

**STATE OF WISCONSIN
BEFORE THE ARBITRATOR**

In the Matter of the Petition of

**Manitowoc County Human Services Professionals
Local 986-A, AFSCME, AFL-CIO**

**To Initiate Arbitration
Between Said Petitioner and**

Manitowoc County (Human Services)

**Case 330
No. 55902
INT/ARB-8350
Decision No. 29441**

APPEARANCES:

Mr. Gerald Ugland, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 370, Manitowoc, Wisconsin 54421-0370.

Attorney James Korom, von Briesen, Purtell & Roper, S.C., Suite 700, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4470.

INTEREST ARBITRATION AWARD

Manitowoc County Human Services Professionals, Local 986-A, AFSCME, AFL-CIO, hereinafter referred to as the Union, filed a petition to initiate interest arbitration pursuant to Section 111.70(4)(cm), Stats., with the Wisconsin Employment Relations Commission with respect to it and Manitowoc County (Human Services), hereinafter referred to as the County. The undersigned was appointed to hear and decide the dispute as specified by order of the Wisconsin Employment Relations Commission, dated October 13, 1998. A hearing was held in Manitowoc, Wisconsin on January 6, 1999, where a stenographic transcript was taken. The parties were given opportunity to present

evidence and to examine and cross-examine witnesses. Post-hearing initial and reply briefs were filed by April 15, 1999, marking the close of the record.

STATUTORY CRITERIA:

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70(4)(cm), Stats., as follows:

7. "Factor given greatest weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer.

7g. "Factor given greater weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified under subd. 7r.

7r. "Other factors considered." In making any decision under the arbitration procedures authorized in this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment performing similar services.

- e. Comparison of the wages, hours and conditions of employment involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
- f. Comparison of the wages, hours and conditions of employment of the municipal employees, involved in the arbitration proceedings with the wages, hours and conditions of other employees in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost of living.
- h. The overall compensation presently received by the municipal 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.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken in 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.

FINAL OFFERS:

The parties have reached stipulations (see Appendix C, attached) on certain issues. As the parties concur, all the remaining issues in each party's Final Offer are identical, except for the additional proposal by the Union to improve vacation leave. The Union's Final Offer is attached and marked as Appendix A, and the County's Final Offer is attached and marked as Appendix B.

POSITION OF THE UNION:

At the outset, the Union argues that the central open issue in this case is internal comparability. The Union notes that it has agreed to reduce the leave accounting for Crisis Intervention Team (Crisis Team) members, along with the County's proposal to delete the health insurance Fourth Quarter Deductible carryover. Now, according to the Union, it wants to be treated as the other represented professionals. The Union argues that it will demonstrate how the County will not be disadvantaged. The County will try to show how, allowing access to a Vision Plan, and maintaining coverage under the Health Insurance Portability and Accountability Act (HIPAA), the Mental Health Parity Act (MHPA) and the Newborns' and Mothers' Health Protection Act (NMHPA) is a quid pro quo. However, such acts are already a part of the coverage; instead, the County's opting out is the real issue.

The Union submits that the vacation improvement it proposes approaches parity with the Health Department employees and Health Care Center Nurses. According to the Union, such an improvement is equivalent to seventy-four hundredths of one average workday. The improvements in funeral leave and access to vision plan are minor issues which do not rise to the level of adequate value for a trade-off. Moreover, the mileage reimbursement improvement is not a benefit; rather, it is a reimbursement for an expense.

The Union's giving up of the health insurance deductible they used up in the fourth quarter is equivalent to one and one-half percent of the 1997 health insurance premium. The side letter, Union Exhibit A., 1., p. 6, is entirely new language.

Moreover, the Union submits that it is giving up a large portion of the paid time-off by two Crisis Team members. The new language will reduce the benefit by increasing the amount of time each employee will have deducted on an hourly basis for each day of paid time-off. The Union draws the Arbitrator's attention to Union Exhibit A., 1., page 11, which shows how paid time-off will prospectively be deducted from accrual. Attachments A., B., and C., illustrate how it was deducted as well as the new method .

The Union believes that the internal bargaining unit most comparable to this one is the Health Department Employees and Health Care Center Nurses. Most of them work Monday through Friday, the same hours as the instant counselors. There is no reason why this bargaining unit should not receive the same vacation benefit.

