

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)	
)	
Between)	
)	
FOND DU LAC COUNTY)	Case 164
(Health Care Center))	No. 57026
)	INT/ARB-8604
And)	Decision No. 29621-A
)	
WISCONSIN COUNCIL 40, AFSCME,)	
AFL-CIO, LOCAL UNION #1366a)	
_____)	

Impartial Arbitrator

William W. Petrie
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Post Office Box 320
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Hearing Held

Fond du Lac, Wisconsin
September 8, 1999

Appearances

For the Employer

FOND DU LAC COUNTY
By Richard Celichowski
Director of Administration
City-County Government Center
160 South Macy Street
Fond du Lac, WI 54935

For the Association

WISCONSIN COUNCIL 40, AFSCME
By James E. Miller
Staff Representative
1712 Cedar Court
Manitowoc, WI 54220

BACKGROUND OF THE CASE

This is a statutory interest arbitration between Fond du Lac County and AFSCME Local Union #1366-A, representing a bargaining unit of Health Care employees, with the matter in dispute the terms of a two year renewal labor agreement running from January 1, 1999 through December 31, 2000. After their preliminary negotiations had failed to result in complete agreement, the Union on November 23, 1998 filed a petition with the Wisconsin Employment Relations Commission seeking final and binding arbitration pursuant to Section 111.70 of the Wisconsin Statutes. Following an investigation by a member of its Staff, the Commission issued certain *findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitration* on May 11, 1999, and on May 24, 1999 it appointed the undersigned to hear and decide the matter.

An arbitration hearing took place in Fond du Lac, Wisconsin on September 8, 1999, at which time both parties received full opportunities to present evidence and argument in support of their respective positions, and both thereafter closed with the submission of post-hearing briefs and reply briefs, the last of which was received by the undersigned on February 8, 2000.

THE FINAL OFFERS OF THE PARTIES

The parties have agreed to a two year renewal labor agreement covering January 1, 1999 through December 31, 2000, and the only remaining areas of disagreement are in two areas: the *funeral leave language* to be included in the renewal agreement; and the 1999 wage increases, principally the *supplemental wage increases* to be effective during the term of the agreement for Certified Nurses Assistants and Certified Nurses Aides. The certified respective final offers, hereby incorporated by reference into this decision, may be summarized as follows:

- (1) The *final offer of the Employer*, dated April 14, 1999, proposes, in summary, as follows.

- (a) After the application of 3% wage increases effective January 1, 1999, for the following additional wage increases for the specified *Nursing Assistants (Certified)*, *Nurses Aides (Certified)*, and *Nurses Aide - Social Services*, at the Health Care Center and Rolling Meadows.

	PROB	STEP I	STEP II	STEP III	STEP IV	STEP V
\$7.84	\$8.37	\$8.89	\$9.41	\$9.93	\$10.46	

to	to	to	to	to	to
\$8.71	\$9.06	\$9.41	\$9.76	\$10.11	NC

- (b) After the application of 3% wage increases effective January 1, 1999, for the following additional wage increases for the *Nurses Aide (Certified) (Weekends)* at Rolling Meadows.

	PROB	STEP I	STEP II	STEP III	STEP IV	STEP V
	\$8.71	\$9.30	\$9.88	\$10.46	\$11.03	\$11.62
	to	to	to	to	to	to
\$9.68	\$10.07	\$10.46	\$10.84	\$11.23	NC	

- (c) A 3% across the board wage increase effective January 1, 2000.
- (d) Certain changes in Article XIV, entitled **FUNERAL LEAVE**, the specifics of which are dealt with in the body of the decision herein.
- (2) The *final offer of the Union*, dated April 13, 1999, provides for the following wage increases for the *Nursing Assistants (Certified)*, the *Nurses Aide (Certified)*, the *Nurses Aide-Social Services Aide*, and the *Nurses Aide (Certified Weekends)* classifications at the Health Care Center and Rolling Meadows:
- (a) A 2.5% across the board wage increase effective January 1, 1999.
- (b) A 40¢ per hour general increase effective July 1, 1999.
- (c) A 3% across the board wage increase effective January 1, 2000.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Arbitrator to utilize the following criteria in arriving at a decision and rendering an award:

"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 legislature to an administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

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 in subd. 7r.

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by 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. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
- e. Comparisons of wages, hours and conditions of employment of the municipal employees 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. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment 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 pension, 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 hearing.
- j. Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

POSITION OF THE EMPLOYER

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

- (1) The wage increase proposals of the parties differ as follows when applied to the salary structure, the affected classifications, and the locations.

- (a) For *Nursing Assistants (Certified)*, *Nurses Aide (Certified)* and *Nurses Aide-Social Services Aide*, at Health Care Center and Rolling Meadows.

<u>1999</u>	<u>PROB</u>	<u>STEPI</u>	<u>STEP II</u>	<u>STEP III</u>	<u>STEP IV</u>	<u>STEP V</u>
<u>Union</u>						
1-1	\$7.80	\$8.33	\$8.85	\$9.37	\$9.88	\$10.41
7-1	8.20	8.73	9.25	9.77	10.28	10.81
<u>County</u>	8.71	9.06	9.41	9.76	10.11	10.46

2000

<u>Union</u>	8.45	8.99	9.53	10.06	10.59	11.13
<u>County</u>	8.97	9.33	9.69	10.05	10.41	10.77

- (b) For *Nurses Aide (Certified) (Weekends)* at Rolling Meadows.

<u>1999</u>	<u>PROB</u>	<u>STEPI</u>	<u>STEP II</u>	<u>STEP III</u>	<u>STEP IV</u>	<u>STEP V</u>
<u>Union</u>						
1-1	8.67	9.26	9.83	10.41	10.98	11.57
7-1	9.11	9.70	10.28	10.86	11.42	12.01
<u>County</u>	9.68	10.07	10.46	10.84	11.23	11.62

2000

<u>Union</u>	9.39	9.99	10.59	11.18	11.77	12.37
<u>County</u>	9.97	10.37	10.77	11.17	11.57	11.97

