BEFORE THE ARBITRATOR

In the Matter of the Petition of	Case 140 No. 57219 INT/ARBITRATION-8667
LOCAL 1162, AFSCME, AFL-CIO	Decision No. 29853-A
To Initiate Arbitration Between Said Petitioner and	Heard: 6/15/2000
	Record Closed: 7/31/2000
GREEN COUNTY (PLEASANT VIEW NURSING HOME)	Award Issued: 9/6/2000
	Sherwood Malamud Arbitrator

APPEARANCES:

Thomas Larsen, Staff Representative, Wisconsin Council 40, AFSCME, 1734 Arrowhead Drive, Beloit, Wisconsin 53511-3808, appearing on behalf of the Union.

Brennan, Steil, Basting, MacDougall, S.C., Attorneys at Law, by Howard Goldberg, 22 E. Mifflin Street, Suite 400, P.O. Box 990, Madison, Wisconsin 53701-0990, appearing on behalf of the Municipal Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On April 11, 2000, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator to issue a final and binding Award pursuant to Sec. 111.70(4)(cm)6.c., Wis. Stats., to determine several unresolved issues outstanding between the parties for a two-year agreement for calendar years 1999 and 2000. Hearing in the matter was held on June 15, 2000, in the Green County Courthouse in Monroe, Wisconsin, at which time the parties presented testimony and documentary evidence. Original and reply briefs were received and exchanged through the Arbitrator by July 31, 2000, at which time the record in the matter was closed. Upon reviewing the evidence, testimony and arguments presented by the parties and upon the application of the criteria set forth in Sec. 111.70(4)(cm)7., 7.g., 7.r., a-j, Wis. Stats., to the issues in dispute herein, the Arbitrator renders the following Award.

BACKGROUND

Green County is located in south central Wisconsin. It has a population of 31,983. As is the case in most of the state of Wisconsin, Green County is experiencing a tight labor market. Its unemployment rate was 3.5% in 1997 (Union Exhibit 18). Health care employment is one of the areas of growth in the employment picture in the county.

The parties reached a tentative agreement on wages and other economic matters. The Employer implemented the wage agreement by increasing wages across the board by 2.75% on January 1, 1999 and on January 1, 2000. The successor Agreement expires on December 31, 2000.

The County operates Pleasant View Nursing Home and does so consistently at a deficit. With federal funding channeled through the state of Wisconsin, it absorbs one million of the one and a half million dollar deficit. A half million dollars of the deficit is absorbed through County resources.

THE ISSUES IN DISPUTE

The Union Proposal

The Union proposes to modify the language of Article XVII of the expired 1997-98 Agreement to permit employees to take vacation in half-day increments. Otherwise, the Union proposes that the language of the expired agreement remain unchanged except for the inclusion of the tentative agreements in the successor contract.

In response to the Union's final offer, the County proposes that the language of Article XVII remain unchanged, that employees take vacation in increments of no less than one day.

The County Offer

The Employer proposes that the following language changes be incorporated in the 1999-2000 successor agreement:

1. Sec. 2.01 Management Rights. The Employer proposes the addition of language that, inter alia, clarifies the Municipal Employer's right to: demote, transfer, suspend (as well as discipline or discharge for just cause);

   To lay off employees for economic reasons;

   To establish reasonable work rules and require employees to observe its regulations.

2. Amend Article 7.01 to read, as follows:

   The Employer may discharge or discipline [new language proposed by the Employer] any employee for good cause.

In addition, the Employer proposes to modify the language of Article 7 by adding a catchall provision to the list of conduct subject to immediate discharge, as follows:

> (7) for other flagrant misconduct which constitutes just cause for discharge without the need of prior progressive discipline.

3. The deletion in its entirety of Article 7.06 of the Agreement. Conduct subject to the CNA Registry are disposed of by the statutory process under this section of the expired Agreement.

4. The Employer proposes language that would permit it to create a flex shift, change the normal shift of an employee, with her consent. The Employer proposes language amending Sec. 21.02 and 21.04 to accomplish this end.