The Union points out that the Nurses receive eight days of vacation after one year, twelve days after two years, and fifteen days after five years. Sheriff's Department employees receive six days after one year, twelve days after two years, and eighteen days after eight years. However, the Professionals receive five days after one year, ten days after two years, and fifteen days after seven years.

The Union further points out that, as Attachment M shows, Public Health Nurses, Health Care Center RN's, and the other Health Department Professionals receive thirty days vacation. While some Health Care Center Nurses work a schedule that includes seven days per week and holidays, Attachments J and K show that more than half of that bargaining unit does not work at the Health Care Center. In addition, Sheriff's Department and Health Care Center employees receive thirty days of vacation. There is

no differentiation in vacation for Sheriff's department employees who work first shift, Monday through Friday.

Attachment M illustrates the comparison of vacation benefits with the Health Department Employees and Health Care Center Nurses. The instant bargaining unit employees are three days behind Health Department Professionals after one year. They are two days behind after three years and five days behind after two years. For the remainder of the years the instant employees remain behind. Human Services Department Professionals are more significantly negative than positive when compared with the other bargaining units. The Union points out that the bargaining units that have more vacation require more training after high school. The Union simply wants parity with other similar internal bargaining units.

With respect to the Crisis Team loss of paid time-off, those two employees would have 0.125 of scheduled hours off in a pay period for each weekday off and 0.1875 of scheduled hours off for each weekend day or holiday off. However, other employees would have an average of 0.06 of a scheduled hour off in a pay period per workday off. The Union contends that this has existed since the Crisis Team began, and it is a long-standing status quo benefit.

Under the language agreed to, more hours will be deducted from the Crisis Team members' accruals. The Union points to Attachment A from its initial brief, which, it is argued, illustrates the usual Crisis Team member's schedule. Attachment B from its initial brief shows the impact of the change from the status quo. Under the new arrangement the time that those employees will be allowed to take off will be reduced by 2.5 hours per weekday and 5.5 hours per weekend day. Paid holiday time-off is affected

the same way, the Union submits. In addition, the Union argues that the value of sick leave and funeral leave is also diminished under the changed Crisis Team time-off.

The Union further contends that removal of the Fourth Quarter Deductible will result in 1.5% of the premium, which, according to the Union, amounts to a savings of \$3,590.74 per year at the 1997 rates. The Union calculates that adding the loss of accrued paid time-off for Crisis team members and the loss of Fourth Quarter Deductible carry-over amounts to a total of \$9,253.37. However, according to the Union, the increase in vacation results in an added cost of only \$5,473.34.

The Union contends that the County expects take backs without any consequence. The Union, on the other hand, is asking for a vacation benefit comparable to Health Department Professionals. Nonetheless, the net effect is that the County is still ahead if the vacation proposal were implemented.

The Union further points out that the Sheriff's Department Non-sworn unit received substantial improvements in wages in the form of a one percent increase at the 36 month step for Corrections Officers and two steps added above that at one percent each. The Telecommunicators' increase is more stark, according to the Union. The senior Telecommunicators received a 12.5% increase. Four others received a new 4% step increase. The Sheriff's Department Sworn employees also received larger percentage increases for certain classifications. Highway employees also received a vacation improvement.

In sum, most of the other bargaining units received catch-up on wages, while the instant bargaining unit simply wants to catch-up on vacation. With respect to external comparables, the Union would agree with Arbitrator Rice's previous determination with

respect to counties; however, the City units are not professional units or combined units, so their relevance here is questionable.

In response to the arguments made by the County in its initial brief, the Union first asserts that, contrary to the County's position, the County could not have opted out of HIPAA, MHPA and NMHPA. In addition, there is no evidence whether comparable communities have the Fourth-Quarter Deductible carryover; therefore, there is no basis in the record for the County's justification for removing that benefit.

With respect to the Crisis Team changes, the Union points out that they are paid much less per hour than other professionals. Moreover, for the County to suggest that the parties had failed to previously address Crisis Team leave time is simply "ludicrous." In addition, under the new agreement, Crisis Team members will receive fewer paid holidays. For the County to characterize the recording of vacation and consequent deductions from accruals as not being the status quo is preposterous, for, according to the Union, the record demonstrates otherwise. While the agreed-to procedure is fair, there is, the Union argues, a definite loss to the affected employees and bargaining unit as a whole in paid time-off benefits. Furthermore, the County has no basis to claim that overtime for Crisis Team members is a burden to them now, or that it had been a burden before.

