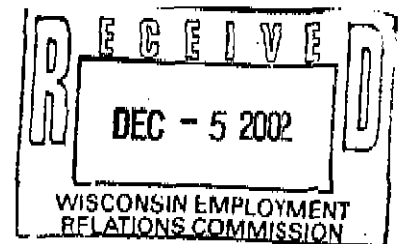


BEFORE THE ARBITRATOR



In the Matter of the Petition of

NORTH CENTRAL COMMUNITY
SERVICE PROGRAM BOARD

To Initiate Arbitration	Case No. 5 9500
Between Said Petitioner	INT/ARB-914 3
and	Decision No. 59500-A 30265-A

LOCAL 150, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S. C., Attorneys at Law, by Marianne Goldstein Robbins, appearing on behalf of the Union.

Ruder, Ware, & Michler, J.L. S.C., Attorneys at Law, by Ronald J. Rutlin, Esq., appearing on behalf of the Employer.

INTEREST ARBITRATION AWARD

Local 150, Service Employees International Union, AFL-CIO, (herein "Union") having filed a petition to initiate interest arbitration pursuant to Section 111.70(4)(cm), Wis. Stats., with the Wisconsin Employment Relations Commission (herein "WERC"), with respect to an impasse between it and North Central Community Service Program Board; and the WERC having appointed the Undersigned as arbitrator to hear and decide the dispute specified below by order dated February 6, 2002; and the Undersigned having held an evidentiary hearing in Wausau, Wisconsin, on April 4, 2002; and each party having filed post hearing briefs, the last of which was received August 13, 2002..

ISSUES

The parties' final offers state the issues in dispute with respect to their first collective bargaining agreement which will cover calendar years 2001-2.. I summarize them as follows:

1. ARTICLE 11 - WAGES: Both parties propose a 3% across-the-board increase effective January 1, 2001. The Employer proposes 3% January 1, 2002, while the Union proposes 4% January 1, 2002. The Employer proposes a wage schedule footnote:

"Management may place new employees at any step of the salary schedule, based on their experience. Normal progression on the salary schedule is 1 (one) step every 12 (twelve) months of employment. However, management may deny or accelerate step increases in its sole

discretion.”

The Union proposes to add to the above language the following:

“These increases are not guaranteed, except after 36 (thirty-six) months employees must be at least at step four, and after 60 (sixty) months, the full rate must be paid.”

2. ARTICLE 14 - INSURANCE: The parties both propose to set the Employer's monthly contribution to employees' insurance as follows:

	Employer	Union
Effective	\$186.61/single	\$195.73/single
1/1/2001	\$495.29/family	\$519.29/family
1/1/2002	\$217.77/single \$573.89/family	92% of HMO premium

The Union also proposes that the Employer may change carriers as long as the current benefits are not reduced.

3. ARTICLE 2 - MANAGEMENT RIGHTS: The Employer proposes to include a subcontracting provision in the management rights provision. The Union opposes this. The provision would read in relevant part:

Nothing in this agreement shall limit in any way the Board's contracting or subcontracting of work or shall require the Board to continue in existence any of its present programs in their present form and/or location or on any other basis. The board shall make every reasonable effort to find employment within the facility for employees displaced by virtue of subcontracting.

4. ARTICLE 11 - WAGE SCHEDULE: (Direct deposit) The Employer proposes to change the current method of making payment through paychecks to one in which is solely through direct deposit to a “financial institution of their choice or in cash through the Marathon County Employees' Credit Union, at the option of the employee.” The Union proposes to continue the current system of paychecks by mail. The Union proposes to add a provision to the agreement which prohibits the Employer from making any change in the method of payment during the term of the Collective Bargaining Agreement without the consent of the Union.

5. ARTICLE 7 - JOB POSTING: The Employer proposes the following:

New Shifts: If management makes temporary or permanent changes in shift starting and ending

times for a currently filed positions(s), the immediate supervisor shall post the new shift in the unit. Current Employees in the unit on the shift to be changed shall be the only employees allowed to bid. The immediate supervisor shall assign the new shift to the bidder with the most institutional seniority. If there are no bidders, the new shifts shall be assigned beginning with the employee in the unit with the least institutional seniority on the shift to be changed.