The Employer proposes a number of changes to Article 22.01, the overtime language of the Agreement. The Arbitrator separates the proposed changes and identifies them as three separate issues.

5. The Employer proposes to no longer pay overtime for hours worked in excess of eight in a day. It keeps intact the payment of overtime for hours worked in excess of 40 in a week.

6. The Employer proposes language that alters the payment of double time for Sunday work from a shift commencing at 10:30 p.m. on Saturday night to a shift commencing at or between 5:45 a.m. and midnight on Sunday. It proposes to strike the following language from the expired Agreement: "work performed during a 24 hour period commencing 10:30 p.m. on Saturday and ending 10:30 p.m. on Sunday."

7. The Employer proposes language that would prohibit the pyramiding of premium pay. At the arbitration hearing, the Employer and the Union requested that the Arbitrator refrain from addressing the Employer's proposal on pyramiding. Arbitrator Raleigh Jones ruled that the language in the expired Agreement specifies that all Sunday work is at double time and

may not be pyramided to 3.5 times the hourly rate for hours in excess of 8 worked on a Sunday.[1]

STATUTORY CRITERIA

The criteria to be used to resolve this dispute are found in Section 111.70(4)(cm)7, Wis. Stats.,

> 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. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.
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> 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.
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> 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:

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[1] The parties included arguments on the pyramiding issue in their briefs. Whether the Union or the Employer offers are adopted, there will be no pyramiding of overtime during the term of the Agreement at issue, herein. Accordingly, the Arbitrator does not discuss this issue in the body of the Award in accordance with the parties' request at the arbitration hearing.

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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes, including direct wage compensation, vacation, holidays and excused time,

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

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 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.

DISCUSSION

Introduction

Overtime is the only direct economic issue that remains in dispute. As a result, the statutory criteria that pertain to the determination of economic issues either play no role in the analysis that follows or play a limited role in the Arbitrator's discussion of the issues in dispute. The criteria b. ***the lawful authority of the Employer***; c. ***the interest and welfare of the public***; the ***comparabilitycriteria***, to a limited extent, play a part in the analysis of the issues in dispute. The ***such other factors*** criterion j. is the factor which the Arbitrator gives the most weight in the analysis that follows. The Arbitrator references the parties' arguments in the course of his discussion of each of the above issues. The Arbitrator first addresses the Employer's proposals for change found in its final offer.

Management Rights

The Union does not raise any significant objection to the Employer's proposal. The Union's opposition to this proposal is the result of the

Employer's determination to make other language changes to the expired Agreement.

The Employer's proposal on Management Rights is the kind of "housekeeping" proposal that does not belong and should not appear in an interest arbitration proceeding. The parties, particularly in the case of a mature relationship, and especially in a case where the parties have resolved most economic issues, should be able to resolve the kind of language issues present here in this Management Rights provision. The ***such other factors*** criterion is the only one applicable to the determination of this proposal. In the absence of any serious objection to the Employer's proposal to clarify the Management Rights provision, the Employer's proposal is preferred. The Arbitrator gives this proposal little weight. At the conclusion of the arbitral analysis of all issues in dispute, should the Arbitrator conclude that the evidence equally supports the selection of either offer for inclusion in the successor agreement, the Arbitrator will look to this proposal to tip the balance.

Discipline and Discharge

The Union has no quarrel with the Employer's addition of the two words "or discipline" to Article 7.01 of the expired Agreement. It adds clarity to this provision.

The Union vigorously objects to the Employer's proposal to add (7), a catchall provision to the list of offenses that are subject to immediate discharge. The list that appears in Sec. 7.01 is as follows:

> dishonesty; working under the influence of liquor or drugs; willful destruction of property; physical or verbal abuse of residents; theft from employer or other employees or residents; failure of an employee to report to work on three (3) consecutive scheduled shifts without any notification to the Employer, unless due to circumstances beyond the control of the employee.

The Union argues that the catchall language, flagrant misconduct is vague. The Union maintains that the language of Article 7.07 provides the Employer the flexibility it seeks, as follows:

> In exceptional cases, discipline may commence at the second or higher step depending on the severity of the offense committed.

