

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

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IN THE MATTER OF INTEREST ARBITRATION                      AWARD

between

JACKSON COUNTY  
(PINE VIEW CARE CENTER)

INT/ARB-10601

Case 173

No. 65429

and

[Dec. No. 31897-A]

LOCAL 738, AFSCME, AFL-CIO

Gil Vernon, Arbitrator

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APPEARANCES:

On Behalf of the Employer/County: John J. Prentice, Attorney –  
Petrie and Stocking

On Behalf of the Union: Daniel R. Pfeifer, Staff Representative –  
Council 40, AFSCME

I. BACKGROUND

The matter before the Arbitrator involves the unresolved issues from the Parties' unsuccessful attempt to negotiate a successor labor agreement to cover the period of January 1, 2006 through December 31, 2007. The bargaining unit includes homecare workers and workers at the Pine View Care Center.

The parties' effort to negotiate said labor agreement began sometime in 2005. By December 22, 2005, the Union filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting that the Commission initiate arbitration pursuant to Sec. 111.70(4)(cm)(6) of the Municipal Employment Relations Act. On July 21, 2006, a member of the Commission's staff, conducted an investigation which reflected that the Parties were deadlocked in their negotiations and, by September 26, 2006, the Parties submitted to said investigator their final offers, written positions regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the Commission, and thereupon the investigator notified the Parties that the investigation was closed, and said investigator has advised the Commission that the Parties remain at impasse.

The WERC declared an impasse and ordered the Parties to select an arbitrator on November 6, 2006. The Parties selected the undersigned and his appointment was ordered January 8, 2007.

A hearing was ultimately scheduled and held on May 21, 2007, at which the Parties submitted evidence. Parties reserved the right to file post hearing briefs by July 23, 2007, and reply briefs within 10 days of the receipt of the initial brief. Reply briefs were not filed.

## II. ISSUES AND FINAL OFFERS

The Union's final offer reads as follows:

1. Wages:           Effective 1/1/06 - 2% increase ATB  
                          Effective 1/1/07 - 2% increase ATB
2. Add - Article 19, Section 3:

“Severance Compensation - The Pine View Home Health Employees and the Pine View Care Center Employees (if the Care Center is sold) shall receive full payout of benefits (100% of banked time.) In addition, the Pine View Home Health Employees and the Pine View Care Center Employees (if the Care Center is sold) shall receive a payment of \$100 for each year of service, including a pro-rated amount for partial years of service. This provision applies to any employee who was laid-off and/or had a non-voluntary termination of employment during the term of this collective bargaining agreement.

If the Pine View Care Center is sold, the County will continue to provide health insurance coverage to employees for one (1) full month following the month in which the Care Center employees cease to be employees of Jackson County. During this period of time, the premium contributions of the County and the employee shall remain the same (98% paid by the County and 2% paid by the Employee).”

3. Article 20 - Duration - 1/1/06-12/31/07
4. Provision retroactive to 1/1/06
5. All items not addressed in the Union's Final Offer to remain as in the 2004-2005 collective bargaining agreement between the parties.

The County's final offer reads as follows:

1. **Article 20 (Duration and Execution) is amended to read as:**

This agreement shall be binding and in full force and in effect from January 1, 200~~6~~4 through December 31, 200~~7~~5

2. **The Wage Scales are amended to reflect:**

Effective January 1, 2006, a 2% wage increase across the board  
Effective January 1, 2007, a 2% wage increase across the board

3. **Stipulation off the parties.**
4. **Status quo on the balance of the Agreement.**

The Parties' final offers are identical on wages and duration. Thus, the only issue separating them is the Union's request for a severance pay provision, sick leave payout and one month health insurance in the event the health care facility was sold by the County.

### **III. OPINION**

#### **A. Introduction**

This is an unusual case. The main unresolved issue for the January 1, 2006, to December 31, 2007, contract is a severance pay provision contingent on the sale of the facility.

The provision did not develop out of thin air as prior to negotiations, the County put the facility up for sale. During contract negotiations, it found a buyer. In connection therewith, the County entered into impact bargaining with the Union concerning the decision. The impact bargaining occurred simultaneously with contract negotiations. The County also eliminated its home care services at the end of 2006.

The new owner assumed operation of the facility effective April 1, 2007. There were no provisions in the sale nor was there an ancillary agreement between the new owners and the Union concerning recognition of

the Union. Because all the former employees were offered employment with the new employer (all but two accepted – each retired), Jackson County expected that the new employer would bargain with the Union. If, when and the results of any bargaining was unknown at the time of this hearing.

