



BEFORE THE ARBITRATOR

In the Matter of Final and Binding Final Offer Arbitration Between

MANITOWOC COUNTY (HEALTH CARE CENTER)

and

MANITOWOC HEALTH CARE CENTER EMPLOYEES
LOCAL 1288, AFSCME, AFL-CIO

WERC Case 377 No. 60812 INT/ARB-9523
Dec. No. 30514-A

I. NATURE OF PROCEEDING. This is a proceeding under the Section 111.70 (4) (cm) 6 and 7 of the Wisconsin Municipal Employment Relations Act for the resolution of an impasse in selecting a final offer under collective bargaining between Manitowoc County and Manitowoc Health Care Center Employees, Local 1288, AFSCME, AFL-CIO. The parties having engaged in collective bargaining reached an impasse. Manitowoc County then on January 24, 2002, filed a petition with the Wisconsin Employment Relations Commission ("WERC") alleging that an impasse existed between it and the Local Union. The Commission thereafter investigated and through Marshall L. Gratz, staff member, who reported to WERC that the parties were at an impasse. On November 22, 2002 the parties submitted final offers to the Investigator. On December 3, 2002 the Commission initiated final and binding arbitration and advised the parties to select an arbitrator from a panel submitted to the parties by the Commission. The parties thereafter selected the undersigned, Frank P. Zeidler, Milwaukee, Wisconsin, as arbitrator and the Commission then appointed him on January 21, 2003. A hearing was held at the Manitowoc County Administration Building on March 31, 2003. Parties were given full opportunity to give testimony, present evidence, and make argument. Briefs were supplied and exchanged through the arbitrator on July 20, 2003. The last reply brief was received by the arbitrator on August 11, 2003.

II. APPEARANCES.

von BRIESEN & ROPER, s.c., by JAMES R. KOROM, appeared for Manitowoc County.

NEIL RAINFORD and HAROLD LEHTINEN, Staff Representatives, Wisconsin Council 40, AFSCME, AFL-CIO, appeared for the Local.

III. THE FINAL OFFERS.

A. County Offer.

Add to Appendix "A" the following classifications and rates. Rates are prior to the January 1, 2002 general increase. These rates would be increased by the agreed upon general wage increase for 2002 and 2003.

<u>Position</u>	<u>Hire rate</u>	<u>6 Month Rate</u>	<u>12 Month Rate</u>
Nurse Scheduler	\$11.90	\$12.59	\$13.00
Dementia Coordinator	\$10.14	\$11.56	\$12.00

B. Union Offer.

1) Article 3 - MANAGEMENT RIGHTS RESERVED

Manitowoc County shall have the sole right to contract for any work it chooses so long as there is no lay off or reduction in the hours of work of Bargaining Unit Employees and to direct its employees to perform such work wherever located subject only to restrictions imposed by this agreement and the Wisconsin Statutes. In the event the Employer desires to subcontract any work, said matter shall first be reviewed with the Union.

2) APPENDIX "A"

Add the following classifications to the wage schedule effective January 1, 2002, (wage rates expressed at 2001 rates). Increase the rates each year of this agreement by the agreed upon across the board percentages.

<u>Classification</u>	<u>Hire</u>	<u>6 Month</u>	<u>12 Month</u>
Nurse Scheduler	10.29	10.31	10.97
Dementia Coordinator	9.22	10.51	10.91

IV. STIPULATIONS. The parties have stipulated to all other matters between them through stipulated agreement.

V. FACTORS CONSIDERED. Section 111.70 (4) (cm) 7.

7. 'Factor given greatest weight.' In 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 or administrative office, 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 to in subd. 7r.

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

- a. The lawful authority of the municipal employer.
- b. Stipulation 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 a proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
- e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of 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 employee, 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.

VI. LAWFUL AUTHORITY. There is no issue of the lawful authority of the County to meet either offer.

VII. COSTS OF OFFERS. The following costs are given by the County in its Exhibit 6:

Table I. TOTAL COST, HEALTH CARE CENTER

Total Cost, 2001	\$5,189,818.50	
Total Cost, 2002	\$5,416,105.99	Increase: 6.13%
Total Cost, 2003	\$5,887,181.47	Increase: 7.51%

(County Exhibit 6)

The parties have tentatively agreed to a 3% across the board wage increase for 2002 and 2003. The County reports a savings of \$42,232.05 through a drug card program.