- (2) In applying the *external comparison criterion*, that the following considerations should be determinative.
- (a) The parties agree to the following primary external comparables in these proceedings: Fond du Lac County, Dodge County, Manitowoc County, Outagamie County, Sheboygan County, Washington County and Winnebago County.¹
 - (b) All of the counties except Manitowoc and Outagamie share a common border with Fond du Lac County, and these two counties are in close proximity to and similar in equalized value, size and population.² The adjacent counties of Calumet and Green Lake were not included as primary comparables due to their small size.
 - (c) The Wisconsin Taxpayers Alliance has published a current compilation of County Economic Profiles and Trends for all 72 Wisconsin counties, on the bases of per capita or percentage changes in population, personal income, employment and equalized value.³ Application of these factors to Fond du Lac and comparable counties indicates as follows.
 - (i) Fond du Lac County's average ranking among the primary comparables in the seven categories of comparison was 5.43 of 7.⁴
 - (ii) The 72 counties in the State of Wisconsin were evaluated on the bases of *current economic strength* and *growth history*: 20 were rated above average; 6 were rated average, 24 were rated below average, 10

¹ Citing the following arbitral decisions: Arbitrator Frank Zeidler in Fond du Lac County (Social Services Association), MED/ARB 19404 (1982); Arbitrator Edward Krinsky in Fond du Lac County (Sheriff's Department), MIA-1038 (1986); Arbitrator Stanley Michelstetter in Fond du Lac County (Social Services Administration), Dec. No. 223704-A (1986); and Arbitrator Frederick Kessler in Fond du Lac County (Professional Social Work Association), Dec. No. 26924-A (1991).

² Citing the contents of Employer Exhibit #2.

³ Citing the contents of Employer Exhibit #4.

⁴ Citing the contents of Employer Exhibit #4.

were rated as *gaining ground*, and 12 were rated as *losing ground*.⁵

- (iii) That the above ratings, as applied to the seven primary comparables, indicated as follows: *Outagamie, Washington and Winnebago Counties* were rated as *above average*; *Dodge County* was rated as *gaining ground*; *Fond du Lac and Sheboygan Counties* were rated as *losing ground*; and *Manitowoc County* was rated as *below average*.
- (d) Based upon its relatively low ranking (i.e., 5.43 of 7) and its losing ground rating, one arbitrator recently concluded that "There is some evidence that the County is less well-off economically than the other counties in the group of comparables."⁶
- (3) In addressing the *funeral leave impasse item* that the following considerations should be determinative.
 - (a) That the main reason for the Employer proposed change is to eliminate ambiguities in the prior article, and to restate the provisions in a clearer and more concise manner which is consistent with past practices and the intent of the parties.
 - (b) The Employer's five other Unions had previously voluntarily agreed to language identical to that proposed by the County in these proceedings.⁷
 - (c) One minor Employer proposed change is the reduction from two to one funeral leave days for the death of a grandchild; this is a minor consideration in that the majority of employees are not grandparents and, fortunately, the death of grandchildren of such employees occurs rarely, if at all; this proposed change renders the funeral leave provision internally consistent with the five other Unions, and with all non-represented employees.⁸

⁵ Citing the contents of Employer Exhibit #5.

⁶ Citing the decision of Arbitrator Stanley Block in *Fond Du Lac County (Social Services Employees)*, Case 158 No. 56824, INT/ARB-8566.

⁷ Citing the contents of Employer Exhibits #21-#25.

⁸ Citing the contents of Employer Exhibits #21-#26.

- (d) One day of funeral leave for the death of a grandchild is consistent with the funeral leave language in Dodge, Manitowoc, Outagamie, Washington and Winnebago Counties.⁹ Sheboygan County covers funeral leave under its sick leave policy.¹⁰
 - (e) The Employer proposed change is reasonable and should be included in the new agreement on the following principal bases: *internal comparison* with the funeral leave provisions negotiated with the County's five other unions, and with all of the County's non-represented employees; the fact that the proposal will have *little or no economic effect* on employees; and *external comparison* with the five other counties having funeral leave provisions in their collective agreements.
- (4) That the *internal comparison criterion* favors the Employer proposed wage increases for Certified Nursing Assistants (CNAs), on the following described bases.
- (a) The County has seven unions with which it deals: the *Sheriff's Department Union (Non-Protective Service Employees), Local 1366F*; the *Sheriff's Department Union (Protective Services Employees) Local 1366C*; the *Highway Department Union, Local 1366B*; the *Social Services Employees Union, Local 1366E*; the *Professional Social Worker Union, Local 1366K*; the *Health Care Center and Dept. of Community Programs Union, Local 1366A*; and the *Rolling Meadows Nursing and Rehabilitation Center Union, Local 1366A*.
 - (b) Although the Health Care Center and the rolling Meadows Nursing and Rehabilitation Center have separate agreements, they bargain jointly and their agreements are virtually the same.
 - (c) Approximately one-half of County employees are represented by the above referenced local unions, and the remaining one-half are not represented, including Courthouse employees, office employees at the highway and institutions, and certain other small areas outside the Courthouse.
 - (d) Internal wage increases for 1999 and 2000 have been granted to non-represented employees, and resulted from two negotiated settlements and two arbitrated settlements; the County proposed wage increase in these proceedings is much closer to these internal wage increases, than is the Union's wage proposal.¹¹

⁹ Citing the contents of Employer Exhibits #15-#17 and #19-#20.

¹⁰ Citing the contents of Employer Exhibit #18.

¹¹ Citing the contents of Employer Exhibit #9.

- (5) That *external comparisons*, often the most important interest arbitration criterion, favors the Employer proposed wage increases for Certified Nursing Assistants (CNAs).¹²
- (a) The County's *minimum wage rate* ranked sixth of the seven comparables in 1998, 83¢ below the median.¹³
- (i) The County's final wage offer for 1999 would place it at the median; the Union's final wage for 1999 would place it 49¢ per hour below the median.
- (ii) The County's final wage offer would improve Fond du Lac County's 1999 ranking to fourth of seven; the Union's final wage offer would retain it at sixth of seven comparables.
- (iii) The hiring rate is extremely important in these proceedings to both parties, due to a *shortage of CNAs, difficulty in hiring at the previous entry levels, excessive mandatory overtime, employee morale problems, and potential admissions limitations*.¹⁴
- (iv) The Employer proposed *minimum wage rate* better addresses the above referenced problems, because it is 51¢ per hour higher at the entry level, thus raising the hiring rate to at or near the median; the resulting enhancement in the ability to hire would avoid the need to freeze admissions and would eliminate the need for mandatory overtime.
- (b) The County's *maximum wage rate* ranked third of the seven comparables in 1998, 12¢ above the median.¹⁵
- (i) The County's final wage offer for 1999 would place it 10.5¢ above the median; the Union's final wage offer for 1999 would place it 45.5¢ per hour above the median.