The Employer recognizes that the use of the term flagrant misconduct refers to conduct of the type enumerated in the Agreement. The Employer proposes this language to make it clear that there is conduct other than what is listed that is properly the subject of immediate discharge. It attempts to avoid through this proposal the situation in which an employee engages in "flagrant misconduct" and defends by asserting that a warning notice was required before the Employer may discipline, because the particular "flagrant misconduct" does not appear on the list of actions subject to immediate discharge.

The Union argues that the just cause principle and the current language of the Agreement provides the Employer with sufficient flexibility to address any of the Employer's concerns. Neither the Employer nor the Union suggest that a particular factual occurrence in Green County or at the Home is the basis for the positions of the parties on this issue.

A just cause provision does not prevent the application of arbitral common sense to a particular fact situation. It encourages it. Should an employee discharge a weapon in a nursing home, this Arbitrator doubts whether the notice defense would prevent an Arbitrator from reaching a just conclusion. The rule of contract interpretation, ejusdem generis, governs the interpretation of the catchall provision proposed by the Employer.[2]

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[2]Elkouri and Elkouri, How Arbitration Works, 5th ed., BNA Books, Washington, D.C. 1997, at p. 497-498:

> It is axiomatic under the doctrine of ejusdem generis that where general words follow an enumeration of the specific terms the general words will be

The Employer proposes a catchall provision which encourages the application of just cause principles to the particular misconduct that is not enumerated in the existing contractual language. The Employer proposes that misconduct "which constitutes just cause for discharge without the need of prior progressive discipline" is the type of conduct for which the Employer may impose the penalty of immediate discharge. The catchall provision does not add to the list of actions subject to immediate discharge. Rather, it requires the parties, at first, and an arbitrator should the matter go to arbitration, to determine whether the misconduct is so severe that the commission of the act would subject an employee to immediate discharge without prior progressive discipline. This Arbitrator finds the Employer's proposal a useful clarification of the contractual language. In this regard, the ***such other factors*** criterion strongly supports the Employer's position on this issue. The inclusion of the Employer's proposal is preferred.

Overtime: Over 8 Hours

The Employer negotiated out of the Courthouse and Human Service contracts the provision for the payment of overtime for over eight hours worked in a day. When the Highway contract opens in 2001, the Employer represents that it will attempt to remove the over eight language from that agreement. In order to establish administrative consistency among the Green County units, the Employer proposes the elimination of over eight hours in a day, here.

The Union notes that the Home employs 79 full-time and 45 part-time employees. At present, the Pleasant View Nursing Home must limit admissions because of lack of staff. The nursing home had, at the time of the hearing, a waiting list of 14 individuals who seek admission to the Home. It is not unusual for the Home to ask part-timers to stay at the conclusion of their scheduled shift and work another shift.

> interpreted to include or cover only things of the same general nature or class as those enumerated, unless it is shown that a wider sense was intended.

If the Employer's proposal were adopted, a part-time employee who works a double shift but who is normally scheduled for three eight-hour shifts per week, would be paid at straight time, although the employee works a double shift.

The Home acknowledged that it has difficulty hiring in this tight labor market environment.

The County notes that the Human Service unit has 15 part-time employees out of a unit of approximately 100 employees. Nonetheless, the Employer and the Union agreed to the elimination of the payment of overtime for over eight hours in a day. The Employer notes in its Reply brief that the Union put in no evidence as to the frequency that part-time employees work a double shift.

The Employer's position will negatively impact the income of part-time staff. Under the Employer's proposal, when a part-time employee agrees to work a double shift which does not put her over 40 hours in a week, she would be paid at straight time rates rather than overtime for those hours over eight in a day.

This Arbitrator applies the status quo/quid pro quo paradigm to such proposals for change. The criterion ***such other factors*** incorporates the status quo/quid pro quo analysis that this Arbitrator has followed for many years. The party proposing change must establish a need for the change. If a need has been established, then the offer of the proponent of change should provide a quid pro quo for the change.