Position of the County.

The County is arguing not the inability to pay the Union offer, but the necessity to reduce County costs for tax and general economic reasons in the County, through subcontracting.

County Exhibit 7 lists the ten comparable counties for "Operational Tax Levy Data." The exhibit shows the operational adopted tax levies for 2002 and 2003, the state imposed operational tax levy limit, and the differences between the two figures, or additional tax levy amounts that might have been available if the counties taxed at the full limit. This exhibit is the source for the following table as an example:

Table II. OPERATIONAL TAX LEVY DATA OF SELECTED COMPARABLES.

<u>Year</u>	<u>County</u>	<u>Tax Levy</u>	<u>State Limit</u>	<u>Difference Available</u>
2003	Brown	\$55,160,818	\$57,317,231	\$2,156,400
	Sheboygan	\$31,678,678	\$332,658,302	\$ 977,624
	Manitowoc	#20,307,646	\$20,309,646	\$ 2,000
2002	Brown	\$52,203,431	\$53,977,821	\$1,774,390
	Sheboygan	\$29,156,851	\$30,513,721	#1,348,670
	Manitowoc	\$19,289,000	\$19,289,000	\$ 0

County Exhibit 8 listed comparable counties that had imposed a half cent sales tax to

increase revenues. Dodge, Ozaukee and Washington Counties had done so. An attempt to get a sales tax in Manitowoc County failed.

Table III. TOTAL MANITOWOC COUNTY TAX LEVIES

<u>Year</u>	<u>Total Levy</u>	<u>% Change</u>	<u>Rate/\$1000</u>	<u>% Change</u>
2002	\$22,189,172		5.297987	
2003	\$24,359,486	8.25%	6.005987	2.85%

(County Exhibit 10)

The following tables are derived from County Exhibit 10.

Table IV. INFORMATION ON DOLLAR COSTS OF HEALTH CARE CENTER.

	2002 (000)	2003 (000)	2004 Projected (000)
Total Operating Revenue	7146	7047	7309
Total Non-operating revenue	3828	4631	4046
Total Expense	10457	20771	1177
Total Non-Operating Expense	135	1797	508
Net Revenue	250	(889)	(250)

Table V. INTERGOVERNMENTAL TRANSFERS AND TAX LEVIES (000)

Intergovernmental Transfer	2,876	3,176	940
Tax Levy for Center	483	1,402	3,106

The County contends that the Union could have saved the County \$240,000 on drug card costs, but did not do so and that the Union is placing the interests of its members above the interests of the taxpayers.

The County states that when the Union points to a 57% inncrease in household income in Manitowoc this does not disclose that household income in Manitowoc is below that of comparable counties in actual dollar amount.

The County states that it must keep at least 10% in its General Fund balance to maintain its AAA bond rating.

Arbitration decisions made by two arbitrators in school district cases were made before the Mirro company announced the ending of 800 positions.

Position of the Union.

Union Exhibit 15, showed that the average cost of personal services for the laundry department of the Health Care Center in 2002 with one month of subcontracting at the end of the year was \$20,459. With one month experience in 2003 under subcontracting, the County's cost came to \$19,326, or a difference of \$1,123.

Union Exhibit 25 reported the sum of Intergovernmental Transfer payments made and paid in the previous four quarters prior to June 30, of 2001, 2002 and 2003. These totals were \$1,119,946 reported in 2001, \$2,644,805 in 2002, and \$5,204,626 in 2003.

Union Exhibit 25, also shows the county sales tax distribution in the state for 56 counties in 2002. Manitowoc is not among these counties, having no sales tax of 0.5%

The Union states that its offer because of wage levels for Dementia Coordinator and Nurse Scheduler are actually less costly than the County's offer.

The Union states that the County had a healthy General Fund balance on 1/03 of \$7.2 million and this will grow to \$7.5 million by the end of the year. The County is not pressed for resources, and also it could enact a sales tax to either increase expenditures or reduce taxes.

Discussion. In terms of immediate actual cost, the Union offer appears to be the less costly because of the lower wages for Dementia Coordinator and Nurse Scheduler. However in the longer run it is likely to be somewhat more costly particularly if the Union offer impedes a substantial subcontracting by the County to reduce costs. Given the County's tightness in taxing ability as shown in Table II foregoing, and the changes in intergovernmental transfers shown in Table IV, the weight of the cost factor rests with the County.