¹² Citing the *decision of the undersigned in Waukesha County (Sheriff's Department)*, Dec. No. 29000-A (1997).

¹³ Citing the contents of Employer Exhibit #10.

¹⁴ Citing the testimony of *County Health Care Administrator Donn Stout, Rolling Meadows Administrator Bill Schoen and Rolling Meadows Union Chairperson Ellen Davis*.

¹⁵ Citing the contents of Employer Exhibit #10.

- (ii) The County's final wage offer would maintain Fond du Lac County's 1999 ranking to third of seven; the Union's final wage offer would improve it to second of seven.
 - (iii) On the above bases, that the final wage offer of the County, at the maximum of the rate ranges, is the more appropriate of the two offers.
- (c) On the basis of external comparisons of the *maximum rate increase proposals* of the parties, in terms of either *cents per hour* or *percentages*, the final offer of the County is much closer to the comparables than that of the Union.
 - (i) The median increase proposed by the County is 2.25¢ below the comparables, versus the Union proposed 12.75¢ above the comparables.
 - (ii) The annualized median increase proposed by the County is 0.2% below the comparables, versus the Union proposed 1.15% above the comparables.
 - (iii) Comparisons of the median increases, based on either cents per hour or percentages, thus favor selection of the final wage offer of the County.
- (6) Testimony at the hearing relating to *difficulty in recruiting and retaining CNAs at the lower end of the salary structure* is substantiated by review of the placement of current CNAs in the salary range, which problem is better addressed in the final wage offer of the Employer.
 - (a) Almost two-thirds of current CNAs are at the maximum rate of pay in the salary structure, which substantiates the argument that there is no problem in retaining such employees; the current wages at the top of the structure coupled with the extensive fringe benefit program make it difficult for an employee to find a comparable position elsewhere.
 - (b) By way of contrast with the above, it is quite easy for employees at the lower end of the salary structure to find similar positions at higher wage rates.
 - (c) The Employer is proposing higher wage rates for 1999 than proposed by the Union at the following points in the wage structure: 51¢ per hour higher at the *probationary level*; 33¢ per hour higher at *Step I*; and 16¢ per hour higher at *Step II*; the final wage offer of the Employer thus better addresses current problems in employing and retaining employees at the lower levels of the wage structure.
- (7) Arbitral consideration of the *Cost-of-Living criterion* favors selection of the final offer of the Employer rather than that of the Union.
 - (a) That the annual changes in the cost-of-living index reported in December 1997 and December 1998 were 1.7% and 1.6%.¹⁶
 - (i) In the area of 1999 wages both parties have proposed 3% annual wages increases, and both have proposed

¹⁶ Citing the contents of Employer Exhibit #6.

supplemental increases for CNAs, with the Employer proposing 5.32% and the Union proposing 6.67% increases.

- (ii) Both parties have proposed an additional 3% wage increase for 2000.
- (b) Both parties have proposed wage increases in excess of the changes in the COL index; since the Employer proposal is closer to movement in the index, however, selection of its final offer is favored by arbitral consideration of the cost-of-living criterion.
- (8) Arbitral consideration of the *interests and welfare of the public* criterion favors selection of the final offer of the County.
 - (a) Arbitrators consider *the ability to attract and retain qualified employees* as serving the interests and welfare of the public.¹⁷
 - (b) That the Union's final offer in these proceedings is not only more costly, but it also fails to address the need to attract new CNAs in the face of a shortage of such employees.
 - (i) Analysis of the CNA wage offers of the parties indicates that the Union wage offer is approximately 1.4% higher on an overall basis, but that it is also well below average at the hiring rate.
 - (ii) The final offer of the Employer is both less costly to the public and will provide a better opportunity to hire additional CNAs, while maintaining a better than average maximum rate of pay, thereby guarding against loss of long term CNAs.

¹⁷ Citing the following arbitral decisions: *the undersigned in Northeast Wisconsin Technical College*, Dec. No. 29320-A (1999); *Arbitrator Jay Grenig in Manitowoc County (Courthouse)*, Dec. No. 29451-B (1999); *Arbitrator Stanley Michelstetter in Fond du Lac County (Dept. of Soc. Services)*, Dec. No. 23704-A (1986); *Arbitrator Raymond McAlpin in City of Watertown (Police Department)*, Dec. No. 29442-A (1999).

- (9) The intent of the arbitration process is to provide a settlement for the parties in line with what should have been agreed upon at the bargaining table.¹⁸
- (a) That the parties reached a settlement at the bargaining table which was thereafter rejected in a vote of the membership.
 - (b) The terms of the original settlement were acceptable to the Employer and the bargaining committee, and they are exactly the same as included by the Employer in these proceedings.
 - (c) The record supports a finding that the final offer of the County is closer to what should have been reached at the bargaining table, than that of the Union.
- (10) In its *reply brief* it emphasized or reemphasized the following principal considerations and arguments.
- (a) While the Union urges that its final offer is supported by the Winnebago County settlement, the County's final offer is supported by the remaining settlements among the remainder of the six primary comparables.
 - (b) Contrary to the arguments of the Union, there is considerable support among the comparables for both the County's proposed change in wage structure and for its proposed change in funeral leave.
 - (i) Five of the six comparables (i.e., Dodge, Manitowoc, Outagamie, Washington and Winnebago counties) have a one day funeral leave provision for the death of a grandchild, as proposed by the Employer.
 - (ii) Five of the six comparables (i.e., Manitowoc, Outagamie, Sheboygan, Washington and Winnebago counties) have three day funeral leave provisions for the death of a mother-in-law or father-in-law, as proposed by the Employer.
 - (c) Contrary to the position of the Union there is support among the comparables for the County proposed change in the wage structure.

¹⁸ Citing a decision of the undersigned in Burnett County (Courthouse and Social Services Employees), Dec. No. 29204-A (1998).