6. ARTICLE 11 - WORK IN A HIGHER CLASSIFICATION: The Union proposes that if an employee is "assigned to work in a higher pay classification due to vacation or illness or any other reason, that employee will receive the higher rate of pay for all hours worked, provided the employee works a minimum of four (4) hours in the higher classification." The Employer does not make a related proposal

7. ARTICLE 18 - NO MAKE UP: The Union proposes that employees not be required to make up absences which it alleges is the prior practice. The Employer opposes this provision.

POSITIONS OF THE PARTIES

The Union heavily relies upon the comparison factor to employees of comparable public employers. It proposes to use the following as its comparison group: Fond du Lac, La Crosse, Manitowoc, Outagamie, Portage, Sheboygan, Waupaca, and Winnebago. The Union bases its comparison group upon the factors of 1. Location, 2. Population and geographic size, 3. Total property value, 4. Per capita property value, 5. Per capita income, 6. The scope of the labor market. In this regard it argues that Marathon, Lincoln and Langlade Counties all provide revenue and receive services from the Employer. Since the Employer's facility is in Marathon County, it uses Marathon as the base for geographic selection of comparables. The Union has included all contiguous counties which have nursing homes with LPNs. This includes Langlade, Portage and Waupaca. It selected other counties at a greater distance which have nursing homes which employ LPNs. The Union selected these because they are approximately similar in wealth, population and income to Marathon, except those with large metropolitan areas. It notes that a number of the non-contiguous comparables the Union has identified have been identified by other parties as comparable to Marathon County. Of the seven counties which the Employer identified as comparable, only one is organized. The Union views the remaining as less useful for that reason.

The Union takes the position that the external comparisons support its offer of 4% in 2002. Only Fond du Lac and Winnebago Counties have settled for 2002, both have higher wages than this Employer and both propose wage increases far in excess of 4%. Fond du lac proposes 4.7% to 5% while Winnebago is between 17% and 20%. The majority of the Employer's private sector comparables have received increases of 4% or more for 2002. The only increases among the Employer's comparables is 3.6% at the non-union facility, Wausau Manor. The maximum rate at Eastview increased by 8.7% to \$19.04 in 2001, and increased by 3% in 2002 to

\$19.61, more than \$4.00 above the Employer's final offer. The Union, thus, views its offer as modest and in keeping with the external comparables.

The Union also argues that its offer is supported by the internal comparable to the position of Charge LPN. Prior to the 1999 organizing drive there was no such position. Now there are seven staff LPN's in the unit and four Charge LPN's out of the unit. Charge LPN's who were removed from the unit received an extra 11% in 1999. It argues that 97% of the Charge LPN's duties are the same as unit LPN's.

Next, it argues that the Employer has not established that the factors given greatest or greater weight apply. There is no evidence that North Central is directly restricted by revenue or expenditure limits. State medical assistance provides 75% of the nursing home costs and that medical assistance is exempted from budget cuts. The nursing home is less dependent on county funding than other North Central programs like the Sec. 51.42, Stats. Board. The total revenue and expenditure of the nursing home in 2001 was just under \$20 million. The 51.42 Board was between \$31 and 32 million. Yet, in 2001, the nursing home was responsible for \$17,508,160, more than twice the rest of the patient service revenue coming in, and 89% of the nursing home's expenses. In 2001, the net operating loss of the nursing home was \$200,000 less than 2000.

While the 51.42 program relied upon \$6.2 million in funds from the three supporting counties, the nursing home received \$1,588,075 from Marathon County, however, the nursing home returns \$701,400 in contributed capital for the construction of the nursing home. It is likely that the nursing home is responsible for some of North Central's \$382,000 in interest income although all of this is credited to the 51.42 program. The County owns the land and building, but the nursing home is charged with the depreciation of the home which is \$478,749 in 2001. Mr. Krumrie stated that medical assistance cost reports have shown a loss of more than \$5,000,000 over a three-year period. He did not submit documentation. The loss is not surprising given the charge for depreciation, return of capital, and absence of credit for interest earned.

The Union also argues that, contrary to Mr. Krumrie's assessment, it does not appear from the financial statements provided that a relative increase in labor costs is responsible for the nursing home's shortfall. These revenues rose in spite of the decline in patients, and rose by a greater degree than salaries. North Central implemented its final offer. Thus, its figures for salaries and fringes for 2001 already encompass its offer. The nursing home is largely self-sufficient and not hampered by state legislative or administrative restriction on its ability to pay the Union's final offer. Further, there is no evidence that the Employer's offer will be less expensive than the Union's because the LPN market is competitive and a shortage of LPN's would require the Employer to use expensive temporary help.

