VTAE, Dec. No. 19793-A (1982); Arbitrator Grenig in Sturgeon Bay School District, Dec. No. 20263-A (1983); Arbitrator Hafenbacker in Vernon County (Courthouse & Social Services), Dec. No. 19843-A (1982).

(a) That the parties differ with respect to the inclusion of Monroe County and the City of Richland Center in the primary intraindustry comparison pool.

(b) That Monroe County is reasonably proximate to Richland County, with large areas closer to points in Richland County than some in counties stipulated as comparables, and that its population and per capita values support its inclusion in the primary intraindustry pool.

(c) That significant precedent from Wisconsin interest neutrals indicate that a preference for proximate comparables does not translate into a requirement for contiguous comparables.[7]

(d) That the City of Richland Center should also be considered a proper comparable, since it is the only City in the County, nearly 30% of the county population resides within the city limits, and those in the bargaining unit perform duties similar to those performed within the City's Police Department.

(e) That the position of the Union relative to inclusion of the City of Richland Center is consistent with some of the previously cited arbitral decisions and awards, and its proposed pool in the case at hand is consistent with the one recently used by another arbitrator in Richland County.[8]

(f) In summary, that both the City of Richland Center and Monroe County should be part of the primary intraindustry comparison pool in these proceedings.

(3) That the pattern of wage increases granted to comparable employees supports the position of the Union in these proceedings.

(a) That the Union's final offer would provide for a wage increase of 4% each year, based upon the unit average; that this would increase hourly wages to $11.44 in 1993, an increase of .44 per hour, and to $11.90 in 1994, an increase of .46 per hour.

(b) That the average lift in wage increases among comparables are 4.65% in 1993 and 4.79% in 1994, for an average two year lift of 9.61%; in the case at hand that the Employer is proposing 3% increases per year for an average two year increase of 6.09%, while the Union is proposing 3.88% in 1993 and 3.82% in 1994, for an average two year increase of 7.84%.

(c) That the above figures show that the Employer's offer is not supported by the comparables, that the Union's offer is

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[7] Citing the following decisions and awards: Arbitrator Yaffe in School District of Mishicott, Dec. No. 19849-A (1983); Arbitrator Mueller in Kenosha County (Deputies), Dec. No. 25485-A (1989); Arbitrator Michelstetter in Vilas County (Courthouse), Dec. No. 27896-A (1994); Arbitrator Rice in Iowa County (Social Services), Dec. No. 23941-A (1987); Arbitrator Tyson in Iowa County (Highway), Dec. No. 27608-A (1994); Arbitrator Vernon in Grant County, Dec. No. 22428-B (1986).

[8] Citing the decision of Arbitrator Malamud in Richland (County Highway Department), Dec. No. 27897-A (1994).

within the settlement range of the comparables, and that the final offer of the Union is favored by arbitral consideration of the comparables.

(4) That the Union advanced percentage increases for Sauk County should be utilized by the Arbitrator in these proceedings.

(a) That the parties disagreed at the hearing relative to the impact of Sauk County having agreed to certain changes in the manner in which longevity would be determined and paid.

(b) That Union's figures for Sauk County show increases of 6.57% in 1993 and 9.24% for 1994, while those of the County show increases of 1.5% for 1993 and 4% for 1994.

(c) That the record supports an arbitral finding that the Union advanced increases for Sauk County are accurate, and are fully appropriate for comparison purposes in these proceedings.

(5) That arbitral consideration of the pattern of monthly/cent per hour wage increases for Road Patrol Officers, support selection of the final offer of the Union.

(a) That the Union proposes the sixth highest increase among the eight comparables for 1993, and the fifth highest among the eight comparables for 1994.

(b) That the Employer proposed the lowest increases in both years of the agreement, and one that is .44 per hour below the average two year increase.

(6) That the Employer's stability of employment arguments do not persuasively support its position.

(a) Contrary to the Decision of one frequently cited Wisconsin interest arbitrator, the case at hand does not involve the attempted establishment of a catch-up claim.[9]

(b) That the Richland County Sheriff's Department is probably no different than any other sheriff's department in the State, with long service almost always the rule.

(7) That benchmark analysis of the wages paid the Patrol Officer, the Dispatcher/Jailer and the Jail Sergeant classification, supports the final offer of the Union.