- (i) The County proposal would move the minimum CNA wage rate from sixth out of seven (83¢ below the median) to fourth of seven (at or 3¢ below the median depending upon whether six or seven counties are included in the computation).¹⁹
- (ii) The Union's final offer, by way of contrast, would lower the County's ranking for the minimum CNA wage rate, from sixth to seventh for one-half a year, and for the following six months it would remain approximately one-half dollar below the median.
- (d) Contrary to the position of the Union, the existing employees at the top of the wage structure are not adversely affected by the Employer proposed wage structure.
 - (i) Their wages would not be reduced in any way to fund the larger wage increases at the bottom of the wage structure.
 - (ii) Those at the top of the structure will receive 3% wage increases for 1999 which is exactly the same as negotiated for all other non-CNA employees in the Fond du Lac County Institutions Union; it is also the same raise received by top step Manitowoc County CNAs, probably the same as that received by top step CNAs in Sheboygan County, and closer to the increases received by such employees in Dodge, Outagamie and Washington counties.²⁰
 - (iii) The 3% 1999 wage increase is equal to that received by those in the County's Non-Protective Service Employees bargaining unit, and by its non-represented employees.²¹
 - (iv) The 3% wage increase is either equal to or closer to the increases received by those in the Fond du Lac County Social Workers, and Fond du Lac County Highway Employees bargaining units.²²
- (e) The Union cited decisions of Arbitrators Krinsky and Johnson are distinguishable from the situation at hand.
 - (i) Those at the top of the wage scale were not adversely affected by the County proposed supplemental increases at the bottom of the wage scale in these proceedings.
 - (ii) In the case at hand, the Employer's offer is substantially higher than recent increases in the cost-of-living index.
 - (iii) The County's final offer would bring the probationary rate for CNAs to the level of other County institutions, while the final offer of the Union would not do so.

¹⁹ Citing the contents of Employer Exhibit #10.

²⁰ Citing the contents of Employer Exhibit #12.

²¹ Citing the contents of Employer Exhibit #9.

²² Citing the contents of Employer Exhibit #9.

- (f) Contrary to the argument of the Union, there was substantial evidence advanced at the hearing in support of the proposition that a significant problem exists in recruiting CNAs due, in large part, to the extremely low hiring rate.²³
- (g) The Union's final offer does not address the recruitment problem because it does not bring the hiring rate up or in line with the current "market rate", but rather keeps it below the hiring rate in comparable counties.
- (h) There is no evidence in the record indicating a problem involving the retention of long term employees, due in large part to the County's extensive fringe benefits program for such employees.
- (i) Because the Union offer has a higher maximum rate and the majority of the current employees are at the maximum, its offer is more costly; despite its costliness, however, it does not address the problem of hiring and retaining new CNAs at the bottom of the wage scale.

In summary, that arbitral consideration of the following factors favor selection of the County's final offer in these proceedings: *first*, the *interests and welfare of the public*, in that its offer addresses the CNA shortage by bringing the hiring rate into line with other employers without doing it at the expense of long terms employees; *second*, the *wages and benefits of municipal employees performing similar services*, in that its offer raises CNA wages to the mid-point of the hiring rates and keeps the wages above the mid-point of the maximum rate; *third*, the *wages and benefits of Fond du Lac County employees*, in that its offer is closer to the increases received by other represented and non-represented County employees; *fourth*, the *cost-of-living*, in that its offer is closer to increases in the COL index; and *fifth*, its offer is closer to what the parties might have or should have agreed upon at the bargaining table. Accordingly, that the County's final offer should be selected by the undersigned in these proceedings.

POSITION OF THE UNION

²³ Principally citing the following factors: the need to employ agency help to meet vacancies at each of the two institutions; the need to require employees to stay beyond the ends of the scheduled shifts, in response to employee absences due to illness; the testimony of the Union Chairperson which acknowledged morale problems due to mandatory stay-overs; the testimony of the two Administrators describing the worsening staff shortages, and the potential future need to freeze admissions.

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

- (1) That the primary issue in dispute is the wage rates to be paid to the Nursing Assistant classification at the Fond du Lac County Heath Care Center and to Nurses Aides at the Rolling Meadows Nursing and Rehabilitation Center in 1999.
 - (a) All of the other job classifications at these facilities will received 3% increases in 1999 and all will receive 3% increases in 2000.
 - (b) Both facilities are operated by the County, both have independent bargaining units, but the two units bargain their contracts together and employees at both facilities belong to and are represented by the same local union.
 - (c) Both parties propose additional 1999 wage increases beyond 3% for the Nursing Assistant or Nurses Aide classifications in 1999: the County proposes increases ranging from 87¢ at the probationary step to nothing additional at Step V; the Union proposes increases for all CNAs of 2.5% on January 1, 1999, and 40¢ per hour on July 1, 1999.
 - (d) During negotiations the Employer argued that the County needed to make significant changes in the wage schedule because of what they perceived to be a continuing problem in recruiting new CNAs for both County facilities.
 - (e) The Union believes that there are a number of other issues impacted by the manner in which the County framed its offer: the *retention* of employees is not addressed by the County, and its proposal for adjustments only to steps below the maximum has a negative impact on senior employees already at the maximum wage rate; in short, one of the primary reasons the County proposal was unacceptable to the Union was its front end loading in the early steps of the wage scale, giving new employees significantly higher increase above the 3% received by all employees; the Union's proposal addresses the same needs to attract new employees while also providing additional compensation to all CNAs at all levels of experience, which should provide an incentive for them to continue working for the County.
- (2) The Employer has another issue contained in its final offer, in the form of its proposed replacement of the old funeral leave language with language negotiated into existence in other County bargaining units.
 - (a) There are two differences between the current language and that proposed by the County: *first*, it changes the current two days of funeral leave to one day, in the event of the death of a grandchild; and, *second*, it would add mothers-in-law and fathers-in-law to the three day funeral leave benefit, relations which had not been covered under the current language.
 - (b) While all of the five other County bargaining units voluntarily agreed to the funeral leave language change, there is no testimony or other evidence showing what, if anything, these bargaining units received for agreeing to the new language.