VIII. COMPARABLE COUNTIES AND COMPARABLE MUNICIPALITIES.

The factor of comparability in the instant matter relates chiefly to practices of Manitowoc County on rights of management, and in a minor way on other matters. The population size does not play as significant a role in comparability as it would generally. This argues for the use of comparables that are regionally located. County Exhibit 8 uses the counties of Brown, Calumet, Dodge, Fond du Lac, Kewaunee, Manitowoc, Outagamie, Ozaukee, Sheboygan, and Washington. In 1994, Arbitrator Rice held that a similar regional list of counties was appropriate

for comparables because of a common labor market. In 1995, Arbitrator Kessler used similar list, though not identical, because of counties near to Manitowoc County had health care facilities. However Arbitrator Dichter in 1999 used only Dodge, Calumet, Fond du lac and Sheboygan to compare with Manitowoc. The list here will include as comparables, Brown, Calumet, Dodge, Fond du lac, Manitowoc, Outagamie, Ozaukee, Sheboygan, Washington, and Winnebago as comparables because of regional location. (County Exhibits 7, 8. Union Exhibits 3, 4, 5)

For information on the diversity of population of the comparables the following table is useful. However though the counties are diverse in size, in population and in economic value, yet they each have organized employees and have some type of management rights section in contractual agreements. They thus can be used in the instant matter for comparison.

Table V. SELECTED CHARACTERISTICS OF COUNTIES USED AS COMPARABLES.

<u>County</u>	<u>2001 Pop.</u> <u>(000)</u>	<u>Full Value</u> <u>(000,000)</u>	<u>Levy Rate</u>
Brown	229	12,113	5.21
Calumet	41	1,927	5.78
Dodge	86	3,988	6.25
Fond du Lac	98	4,733	4.73
Kewaunee	N.A.		
Manitowoc	83	3,813	5.90
Outagamie	162	8,413	5.22
Ozaukee	83	7,235	2.12
Sheboygan	113	4,658	6.48
Washington	118	8,052	3.99
Winnebago	157	7,901	5.69

YX-25

The significance of these comparables is discussed later herein.

IX. MANAGEMENT RIGHTS CLAUSE OFFERS.

The Union is proposing the following language for Article 3 - Management Rights Reserved in the second paragraph of that section:

"Manitowoc County shall have the right to contract for any work so long as there is no

lay-off or reduction in the hours of work of bargaining unit employee and to direct its employees to perform such work wherever located subject only to the restrictions imposed by this Agreement and the Wisconsin Statutes. In the event the Employer desires to subcontract any work, said matter shall be reviewed with the Union."

The County proposes to retain the language of Article 3 - Management Rights Reserved, second paragraph, as stated in the 2000-2001 Agreement between the parties. This paragraph is as follows:

"Manitowoc County shall have the sole right to contract for any work it chooses and to direct its employees to perform such work wherever located subject only to the restriction imposed by this Agreement and the Wisconsin Statutes. In the event the Employer desires to subcontract any work which will result in the layoff of any County employees said matter shall first be reviewed with the union."

Relevant Exhibits to the Issue of Management Rights. The following table is derived from Union Exhibit 3:

Table VI. COUNTIES' HEALTH CARE PROVISIONS ON SUBCONTRACTING

<u>County</u>	<u>Provision</u>
Brown	No language.
Calumet	First review with union.
Dodge	No language.
Fond du Lac	
Rolling Meadows	No language.
Health Care Center	No language.
Outagamie	Bargaining.
Ozaukee	No language.
Sheboygan	Not if layoff or reduction of hours.
Washington	Right of management.
Winnebago	No layoff if hours reduced.

Union Exhibit 4, tabulated 3 Manitowoc County cities with organized employees - Kiel, Manitowoc City, and Two Rivers. In Kiel one union requires advanced notice for subcontracting. Four agreements have no language. In the City of Manitowoc four union agreements either bar subcontracting, or allow it if it does not result in layoff or reduction of work hours. In Two Rivers one agreement gives management the right to subcontract, one does not speak to the issue

and one bars subcontracting if it results in layoffs or reduction of hours.

Four Manitowoc County school districts are cited by the Union for comparison. Of three unions in the Manitowoc School District, two explicitly bar subcontracting if it results in lay off or reduction of hours. A Two Rivers School District Custodial union agreement bars subcontracting. In the Valders School District a custodial agreement bars subcontracting if employees are laid off. A custodial agreement in Kiel has no language.