(8) That arbitral consideration of the Employer's internal settlement comparison does not support its position in these proceedings.

(a) That the Sheriff's Department is the last unsettled agreement for 1993-1994, with the Nursing Home Unit settled at 3% wage increases each year, the Highway Department settled at 4% wage increases each year, and the Professional Employees unit receiving increases of 3% each January 1 and a 2% increase each July 1 on a new 42-month step.

(b) In the professional unit, that those with at least 42 months of service as of January 1, 1993, would receive a 3/2 split increase each year for a 10% lift over two years, and those

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[9] Citing the decision of Arbitrator Fleischli in Marathon County, Dec. No. 26030-A (1990).

with less than 42 months of service will qualify for the new step increases in the near term. That this settlement is more supportive of the Union's than the County's offer in the case at hand.

(9) That arbitral consideration of the interests and welfare of the public criterion does not support selection of the final offer of the Employer in these proceedings.

(a) That the tax rate limit imposed by Act 16, which requires tax rates to remain frozen for 1992, does not support the County's offer over that of the Union.

That the County has been operating under a virtual "tax rate freeze" for years, with only 13.94% tax levy increases between 1987 through 1992, during which period its comparables increased by more than 50%.

That the County is well positioned to adjust to the legislatively mandated tax rate freeze without much trouble; that it is also a county which has previously been willing and able to provide reasonable employee pay increases from year to year.

(b) That Employer argued *economic adversities* and *budget restrictions* should not be assigned controlling weight in these proceedings; to the contrary, and in the absence of absolute *inability to pay*, the intraindustry comparison criterion should be assigned determinative weight.

In summary and conclusion, that the following considerations favor the selection of the final offer of the Union in these proceedings: that the most relevant of the statutory criteria are those which involve the intraindustry comparison of wages paid to Richland County's law enforcement employees versus those paid by comparable employers; that the counties of Crawford, Grant, Iowa, Sauk, Vernon, Monroe and Richland, and the City of Richland Center, should comprise the primary intraindustry comparables; that arbitral consideration of the external comparables clearly supports the Union's final offer; and that the Employer's interest and welfare of the public based arguments are not persuasive, and they include no claim of inability to pay.

FINDINGS AND CONCLUSIONS

Although the parties differ only with respect to one impasse item, they also disagree as to the application of and the weight to be placed upon various of the statutory arbitral criteria. Accordingly, and prior to reaching a decision and rendering an award in these proceedings, the undersigned will offer certain general preliminary observations and conclusions relating to the following considerations: the nature of the Wisconsin interest arbitration process, including the significance of the parties' *past practices* and their *negotiations history* within the Sheriff's unit and in other bargaining units in the County; the significance of the comparison criteria; the significance of the overall compensation and the stability of employment criteria; and the significance of the interests and welfare of the public criterion. Thereafter, the evidence and the arguments of the parties will be specifically applied against the statutory criteria, including the *comparison criteria*, the *interests and welfare of the public criterion*, the *cost of living criterion*, and the *overall compensation and stability of employment criteria*, each of which was emphasized by the parties in arguing their respective cases.

The Nature of the Wisconsin Interest Arbitration Process

As the undersigned has indicated in a number of prior interest proceedings, a Wisconsin interest arbitrator operates as *an extension of the parties' collective negotiations process*, and his or her *normal role is to attempt to put the parties into the same position they would have occupied but for their inability to reach full agreement at the bargaining table*. In attempting to do so, the neutral will normally closely examine and consider the parties' *past practices* and their *negotiations history*, which criteria fall well within the scope of Section 111.77(6)(h) of the Wisconsin Statutes, including the significance of the fact that various local unions of Wisconsin Council 40, AFSCME represent separate bargaining units of County employees. Some of these principles are discussed in the following excerpts from the frequently cited book by Elkouri and Elkouri:

> "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 which accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:
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> > '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 consideration of policy, fairness and expediency, of what the contract rights ought to be. In submitting their case to arbitration, the parties have merely extended their negotiations - they have left to this Board to determine what they should in 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 negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining..."[10]

In applying the above considerations, interest arbitrators normally look to such factors as the parties' past agreements, their past practices and their bargaining history, including settlements in other bargaining units for the same employer.[11] The arbitral weight to be placed upon these factors in other bargaining units will vary, principally with *the nature of specific impasse item(s)* and/or *the importance historically placed upon such considerations* by the parties themselves.