The Employer's claim that there was an economic slump in the Marathon County economy may be accurate, but the same may be said of other surrounding counties which suffered from the same factors which occurred throughout the nation. Marathon County has above average per capita income when compared to comparable counties.

The cost of living factor does not support the position of the Employer. The relevant time period is that which occurred since the last agreement was negotiated. Urban wage earners experienced a cost of living increase of 3.5% for 2000. Non-metropolitan urban areas CPI rose 3.7%, while the wage increase in that period was only 2%. In 2001, those figures averaged 2.75% to 2.5% respectively. Thus, employees have lost ground respectively 1% to 1.5%. The Union's proposal of 4% in 2002, will put employees back where they were at the beginning of 2000, if there is a similar inflationary trend to that in 2001.

The Union also argues that its proposal to guarantee fourth step after 36 months and top step after 60 months is consistent with all comparables which are organized. The Employer may rely on the Service and Support Contract; however, that agreement guarantees the maximum wage rate after 36 months.

The Union also argues that the statutory criteria support its proposal with respect to pay checks. It argues that this proposal is consistent with past practice. The Union argues that the Employer has provided neither justification for changing the practice nor a quid pro quo for doing so. All LPNs are located at the home and there is no need to change the practice.

The Union also argues that its proposed out of classification pay provision is appropriate. If LPN's work as Charge LPN's they are entitled to the higher rate.

The Union argues that its health proposal is supported by the criteria. The financial impact of the two proposals is the same. The Union argues that its proposal is strongly supported by comparisons to other public sector comparables. The plan here has a higher deductible than any of the other comparables. It is, therefore, inferior to those plans. The Employer's premium here is lower than other places. The capped premium rate has undermined bargaining and has provided the impetus for the Employer to engage in prohibited practices in violation of MERA.

The Union also argues that the statutory criteria support its position with respect to subcontracting. This employer has never eliminated a position as a result of subcontracting in 30 years. There is no showing that the language is needed. The proposal of the Employer would permit it to subcontract the entire unit. The Employer has previously undermined the unit by reclassifying 4 of the 12 LPN's in the bargaining unit as Charge LPN's. There is no evidence to support the claim that the Employer would be prohibited from hiring temporary help without this language. The comparables upon which the Employer seeks to justify its position

do not actually support it.

Next, it argues that the statutory criteria do not support the position of the Employer for its language with respect to new shifts. This language would allow the Employer to change shifts at will and would have a detrimental impact on the bargaining unit. The Employer's proposal is impractical in this small unit.

The Employer takes the position that its offer is fully supported by the statutory criteria. The Employer argues that its offer is supported by the comparability criterion. It urges that the appropriate comparable pool consists of area nursing homes because that is the area in which the Employer hires applicants from. These include Colonial Manor, Kennedy Park, Marywood Convalescent and Wausau Manor. It also includes East View Medical and Rehabilitation Center, Homme Home Nursing Home and Pinecrest Nursing Home. Pinecrest is operated by Lincoln County and is in Antigo. The Homme Home is in Wittenberg. The Employer included the latter homes because it also has facilities in Merrill and Antigo. The Board has provided applicant data showing that it has hired from the immediate area and, therefore, the Union's comparisons are irrelevant. It argues that this view of comparability is supported by arbitral authority.