The Union further disagrees with the County's arguments that this unit has higher total compensation than most comparable communities. The Union's vacation proposal is closer to internal comparable data. According to the Union, the County incorrectly asserts that the Union's vacation proposal calls for an increment after the seventh year. The County also errs in its depiction of the number of days of vacation for for this unit, as well as its description of the number of days of vacation for other internal units.

With respect to the wage agreement, the Union disagrees with the County's portrayal, and it argues that the County provides no evidence the wage settlement differed from the external comparables; rather, it is, in fact, at the low end of settlements. The Union further responds that wages are not at issue here.

Though the County argues that there was a quid pro quo for the Fourth Quarter Deductible carryover, the Union replies that the County misstates the facts. The Union submits that other bargaining units in the County received significant lifts in addition to the across-the-board increase.

With regard to the County's vacation costing method, the Union argues that the County neglected to consider the effects of turnover. Moreover, to cost the first year's vacation increase as a new cost in the second year inordinately inflates the results.

The Union further responds that there is a three prong test for evaluating whether proposed new language is appropriate: (1) whether the present language gives rise to the need to amend; (2) whether the proposed language may reasonably be expected to remedy the situation; and (3) whether the change will not impose an unreasonable burden on the other party. The Union argues that for the County to expect to make gains, it must recognize the employees' wish to do so as well.

In response to the County's arguments on external comparables for the vacation proposal, the Union replies that its vacation proposal is well within the range of external professional units which have positions that are the same as this unit.

For the County to argue that to maintain its health insurance benefit, the Union must surrender other benefits, is, according to the Union, preposterous. If employees gave up a benefit every time the health premiums rise, they would lose all benefits.

Finally, the Union submits that the quid pro quo principle does not apply where the employees are merely seeking to be brought into the comparable mainstream, and the Union concludes that it is only striving for parity with the other professional bargaining units, including the Health Department Employees and Health Care Center Nurses.

The Union therefore asks that its offer be implemented. The Union cites arbitral authority in support of its position.

COUNTY'S POSITION:

The County argues that its Final Offer is consistent with both internal and external comparables. It notes that the 1998 wage rates are 3% above the average of the external comparables. Moreover, the mutual agreement on allocating sick time and vacation time for the Crisis Team members is not a take back, as the Union suggests, but simply a rational, fair method for handling a problem that had not previously been addressed.

In addition, while elimination of the Fourth Quarter Deductible carryover generates some savings, absent any catch-up adjustments dictated by external comparables, the internal settlement pattern is comparable to the County's Final Offer here.

The County draws the arbitrator's attention to the historic reason for the health insurance change. Health insurance costs have increased in 1998 and 1999. The Fourth Quarter Deductible provision allowed elimination of the following year's deductible if the deductible had been met in the fourth quarter. However, even with the change in the Fourth Quarter Deductible, the County must still absorb an increased cost of \$42,553.21

over the contract period. In order to absorb that cost, the various bargaining units (including this one) agreed to delay the across-the-board wage increase for five weeks.

Of the other contracts that have been, or are being bargained, the Highway Department, Sheriff's Department, and Health Department agreed to both the Fourth Quarter Deductible and an increase in the 80/20 co-pay for out-of-network services. Most of those employees received an additional quarter percent. Certain other units agreed to only the Fourth Quarter Deductible change. Such agreed-to changes by those units reflect that those units viewed the changes as minimal.

In fact, the County argues that the reverse could be argued with respect to insurance costs because it has not sought to pass on those increasing costs to the employees. Nor has the County lowered its wage increases, despite paying wages above the comparables.

Nonetheless, the County submits that it has offered a fair quid pro quo for elimination of the Fourth Quarter Deductible with the pre-tax vision insurance program and agreeing not to withdraw from HIPPA and related acts.

While the Union argues that its demand for vacation time is a quid pro quo for claimed changes in the Crisis Team members' leave time, the County responds that there was no change in the Crisis Team members leave time allocation, because there never was any status quo with their leave time. They only recently were included in the bargaining unit. The only previous guidelines were that the Crisis Team members would be on call every other week and be paid for 76 hours. The record reflects that different supervisors had different policies regarding the reporting and use of leave time. The

provision that was agreed to in this bargain was simply a method for creating a consistent policy.