- (c) In the two bargaining units involved in these proceedings, however, the Union has not accepted the proposed changes, as they were perceived to negatively affect the covered employees.
 - (d) While the issue may be minor in relation to the wage issue, the Union does not believe that its impact upon the affected employees can be taken lightly.
 - (e) The Employer also entered evidence in the record comparing the funeral leave provision in comparable counties. While such comparisons are difficult, of the six comparable counties, four provide three different levels of leaves from one to three days, while Sheboygan County provides a three day leave for all categories, and only Winnebago County has a system similar to Fond du Lac's proposal with three day and one day provisions.
- (3) The principal difference between the two final offers is the wage structure approach used in addressing the need for CNA wage rate changes.
- (a) The County proposal adds additional money to each of the first five of the six wage steps in the contract along with the 3% proposed by each party, while retaining only a 3% increase at the top step.
 - (b) The Union's final offer addresses the issues of both *recruitment* and *retention*, and it does so in a manner which treats all CNAs equally.
 - (c) The Employer proposed dramatic change to the wage structure is not justified by the comparables, and it adversely affects those employees at the top steps of the wage structure.
 - (d) The 1999 wage increases generated by the two offers are as summarized above in the position of the Employer; the County proposed increases in excess of 3% are as follows: Probation - 87¢ per hour; Step I - 69¢ per hour; Step II - 52¢ per hour; Step III - 35¢ per hour; Step IV - 18¢ per hour; and Step V - no increase.
 - (e) The County proposal provides more money to employees at the lowest end of the seniority list, rather than to senior employees who have been at the facilities for longer periods of time.
 - (i) Such proposed changes in wage structure, particularly those with negative effects upon long service employees, have been arbitrarily rejected, in recognition that such changes should be agreed upon by the parties at the bargaining table.²⁴
- (4) That this is not the first Fond du Lac County arbitration between the parties involving County proposed higher starting rates, where the position of the Union was sustained.²⁵

²⁴ Citing the following decisions of Arbitrator Edward Krinsky: School District of Barron, Dec. No. 16276-A (1978); Chilton School District, Dec. No. 22891-A (1986).

²⁵ Citing the decision of Arbitrator David Johnson in Fond du Lac County

- (a) The County's final offer in these proceedings is simply a variation on its 1979 proposal to raise probationary rates higher than the increases to be provided to the senior employees; instead of providing new employees with slightly higher starting rates, the Employer proposes significant raises above the 3% already offered to current employees, to employees who have not been hired, through Step IV in the wage structure.
 - (b) Under the County proposal, new employees would receive higher increases than those who have been employed for longer than four and one-half years; it would create a greater disparity among the CNAs than the wage disparity discussed in the 1979 arbitration.
- (5) The Employer argued that its final offer was designed to address the problem of recruitment of new CNAs by significantly raising the starting rates; while there was no evidence presented at the hearing as to the County's recruitment difficulties, the Union believes that any such problem should be addressed by providing long term wage increases for both new hires and long term employees.
- (a) It is simply not practical to address the question of hiring new employees by higher entry rates, while diminishing the significance of such wages over the long run by providing senior employees with smaller increases.
 - (b) The Union's final offer proposes additional increases at all steps, saves the Employer money by delaying its additional increase until mid-1999, and maintains the current wage structure.

- (c) The County's proposal would distort the wage structure forever, by artificially raising the starting rates significantly above current levels, thus creating permanent inequities in the salary schedule for CNAs. The proponent of such changes must be required to provide special justification for its position.²⁶
- (d) Fond du Lac County has not proven the need for the radical changes to the wage structure for CNAs in its two nursing homes.
 - (i) Its proposed wage structure provides extraordinary and out-of-line wage increases for new employees, while alienating the older employees.
 - (ii) The Union proposal, based upon comparable settlement in Winnebago County, provides wage increases to all steps in the CNA classification.
 - (iii) To the extent that starting wages alone can address the issue of recruiting new employees, the Union offer accomplishes this in a manner that treats all levels of experience the same, and it also addresses the issue of retention of qualified employees.
- (6) The Union also submits that the status quo language in the contract governing funeral leave should be left untouched, rather than changed through arbitration as proposed by the Employer.
- (7) In its *reply brief* it emphasized or reemphasized various considerations and arguments, principally including the following.
 - (a) The Union is opposed to the Employer's wage proposal in that it ignores the issue of retention for the majority of the bargaining unit employees; the Union's final offer, by way of contrast, addresses both the recruitment of new employees and the retention of all employees by providing balanced wage increases for all CNAs.
 - (b) Historically, all employees have received the identical wages increases during negotiated contract renewals, which increases are usually based upon percentage figures; during the contract renewal negotiations leading to the impasse at hand, however, the Employer refused to consider any wage adjustment for those at the top of the wage scale above the 3% increases offered to all employees.
 - (c) The Union's final offer was based upon a Winnebago County settlement, while both proposals differ from those of the remaining primary comparables.
 - (d) While the Employer has suggested that the funeral leave issue is minor in terms of the other issues, the Union stands by its stance that the other bargaining units which agreed to the language did so in bilateral negotiations and may have negotiated other language seen as beneficial to them during the bargaining. Further, the Employer's funeral leave proposal is not supported by consideration of the external comparables.

²⁶ Citing the *decision of Arbitrator June Weisberger in School District of Brown Deer*, Dec. No. 18064-A (1981).

- (e) That the primary issue in these proceedings is not only which final offer is most appropriate under the statutory criteria, but which best addresses the issues of attracting and retaining Certified Nursing Assistants at the Fond du Lac County Health Care Center and the Rolling Meadows Nursing and Rehabilitation Center.
 - (i) The Employer's final offer is flawed by virtue of the fact that it addresses only the retention of new employees rather than the retention of all qualified employees, regardless of whether they are newly hired or long term employees.
 - (ii) The Union proposal treats all employees the same way, while promoting stability, and decent jobs, wage rates and benefits for new employees.
 - (iii) That the balanced final offer of the Union best meets the interests and welfare of the public criterion.²⁷

On the basis of all of the above, and by way of conclusion, the Union urges arbitral selection of its final offer to be included in the 1999-2000 collective bargaining agreement.

FINDINGS AND CONCLUSIONS

The two issues before the undersigned in these proceedings consist of the amounts and the distribution of the 1999 *supplemental wage increases at various wage steps within the CNA classifications*, and the *language in the renewal agreement governing the eligibility for funeral leave* during the term of the renewal agreement. Both parties recognize that the wage impasse is, by far, the more important of the two impasse items, and in arguing their respective positions, they principally addressed the following arbitral criteria: *the external and internal comparisons; the interests and welfare of the public; cost-of-living; and the significance of the Employer proposed changes in the status quo ante*, in the form of its proposed modifications in the *wage steps for the CNA classifications*, and in the *paid funeral leave provision*.