Union Exhibit 6 reports that a private institution, River Bend Health and Rehabilitation Center which has Park Lawn Home Employees has an agreement which permits subcontracting if incumbent laundry employees affected are given continued employment.

Union Exhibit 30 is a summary of settlements and of negotiations in seven Manitowoc County employee unions. The Health Nurses (AFT), the Sheriff's Sworn personnel (WPPA), and the Sheriff's Non-Sworn personnel (AFSCME) have agreements for 2002-2004 which provide for advance review of Employer's subcontracting. The Health Care Center Employees, the Highway Employees, the Human Service Professionals and the Support Service personnel, all AFSCME unions, have not settled.

County Exhibits consisted of the same counties generally as found in Union exhibits. County Exhibit 25 states that Dodge, Fond du Lac, Kewaunee and Outagamie County have no language in the management rights clause addressing subcontracting. In Washington County management reserves the right to contract. In Brown County an agreement for highway employees preserves for them the right to do the work. In four contracts in Calumet County, subcontracting must first be reviewed with the respective unions. In Ozaukee County OEIPU Local 35 has the right to confer with management on subcontracting.

Position of the Union. The Union makes the following assertions to support its proposal:

- a. The existing second paragraph of Article 3 is obsolete, having existed since 1986. Conditions have changed and management has had an aggressive policy of subcontracting bargaining unit work in recent times. Union positions are threatened.
- b. The County's subcontracting of work has resulted in the loss of a position for a career employee who was committed to his work in the Human Services Department.
- c. Subcontracting has resulted in loss of work for bargaining unit employees of the laundry of the health care center.
- d. Labor agreements in comparable counties support restrictions on management's authority to subcontract.
- e. The Union is arguing that where there is no language specifically addressing subcontracting, that the absence of such language must be interpreted as requiring the Employer

to bargain with the affected employees. This argument is based on a decision by the Wisconsin Supreme Court in Unified School Dist. No. 1 of Racine, v. Wisconsin Employment Relations Commission, No. 30, 1977, Decision No. 12055-B.. In this matter the Court held that in the case of subcontracting the Employer was required to bargain both the decision and impact of subcontracting as matters affecting the wages, hours and conditions of employment. The Union cites subsequent rulings of the Wisconsin Employment Relations Commissions and its examiners which follow the decision of the Court.

f. Labor agreements also in comparable cities, in school districts and in the private sector support the Union position.

g. No quid pro quo is required in this situation since circumstances of relationships between the parties have changed because of the County's policy of subcontracting of various services.

h. Under past subcontracting by the County of previous union work, there has not been a "soft landing" for some employees displaced.

i. The Union offer is not a drastic change in the authority of the County to subcontract. The County can still subcontract work. The Union offer does not exercise veto power over the County's ability to subcontract and the Union concedes the County's right in the terms of decision and impact of sb subcontracting, in return for which the Union seeks job portection.

j. The County did not supply the Union with full information before subcontracting the laundry work. In essence the actions of the County do not presage proper negotiation on future proposals to subcontract.. The County was unwilling from the start to bargain on subcontracting.

k. The County's claim that the Union offer will block subcontracting and cause a loss of savings is not substantiated as the County retains the right to subcontract, but only must not layoff employees "to the street". The County itself has demonsrated that it can subcontract and retain employees at little or no cost.

l. Employees need minimum protection. Under the current language the County has the blanket right to subcontract any and all work only with review by employees. The environment has changed in that the County has been increasing subcontracting and in the case of the Human Services Department and laundry changes the County did not meet its contractual requirement to review the proposed changes.

m. Powerful private profit making interests are seeking public functions and the County is not a neutral arbiter in the matter. Public employees provide a balance on such issues in the public interest.

n. The County dramatically overstates the limitations of the Union offer on its operations.

o. The County well understood the Union proposal to mean that employees laid off to the street were the only employees the Union was concerned with and not internal transfers. The Union offer does not block internal changes.