In fact, the County argues the record reflects that during call-in periods the Crisis Team member's only restrictions are that the member must remain in the County and not drink alcohol. In addition, the County contends there are various other advantages afforded the Crisis members under their scheduling (such as a week off every other week) which employees do not receive. Furthermore, under the agreed-to leave system, Crisis Team members will come out ahead in many circumstances.

The Crisis Team members also agreed in their testimony that under the new procedure, they will, for example, be paid time and a half for holidays, which they did not receive previously. Moreover, the Crisis Team members will now also receive overtime hours at time and a half.

The County further argues that, even if one agreed the Crisis Team members should receive a quid pro quo for the creation of their sick leave and vacation procedure, they already received a quid pro quo when the County accepted the Union's proposal on holidays and overtime for those employees. Moreover, there are only two Crisis Team members; however, the Union's vacation proposal would benefit all fifty-six bargaining unit members.

The County calculates that the vacation proposal would cost \$14,198 over the duration of the contract. The County also cites a list of improvements that the County has already agreed to in negotiations.

The County contends that the employees in this bargaining unit already receive more vacation than surrounding counties, and, as previously noted, they also receive a better compensation package than most other comparable communities.

The Union's Final Offer must be viewed as unreasonable under the statutory criteria, according to the County. The vacation proposal is not a fair quid pro quo, even if it could be argued that there were a need for such a change. The County further cautions that to approve of the Union's proposal would set a bad precedent, for, in the future, the County would be expected to make concessions without recognition for their value.

In response to the Union's arguments in its initial brief, the County first objects to certain documents that were attached to the Union's brief. The County argues that it did not have a chance to receive clarification on those documents, and those documents should be either rejected in their entirety or viewed with great skepticism by the arbitrator.

With respect to the Union's substantive arguments, the County notes that the Union never considered any external comparable data. Instead, the Union compares itself with only one unit in the County, the Nurses. According to the County, the Union attempts to take the best items from various internal and external units. If the Union wishes to be like the Nurses, then, the County suggests, it should be willing to accept the entire package, such as the 80/20 co-insurance and the 3% wage increase for 1999.

With respect to the vacation benefit, the County responds that many of the employees in the Nurses unit work nights and weekends and that most of the employees in the Sheriff's Department work a six-three schedule. When those Sheriff's employees take a week of vacation, six days are required.

The County further argues that, contrary to the Union's assertion, probably the most comparable unit is not the County's Health Department employees, but rather external Human Services units.

Moreover, while the Union argues there is no clear internal pattern for wage settlements, in fact, the settlement pattern is that: if the 80/20 deductible change and the Fourth Quarter Deductible change is accepted, then there is a 3% January 1, 1998, increase and a 3.25% January 1, 1999, increase; while if only the Fourth Quarter Deductible change is accepted, the wage settlement is 3% February 8, 1999, and 3% January 1, 1999.

Furthermore, the County is disturbed that the Union, which "so desperately" wanted the HIPAA side letters at the bargaining table, now portrays compliance with the HIPAA and related acts as part of the status quo. Under the HIPAA the County could have opted out, which would have been the status quo. However, the County ultimately agreed to not opt out of HIPAA.

With respect to the Crisis Team changes, the County responds that there was no clear previous practice on that issue. Moreover, the agreed-upon solution was designed to create internal parity. No quid pro quo is required when the change simply brings those employees into the comparable mainstream. In addition, the Crisis Team employees will have an improvement in how holidays are handled.

The County also points out that the tentative agreements include "non-quantifiable" benefit improvements, such as improved funeral leave benefits, an increase in mileage reimbursement, and a better rate on vision insurance.

One of the most serious flaws in the Union's Exhibit E, according to the County, is the failure to take into account the 12% increase in 1998 health insurance premiums and the approximate 8.75% increase in 1999.

While the Union also suggests that step increases are free, because replacements for the employees at the top step will start at the base, in fact those at the top will continue working for the County for many more years.

For the foregoing reasons, the County concludes that there is no support for the Union's argument to increase their vacation, and the Arbitrator should adopt the County's Final Offer.

DISCUSSION:

I. PROCEDURAL CONCERNS:

The County's Reply Brief raises certain concerns about some attachments to the Union's initial brief, arguing that some of the attachments amount to new evidence which was never admitted into the record. The County suggests that either those documents be stricken or be viewed with great skepticism.