When the Employer's putative need, administrative consistency, is compared to the loss of income to the part-time staff of the Home, the Employer's attempt to establish a need for the change fails. The Employer's proposal impacts approximately one-third of the total number of employees at the Home. There are 20 CNA vacancies at the Home. The work of a CNA involves hard physical labor. The limitation of overtime pay for part-time

CNAs working beyond their regularly scheduled shift removes an economic incentive for the performance of this work.

The Employer offers a quid pro quo for its proposed change to delete the payment of overtime for work in excess of eight hours in a day. It proposes that credit for hours paid, such as sick leave, holidays and vacation, be counted in the computation of overtime. This is a benefit for full-time employees. The expired Agreement does not provide credit for such paid time in the calculation of overtime. The Employer has successfully negotiated this quid pro quo in the Courthouse and Human Service units for the elimination of overtime pay for hours worked in excess of eight in a day.

The Employer's quid pro quo has little impact on part-time employees, those most affected by its proposal. Part-time employees are a significant segment of this bargaining unit. The Arbitrator concludes that the quid pro quo offered by the Employer serves as a negative incentive to part-time employees to work double shifts. The Arbitrator concludes that the ***such other factors*** criterion supports the adoption of the Union's proposal to retain the language of the expired Agreement in the successor Agreement, to pay overtime for work performed in excess of eight hours in a work day.

The Arbitrator reasons that the reduction of income for part-time staff would not help the Employer recruit staff in a tight labor market. There is no evidence in this record from which the Arbitrator could infer that the savings that would result from the nonpayment of overtime for hours worked in excess of eight in a day would generate sufficient funds to make a significant dent in the deficit operating budget of the Home. Accordingly, the Arbitrator concludes that criterion c., ***the interest and welfare of the public***, supports the adoption of the Union's proposal.

Overtime: Sunday Double Time

The Employer proposes to pay double time for employees whose regular starting time falls between 5:45 a.m. and midnight on Sunday. The Employer explains that it makes this proposal in order to eliminate the payment of

double time for shifts that begin on Saturday night at 10:30 p.m. The two week pay period begins on Sunday and ends on Saturday. The Employer must manually correct the payroll to pay employees for the hour and a half worked on Saturday night that falls in the previous work week. The overlapping of work weeks is the impetus for the Employer's proposal.

The Employer proposes the elimination of the 24-hour period. Under its proposal to pay double time for shifts commencing at 5:45 A.M. or later, employees whose shifts commence on Monday, just after midnight, would not be paid double time. The Union argues that employees called in prior to 5:45 a.m. due to inclement weather may have their claim for double time pay denied under the language proposed by the Employer.

It is unclear to the Arbitrator why the Employer did not frame its proposal to provide for the payment of double time for any shift commencing at 12:01 a.m. on Sunday and continue the 24-hour language in the overtime provision. That would eliminate the overlap from one pay period to another, and it would maintain the 24-hour language in its simplest form.

The Employer has demonstrated a reasonable need for the change. However, it proposes a change that is unclear. The Employer's administrator, Mr. Stoor, testified that there was no intent to deprive any employee of double time pay. Nonetheless, the language as proposed would provide double time to those employees whose shifts begin between 5:45 a.m. and midnight. The Employer's extension of the language to cover employees whose shifts began just subsequent to midnight Sunday/Monday is contrary to the clear language of its own proposal. For this reason, the Arbitrator concludes that the language of the Sunday double time proposal is flawed and should not be incorporated into the successor Agreement.

The Employer's proposal to change "provided" to the appropriate term "required" in Article 22.01 should not appear as an issue in a final offer arbitration proceeding. The Arbitrator applies the same weight and analysis to this matter as he did to the proposed change to the Management Rights language. This issue is given little weight, but if, in the final analysis the

application of the statutory criteria equally support the inclusion of both final offers, the Arbitrator will look to these editorial changes to tip the balance.

Flex Shift

The Employer presented convincing evidence of the need for a change to permit flexibility in scheduling employees. The need is illustrated by an employee's request to change his reporting/quitting time by 15 minutes. An employee requested a 15-minute change in the time that he was to report to work in order to accommodate his working another job. The Employer agreed to the request. It found the request to be reasonable. The Employer did not consult with the Union when it granted the requested flex shift. The Union grieved. The Employer agreed that the contractual language did not provide for the Employer's granting an employee the requested flex shift scheduling. The Employer restored the employee requesting the flex shift to a normal shift in accordance with the Agreement. The employee quit.