There are three components to the Union's severance package proposal: (1) a \$100 per year severance payout; (2) a 100% payout of banked "sick time", and; (3) one month of health insurance. The second and third of these components requires some explanation and the first one is relatively straight forward and self explanatory.

Concerning the sick time payout proposal, it must be noted that three years ago prior to the employees being represented by the Union, employees received typical paid leaves in the form of sick leave, vacation and holidays. In 2002, these paid leaves were combined into one category called personal leave time or PLT. For those employees hired prior to January 1, 2003, who at the time of the PLT implementation had sick leave accumulated (the limit was 720 hours), the County allowed them to retain these hours in a separate bank. In a sense, employees or more precisely their sick leave bank was grandfathered. These employees could under certain circumstances use the sick leave for illness. County policy and later the collective bargaining

agreement (CBA) provided that upon retirement these grandfathered employees could cash out up to 35 days or 280 hours of sick leave upon retirement if they had ten years of service. From the point of personal leave time (PLT) implementation forward, all employees received and accumulated PLT.

Even though the County's offer is silent on any leave payouts, it is not disputed pursuant to Article 9 Section 4 the CBA that, as a result of the sale, all employees who had PLT accumulated were paid for that accumulated leave. The only condition on the payout of accumulated PLT is two weeks notice. It is payable for layoffs, retirements or resignations. The maximum accumulation of PLT is 60 days or 480 hours.

The County also modified its eligibility for the payout of accumulated "sick leave" for grandfathered employees. Rather than making it contingent upon 10 years of service and retirement the County paid accumulated sick leave to anyone with ten years or more tenure whose County's employment was separated (in this case by the sale). Of course this would only benefit those with ten years service and who were not eligible for retirement. For those eligible for retirement, who had a "sick leave" bank, who had 10 years and chose to retire would not have been put in a better position. It is not known how many were eligible to retire but it is known there were thirty one

employees with more than 10 years service and that only 2 of 71 employees at Pine View and Home Health did not accept employment with the new owner. An Employer exhibit indicates that two employees retired.

Thus, this leaves only two areas where sick leave was not paid out. The effect of the Union's proposal is to remove the 35 day or 280 hour cap for employees with accumulated sick leave and to pay accumulated sick leave even for those with less than ten years service.

The Union's costing indicates that between PLT payout and the County's sick leave payout the employees, on average, each received \$2778. This totals \$197,235 for 71 employees.

The Employer says its costs were higher when FICA, WRS, etc. were factored in. For instance, just the improved "sick leave" payout to grandfathered employees cost \$70,799 over and above PLT cost.

As noted already, what the Union's proposal does, in effect, is to take the 35 day or 280 hour cap off the "sick leave" payout for grandfathered employees and remove the 10 year qualifying factor. The Union says there are 26 employees affected by this. Of course, the cost of this to the Employer depends on how much "sick leave" the 26 grandfathered employees have. The Union's costing analysis indicates that on average (per employee) their proposal would yield \$2881 for each of the 26 employees.

This calculates to a total of \$59,306. The payments would range from \$0.59 to \$4681. The County's cost analysis says with roll-ups (FICA, WRS, etc.) the additional cost would be a total of \$81,246 for Pine View and \$9957 for Home Health

The Union's \$100 per year bonus (prorated for partial years) would yield payments to employees on average of \$982.25 each or \$69,722 total for 71 employees. The County says the cost to them would be \$96,754 at Pine View and \$29,117 at Home Health.

In terms of the total cost, the Union's analysis shows the cost of the sick leave buyout and the \$100 per year bonus is \$129,028 (\$59,306 and \$69,722). The County says that all totaled the Union's request for 100% payout of sick leave for the 26 employees above 280 hours and \$100 per year for each employee for the whole unit (according to their costing analysis in Exhibit 3) would be:

Pine View

Longevity (\$100/year)	\$ 96,754
Additional sick leave payout	\$ 81,245

Home Health

Longevity (\$100/year)	\$ 29,117
Additional sick leave payout	<u>\$ 9,956</u>

Total	\$217,072
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Regarding health insurance, the Union's proposal for one month of insurance is simple enough on its face. However, since the sale went through, prior to this arbitration, its implementation is complicated. It was particularly complicated because the new owners did not cooperate with the Union or Jackson County in providing either party information prior to the closing as to what, how and when it was going to provide health insurance to former County employees who accepted employment.