The County's Position. The County states the following positions to support its position

on the management rights clause:

a. The critical condition of limits to the County's authority to tax requires the County having the authority to subcontract to reduce expenditures.

b. Circumstances of improving health care services made necessary the addition of health care facilities which in turn required the County to subcontract services to save large capital expenditures.

c. Union employees in the past who have had their positions eliminated in subcontracting nevertheless to a large measure found a "soft landing" in other agencies of the County.

d. The Union proposal offers no quid pro quo to the County for the proposed change in language and authority of the County.

e. The Union proposal would effectively eliminate the authority of the County to subcontract if an employee whose position was eliminated refused to bump into or take another County position for which the employees was qualified and if the employee decided to remain on layoff.

f. The Union proposal is not found comparable in the agreement of other comparable counties.

g. The Union proposal is not found to be comparable to existing practice in Manitowoc County among other labor organizations.

h. The County did inform the Union of its intentions of subcontracting the laundry work at the health care center.

i. The Union bargaining history over a drug card issue resulted in a decision that costs \$250,000 in increased premium charges, so that the Union can not be relied on to protect the taxpayer interests.

j. If the Union proposed provision had been in existence in previous contracts, the County could not have effected savings in capital and operating costs in laundry work, x-ray services, gravel crushing or road striping.

k. The union proposal on subcontracting is so stringent that if one person is without a position and also refuses to take one that is offered, the subcontracting can not go forward.

l. The language of the Union proposal is ambiguous and the question of what it means to lose a position or work hours is not clear, especially if it means an employee must be discharged and not transferred. The Union misstates what its proposal means and the proposal is poorly drafted.

m. County past's record is that it has acted reasonably and with the interest of its employees in mind when it sub-contracted and the results of employee hardship were minimal.

n. The County argues that the Union does not balance the competing interest of saving money against Union job security. Under the Union offer the County can subcontract only if attrition occurs, which is rare. Market forces will keep the County from acting unreasonably.

o. The Union statement that there is no cost is incorrect. The Union calls for the County to keep unnecessary positions vacant for filling them if subcontracting occurs. This has a cost.

p. The County contends that silence on subcontracting in an agreement does not bar subcontracting. The parties must bargain in good faith, but if an impasse is reached the Employer can go forward with subcontracting.

Discussion. The various positions of the parties require certain priorities in addressing the major issues, and the first is the subject of comparability. On the factor of comparability of contract language, both parties contend that their offer is the more comparable. The Union is making the claim that its offer is more comparable to what exists in comparable counties, and in regional cities and school districts. The Union is basing this position on the contention that where there is no language in an agreement on subcontracting, this means that if the Employer wants to subcontract, the Employer has to bargain with the Union, and this is a restriction on the absolute right to contract. According to the Union, Employers must bargain subcontracting under the decision of the Wisconsin Supreme Court in the case of the Unified School District No. 1 of Racine. The Union is further holding that its offer is much less restrictive than what may come from bargaining under the Racine case. The arbitrator does not find this analysis persuasive because of the contrast between the specificity of the Union proposal and the generality of results which may come from an Employer being required to bargain. In the latter case the results may range from no restrictions to many restrictions, and an Employer after an impasse is reached can nevertheless go forward with subcontracting. An agreement about subcontracting then is not equated here with a possible requirement to do so. The Union as a moving party in a proposed change has not met the burden of proving the comparability of its offer.

It is to be noted that the current provision supported by the County also does not meet the test of comparability because only one of the comparable counties has the unrestricted right to subcontract. The decision in this matter does not rest on one of the parties having established a claim of greater comparability for its offer on subcontracting.

Another early claim to be addressed is the claim of the County that the Union in proposing its change has offered no quid pro quo - something in exchange. The arbitrator here has previously expressed elsewhere the opinion that a quid pro quo, while it often is helpful in balancing the interests of the parties, is not required where a critical issue that one party feels needs to be addressed appears. In this matter the critical issue here is the Union's fear of loss of work by bargaining unit members, perhaps even on a large scale. This is a serious concern, enough so as to not require the consideration of a quid pro quo in making a proposed change.

The matter of whether the Union offer should be supported because in some recent matters of subcontracting the County is alleged not to have provided opportunity for review is something which should have been addressed through grievance procedure at the time and will not be addressed here since it would require its own hearing to establish all the facts in greater

detail..

The claim by the County that the Union proposal is not well drawn and is capable of disputative interpretation has merit, though minor. There is a concern as to whether the Union language is capable of being interpreted so as to mean any layoff, transfer, or even reduction of opportunity in over time hours, and especially as to whether an employee has to be laid off "to the street". This is a deficiency which the arbitrator feels needs to be addressed because it could lead to grievances if the language becomes incorporated in the agreement.