When the parties themselves have either sought or agreed upon uniform wage increase percentages or uniform amounts in other bargaining units, particularly when the same union represents employees in the various units, interest arbitrators normally attach significant weight to this clear indication of joint preference for such wage uniformity; stated another way, such actions strongly indicate what the parties would have agreed upon at the bargaining table had they been able to do so. In applying these principles to the case at hand, the undersigned notes that the parties apparently made identical final wage increase offers in their negotiations covering the Highway Department, the Professional Employees and the Pine Manor bargaining

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[10] Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, pp. 104-105. (footnotes omitted)

[11] Arbitral consideration of parties' *past agreements*, their *past practices* and their *negotiations history*, fall well within the scope of Section 111.77(6)(h) of the Wisconsin Statutes.

units, with the Union seeking 4% wage increases in 1993 and 1994 and the Employer offering 3% increases in each of the two years.[12] Accordingly, arbitral consideration of the parties negotiations history and their settlements in these bargaining units is entitled to significant weight in applying the comparison criteria and in the final offer selection process in these proceedings.

Also in accordance with the above described principles, *the primary intraindustry comparison group* used by the parties in their prior negotiations or established in prior arbitrations, will rarely be disturbed in subsequent interest arbitrations. In the absence of a definitive bargaining history within a specific bargaining unit, the composition of the intraindustry comparison group used by the parties in other bargaining units is likely to be adopted by an arbitrator. In this connection the undersigned notes that Arbitrator Malamud in his decision and award of September 8, 1994 concluded that the pool of intraindustry comparables included the counties of Crawford, Iowa, Monroe, Sauk and Vernon, and the City of Richland Center; he excluded Grant County only because its Highway Department was unorganized. Arbitrator Johnson in his decision and award of September 26, 1994 defined the intraindustry comparison group as composed of Grant, Iowa, Sauk and Vernon Counties, with Lafayette County substituted for Crawford County due to the latter's lack of a nursing facility, and excluding Monroe County. These conflicting decisions are considered below where the comparison criteria are specifically applied to the dispute at hand.

The Significance of the Comparison Criteria

The undersigned has also frequently noted that the Wisconsin Legislature has not established the relative importance of the various statutory arbitral criteria, and that their relative importance will frequently vary from case to case. Generally speaking, however, it is widely recognized that the most persuasive and the most frequently cited criteria in interest disputes are comparisons, and that the most important of these are normally the so-called intraindustry comparisons, which factor normally takes precedence when it comes into conflict with other criteria. These considerations are very well described in the following excerpts from the respected book by Irving Bernstein:

> 'Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the Union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill... Arbitrators benefits no less from comparisons. They have the appeal of precedent and ... awards, based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.
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> a. *Intraindustry comparisons.* The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. More important, the weight it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance in the wage-determining standards
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[12] See Employer Exhibits #61 and #62, and Union Exhibit #10.

> A corollary of the preeminence of the intraindustry comparison is the superior weight it receives when found in conflict with another standard of wage determination. The balancing of opposing factors, of course, is central in the arbitration process, and most commonly arises in the present context over an employer argument of financial adversity."[13]

The weight normally placed upon the comparison criteria is also reflected in the following additional excerpts from the Elkouris' book:

> "Without question the most extensively used standard in interest arbitration is 'prevailing practice'. This standard is applied with varying degrees of emphasis, in most interest cases. In a sense when this standard is applied the result is that disputants indirectly adopt the end results of the successful collective bargaining of other parties similarly situated. The arbitrator is the agent through whom the outside bargain is indirectly adopted by the parties."[14]

On the basis of the above, it is clear to the undersigned that comparisons are normally the most frequently used and the most persuasive of the various arbitral criteria, and that the most persuasive of these normally consists of so-called intraindustry comparisons.[15]

The Significance of the Overall Compensation and the Stability of Employment Criteria

The *overall compensation* and the *stability of employment* criteria are grouped together in Section 111.77(6)(f) of the Wisconsin Statutes, and it is important to understand that they are *relative standards*, and that while they may be used to justify the *establishment of differential wages*, they generally have little or no application to the *application of general wages increases* thereafter. These principles are addressed in the following additional excerpts from Bernstein's book:

> "A further hurdle to administering the intraindustry comparisons is regularity of employment. Wage differentials are common, for example, between craftsmen employed by utilities or manufacturing firms and those with the same skills who work in the building trades. Their justification lies in differences in the steadiness of employment offered by these industries. The problem is discussed below.
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> Much the same can be said of nonrate monetary benefits. Such 'fringes' as vacations, holidays, and welfare plans may vary among firms in the same industry and thereby complicate the wage comparison. This question, too, is treated below.
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> A widely observed principle of wage administration is that regularity of employment shall affect the hourly rate. Perhaps the most notable example occurs in the building trades scales. Craftsmen

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[13] Bernstein, Irving, The Arbitration of Wages, University of California Press - 1954, pages 54-56, 57. (footnotes omitted)

[14] How Arbitration Works, pages 104-105.

[15] While the *intraindustry comparisons* terminology obviously derives from the private sector, the same underlying principles of comparison are used in public sector interest impasses; in this connection, the so-called *intraindustry comparison* groups normally consist of other similar units of employees employed by comparable governmental units.

employed in construction, who suffer sharp fluctuations in employment, customarily receive higher rates then men with the same skills employed by utilities who work steadily...

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...In the *Reading Street Railway* case, for example, the company argued strenuously that its fringes were superior to those on comparable properties and should be credited against wage rates.

Arbitrators have had little difficulty in establishing a rule to cover this point. They hold that features of the work, though appropriate for fixing differentials between jobs, should not influence a general wage movement. As a consequence, in across-the-board wage cases, they have ignored claims that tractor-trailer drivers were entitled to a premium for physical strain; that fringe benefits should be charged off against wage rates; that offensive odors in a fish-reduction plant merited a differential; that weight should be given the fact that employees of a utility, generally speaking, were more skilled than workers in the community at large; that merit and experience deserved special recognition; and that regularity of employment should bar an otherwise justified increase...

The theory behind this rule is that the parties accounted for these factors in their past collective bargaining over rates."[16]

The above described principles must be utilized in the specific application of these arbitral criteria to the case at hand.

The Significance of the Interests and Welfare of the Public Criterion

This criterion is normally emphasized by employers in connection with their arguments based upon financial adversity, and it is well established that such factors must be taken into consideration in the final offer selection process in Wisconsin interest arbitration proceedings. They are normally entitled to determinative importance, however, in only two sets of circumstances: *first*, where the record indicates an absolute inability to pay; and, *second*, where the selection of one of the final offers would necessitate a disproportional or unreasonable effort on the part of an employer. In the case at hand, the Employer is urging that its ability to pay is reduced because of various economic factors, but it is not claiming an absolute inability to pay.

The Specific Application of the Statutory Criteria to the Dispute at Hand

In first considering the comparison criteria, the Arbitrator notes that two major types of comparisons must be addressed, *intraindustry comparisons* and *internal comparisons* with other bargaining units. Three exhibits in the record describe the resolution of separate interest proceedings involving the County and bargaining units also represented by locals unions affiliated with Wisconsin Council 40, AFSCME:

(1) Employer Exhibit #62 is Arbitrator Zeidler's June 8, 1994 consent award in the impasse between the same parties, governing the *Professional Employees bargaining unit*. It provides, in pertinent part, for 3% increases for 1993 and 1994, and for an additional 2% becoming applicable at a new 42 month step on the salary schedule.

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[16] The Arbitration of Wages, pages 65-66, 101, 90. (included citation at 6 LA 860)

(2) Union Exhibit #10 is a copy of Arbitrator Malamud's September 8, 1994 decision and award in the impasse between the same parties, determining *Highway Department bargaining unit* wages for 1993 and 1994. At pages 4 through 8 of his decision the Arbitrator comprehensively addresses the composition of the intraindustry comparison pool, before excluding Grant County, solely because its Highway Department was not organized, and including Crawford County, Iowa County, Monroe County, Sauk County, Vernon County, the City of Richland Center and Richland County. After applying the various arbitral criteria, the Arbitrator concluded that the Union's final offer for 4% wage increases in 1993 and 1994, was more appropriate than the Employer's offer of 3% increases in each of the two years, and in his award he selected the final offer of the Union.