Thus, employees, as the April 1 closing date approached, did not know if they would have health insurance with the new Employer. While the evidence indicated employees would have 60 days after their county employment ended to extend (at their own cost) coverage pursuant to the county health plan under 'COBRA'; approximately less than 20 people elected to do so before the closing date and paid premiums for April and then May. Just prior to the arbitration hearing (on May 21, 2007) the new employer let it be known that it was going to provide health insurance retroactive to April 1. This information came at a time that some refunds for May COBRA payments were made to employees. But, since April had passed, no refunds for April COBRA payments could be made. Accordingly, the practical effect of the Union's proposal is to provide refunds for the COBRA payments not already recovered.

B. Arguments of the Parties (Summary)

1. The Union

The Union sees this as an unusual interest arbitration proceeding in that the normal application of the statutory criteria has limited relevance. This is true because: (1) neither party could find a previous interest arbitration case under the applicable statute involving severance benefits, and; (2) because only two agreements in the state could be found that addressed severance benefits in the context of the sale of a county owned health care facility. It was fortuitous that the issue could be addressed at all in interest arbitration and this was because impact negotiations were going on at the same time. The Union questions the relevance of the Employer's evidence regarding the consumer price index, internal settlements, internal data, external comparative data, external source documents and county profiles. They say these are of little value because none of this information is relative to a severance package for the sale of a county nursing home or the stoppage of home health services.

The two negotiated agreements, used as comparables concerning health care facility sales, were in Eau Claire and Sheboygan Counties. Concerning sick leave payout, the Eau Claire agreement provided employees who had less than 20 years of service 50% of accumulated sick leave as a

payout and employees who had 20 or more years of service 75% of accumulated sick leave as a payout. Concerning severance pay the employees of Eau Claire County received \$400 per full year of service with a minimum payment of \$200. In Sheboygan County the relevant part of their agreement, Section 14 (a) reads that there is a full payout of accrued sick leave. The evidence also shows that the Sheboygan County employees could receive a sick leave payout of 960 hours (120 days). In contrast, under the Union's final offer in Jackson County, only 26 employees are affected resulting in an average additional payout of 24.40 days or 195.2 hours. Regarding severance pay the employees of Sheboygan County received \$300 plus \$100 per full year of service.

The Union argues their offer is reasonable because: (1) its severance of \$100 per year is far less than \$400 and \$300 in the aforementioned counties; (2) the sale eliminated the sick leave benefit and eliminated the availability of employees to utilize a benefit each earned over many years, and; (3) the severance payment makes up, in part, for the loss of payments to the Wisconsin Retirement System, which are in excess of 10% of gross income. The new Employer does not offer a guaranteed benefits retirement plan. In addition, private sector employers do not offer health insurance benefits that are as great as those offered in the public sector.

Concerning health insurance, the Union notes that health insurance premiums, in Jackson County, are paid in the current month for the following month. Some employees paid the COBRA premium for April. They were forced into this because of the untenable action of Jackson County left its employees “high and dry” concerning continued health care coverage which is one of the most important benefits. The Union’s request for one month insurance is consistent with the agreement in Sheboygan County. In addition, the Sheboygan County employees did **not** have to pay their share of the premium for the additional month. Thus, the Union is requesting that Jackson County pay each employee, who was participating in the health insurance at the time of the sale or discontinuance of home care services, for one (1) month of the County’s share of the premium.

The Union also addresses the financial aspects of the sale. The sale price was \$4.3 million. They claim that the County’s data showing losses of \$273,494 for 2006 and a \$398,210 loss for the 3 months of 2007 is not clear because the County does not make it known whether these amounts include the ITP/IGT program reimbursements which cover operating losses.

The Union also disagrees with the County’s accounting methodology which involves counting as a liability reimbursements to itself for 2006 and 2007 losses. Another example of this is where the County counts as a

liability for health medical monitors (equipment). However, the Union suggests that if the County is able to be released from the contract and/or able to sell the monitors, the liability will be less or eliminated.

Even if the equipment is fully charged as a liability it still leaves over \$2.4 million dollars available. Moreover, even using the Employer's calculation of the additional cost of the Union's offer at \$39,074 for home health workers and \$177,999 for Pine View employees, the Union does not believe this is too much to ask the County to pay out of the \$2.4 left over from the sale especially considering that the Eau Claire and Sheboygan settlements both exceeded the severance settlement sought herein to help employees recoup the WRS and health insurance losses, not to mention their loss of employment with the County.

Next, they contend it is appropriate to expand the traditional comparable pool to look at Eau Claire and Sheboygan counties. They also look at some private sector severance provisions which are far more than what the Union is asking for. Last, the Union argues that the fatal flaw of the County's final offer is that it offers no severance package.