The County also makes what the arbitrator feels is a valid point that under the Union offer a laid off employee who refuses assignment to another County position can invalidate subcontracting designed to save funds. The County's argument that it has not acted unreasonably in the past is accepted here, though this is no guarantee it would not act unreasonably toward a bargaining unit in the future. The proposal to limit County subcontracting to situations only where attrition has occurred does not appear supportable as an administrative policy.

The conclusion here is that the Union offer restricting subcontracting by the County to situations only where attrition has occurred is too limiting when viewed in connection with the economic conditions of the County, hereinafter discussed

X. POSITION CLASSIFICATIONS

The Union offer contains the following offer on classifications.

"In Appendix 'A':

"Add the following classification to the wage schedule effective January 1, 2002 (wage rates expressed at 2001 rate). Increase rates in each year of the life of the agreement upon the across the board percentage>

<u>"Classification</u>	<u>Hire</u>	<u>5 month</u>	<u>12 month</u>
Nurse Scheduler	10.29	10.51	10.97
Dementia Coordinator	9.22	10.51	10.91

In the County offer, the following appears:

"Add to Appendix 'A' (rates prior to general increase for 2002):

<u>"Classification</u>	<u>Hire</u>	<u>5 month</u>	<u>12 month</u>
Medication Certified			
Nursing Assistant	11.62	12.17	12.91
Clerk Typist	9.21	10.51	10.91

No evidence was supplied by either party as to what positions comparable to these two positions in Manitowoc are paid in comparable counties. This leaves the arbitrator to rely on the judgment of Manitowoc County as to what the pay rate differential should be between these positions and CNA.

The conclusion here is that the case for reducing the compensation rate of Dementia Program Coordinator and of Nurse Scheduler to be the same or close to that of CNA has not been made.

XI. GREATEST WEIGHT. There is no condition here involving the necessity of applying the factor of "greatest weight" to either offer. No statutory limitation has been placed on the County offer.

XII. ECONOMIC CONDITIONS AND "GREATER WEIGHT".. Under the foregoing stated provisions of the Statutes, the arbitrator is to give greater weight to the economic conditions in the jurisdiction of the government involved. The County has submitted exhibits relating to this factor. County Exhibit 11, is the Manitowoc County Work Force Profile for 2000. The source of information was the 2000 census. Among the points made in this report were these:

- a. The County's population estimate in 2001 was 83, 244, up 0.4% but less than the state growth at 0.7%. The previous decade showed sluggish growth.
- b. 33.4% of the housing was built prior to 1939. 59% was more than 40 years old.
- c. Manitowoc County has a higher percentage of people 50 years or older than the state or the nation.
- d. A large portion of the work force has retired or is in the more advanced stages of work careers.
- e. Male participation in the work force is about 78% and has declined. Female participation has reached about 60% participation.
- f. The unemployment rate in 2001 was 5.7%, rising from 3.5% in 2000.
- g. Significant growth in employment has occurred in transportation, communication and utilities. There is a loss of jobs in manufacturing.
- h. The third top employer in 2001 was the Newell Operating Company which manufactures "Mirro" utensils. This company in February, 2003 announced closing with a loss of 800 jobs.
- i. The average wage in Manitowoc County in 2000 was \$38,780, 93.1% of the state average.
- j. The total of the workforce population was not given but 42,953 persons were reported as employed in 2000.

k. The per capita personal income for Manitowoc for 2000 was \$35,371 as compared to the Wisconsin per capita of \$28,100.

County Exhibit 9 is a group of documents relating to a referendum in order to exceed the state levy limit to raise \$1,077,151 to help pay for services at the Manitowoc Health Care Center. The amount of \$1,675,349 was required to operate the Center. A referendum was authorized by the County Board on September 26, 2000 and it was defeated in a referendum of November 7, 2000 by 25,024 to 10,000.

Position of the Union. The Union holds that the County has had a growth in income levels which have grown 57% in the last decade which is comparable to what has happened in the state and other counties. Manitowoc employment rates are not out of line with that of other counties where there is manufacturing. The Union notes that in two recent arbitration decisions involving the school district, the arbitrators found that the economic conditions in Manitowoc supported Union claims. The Union notes also that property values in Manitowoc have risen and are a sign of prosperity and ability to pay.

The Union notes that Manitowoc County has an unexpended general fund of \$7.3 which will grow during the year to \$7.5.