(3) Employer Exhibit #61 is a copy of Arbitrator Johnson's September 26, 1994 decision and award in the impasse between the same parties, governing *Pine Valley Manor bargaining unit*. The Arbitrator declined to consider the above consent award and arbitration award, he addressed the composition of the external comparison pool at the bottom of page 2 and the top of page 3 and concluded that the comparables should consist of the contiguous counties of Grant, Iowa, Sauk, Vernon, Richland, and Lafayette County substituted for Crawford County (which has no nursing home); after applying various arbitral criteria, he concluded that the Employer's final offer for 3% wage increases in 1993 and 1994, was more appropriate than the Union's offer for 4% increases in each of the two years. The Union's final offer also included a proposed change in the overtime pay threshold which the Arbitrator indicated, by way of dicta, that he favored.

The immediate questions before the undersigned are the significance of the above settlements in relationship to *the composition of the primary intraindustry comparison pool* and *the appropriate levels of wage increases for 1993 and 1994*. When the parties have either agreed-upon or had the composition of the primary intraindustry comparison group arbitrally determined, subsequent arbitrators normally respect the composition of such group unless the parties agree otherwise or there are very persuasive reasons to change the composition of the group. Similarly, when the parties either agree upon or each propose identical percentage increases across bargaining unit lines, it is reasonable to infer that identical increases are mutually preferred.

If the earlier awards of Arbitrators Zeidler and Malamud stood alone, it is clear that I would unhesitatingly recognize and adopt the same intraindustry comparison group identified by Arbitrator Malamud, and would also place significant weight upon the fact that the wage settlements in the Professional and in the Highway Department bargaining units supported the selection of the Union's rather than the Employer's final offer in these proceedings. Despite the non-conforming decision and award of Arbitrator Johnson on September 26, 1994, the undersigned has preliminarily concluded that the awards of Arbitrator Zeidler and Arbitrator Malamud are distinguishable from the Johnson award, and that they should be accorded full weight in these proceedings, including Arbitrator Malamud's determination of the composition of the primary intraindustry comparison pool.

The undersigned has preliminarily concluded, therefore, that the internal comparisons criterion is entitled to significant weight in these proceedings, and that it favors the selection of the final offer of the Union in these proceedings.

What next of the application of the intraindustry comparison criterion? In this connection, it is first noted that the data contained in Union Exhibit #12 contains Sauk County figures which are remarkably inconsistent with all

other settlements during the two year period in question, apparently due to significant negotiated changes in the payment of longevity.[17] While the Employer has persuasively argued that longevity should be included or excluded for all comparables, and the Union has presented various arguments relating to why its comparison figures should be used, even if the 1993 and 1994 Sauk County wage data are disregarded, the average two year wage lift for the remaining comparables approximates 8.24%; a two year lift in excess of 8% is significantly closer to the approximate 8% wage lift proposed by the Union, rather than the approximate 6% lift proposed by the Employer.

Accordingly, the undersigned has preliminarily concluded that the wage offer of the Union is significantly closer to the average 1993 and 1994 wage increases enjoyed by the intraindustry comparables, and that consideration of the intraindustry comparison criterion significantly favors selection the final offer of the Union.

In next applying the cost of living criterion, the undersigned first notes that its importance in interest arbitration normally varies with the rate of recent movement in the CPI; in periods of rapid increases in living costs, for example, the criterion assumes greater importance, while during periods of relative stability in the indexes, its importance declines. In examining the evidentiary record and the arguments of the parties, the undersigned has reached the following preliminary conclusions relating to the application of this criterion in these proceedings:

(1) Contrary to the arguments of the Union, Employer Exhibit #71A traces annual movement in the CPI for Non-Metropolitan Urban Areas during the period in question, and it verifies the degree of movement cited by the Employer in its brief, and it is entitled to arbitral consideration in these proceedings.

(2) In addressing cost-of-living considerations in the case at hand, the Employer referenced CPI increases aggregating 1.7% in 1992, 3.4% in 1993 and 2.3% in 1994, versus an actual wage increase of 4% in 1992 and Company proposed wage increases of 3% in 1993 and in 1994; these wage increases would aggregate 10% against 7.4% in CPI increases, versus the Union proposed 4% increases in 1993 and in 1994 which would aggregate 12% in wage increases during calendar years 1992, 1993 and 1994.