## 2. The Company

The Employer notes the Union requests a severance compensation package that is above and beyond what the County has already provided and

what is required by the Collective Bargaining Agreement. Consequently, the County argues that selection of the Union's offer here would set a dangerous precedent and constitute an unwarranted windfall to the fully and gainfully employed former employees of Pine View Care Center and Home Health.

The Employer analyzes the offers against the statutory criteria. The Arbitrator must first consider and give greatest weight to state levy limits which places limitations on the revenues that may be collected by a municipal employer. In this case, the evidence shows Jackson County is at its levy limit and has been for many years. In fact, it is the impact of the levy limit upon Jackson County that was the main impetus behind the County's sale of Pine View Care Center. Thus, the County asserts it cannot afford the additional \$217,073.83 required under the Union's offer or levy for the additional revenue. Jackson County is only allowed, under State law, to levy an additional \$208,028 in 2007, which is less than the additional cost of the Union's final offer and has already been spent for general operations.

If the Union argues the County can afford to pay the \$217,073 out of reserves, the County asserts that spending down fund balances runs afoul of Government Accounting Standards Board (GASB) principles and betrays sound public policy. It is elementary that when revenue is permanently

reduced or capped, as here, you must reduce or cap spending. You cannot deplete your savings account when there is no practical way of replacing the money. Additionally, the County has only enough reserve money to operate the county for roughly 3 to 4 months. This is about the amount recommended by GASB and consistent with generally accepted accounting principles. In addition to the levy limits, the state and federal governments continue to cut revenue to municipal employers, including reduction in emergency management money, victim-witness revenue, court costs and reimbursement to counties for virtually every mandated program.

The limits on revenues are aggravated by 12% annual increases in health and dental insurance costs that affects the cost of other services such as highways and law enforcement. This environment is not likely to change.

The next statutory criteria (one which requires the Arbitrator to give greater weight than any of the remaining factors) is economic conditions in the jurisdiction. The County asserts the economic times have been tough in Jackson County. Beginning in the spring of 2004, Jackson County laid off its entire highway department workforce for 3 days. Layoffs in the County's Health and Human Services Department ensued and the entire Courthouse Unit employees were even laid off to save money. Owing to the County's adverse tenuous economic condition, Jackson County employees have

settled for 2% wage increases the last two contract terms while external comparable employers have annually settled at 3% during the same time frame. While Pine View employees were treated the same concerning wages, they are now rolling the dice to get more in addition to the special accommodation with respect to the payout of their accrued sick leave. The County Board already waived the requirement that the employees, to be eligible, had to retire under the Wisconsin Retirement System to receive payment for their unexpended sick leave.

The County also stresses that Pine View Health Care Center has been a constant financial burden to Jackson County. In spite of the fact it was supposed to be an economically self sufficient enterprise. The County had to contribute over \$9.1 million dollars to keep Pine View in operation between 2001 to 2006. This amount does not include the debts incurred for the year 2007 or potential unemployment claims. This is one of the reasons Jackson County did not profit from the sale of Pine View. Of the \$4.3 million proceeds brokers took \$200,000, \$1.7 million went to debt, between \$1.5 and \$2.0 million comprised a loss of assets, and \$671,000 went to cover losses incurred from 2006 to 2007. These liabilities totaled over \$4.5 million meaning the County lost \$271,704 and they have no money to replace the \$9.1 million subsidy.



In terms of other relevant statutory criteria the County contends neither the internal or external comparables support the Union. All the other Jackson County employees are covered by the “PTL” and are not allowed to cash out old “sick leave” accrues unless they have 10 years. To grant the Union’s request to payout all “sick leave” would disturb the internal pattern.

In terms of external comparables three of the traditional comparables have nursing homes (Clark, Vernon and Monroe Counties). They analyze the contract provisions in these facilities noting that only Clark County Health Care Center pays more, e.g., 100% of accrued sick leave, but only after 21 years of uninterrupted service. Even Clark County has a maximum accumulation of 110 days for 5-9 years of service. The payout is 25% of sick leave, 50% for 10-15% and 75% for 16-20 years. Monroe has a maximum accumulation of 130 days and a 25% cap on payouts and Vernon County has a maximum accumulation of 96 days and a 25% cap.

The County notes that the Union did not submit any data concerning traditional comparables. Regarding Eau Claire and Sheboygan counties, they bear, in the County’s estimation, little resemblance to Jackson County. They are more populated, more industrial and wealthier. Nor was there any information about the sale. For instance, concerning the sale of the facility in Eau Claire County, it appears to the Employer that the Parties negotiated a

severance package and the cost was implicitly added to the sale price.