The Union emphasizes that the Employer did not notify or consult with the Union upon granting the flex shift. However, the Union does not propose in its final offer that flex shifts may be established by the Employer with employee consent after notification to or consultation with the Union. Rather, the Union rejects the Employer's proposal. It demands that the language of the expired Agreement remain unchanged.

The criterion ***such other factors criterion*** which incorporates the status quo/quid pro quo analytical framework is applicable to the analysis of this issue. Again, the party proposing change must establish a need for the change. The proposing party must provide a quid pro quo for the change.

The Employer has established a need for the change. In order to accommodate the needs of its employees, modifications to the contractually established shifts may be required. The Employer's proposal provides for employee consent to such changes,. preventing the Employer from unilaterally changing the normal starting/quitting times of employee(s).

The Arbitrator concludes that within the Employer's proposal can be found the quid pro quo for the change. Employees benefit from the flexibility that permits the Employer to adjust starting and/or quitting times to meet employee needs. Individual employees are protected in that their voluntary consent is required to "flex" the contractually established shift times.

In applying the status quo paradigm, the party who rejects the proposed change, without making a counter proposal to include a provision that it deems appropriate for inclusion, does so at its peril. The Union did not propose that it be notified of a flex shift change and afforded an opportunity confer with the Employer before it implements the flex shift. Under the language of the expired Agreement, the Employer must obtain the Union's agreement to an extra-contractual change to the start/quit time of a normal shift. The status quo/quid pro quo analysis supports the Employer's proposal and its inclusion in the successor Agreement.

Deletion of CNA Registry

This Employer proposal is based on a case. It reported suspected abuse to the State, as it is required to do. The Bureau of Quality Assurance of the Wisconsin Department of Health and Family Services investigated the incident. The Bureau concluded that the employee suspected of abuse should be placed on the Registry. Her inclusion in the Registry prevents this or any nursing home from employing her as a care giver. The employee appealed. An Examiner in the Department of Administration's Division of Hearings and Appeals concluded that the registered nurses aid did not intend to harm the nursing home resident. He ordered that the Bureau's findings not be entered on the care giver Registry. The investigation by the Bureau and the appeal of its findings consumed approximately one year.

The Employer proposes to delete reference to the Registry from the Agreement. Conduct that would be subject to Registry reporting would continue to be reported by the Employer in accordance with state statute, but any disciplinary action taken by the Employer would be reviewed in the

contractual grievance and arbitration procedure. The Employer argues that arbitration is far more expeditious than the statutory process.

The Union resists this proposed change. It points to the conflict that arises from an arbitration award that sustains the grievance and provides for employee reinstatement, when at the same time, the Bureau of Quality Assurance issues findings of abuse that are sustained by the Division of Hearing and Appeals. The employee may decide to not appeal the findings of the Bureau in light of a favorable arbitration award. The Union argues that the contractual provision identifies a single process for the administration of incidents subject to Chapter 13 of the Wisconsin Statutes.

The delay in the issuance of a final decision can be costly to the Employer in the event the Division of Hearing and Appeals or the courts order reinstatement. The Employer has identified the following problem in the processing of these cases. The Employer plays no role in the process. It cannot appear before the Division of Hearing and Appeals. It can provide the product of its investigation to the Bureau of Quality Assurance. After that, the matter is out of its hands. In arbitration, the Employer controls the process in partnership with the Union. It has a say in the outcome. It presents the evidence to the finder of fact, the Arbitrator.

The Employer makes a persuasive case for change. However, its proposal fails to address the difficult issue of a potential conflict between an arbitration award and a decision rendered under Chapter 13 of the statutes.