The Employer also argues that the Arbitrator must give greatest weight to the state law that puts a limit on its tax levy, Section 66.77(2), Stats. It notes that the Employer does not have the ability to tax and it is dependent upon what it receives from the state, counties and third party revenues (the patients' medicare, medical assistance or insurance). The Section 51.42, Stats., services are funded by three counties, Marathon, Langlade and Lincoln. The Employer takes what comes from state sources and third party sources and then seeks reimbursement from the three counties for the remainder. Since the counties are the sole source of supplemental revenue in this manner, their ability to raise taxes is controlling. Only 25% of the revenue comes from patient care in the 51.42 portion of the Employer's operations. In the nursing home, 85% of the revenue is primarily medical assistance, 5% is medicare, 10% is private pay from third parties. It argues that the remaining revenue is provided from appropriations from Marathon County. Over the last several years, the nursing home has experienced substantial financial difficulties in funding due to lack of revenue. Mr. Krumrie stated that since 1998, the Employer has received only an average of 4.5% increase in medical assistance rates, while at the same time the facility has experienced a large decline in patient days. As a result, patient revenue has decreased 2.4% since 1998. This revenue is used to cover any increase in wages and fringe benefits for the nursing home employees. Medical assistance reimburses the Employer on average for about 75% of the actual costs. About 84.7% of the total patient days at the nursing home are identified with medical assistance. The medical assistance rate increases which the Employer have received have not been adequate to cover actual increases in expenses. Mr. Krumrie testified that some of the increases from the state in the last few years have been less than 2.0%. This has been far lower than wage and benefit increases. The increase the state

negotiates with the nursing home industry does not always reflect what the Employer receives. The actual rate increase each nursing home receives throughout the state can vary tremendously. The Employer has lost \$5 million in operating losses for 1999 through 2001. The revenue received from Marathon County goes toward offsetting the \$5 million loss. For example, in 2000, the Employer still experienced a loss of \$517,165, after Marathon County appropriations were applied. In 2001, the Employer applied \$1,588,075 of Marathon County's appropriations and the nursing home still experienced a loss of \$303,992. In addition to maintaining a continuing deficit as of December 31, 2001, the Board had cash reserves of only \$477,210 against a total budget of \$20 million. This represents only nine days operating expense at the home.

It notes that the primary reason the Employer is still operating is that it is "borrowing" money from Marathon County's contribution to the 51.42 functions. However, at the current rates of expenditures, this money will be gone in a year or two.

Finally, it notes that the Governor has proposed decreasing state aids to municipalities and shared revenues to fill the state budget gap for 2001-3. The shared revenue funds provide financial assistance to municipalities as a way to support daily government operations and relieve property taxes. As of the date of the arbitration hearing, the Governor now proposes to reduce shared revenues by \$350 million, or 4.0%, for the calendar years 2002-3 and the reduction for calendar year 2004, will be 13%, and to eliminate the program in fiscal year 2004-5. Marathon County will have no choice but to drastically cut spending and programs and the 51.42 funds currently being borrowed will, instead, have to be used solely for 51.42 purposes. Marathon County may not be able to continue to afford to operate the nursing home. The state does not mandate that Marathon County have a nursing home.

The Employer also argues that the Arbitrator must give greater weight to economic conditions occurring in the jurisdiction of the municipal employer. It relies upon standards enunciated by other arbitrators with respect to this standard. For example, Arbitrator Petrie stated that this standard can be applied by first, g that the employer's economic conditions are fully considered in the composition of the primary intra-industry comparables; and, second by ensuring that the economic costs of a settlement are fully considered in relationship to the economic conditions in the jurisdiction of the municipal employer. Marathon County's jobless rate has steadily increased over the last year as well as business going out-of-business due to the economy. The Employer has had difficulty in the past competing for employees, but it does not have any difficulty at this time.

The Employer argues that the Arbitrator should rely upon the internal settlement pattern, namely the wage increase it has given its unrepresented employees. This is 3% in the second year. The Employer has a history of consistency between this unit and its non-represented unit.

The Employer next argues that the Union cannot justify its final offer to change the status quo with respect to the health and dental insurance premiums. The history establishes that the premiums have been in dollar amounts since 1997. The Union has not shown any reason to deviate from the status quo. [The Employer has historically determined what the health and dental premium contributions after the premiums are stated and the amount of funds the Employer will have available will be determined. Any other approach will make it difficult for the Employer to negotiate a premium.] In this case, the Union seeks to obtain in arbitration what it cannot get in voluntary bargaining. Also, it has not shown a need. Finally, the Employer's external comparables do not support the Union's position. It also argues that a review of the Union's own external comparables do not provide support for the Union's position. Further, the trend is that employers are reducing, not changing or increasing their premium contributions because they cannot afford the burden. The Union has not offered a quid pro quo for this change either.

The Employer takes the position that its wage offer is supported by its comparisons and should be adopted. Current wages here are comparable for employees mid-career. It concedes that some nursing homes pay higher rates for very senior LPN's. In its view, even the Union's own wage comparisons support the Employer's position. The Employer argues that its wage proposal is also in line with comparable wage increases. In this context, it argues that its offer ought to be adopted.