Further, there is no indication of how many, if any, of the employees here rehired by the successor entities. The County terms the Union's reliance in private sector severance agreement as "ridiculous."

Last, concerning health insurance, the County contends that the Union's offer is defective and can not be selected. The Union's final offer requires the County to extend health insurance coverage to employees for an additional month following their separation of employment. This can no longer be accomplished and, therefore, the Union's offer is defective and cannot be chosen.

C. Discussion

This case is a good example of why total package rather than issue-by-issue arbitration can be frustrating. The Union's request for a \$100 per year severance payment is not unreasonable, particularly considering what was done (much higher amounts) in Sheboygan and Eau Claire counties; this is the only guidance on this point in the record concerning other employers. And it is true that the fact the Employer doesn't have a corresponding severance payment proposal does weigh against them.

It is however, the state of the law that the preference for the Union's offset on this issue must be weighed against the other two issues. Of these,

the sick leave payout is by far the most important because the health insurance issue is not only a much smaller amount, the impact is limited to the reimbursement of those couple handfuls of people who made a COBRA payment before the new Employer announced it intended to pay insurance effective April 1 and before it was necessary to make a COBRA payment in order to have continuous coverage. The evidence indicates COBRA can be invoked with 60-day retroactivity.

The Union's sick leave payout proposal is a problem. It is expensive and, in the final analysis, it is an issue that stands or could have stood completely separate from the sale. Sick leave payouts are commonly addressed in labor contracts. If the contractual provision limiting sick leave payout for grandfathered employees to 35 days or 270 hours is unreasonable and/or inadequate, this could have been addressed in earlier bargaining or been argued, in this case, based on traditional comparables.

When analyzing whether the sick leave payout provisions of the contract are adequate it absolutely must be considered that Jackson County is in a unique position in that after January 1, 2003, PLT was in effect and that under PLT employees can accrue 60 days or 480 hours and get 100% when they leave. This applied to grandfathered employees too.

This unique and significant benefit cannot be lost sight of when making comparisons to other employees since they only have traditional sick leave, vacation, and holiday provisions. So, an apples to apples comparison is difficult. Under the revised County policy grandfathered employees with ten years of service did not have to retire to get the payout. In Monroe County, sick leave payout is still contingent on retirement or disability and is limited to 32 days which is 25% of the maximum accumulation of 130 days. It is hard to say Jackson County provisions are relatively unfair. Employees in Clark County have a little better system limited to just grandfathered sick leave; but again, with respect to overall payouts, Jackson County fairs better since PLT is a 100% payout.

The other problem with the Union's sick leave payout provision is not only are Jackson County employees not disadvantaged on this score set apart from the severance issue, the Union's provision only benefits a minority of workers (26 of 71.) In contrast, their severance proposal benefits everyone on a prorated basis. The additional sick leave payout beyond the \$70,000 improvement the County made is nearly as expensive (approximately \$90,000 as the longevity or \$100 per year bonus \$122,000).

The lack of comparable support for the sick leave payout makes it difficult for the Arbitrator to impose it. The expense also makes it difficult

to award and when it is considered that it significantly benefits only a fraction of the unit, it is even more difficult.

So, the positive preference for the Union's \$100 per year severance payment for everyone is countered by the impact, lack of comparable support, and selectivity (in general unreasonableness) of its sick leave proposal.

This must also be considered along with the fact that--even though the Employer's offer is silent on sick leave payout--the current contract and the Employer's changed policy resulted in significant payments to employees. Between the 100% PLT payout and the liberalized qualifying criteria for grandfathered sick leave payout, employees received a payment, on average, of \$2777.96. The cost to the Employer's pocketbook was much greater. Approximately twelve employees received payments exceeding \$6000 with the highest being \$9457. Approximately twenty-two employees received payments exceeding \$4000. Thirty-six (roughly half the unit) employees received payments exceeding \$2000 and the median payment was \$1924.21.

Indeed, the entire sets of circumstances are unfortunate. These circumstances include the fact that some grandfathered people lost accumulated sick leave, that continued employment with the new employer may not be on as favorable terms, that the county subsidized the facility to

the tune of \$9 million dollars, and that the sale made up for none of it.

However, the provisions of the current contract and County improvement gave employees relatively reasonable and acceptable cash payments to assist in a difficult transition.

**AWARD**

The County's final offer is accepted.

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Gil Vernon, Arbitrator

Dated this 5th day of November, 2007.