As the County correctly points out, there was no agreement made by the parties on the submission of additional exhibits with the filing of the post-hearing briefs. While many of the attachments to the Union's initial post-hearing briefs are summaries (or, interpretations) of data previously made part of the record (such as Attachment P), other attachments apparently may not have resulted from information already in the record. In any event, with respect to all the attachments, the undersigned will not rely upon them as evidence, but, rather, either as reinterpretation of data or argument.

II. MERITS:

When comparing the parties' Final Offers, the sole issue that distinguishes them is the Union's proposal to improve vacation. However, the Union essentially contends that, though its Final Offer is identical to the County's in all other respects, the vacation improvement is needed for two reasons: (1) the internal and external comparables support the vacation improvement and (2) when the other identical components of both offers are considered, some quid pro quo is required.

When arbitrators are presented with proposed changes from the status quo, they generally consider the following criteria:

1. Has the party proposing the change demonstrated a need for the change?
2. If there is a demonstration of need, has the party proposing the change provided a quid pro quo for the proposed change?
3. Has the party demonstrated such criteria by clear and convincing evidence?

To change the status quo, the arbitrator must be convinced of the need for the change. As the statutory framework reflects, stability, or the status quo, in the bargaining relationship has some high priority. The Union's proposal to improve the vacation leave will be considered using such an analysis against the framework of Sec. 111.70(4)(cm), Stats..

A. QUID PRO QUO

1. HEALTH INSURANCE AND WAGE INCREASE:

Both Final Offers are identical with respect to the wage increase and health insurance, including elimination of the Fourth Quarter Deductible clause. The Fourth Quarter Deductible provision had allowed an employee who met the deductible in the fourth quarter of a calendar year to not have to pay the deductible for the next calendar year. Both parties' Final Offers include a 3% increase retroactive to February 8, 1998, and a 3% increase retroactive to January 1, 1999. In addition, both Final Offers will include two additional steps for the Psychiatric Nurse schedule beginning January 1, 1999.

The Union contends that elimination of the Fourth Quarter Deductible amounts to a take-back which requires the quid pro quo of the vacation improvement. However, the County responds that, when the other internal bargaining units are compared, a certain pattern develops.

As the County points out, because, in part, of increases in the health insurance premium in 1998 and 1999, for the most part two patterns have emerged for the wage increases agreed to by the other internal bargaining units (or identical in proposals between the parties): (a) 3% ATB effective January 1, 1998, and 3.25% ATB effective January 1, 1999, with elimination of the Fourth Quarter Deductible and a change to 80/20 co-pay; or (b) 3% effective February 1, 1998, and 3% effective January 1, 1999, when only the Fourth Quarter Deductible is eliminated.¹

¹ This bargaining unit, as well as certain other units, included specific additional wage increases for a few positions, which addressed certain inequities, not as a quid pro quo, however.

None of those other bargaining units also received a vacation improvement as part of a trade-off in either of those economic packages.² As Arbitrator June Weisberger stated in Pierce County Human Services (Dec. No. 28186-A; 4/95):

However, the County's emphasis on the fact that its health insurance proposal has been voluntarily accepted by all other County bargaining units (except the law enforcement unit represented by the Teamsters) is a forceful argument. The County's argument is particularly effective since it is made against ... the County's related argument (supported by substantial arbitral authority) that increasing health care costs paid by an employer reduce significantly or even eliminate the usual burden to provide special justifications and a quid pro quo.

Given such an internal economic settlement (or Final Offer) pattern throughout the County's other bargaining units, the undersigned finds that elimination of the Fourth Quarter Deductible does not require the vacation improvement as a tradeoff.

2. CRISIS TEAM:

There are two Crisis Intervention Team employees in the bargaining unit. Crisis Team members provide on-call work from 4:30 p.m. until 8:30 a.m. on weekdays and twenty-four hours each day of the weekend for emergencies handled by the County's Human Services Department. The Crisis Team member is on duty 128 hours each week, ready to take a call during that time, and the Crisis Team member is paid for 76 hours during the week she is on duty. The next week the other Crisis Team member is on duty and the first Crisis Team member is off. Initially, Crisis Team members were not part of the bargaining unit; however, several years ago they were included.

² The Highway Department 1998-1999 contract does have a slight improvement in Vacation; however, the change was minor as compared to the Union's Vacation proposal here, and there was no demonstration that such a change in the Highway Department was as a quid pro quo.