The Employer argues that its contract language proposals are supported as well. It provides that the subcontracting language it proposes is necessary because it has to bring in temporary help LPN's when unit employees call in sick. This language covers past practice. It also argues internal and external comparables support adopting its subcontracting language. All comparable nursing facilities have subcontracting language.

Next, it argues that the direct deposit system reduces its costs and is safer for employees. Finally, it argues that its other language proposals are minor and should be adopted. It also argues that its total package is supported by the cost of living criterion.

DISCUSSION

Under Section 111.70(4)(cm), Stats., the arbitrator is to select the final offer of one party or the other without modification. The arbitrator is required to make that selection on the basis of evaluating statutory criteria as follows:

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

made or revenues that may be collected by a municipal employer. 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 following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. 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 generally in public employment in the same community and in comparable communities.
- f. 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 generally 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 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 parties, in the public service or in private employment.

Wage Comparisons

The parties have not mutually agreed on a complete set of external comparables, nor has there ever been any prior awards establishing the comparables for this group. The selection of comparables is a very important function in interest arbitration because the selection often influences bargaining between the parties for years to come. Further, the selection must include sufficient comparisons so that the employee classifications involved are fairly represented and so that the number of comparisons is sufficiently broad to avoid skewing by aberrant situations at a specific comparable. The factors considered in comparing public communities which I have used are proximity, population and geographic size, total property value, per capita property value, per capita income, whether or not the proposed comparable is in the same or similar labor market. (See LaCrosse County, Decision no. 29742-A (Michelstetter, 8,2000) When I select public sector comparisons, I have given heavy emphasis to the location of comparables. For example if a county is roughly similar to its surrounding counties with respect to the other major factors, I have preferred a comparability group of the surrounding counties because they are likely to be in the same labor market and share similar economic circumstances. If there is reason why a comparability group of that nature is not practical, I have used other comparability groups. One method is to look at communities either in the same general part of the state or from across the state who share other similar characteristics.

The Employer has supported its selection of basically private sector comparables because they are in Marathon County or the surrounding counties. These comparisons are largely private sector comparisons. Many are non-union and a few are public sector. About 80% of its non-professional and LPN staff come from Marathon County. These employers are in the same labor market and they are facilities with which the Employer competes for employees. Both parties have heavily relied on the fact that this employer is in a competitive environment for employees to justify their positions. The Employer's offered group is, therefore, one group which is comparable.

The Employer's group is not sufficient. The Employer is a public sector entity. Public Sector entities have different funding than private sector entities. They receive different

subsidies. They are bound by different limitations on taxing and revenue raising. They are in a different labor relations environment. Employer testimony indicates that this facility does not have many private paying patients even though private sector patients pay more for their services and offset the costs for medicare patients. Public sector nursing homes also have public responsibilities to set examples of proper payment and treatment of employees. Private sector employers do not have that responsibility. These differences are recognized in the statutory criteria which establish separate comparisons for private and public sectors. The public sector is not adequately represented in the Employer's comparability group. Accordingly, I have selected the following as the private sector comparability group:

Private Sector

Colonial Manor (Wausau) (non-union)
Homee Home Nursing Home (Wittenberg-Biramwood) (union)
Kennedy Park Nursing Home (Schofield/Wausau) (union)
Marywood Convalescent Center (Wausau) (union)
Wausau Manor Nursing Home (Wausau) (non-union)

Similarly, many of the Employer's comparables are non-union. Facilities with collective bargaining agreements often pay a higher level of benefits and wages. They have provisions in their collective bargaining agreements which are more protective of their employees. The Employer's group is not sufficiently representative of collective bargaining and more organized comparables are needed.

Unlike the support unit, there are few public sector nursing homes in the surrounding counties which employ any LPN's. I have included all of those that do have LPN's in the public sector comparability group. These include Langlade, Portage and Waupaca Counties. Those are not sufficient to protect against skewing. The Union has offered five counties from around the state as additional comparisons, however, that many comparisons are not necessary. (See appendix A for comparative data.) I have added in Outagamie and Winnebago Counties. These facilities are from the more industrial Fox River Valley area, but they are in the central part of Wisconsin and, therefore, are more likely to share some economic circumstances with Marathon County than the others. Those are more populous counties with higher per capita income. I have added in La Crosse which is a less populous, lower income area from western Wisconsin to balance the secondary comparables. I have selected the following public sector comparison group:

Public Sector

Langlade County (East View)
La Crosse ?
Outagamie ?
Portage

Waupaca
Winnebago ?