Prior to applying the statutory criteria to the final offers of the parties, reaching a decision, and rendering an award, the undersigned will preliminarily address the nature of the Wisconsin interest arbitration

²⁷ Citing the following arbitral decisions: the undersigned in Northeast Wisconsin Technical College, Dec. No. 29320-A, (1999); Arbitrator Jay Grenig in Manitowoc County (Courthouse), Dec. No. 29451-B (1999); and Arbitrator Stanley Michelstetter in Fond du Lac County (Department of Social Services), Dec. No. 23704-A (1986).

process, including some of the principles governing the application of the statutory criteria emphasized by the parties in these proceedings.

The Wisconsin Interest Arbitration Process

As has been emphasized by the undersigned in many prior Wisconsin interest proceedings, an interest arbitrator operates as an *extension of the normal contract negotiations process*, and his or her normal role is to attempt to place the parties into the same position they would have occupied but for their inability to reach full agreement at the bargaining table. In so doing, such arbitrators will closely consider *the various specific statutory arbitral criteria* in addition to the parties' *past practices and negotiations history*, which criteria fall well within the scope of Section 111.70(4)(cm)(7) of the Wisconsin Statutes. When faced with a significant proposed change in either the negotiated or non-negotiated status quo ante in public sector disputes, Wisconsin interest arbitrators have normally required the proponent of change to establish a *very persuasive basis for its proposal* and to *bear the risk of non-persuasion*. The requisite *very persuasive basis for change* has normally been achieved by showing that *a legitimate problem exists which requires attention*, that *the disputed proposal reasonably addresses the problem*, and that *the proposed change is accompanied by an appropriate quid pro quo*.

Although the statutory criteria have not been comprehensively prioritized by the Wisconsin Legislature, it is widely recognized by interest arbitrators, particularly in addressing *wage impasse items*, that comparisons are the most frequently cited, the most important, and the most persuasive of the various arbitral criteria and, in the absence of very strong evidence to the contrary, the most persuasive comparisons are normally the so-called *intraindustry comparisons*.²⁸ These considerations are well described in the following excerpts from the still authoritative 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 benefit no less from comparisons. They have the appeal of precedent...and awards, based

²⁸ While the terms *intraindustry comparisons* derive from the private sector, the same principles of comparison are used in public sector interest impasses, where the so-called *intraindustry comparison groups* normally consist of other similar units of employees employed by comparable governmental units.

thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.

* * * * *

"a. *Intraindustry Comparisons*. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. Most important, the weight that 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 among the wage-determining standards."²⁹

In applying the *intraindustry comparison criteria*, Wisconsin interest arbitrators normally defer to the *bargaining history of the parties* by utilizing the comparables used by them in prior negotiations, which principle is described as follows by Bernstein:

"This, once again, suggests the force of wage history. Arbitrators are normally under pressure to comply with a standard of comparison evolved by the parties and practiced for years in the face of an effort to remove or to create a differential...

* * * * *

²⁹ Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, pages 54 and 56. (footnotes omitted)

The last of the factors related to the work is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..."³⁰

While *external* rather than *internal comparisons* are normally most persuasive to arbitrators in dealing with *wage level impasses*, the reverse is frequently true in dealing with certain types of *fringe benefits* which may well justify *internal uniformity*.

The *interests and welfare of the public criterion* has normally been emphasized by Wisconsin employers in connection with claims of financial adversity or disparate demands upon taxpayers, and this criterion has normally been assigned determinative weight only where the record establishes an *absolute inability to pay*.

The relative importance in interest arbitration of *the cost-of-living criterion* varies significantly with the state of the national and the Wisconsin economies. During periods of rapid movement in prices, cost-of-living may be one of the most important criteria in wage determination, but during periods of relative price stability, it declines significantly in relative importance. The relative stability in cost-of-living over the past several years has significantly reduced the weight placed upon this factor at the bargaining table and, accordingly, in interest arbitration proceedings.

The relative importance of the remaining statutory criteria normally varies from case-to-case, based upon a wide variety of facts and considerations.

³⁰ The Arbitration of Wages, *supra*, pages 63, 66.

The 1999 Wage Increase Impasse Item

There is no dispute between the parties as to identity of the *primary intraindustry comparables*, which consists of the counties of Dodge, Manitowoc, Outagamie, Sheboygan, Washington, and Winnebago, and, accordingly, the makeup of this group remains unchanged in these proceedings. In evaluating the merits of their 1999 wage offers on the basis of these external comparables, the following evidence and considerations are very persuasive.³¹

- (1) An examination of the *1999 minimum wages paid for the CNA classifications within the seven intraindustry comparables* indicates as follows.³²
 - (a) Fond du Lac County ranked sixth of seven in 1998 with its \$7.61 per hour wage rate, which was 86¢ per hour below the median wage paid by the remaining six counties.
 - (b) *Selection of the County's final offer* would move the ranking to fourth of seven in 1999, and would advance the wages to 3¢ per hour below the median wage paid by the remaining six counties.
 - (c) *Selection of the Union's final offer* (as of 7/1/99), would retain the sixth of seven ranking and would advance the wages to 54¢ per hour below the median wage paid by the remaining six counties.
- (2) An examination of the *1999 maximum wages paid for the CNA classifications within the seven intraindustry comparables* indicates as follows:³³
 - (a) Fond du Lac County ranked third of seven in 1998 with its \$10.16 per hour wage rate, which was 12¢ per hour above the median paid by the remaining six counties.
 - (b) *Selection of the County's final offer* would retain the third of seven ranking in 1999, and would move the wages to 10.5¢ per hour above the median wage paid by the remaining six counties.
 - (c) *Selection of the Union's final offer* would advance the ranking to second of seven in 1999, and would move the wages to 45.5¢ cents per hour above the median wage paid by the remaining six counties.

³¹ It is noted that both parties propose 3% across the board wage increases in 2000.

³² See the contents of Employer Exhibit #10.

³³ See the contents of Employer Exhibit #11.

- (3) An examination of the 1999 maximum wages paid for the CNA classifications within the seven intraindustry comparables, shows the following annualized increases and total lifts.³⁴
- (a) Selection of the County's final offer would result in a 1999 increase 2.25¢ per hour and .0025% below the median of the remaining six counties.
 - (b) Selection of the Union's final offer would result in a 1999 increase 12.75¢ per hour and .0115 above the median of the remaining six counties.
 - (c) Section of the County's final offer would result in a 1999 total lift of 3.5¢ per hour and .004 below the median.
 - (d) Selection of the Union's final offer would result in a 1999 total lift of 31.5¢ per hour and .03% above the median of the remaining six counties.