Past collective bargaining agreements did not include provisions on how Crisis Team members' various leave times were to be computed. In part because of their unusual work week, there have been some different methods for tracking leave time. For example, Crisis Team member Lisa Korslin testified under direct examination by Representative Ugland as follows:

There were two times during the course of eight and a half years that I've used sick leave and those were for maternity leaves, and the first time was back in 1994, they had asked me to record it, I had taken, I had actually had nine weeks of vacation or leave, but I recorded it as my seven, my five weeks of seven days of work, so I took actually five weeks of sick leave at that time, I was paid for five weeks. In 1997 when I took off they asked me, they asked me to take the, mark it as working nine weeks of vacation, taking nine weeks of my work off because I had nine weeks without work, so it was recorded differently. Each time I was asked to do it differently. ... No, excuse me, I took it as sick leave each time. Tr. at p. 111.

Ms. Korslin took her maternity leave as 38 hours of sick leave in 1994 and 76 hours in 1997.

Since Thanksgiving of 1997 Crisis Team members who worked on a holiday received time and a half and were allowed to take another day as a holiday. If they were not on duty during a holiday, then the Crisis Team member could take another day off as a holiday.

Recording of vacation leave time had remained the same over the past several years. Whether a Crisis Team member took vacation on a weekday or weekend, 7.5 hours of vacation leave was recorded for each day.

Under the newly agreed-to procedure for Crisis Team leave accounting, if a Crisis Team member works on a holiday that person will receive time and a half for ten hours and will be given another paid weekday off at another time, to be recorded as 7.5 hours. If the Crisis Team is not on duty during a holiday, the Crisis Team member will receive

pay for that holiday. For sick leave, Crisis Team members will now deduct 10 hours of sick leave for each weekday and 13 hours for each Saturday, Sunday, or holiday. For vacation Crisis Team members now deduct 10 hours of vacation for each weekday taken off and 13 hours for each Saturday, Sunday, or holiday taken off.

The Union contends this was a major take back from the status quo for Crisis Team leave accounting. However, as summarized above, the record reflects that for much of the leave accounting there has not been a long, consistent, mutually understood practice for tracking Crisis Team members' leave. Sick leave has varied over time and holidays were changed shortly before the end of the last contract. Given the history on Crisis Team leave accounting a clear status quo has not been demonstrated. A take back has not, therefore, been demonstrated as a result of the new Crisis Team leave accounting procedure.

Even assuming there is a change from the status quo on Crisis Team leave accounting, the Union's proposed vacation improvement benefits all fifty-six employees in the bargaining unit, in contrast to the new Crisis Team leave accounting system, which affects only those two Crisis Team employees. The vacation improvement would not appear to represent a reasonable trade for the changed Crisis Team leave accounting.

3. SIDE AGREEMENTS ON HIPAA, MHPA, AND NMHPA

The parties signed side-agreements which prohibit the County from opting out of the federally mandated programs of HIPAA, MHPA, and NMHPA. The County asserts that the federal acts would have allowed the County to opt out of those programs, and, therefore, the Union clearly benefits from such protection. The Union, on the other hand,

responds that with respect to HIPAA and MHPA the federal acts only allow municipalities with self-funded programs to opt out, though with respect to the MHPA, there are criteria for opting out when specific costing thresholds are met. The Union cites one subsection of a federal act to support its position, and the County insists that subsection, in fact, supports its position.

In this instance, the County must demonstrate its claim that the side letter benefits the Union by prohibiting it from opting out of the federal programs. The side letter in and of itself does not prove the protection was required, for side letters are occasionally agreed to which are not actually warranted. The Union cites a statutory provision in its initial brief, which, the County argues, indicates the County could have opted out of those federal programs. However, that statute does not clearly support the County's contention, nor does it indicate which, if any, of the federal programs it relates to.

Based upon such a record, the undersigned finds that the County has not demonstrated the parties' side letter on HIPAA, MHPA, and NMHPA benefits the employees.

4. OTHER AGREED TO ISSUES:

Most of the other items now agreed to (or where the Final Offers are identical), generally are to the employees' advantage, including: a voluntary pre-tax vision insurance plan, a funeral leave improvement, an increase in the mileage reimbursement, a direct deposit program, and an improvement on how employees account for their time for Union related activities. While none of those items are of particular significance; nevertheless, they do inure to the employees' benefit.

The undersigned concludes that, based upon the foregoing, the Union has not demonstrated the need to change the status quo on the vacation leave as a quid pro quo for other changes that will be incorporated into the 1998-1999 collective bargaining agreement.