I also note that it is appropriate to make comparisons for purposes other than wage rates to dissimilar employees of Marathon County and to a lesser extent Langlade and Lincoln Counties. These are primarily useful for comparisons of general wage increases and total package comparisons. They may be useful for comparisons for benefits which are common to all classes of employees.

I now turn to the actual application of the comparison criteria. All of the comparables have established wage rates for 2001. Since the parties agree on the wage rates for 2001, I have made a comparison to that year. Those comparisons are in Appendix A. There are significant differences between the compensation system here and those in some other comparables. Some of the other comparables have pay scales which include longevity. There is no longevity program for LPNs and none is in issue even though a longevity program exists in the support unit. Five of the seven employees in this unit are at the maximum rate. However, there is no evidence as to how long those employees have been employed at North Central.

These comparisons show that employees in this unit are underpaid at the starting rate. However, they are comparably paid at the six year level compared to the private sector comparisons even when Wausau Manor's merit system is disregarded. They are somewhat lower paid at the maximum. They are comparably paid at the maximum in the public sector group, particularly when Langlade County's built in longevity plan is disregarded. These comparisons do not justify an across-the-board increase beyond a normal general increase.

Wage rates are fully settled for 2002 in the private sector comparability group. The growth at the six year level has been minimal and those comparisons fully support the Employer's final offer. Even at the maximum, the Employer's offer is greater than three of the five comparisons. There are too few public sector settlements in the public sector comparability group to give any indication of that group for 2002.

Marathon County, Lincoln and Langlade Counties have settlements for 2002, which are about 3%. These comparisons support the offer of the Employer.

The Employer heavily relies upon its position of offering non-union and union employees the same increase. Comparisons to the general increase the Employer has unilaterally determined is appropriate for non-represented employees is not an internal comparison entitled to weight in the same manner that voluntarily collectively bargained settlements are considered in arbitration. No weight is given to the Employer's unilateral choice.

The wage increase is the only item which causes a difference in the total package

increase proposed by the parties. Factor h requires a consideration of the total package of wages and benefits. Factor g provides for consideration of the cost of living. The non-metropolitan urban wage earner CPI-U rose 3.9% in 2000 and -.1% in 2001. The Urban CPI-W rose 3.4% in 2000 and 1.3% in 2001. The Urban CPI-U 3.4% and 1.6% respectively. The proper direct comparison of a consumer price index is from the prior year to the proposed year. Further, since the consumer price indexes contain elements relating to health care and other items, the proper comparison is of the total package of benefits. The parties agreed to a total package increase for 2001 of 6.6% and the Employer proposes a 5.03% increase in 2002. The Union proposes a 5.34% total package increase. The direct comparison of this factor favors the Employer's position. Most arbitrators have recognized that the cost of living factor is ordinarily something which parties take into account in collective bargaining. As a result, they give heavier reliance upon area settlements than on direct comparison to the cost of living factor. In either case, this factor favors the Employer's position.

Health Insurance

A party proposing language in a collective bargaining agreement changing past practice must show that there is a change in circumstances which require changed contract provisions and that its proposed language is appropriate to meet that need. Alternatively, it must show that it has offered an appropriate quid pro quo. The cost for the parties' proposals are essentially the same. The change to a percentage rather than dollar amount of premium relates to what will happen if there is an impasse in negotiations for a successor agreement and premiums substantially increase. If the former, the Employer will pay the same percentage of the increase. Under the latter, the employees will pay the full increase. There is no past practice in that the Employer has used both techniques in the past. The problem with respect to this issue is demonstrated by the substantial delay in reaching agreement in the negotiations which led to this case. The public interest criterion favors the Union's position in that this employer is in a competitive position for employees. A large increase in employee contribution to health insurance is likely to cause turnover. While the Employer is correct that the trend is toward greater employee contributions, the trend does not support its proposal to have a dollar contribution. Both parties have the ability to bring negotiations to a speedy conclusion in arbitration. The health insurance issue is the same issue that was presented in the support unit, decision No. 30264, 10/31. In that case, I found that external comparability heavily favored the Union. It does in this case as well, every single public sector employer for which there is data pays a percentage of the health insurance premium. I also noted that the Employer's argument as to bargaining history was without merit in that the bargaining history did not constitute a quid pro quo. Accordingly, the public interest and external comparison criteria favor the Union. Factor e allows consideration of internal comparisons. I note that the uniformity of administration of benefits is an important consideration in the determination of benefit issues. It often is costly for an employer to administer benefits in two separate ways. The Employer has routinely had separate contribution rates between its non-represented employees and its