On the basis of the above, it is clear that while the final offers of both parties exceed the cost-of-living increases reflected in the CPI, the final wage offer of the Employer is closer to movement in the index than that of the Union. Accordingly, arbitral consideration of the cost living criterion favors arbitral selection of the final offer of the Employer in these proceedings. Due to relative recent stability in living costs versus those of years past, however, the cost of living criterion is of a lesser order of importance that are the comparison criteria.

What next of the application of the overall compensation and the stability of employment elements contained in Section 111.77(6)(f) of the Statutes? For the reasons discussed earlier, the Impartial Arbitrator has preliminarily concluded that the Employer's arguments relating to the overall level of benefits enjoyed by those in the bargaining unit and to stability of employment considerations, cannot be accorded significant weight in these proceedings for three reasons: (1) there is no evidence in the record relating to relative benefits levels, or to the relative stability of employment enjoyed by the comparables; (2) the issue in these proceedings involves the application of a general wage increase to previously established

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[17] Union Exhibit #12 reports two year increases totalling 16.42% for Sauk County in 1993 and 1994, which is approximately double the next highest reported figures.

levels of relative wages, rather than to the initial establishment of wages; (3) accordingly, it must be inferred that the parties have fully accounted for these factors during their prior contract negotiations.

Finally, what of the interests and welfare of the public criterion as described in Section 111.77(6)(c) of the Statutes? In this connection the Employer has advanced persuasive evidence and arguments relating to the fact that it had the lowest growth in equalized value in the State of Wisconsin between 1989 and 1994, to its fifth highest tax rate ranking among Wisconsin 72 counties, to its slow growth in property tax revenues despite a relatively high mill rate, to only a one-quarter of 1% population increase over the past three years, to relatively low family and per capita income levels, and to the impact of the tax rate freeze at 1992-1993 levels. Despite the Union's arguments that the Employer is well positioned to handle its economic problems, there is no doubt that the economic conditions in the County favor arbitral selection of the lower of the two final offers. Despite these conditions, however, the County is not claiming inability to pay, and it agreed to the consent award providing higher than 3% annual wage increases in the Professional Employees bargaining unit,[18] and those in the Highway Department bargaining unit were arbitrally awarded 4% annual increases.[19]

On the basis of the above, the undersigned has preliminarily concluded that while the interests and welfare of the public criterion favors the position of the Employer, it does not mandate selection of the final offer of the Employer in these proceedings.

Summary of Preliminary Conclusions

As addressed in greater detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions.

(1) The primary function of a Wisconsin Interest Arbitrator is to attempt to place the parties into the same position they would have occupied but for their inability to achieve a complete settlement at the bargaining table.

(2) Although the Wisconsin Legislature has not prioritized the various statutory arbitral criteria, the comparison criteria are normally the most important and persuasive, and so-called intraindustry comparisons are normally the most important of the various possible comparisons.

(3) Arbitral consideration of the internal comparison criterion favors the position of the Union in these proceedings.

(4) The primary intraindustry comparison pool in these proceedings should consist of the counties of Crawford, Iowa, Monroe, Sauk, Vernon and Grant, and the City of Richland Center. Arbitral consideration of the intraindustry comparison criterion clearly and significantly favors the position of the Union in these proceedings.

(5) The cost of living criterion favors the selection of the final offer of the Employer in these proceedings, but it is of a lesser order of importance than the comparison criteria and is entitled to only limited weight in these proceedings.

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[18] See Employer Exhibit #62.

[19] See Union Exhibit #10.

(6) The overall level of compensation and the stability of employment criteria are entitled to no significant weight in the final offer selection process in these proceedings.

(7) The interests and welfare of the public criterion favors the position of the Employer, but its application does not mandate selection of the final offer of the Employer in these proceedings.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings and a review of all of the various statutory criteria, the Impartial Arbitrator has preliminarily concluded, in a close and difficult selection process, that the final offer of the Union is the more appropriate of the two final offers. While the position of the Employer is favored by the interests and welfare of the public and the cost of living criteria, neither can be accorded *determinative weight* in these specific proceedings, and the final offer of the Union was significantly favored by the intraindustry comparison and by the internal comparison criteria.

AWARD

Based upon a careful consideration of all of the evidence and arguments advanced by the parties, and a review of all of the various arbitral criteria contained in Section 111.77(6) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Union is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the Union, hereby incorporated by reference into this award, is ordered implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

March 28, 1995