The above summarized wage data for the counties comprising the *primary intraindustry comparables* justifies the following preliminary determinations:

- (1) That the maximum wage rate paid for the CNA classifications by the County in 1998 was *competitive*, in that it ranked at the midpoint of the seven counties and it was *slightly above* the median wage rate of the six other counties; by way of contrast, however, the minimum wage rate paid for the CNA classifications by the County in 1998 was *not competitive*, in that it ranked *below all but one* of the comparable counties, and it was also *well below* the median wage rate of the six other counties.
- (2) The County's final offer would move the 1999 minimum wage rate paid for the CNA classifications to the midpoint ranking of the seven counties, and it would raise these wages to *only slightly below* the median wage rate of the six other counties.
- (3) The Union's final offer would retain the sixth of seven ranking of the 1999 minimum wage rate paid for the CNA classifications, and would advance these wages to a level which was still very *significantly below* the median wage rate of the six other counties.
- (4) The County's final offer would retain the third of seven ranking of the 1999 maximum wage rate paid for the CNA classifications, and it would remain *slightly above* the median wage rate of the six other counties.
- (5) The Union's final offer would move the 1999 maximum wage rate paid for the CNA classifications to second of seven, and it would raise these wages to *very significantly above* the median wage paid by the other six counties.

³⁴ See the contents of Employer Exhibit #12.

Stated simply, the County is proposing to remain fully competitive in 1999 wages paid those at the maximum wage rate for the CNA classifications, and it is proposing a significant increase to achieve a competitive wage for those at the minimum wage rate for the CNA classifications. By way of contrast, the Union is seeking a significant supplemental or extra wage increase for those at the maximum wage rate for the CNA classification, and at the same time is proposing wage increases for those at the minimum wage rate for the CNA classifications, which would retain them at a level very significantly below the median wage of the six other counties.³⁵ On these bases, it is apparent that arbitral consideration of the primary intraindustry comparables clearly and persuasively favors the wage increase component of the final offer of the Employer in these proceedings.

In connection with *the negotiations history and past practice criteria*, and as described above, the Employer bears both the burden of proof and the risk of non-persuasion in its proposal to modify the negotiated status quo ante, by significantly changing the wage structure for those holding the CNA classifications. The arbitral determination required at this point is therefore, whether the County has created the requisite *very persuasive basis for change*, by establishing that *a legitimate problem exists which requires attention*, that *its proposal reasonably addresses the problem*, and that the *proposed change is accompanied by an appropriate quid pro quo*.

³⁵ Indeed, by offering only a 2.5% wage increase between January 1 and July 1, 1999 for those at the minimum, it proposes, in effect, to temporarily exacerbate the preexisting recruiting and retention problem at this wage level.

Despite the Union's suggestion that there is an absence of evidence in the record establishing the existence of a significant problem in recruiting and retaining employees at the lower levels of the CNA classifications, testimony at the hearing clearly established that the Employer has a current and ongoing inability to attract and hold CNAs in the lower steps of the rate ranges. Indeed, this is not strictly a problem of the Employer, in that testimony at the hearing also clearly indicated that the amount of required overtime had been causing a morale problem within the bargaining unit, and that a continued recruiting shortfall threatened potential cut-backs in the number of residents, which could represent a potential reduction in the size and/or the future growth of the bargaining unit.³⁶ Also undisputed is the very high percentage of current CNAs at the top of the salary range of the CNA classifications, with over 64% at Step V and only 6.67% at the probationary or entry level.³⁷ On these bases the undersigned has preliminarily concluded that *the County has established that a legitimate problem exists which requires attention.*

³⁶ Note the undisputed testimony of Administrators Donn Stout and Bill Schoen and that of Union Steward Ellen Davis.

³⁷ See the contents of Employer Exhibits #13 and #14.

In next addressing *whether the Employer's proposal reasonably addresses the problem*, it is first noted that the Employer quite properly emphasizes the fact that it is not funding its proposed higher wages for lower level CNA classifications by reducing the wage increases paid to others in the bargaining unit.³⁸ To the contrary, it is proposing significant *supplemental* wage increases in the lower steps of the rate ranges for the CNA classifications, which wage increases are *in addition to* the 3% across-the-board wage increases in 1999 and 2000 for all bargaining unit jobs, which increases are virtually identical to those proposed or negotiated by the County within its other bargaining units, and identical with the increases adopted for its non-represented employees. On these bases, the Arbitrator has preliminarily concluded that *the Employer proposal reasonably addresses its significant problem in attracting and retaining employees in the lower paying steps of the CNA classifications*.

In next considering whether the Employer has proposed *an appropriate quid pro quo* in support of its proposed narrowing of the wage differentials between the bottom and the top of the wage steps for the CNA classifications, two factors are very important: *first*, the Employer is proposing a supplemental wage increase for apparently underpaid employees, rather than a reduction or elimination of an enforceable past practice or a negotiated benefit or condition of employment; and, *second*, there is simply nothing in the record which persuasively suggests that the Company proposed supplemental wage increases would significantly harm the highest paid employees who, as discussed above, will receive a competitive 3% across the board 1999 wage increase under the Employer's final offer. On these bases the undersigned has concluded that the significant supplemental wage increase proposed by the Employer is, in itself, an appropriate *quid pro quo* for the narrowing of the differentials in the lower wage steps of the CNA classifications.³⁹

³⁸ The case at hand is thus distinguishable from the earlier footnoted decisions of *Arbitrators Krinsky and Johnson* which were cited by the Union.

³⁹ Even if a nominal *quid pro quo* were justified, the very significant supplemental wage increases proposed for the top of the wage structure in the Union's final offer, far exceeds any *appropriate quid pro quo*.

On the above described bases, the undersigned has preliminarily concluded that the Employer has fully established *the requisite very persuasive basis* for its proposed change in the wage structure, thus clearly favoring the wage increase component of its final offer.

In connection with *the cost-of-living criterion*, it is noted that the undersigned is faced with the fact that both final offers exceed the relatively minor recent and anticipated increases in the cost-of-living, and it is undisputed that the overall costs and percentage wage increases contained in the Unions' final offer are somewhat higher than those contained in the final offer of the Employer. While, as discussed earlier, this criterion has recently declined in relative importance due to recent stability in living costs, it somewhat favors selection of the final offer of the Employer in these proceedings.