B. COMPARABILITY:

1. INTERNAL COMPARABLES:

The Union argues that, based upon internal comparables, the vacation improvement is necessary. The Union also argues, in part, that many of the other bargaining units in the County received some wage catch-up, and, therefore, the vacation improvement required here.

The record reflects that certain classifications in some of the other bargaining units (such as the Huber Officer and the Process Server in the Sheriff's Sworn unit) are receiving some wage catch-up with their successor collective bargaining agreements. However, there is also wage catch-up for the Psychiatric Nurse classification in this unit. That another unit receives wage catch-up for particular classifications (or other improvements besides vacation) does not justify the need for the vacation improvement in this bargaining unit. Internal comparability arguments, of necessity, require that the issues that are being compared be the same, i.e., the vacation with this bargaining agreement should be compared to the vacation in the County's other bargaining agreements.

However, the Union submits that the vacation for this bargaining unit does require the proposed improvement when compared with the County's other bargaining units, in particular the Health Department Employees and the Health Care Nurses.

Currently, employees in this bargaining unit earn vacation as follows: one week after one year's service; two weeks after two years' service; three weeks after seven years' service; one additional day after the ninth year of service and one additional day thereafter for each additional year of service through completion of the eighteenth year of service; and one-half additional day after the nineteenth year and one-half for each additional year through completion of the twenty-seventh year of service.

The 1998-1999 collective bargaining agreement for the Health Department employees allows for vacation as follows: eight days after one year of service (four days can be used after six months); twelve days after two years of service; fifteen days after five years; one additional day after the eighth up to twenty-five days after seventeen years; and one-half day after nineteen years with one additional one-half day for each additional year through completion of twenty-eight years.

While the vacation leave for the Health Department employees is better than for the employees here, it is of some significance that almost one-half of those Health Department employees work a seven-day per week schedule. When the work schedule of a significant segment of a bargaining unit is more onerous, the vacation leave would reflect that schedule.

When all the other County's bargaining units are compared, the instant bargaining unit's vacation leave is the same as one (Supportive Services); better than two (Health Care and Highway Department); and worse than others (Sheriff's Department, both

Sworn and Non-sworn, and the Health Department - Nurses).³ For the bargaining units that have better vacation leave, it is important to note that, as with the Health Department – Nurses, a significant number of the employees work extended work weeks (for example Patrol Officers in the Sheriff’s Department – Sworn).

In summary, some of the other internal bargaining units have equivalent or lesser vacation leave than the instant unit and some of the units have better vacation leave. Moreover, with certain of those units with better vacation leave, some justification is found because a number of the employees in certain of those units have longer work weeks. Accordingly, the undersigned finds that, with respect to the Union’s vacation proposal, when considering internal comparability under Sec. 111.70(4)(cm)7r.d., Stats., a compelling reason has not been demonstrated for changing the status quo on vacation leave, and the County’s Final Offer is found to be more favorable

2. EXTERNAL COMPARABILITY:

When the vacation leave for professional employees in Human Services Departments from other counties are compared with the current vacation leave here, all of those bargaining agreements (except for Sheboygan County) allow lesser vacation leave than this one. Based upon such external comparability data, pursuant to Sec. 111.70(4)(cm)7r.e., Stats., the record does not demonstrate a need for an improvement in vacation leave, and the County’s Final Offer is found favorable.

³ While not all of the bargaining units have settled, those that have not settled have Final Offers which do not affect Vacation leave.

III. CONCLUSION:

As noted above, the party proposing the change must demonstrate by clear and convincing evidence, the need for the change and, generally, a quid pro quo for the proposal. Applying the analytical framework of Sec. 111.70(4)(cm), Stats.,⁴ The need for a quid pro quo has not been demonstrated for the proposed vacation leave improvement, nor does the internal and external comparability data demonstrate a need to improve vacation leave for this bargaining unit. Based upon such a determination, the undersigned finds that the County's Final Offer is more reasonable.

Accordingly,

AWARD

The Final Offer of the County shall be incorporated into the 1998-1999 collective bargaining agreement.

Dated in Madison, Wisconsin, this ____22____ day of May, 1999.

Andrew M. Roberts, Arbitrator

⁴ Section 111.70(4)(cm)7., Stats., requires that the Arbitrator considers and give greatest weight to any state law or directive which limits expenditures or directives. Neither party raised such an issue, nor does the undersigned otherwise find such an issue affects the determinations here.