The CNA Registry provides public warning to employers of care givers of the names of individuals who have been found, by a preponderance of the evidence, to have committed patient abuse or theft in the nursing home setting. In light of the public interest underlying the statutory scheme, it does not appear that an Arbitrator's award would hold precedence over a final finding issued pursuant to Chapter 13 of the statutes. Arbitration may provide some basis for the Employer's reinstatement of an employee to a position not covered by the Registry. However, the Employer may, on its own, place the suspected employee in a position not covered by the Registry

in order to minimize the amount of back pay that would have to be paid in the event the Division of Hearings and Appeals or a court orders reinstatement of the employee. Although the Employer presents a persuasive case for adjustment of the CNA Registry process, the correction and remedy falls to the legislature rather than this Arbitrator in this proceeding. Accordingly, the Arbitrator concludes that the criterion ***the lawful authority of the employer*** provides strong support for the adoption of the Union's proposal to retain the CNA Registry language in the successor Agreement.

The Union's Final Offer

The Union proposes that vacation days may be taken in half-day increments. The Union presented no evidence to suggest that employees are in any way prejudiced or burdened by the requirement that they take vacation in increments of no less than one day. The Employer notes that Sec. 15.03 of the expired Agreement and in the successor Agreement employees are allowed five personal days per year. Under Sec. 15.03 they may take their personal days in half-day increments. It is more difficult for the Employer to obtain substitutes to maintain coverage when the time to be covered is four hours rather than a full eight-hour shift.

The Union failed to establish a need for the change. The status quo/quid pro quo paradigm and the ***such other factors*** criterion support the adoption of the Employer position to retain the present language in the successor Agreement.

SELECTION OF THE FINAL OFFER

In the above discussion, the Arbitrator concludes that the Employer proposals on Management Rights, Discipline and Discharge, and Flex Time merit inclusion in the successor Agreement. The Union's proposal for the use of vacation days in half-day increments is not supported by the statutory criteria. The Union's proposal to retain existing language in the successor Agreement on the issues of the payment of overtime for hours in excess of

eight in a day, double time on Sunday, and the retention of the CNA Registry language in the Agreement are supported by the statutory criteria.

The Arbitrator concludes that the Employer's Flex time proposal and the Union's proposals on overtime and the CNA Registry should be accorded greater weight than the Employer's proposals on management rights and discipline and discharge. The Employer's proposals on Management Rights and discipline serve to clarify contractual language.

The Employer's Flex time proposal warrants inclusion in the successor Agreement. The Arbitrator gives this issue equal weight to the overtime issue. If these were the only two issues in dispute, the preferability of the Employer's editorial changes would tip the balance in favor of the adoption of the Employer's final offer.

Overtime materially impacts one third of the unit, part-time employees. The establishment of uniformity among the County's several units does not outweigh the burden imposed on part-time employees, who, in some instances, would be paid at straight time rates when asked to work double shifts.

The Arbitrator accords little weight to the double time issue.

The handling of allegations of abuse in an expeditious manner and one which does not require any party to duplicate its efforts is more than a clarification of existing language. With regard to the Registry issue, the Arbitrator is not convinced that the County will save any money in back pay should the parties handle allegations of misconduct arising under Chapter 13 of the Wisconsin Statutes under the grievance and arbitration procedure. The Employer's legitimate concern for its exclusion from the fact finding and hearing process under the statute is well founded. However, the Arbitrator has no power to provide relief. The Employer must look to the legislature to change the statute. The preferability of the Union's status quo position on the CNA Registry issues tips the balance in favor of the adoption of the

Union's final offer. Therefore, the Arbitrator selects the Union's offer for inclusion in the 1999-2000 Agreement.

Based on the above discussion, the Arbitrator issues the following:

AWARD

Upon the application of the statutory criteria found at Sec. 111.70(4)(cm)7, 7.g., and 7.r., a.-j., Wis. Stats., and upon consideration of the evidence and arguments presented by the parties and for the reasons discussed above, the Arbitrator selects the final offer of Local 1162, AFSCME, AFL-CIO, for inclusion in the Agreement between said Local and Green County (Pleasant View Nursing Home) for calendar years 1999 and 2000.

Dated at Madison, Wisconsin, this 6th day of September, 2000.

Sherwood Malamud
Arbitrator