represented employees. Uniformity of administration is therefore not given controlling weight in this proceeding. Accordingly, the Union's offer on this issue is considered appropriate.

Wage Progression

The Employer has proposed that it have unilateral control over wage progression. Criterion e is the internal comparison criterion. The language proposed by the Employer is similar to language in the support contract except the support contract guarantees that employees will reach the maximum of the progression after 36 months. The Union proposal provides an analogous guarantee. The Employer's proposal is without merit. It has created the non-unit position of Charge LPN and, therefore, all supervisory duties are performed by LPN's out of the unit. One would expect that the end of 36 months the employer will have resolved any performance issues with an LPN's it hires by the end of 36 months. Further, five of the seven unit employees are already at maximum and there is no direct testimony that there is a specific problem with the remaining two which merits some special language. The Union's proposal is preferred.

Subcontracting

The Employer has proposed a broad reservation of its right to subcontract. The Employer's rationale for its proposal is that it needs to retain the right to subcontract to 1. continue the current practice of subcontracting LPN's when employees are absent and, possibly, 2. Flexibility to make changes in that system when there are ways of increasing efficiency in filling in for absent employees. While it would be preferable to have specific language in the agreement covering the current practice of subcontracting, the Union has been quite clear that it has no opposition to that practice. Based upon that representation, a subcontracting provision may not be immediately necessary. The Union is correct that the language which the Employer has proposed is over-broad even if it appears in the support contract. It has expressed a concern supported by recent Employer conduct that this provision could be used to undermine the unit. This unit is much smaller than the support unit and the difference between size and job functions makes the internal comparison weak. There is some evidence of other subcontracting language among comparables. Many have no provisions and some have fairly broad provisions such as Shawano, and Lakeview. Under the circumstances, I am satisfied that the proposed language is over broad for the nature and size of this unit. The better judgment is to wait until the bargaining relationship matures before adopting subcontracting language.

Direct Deposit

The direct deposit issue does not significantly affect this unit. The award of the Employer was adopted in the support unit case. Accordingly, the Employer has won the right to direct deposit for virtually all of its employees. This is a matter for which uniformity of

administration is important. Accordingly, the offer of the Employer is favored.

Out of Classification

The Union's proposal for out of classification pay is a customary proposal. It is in the interest of the public (criterion c) that employees be paid appropriately for their work. This encourages employees to accept added responsibility and ultimately reduces overtime costs by eliminating costly overtime for recalling employees. The difficulty with this issue is that the Union's chief reason for seeking this proposal is because the Employer has created the position of Charge LPN which the Union has strongly intimated was created to undermine the unit. It would be a reasonable employer concern that this provision could be abused in a number of ways. Similarly, the Union might well have difficulty getting recognition for Charge LPN work. Either would be unfortunate. If that were the purpose of this offer, I would have recommended against it. At this point, the language should be adopted. Future interest arbitrators will have to take this forewarning into account.

Make Up

This issue is minor and will not be addressed.

Greatest Weight/Greater Weight and Ability to Pay Factors

The statutory criteria have three criteria which primarily address the ability of a public employer to pay for collective bargaining settlements and/or the ability of the local taxpayers to bear the costs of the settlement. These factors are the greatest weight factor, the greater weight factor and the ordinary ability to pay factor, 71.c.

Arbitrator Vernon in Tomahawk School District, Decision no. 30024-A in a well reasoned decision concluded that the greatest weight factor, if applicable, should be given effect when the affected proposal will have a "substantial and palpable adverse effect" on the municipal employer. Arbitrators have placed the burden on an employer to produce evidence that a specific limitation exists on its ability to collect revenue or make expenditures. They then require the Employer to show what its specific limit is and that it has taken full advantage of its authority. They then require it to show that the Union's offer will have a substantial and palpable adverse effect on its ability to stay within those obligations. See, for example, Marathon County, Decision 29513-A, Kessler, 1999.