As discussed earlier, and in light of the fact that there are no serious claims of financial adversity or disparate demands upon the taxpayers, *the interests and welfare of the public criterion* is not entitled to determinative weight in these proceedings. While the Employer emphasizes the need for higher wages in the lower level CNA classifications to better service the needs of the public and the Union argues that its final offer would better remedy these problems, the undersigned has determined that the interests and welfare of the public criterion cannot be assigned significant weight in the final offer selection process in these proceedings.

The Funeral Leave Impasse Item

What, finally, of the *funeral leave impasse item*, wherein the Employer is proposing minor changes in funeral leave language on three principal bases: it urges the need to clarify ambiguous contract language relative to various relationships where uncertainty exists as to coverage and/or eligibility for one or two days of leave; it cites internal comparisons, in emphasizing that all other bargaining units and non-represented employees enjoy the same funeral leave proposed by the Employer in these proceedings; and, it submits the primary intraindustry comparables also support its position on this item.

The Union principally urges that the item is not an insignificant one, it argues that there is no evidence in the record indicating the trade offs or

quid pro quos in the other County bargaining units in exchange for their acceptance of the funeral leave proposal herein, and it submits that the position of the Employer is not supported by external comparisons.

As referenced above, internal rather than external comparisons are frequently accorded primary weight in connection with certain fringe benefits. Internal consistency in funeral leaves is a legitimate objective of management, and thus internal comparisons on this item clearly favor the final offer of the Employer.

The Union arguments of lack of knowledge of quid pro quos or trades during the give and take of bargaining on this item is not persuasive, particularly as they relate to negotiations involving other AFSCME Locals, but there is no evidence of any quid pro quo in support of the Company proposed modification of a previously negotiated fringe benefit. In the extremely unlikely event that the County's *funeral leave* proposal was the only item on the table and in the absence of the referenced internal comparisons, the lack of even a nominal quid pro quo would favor the position of the Union. On the basis of the entire record in these proceedings, including the undisputed lesser importance of this item, the undersigned has preliminarily concluded that this impasse item cannot be accorded significant weight in the final offer selection process.

Summary of Preliminary Conclusions

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

- (1) These proceedings involve two impasse items: *first*, the amounts, the timing, and the distribution of the 1999 supplemental wage increases at various wage steps within the CNA classifications; and, *second*, the language and terms of the funeral leave provision to be incorporated in the renewal agreement.
 - (a) The parties agree that the wage impasse is, by far, the most important of the two impasse items.
 - (b) In arguing their cases, the parties have principally emphasized the following arbitral criteria: the *external and internal comparisons*; the *interests and welfare of the public*; *cost-of-living*; and the *significance of the Employer proposed changes in the status quo ante*, in the form of its proposed modifications in the wage steps for the CNA classifications, and its proposed funeral leave changes.
- (2) The primary focus of a Wisconsin interest arbitrator is to operate as an *extension of the negotiations process* and to attempt to put the parties into the same position they would have occupied but for their inability to achieve a complete settlement at the bargaining table.
 - (a) Wisconsin interest arbitrators will normally closely examine the parties' *past practice* and/or their *negotiations history*, each of which considerations normally fall well within the scope of Section 111.70(4)(cm)(7r)(j) of the Wisconsin Statutes, and they may well be accorded *determinative importance* over other criteria when either or both parties are proposing changes in the *status quo ante*.
 - (i) When faced with proposed changes in either the *negotiated or non-negotiated status quo ante*, Wisconsin interest arbitrators normally require the proponent of change to establish a *very persuasive basis for its proposal* and to *bear the risk of non-persuasion*.
 - (ii) The *requisite very persuasive basis for change* is normally established by showing that *a legitimate problem exists which requires attention*, that *the disputed proposal reasonably addresses the problem*, and that *the proposed change is accompanied by an appropriate quid pro quo*.
 - (b) While the various specific statutory criteria have not been comprehensively prioritized by the legislature, the following considerations normally guide Wisconsin interest arbitrators in their application.
 - (i) The so-called *external intraindustry comparisons* are normally considered the most important and persuasive of the various criteria, particularly in connection with *wage level disputes*.
 - (ii) *Internal comparisons* may be assigned primary weight in certain types of *fringe benefits* which may well justify *internal uniformity*.

- (iii) The *interests and welfare of the public criterion* has normally been accorded determinative weight only in situations involving *inability to pay*.
 - (iv) The relative importance of the *cost-of-living criterion* varies with the state of the economy, being very important during periods of rapid movement in prices and declining in importance during periods of price stability.
 - (v) The relative importance of the *other statutory criteria* varies greatly from case-to-case, based upon a wide variety of considerations.
- (3) In connection with *the 1999 wage increase impasse item*, the undersigned finds the following considerations to be determinative.
 - (a) Consideration of the *primary intraindustry comparables* clearly and persuasively favors the wage increase component of the final offer of the Employer in these proceedings.
 - (b) Consideration of the *internal comparables* favors the wage increase component of the final offer of the Employer in these proceedings.
 - (c) Consideration of *the negotiations history and past practice criteria* clearly favors the wage increase component of the final offer of the County, in that it has fully established the requisite *very persuasive basis* in support of its proposed change in the wage structure.
 - (d) Consideration of the *cost-of-living criterion* somewhat favors the selection of the final offer of the Employer.
 - (e) Consideration of the interests and welfare of the public criterion cannot be assigned significant weight in the final offer selection process.
- (4) In connection with *the funeral leave impasse item*, the undersigned finds the following considerations to be determinative.
 - (a) Internal rather than external comparisons are frequently accorded primary weight in connection with certain fringe benefits.
 - (b) Internal consistency in funeral leaves is a legitimate objective of management, and thus the internal comparisons on this item favor the final offer of the Employer.
 - (c) If the funeral leave impasse item was the only item on the table, and in the absence of the internal comparables, the lack of even a nominal quid pro quo would favor the position of the Union.
 - (d) In consideration of the entire record, including the lesser importance of this impasse item, it cannot be accorded significant weight in the final offer selection process.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, including arbitral consideration of all of the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, the Impartial Arbitrator has preliminarily concluded that the final offer of Fond du Lac County is the more appropriate of the two final offers, and it will be ordered implemented by the parties.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

- (1) The final offer of Fond du Lac County is the more appropriate of the two final offers before the Arbitrator.
- (2) Accordingly, the final offer of the County, hereby incorporated by reference into this award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Arbitrator

February 19, 2000