The Union is holding that because Manitowoc County has the capacity to meet the Union offer, which in fact is less costly than the County offer, the factor of greater weight need not apply.

The County's Position. The County states that local economic conditions require the arbitrator to give greater weight to the County offer. The County has a low rate of population growth. It has a lower number of taxpayers growth in comparison to state taxpayer growth. It has experienced a dramatic increase in unemployment. It has an older work force and a larger number of people on fixed incomes. The County especially notes that loss of 800 jobs at the Newell company. Therefore the County is under pressure to make sound financial decisions. The Manitowoc household income in dollars terms is lower than that in comparable counties.

Discussion. The matter of economic conditions in Manitowoc County as recited above must be considered in light of the information found in Section VII, foregoing, on costs. From the foregoing listing of evidence, although the County has not argued an inability to meet the cost of the Union offer or to pay for the Union proposal, the economic conditions and budgetary limitation factors, and the projected trend of Intergovernmental Transfers support the County's effort to reduce costs by subcontracting. This is a factor to be given greater weight. Though the County has a general unexpended fund of \$7.2 which could readily cover the results of a Union limitation on subcontracting, nevertheless the statutory requirement placed on the arbitrator to consider the overall economic conditions within the jurisdiction of the County and

give it greater weight must be given that factor, and here that weight accrues to the County offer.

XII. COST OF LIVING. Both parties produced exhibits relating to the cost of living and changes in the consumer price index. County Exhibit 26 reported that between 2001 and 2002 the Midwest urban consumer CPI increased 2.19% and the CPI Inflation Calculator increased 1.60%. The proposed across the board increases by the parties for 2002 and 2003 are at 3%. Union Exhibit 20 shows that the percentages increases for the position of LPN in comparable counties indicates that in six of nine comparable counties the increases were at or very near 3% with the highest increase in one county near 4% and the lowest in one county at 2%. Union Exhibit 21 shows that for the year 2002 for the position of CNA 5 counties were at or near 3% in wage increase, one near 4%, one near 4.5% and one near 5%.

The Union is holding that only the wage increase of 3%, not the projected package cost should be considered here.

Discussion. The tentatively agreed upon settlement of wage increases in Manitowoc County for health care center employees is a comparable one in wage and overall costs as compared to the CPI and the Employer need not have gone higher.

XIII. OTHER FACTORS. No changes during the pendency of these proceedings have been brought to the attention of the arbitrator.

XIV. SUMMARY OF FINDINGS AND CONCLUSIONS..

The following is a summary of findings and conclusions of the arbitrator applying statutory factors for consideration:

1. In immediate cost of offers, the Union offer is less than the County offer in the life of the agreement. If subcontracting however is substantially impeded as a result of the Union provision on management rights, the Union offer will likely be the more costly offer. For this reason weight here is given to the County offer as more likely to be less costly in the future..

2. The major comparables are those of the major counties named in the discussion on comparables foregoing. However neither the Union offer nor the County offer are comparable, and no weight is given to either offer for its superior comparability. In making this decision, the arbitrator has not accepted the Union argument equating silence in an agreement on subcontracting with a specific provision to limit subcontracting.

3. The Union offer is not to be barred because it offers no quid pro quo. An essential interest of the Union in employment of its members is involved and therefore the issue can be

raised without resort to a quid pro quo offer.

4. The Union offer limiting management rights is ambiguous and could lead to disputative interpretation.

5. The County has established a need for seeking to reduce costs through subcontracting because of budget limitations and economic conditions in the County, particularly the loss of 800 positions in one company.

6. Because of the economic conditions in the County, the statutory factor of greater weight accrues to the County, and this is the major determinative factor in favor of the County offer.

7. The County position on the wages of the Dementia Coordinator and Nurse Scheduler, that these positions are requiring skill levels above that of CNA, is supported.

8. The overall wage increase under the settlement agreed to by the parties exceeds the changes in the Consumer Price Index, and the County need not to have gone higher in total compensation..

Thus the following Award:

XV. AWARD. The Agreement between Manitowoc County Health Care Center Employees, Local 1288, AFSCME, AFL-CIO and Manitowoc County for 2002, and 2003 shall contain the final offer of Manitowoc County.

Frank P. Zeidler

FRANK P. ZEIDLER

Arbitrator

Date August 13, 2003

Milwaukee, Wisconsin