Counties have Section 66.72(2) levy limits which limits them to "an operating levy at an operating levy rate that exceeds .001 or the operating levy rate in 1992, whichever is greater." Counties are penalized if they exceed the rate without having first obtained approval through a referendum of their constituents. As discussed below, the Employer does not have taxing or

borrowing authority but relies upon Marathon County to subsidize the nursing home side of its operations beyond third party revenues. While the Employer alluded to Marathon County's limitations under Section 66.72(2), it produced no evidence as to specifically what that authority was, no evidence as to whether Marathon County has maximized its revenue under that authority or that the offer of the Union would likely require a subsidy from Marathon County which would have a substantial and palpable effect on its ability to stay within those limits or its operations. Employer exhibit 9, a report from the Wisconsin Taxpayer's Alliance, shows that on the average state-wide county tax levies are increasing 7.9% for taxes to be collected in 2002, over those collected in 2001. The report shows that there is a wide variation however among the counties, with some decreasing tax levies and some substantially increasing tax levies. The table of specific increases in each county was omitted from the portion of the report presented in evidence. There was no evidence about the growth of property values or tax rates in Marathon County or any of the counties involved in this case. Accordingly, the Employer has failed to meet its burden to show that the greatest weight factor applies in this proceeding.

The Employer did address the economic conditions in its jurisdiction (primarily Marathon County). The economic conditions are not a factor in this case because of the small amounts of money involved.

However, the analysis does not stop there. The financial ability of an employer to meet the demands of its union has always been a factor in collective bargaining and in interest arbitration. In Wisconsin, that factor is stated in 7r.c. In the companion case issued today, I found that the Employer lacked the ability to meet the offer of the Union in the support staff case. The Employer's costing shows the total difference between the parties to be \$817. It would appear that on a full roll forward method, the cost would be more, but would not likely exceed \$3,000. The Employer has the ability to meet the offer of the Union.

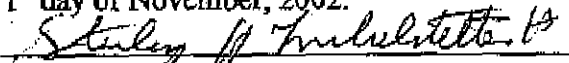
Summary

The economic issues in this case are small. The Union's position has been adopted on health insurance and many of the major language issues. These issues are important in a first contract because correctly decided they foster stability in this new collective relationship. I am satisfied that those issues should be given precedence even though some items adopted will add to the Employer's administrative costs. Accordingly, the Union's offer is adopted.

AWARD

That the final offer of the Union be adopted.

Dated at Milwaukee, Wisconsin, this 1st day of November, 2002.


Stanley H. Michelstetter II, Arbitrator

Appendix A

2001 Wage Comparisons	start	6years	maximum	years to maximum
private				
Colonial Manor	\$12.85		\$16.75	15
Homme Home Nursing Home	\$13.23		\$15.06	20 wage rates 12/2
Kennedy Park Nursing Home	\$12.85		\$14.30	15
Marywood Convalescent Center	\$12.78		\$14.77	10
Wausau Manor Nursing Home	\$13.75	\$13.75	\$13.75	immediate
average	\$13.09		\$14.93	
NCHF	\$11.60		\$15.18	
Charge LPN	\$12.90		\$16.87	

public				
Lincoln County (Pinecrest)	no LPN			
Langlade County (East View)	\$12.61	\$16.50	\$19.04	25
Portage				
Clark				
Wood				
Waupaca	\$13.79	\$14.20	\$14.20	6 months
Shawano				
average				
NCHF				

	population	Million 2001 Equal. Val.	per cap eq. val	\$1,999.00 per cap. income
Fond du Lac	97296	4.7	\$48,647	\$27,129
La Crosse	107120	4.7	\$43,828	\$26,034
Manitowoc	82887	3.7	\$44,767	\$24,865
Outagamie	160971	8.4	\$52,267	\$28,084
Sheboygan	112646	5.7	\$50,232	\$27,705
Waupaca,	51731	2.5	\$48,916	\$24,956
Winnebago	156763	7.9	\$50,403	\$27,759
Marathon	125834	6.2	\$49,745	\$26,009