In the Matter of the Petition of

LOCAL 342, AFSCME, COUNCIL 40,
AFL-CIO

Case 253
No. 67599
INT/ARB – 11068
Decision No. 32414-A

To Initiate Interest Arbitration
Between the Petitioner and

LINCOLN COUNTY (PINECREST NURSING HOME)

APPEARANCES:

Mr. John Mulder, Administrative Coordinator, appearing on behalf of the County

Mr. John Spieglhoff, Staff Representative, AFSCME Council 40, appearing on behalf of the Union

ARBITRATION AWARD

Lincoln County, hereinafter the County or Employer, and Local 342, AFSCME, AFL-CIO, hereinafter the Union, reached impasse in their bargaining for the 2008 – 2009 collective bargaining agreement. The Union filed the subject interest arbitration petition on December 26, 2007. The Wisconsin Employment Relations Commission's staff investigator conducted an investigation of the petition on February 18, 2008 and by April 1, 2008 the parties had submitted their final offers to the investigator. The Commission, on April 25, 2008, certified their impasse/final offers and provided them with a panel of ad hoc arbitrators from which they selected the undersigned to hear and resolve their bargaining impasse. A hearing in the captioned matter was held on July 23, 2008, in Merrill, Wisconsin. The parties submitted post-hearing briefs and reply briefs that were received by October 2, 2008.

BACKGROUND:

This dispute is concerned with the terms of the parties' 2008-2009 collective bargaining agreement in the bargaining unit of

> "all regular full-time and regular part-time employees in the employ of the Employer, who are employed as housekeeping personnel, dietary personnel, maintenance personnel, certified nursing assistants, central supply personnel, recreation aides, medication aides, but excluding department heads/supervisors, professional, confidential, and office personnel, registered nurses, licensed practical nurses, and student trainees."

Both parties made proposals regarding health insurance and because their final offers regarding changes to the health insurance program matched those proposed health insurance change(s) are not in dispute. The final offer items that remain in dispute pertain to wages for calendar years 2008 and 2009, the Union's proposal to increase the number of employee personal holidays from 1 to 2 each year, and the Employer's proposal to amend Article 27.8 of the parties' 2006-2007 collective bargaining agreement relating to advanced placement on the wage schedule because of prior experience in another nursing home or hospital. Also, because the parties have never before submitted an interest dispute to arbitration in this bargaining unit they are not in agreement as to which other Wisconsin counties constitute an appropriate external comparable group.

There are approximately 112 employees in the Pinecrest Nursing Home bargaining unit, which represent 36.96% of the County's unionized workforce. The majority of the employees in this bargaining unit (approximately 83) are classified as Certified Nursing Assistant (CNA), and thus, the parties have treated that classification as the benchmark classification for purposes of wage comparisons.

FINAL OFFERS ON THE ISSUES IN DISPUTE:

County's Final Offer:

1. Wages 1/1/08 2.5% on all rates
   1/1/09 2.5% on all rates

2. Article 27.8 in the last sentence of the first paragraph delete "20 year" and replace it with "25 year" (step on the wage schedule).

Union's Final Offer:

1. Wages 1/1/08 2% Across the Board
7/1/08 1% Across the Board

1/1/09 1.5% Across the Board
7/1/09 1.5% Across the Board

2. Article XI – Holidays in the second paragraph, delete "one (1)" and replace with "two (2)" (additional days each year as floating holidays).

DISCUSSION:

In determining which offer to select the arbitrator is required to apply the following statutory criteria established for the evaluation of the parties final offers.

Section 111.70(4)(cm)

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 the following factors:

a. The lawful authority of the municipal Employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

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

e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost of living.

h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact–finding, arbitration or otherwise between the parties, in the public service or in private employment.

The parties are in agreement that neither the "greatest" or "greater" weight factors are not controlling in this case.

The first issue that must be resolved is what is the appropriate set of external comparables to be utilized in resolving this dispute. The parties agree that Clark, Portage, Rusk, Shawano, Waupaca, and Wood (Edgewater) counties should be included in the public sector external comparable pool. The Employer argues that Marathon County (North Central Health Care) should also be included, but that the pool should not include Dunn, St. Croix and Wood (Norwood) as the Union has proposed. The Union on the other hand argues that Marathon County (North Central Health Care) should not be included because the collective bargaining representative for that nursing home in Marathon County was recently decertified, and thus, that bargaining unit's inclusion is no longer appropriate inasmuch as the employees are now unrepresented.

The Union's contention that Marathon County (North Central Health Care) should be excluded from inclusion in the pool of external comparables is footed solely upon the recent decertification of that bargaining unit's collective bargaining representative.[1] It

[1] The WERC issued its Certification of Results of Election on March 20, 2008.

cites prior interest arbitration awards wherein arbitrators have concluded that non-represented employees are not suitable for purposes of comparison with represented employees. However, the City argues that this is a unique situation in that prior to its decertification the Union bargained the contract for Marathon County (North Central Health Care) nursing home employees, and although it is no longer the representative for those employees their 2008-2009 contract resulted from collective bargaining and was not unilaterally imposed.

The undersigned has previously written that he subscribes to the idea that comparing the wages, hours and conditions of employment of unrepresented employees performing the same work with those of represented employees in the same or similar positions who also have interest arbitration available to them is clearly not as instructive as a comparison with other represented employees operating in the same collective bargaining environment. That is not to say that they will not be considered, but not much weight will be accorded such evidence. However, the situation presented by Marathon County (North Central Health Care) is highly unusual. Marathon County borders Lincoln County to the south and has been used as a comparable in interest arbitration proceedings involving other of the County's bargaining units. It also is the only contiguous county with a county owned and operated nursing home. There would be no dispute concerning its appropriateness in this matter but for the Union's decertification. However, in the undersigned's opinion, because the certified union representative negotiated the 2008-2009 collective bargaining agreement prior to its decertification that agreement was collectively bargained under the same bargaining law applicable to this bargaining unit. Therefore, it should receive the same consideration as it would have received had the Union not been decertified, and the same consideration as the other agreed upon external comparable group contracts.

The Union has proposed, and the County has objected to, the inclusion of St. Croix and Dunn counties in the pool of appropriate public sector comparables. The County's opposition stems from the distance separating those counties from itself, that both counties are impacted by the Minneapolis – St. Paul labor market which is close to both counties, as well as the differences in the financials of those counties as compared with itself. If there was a paucity of county owned and operated nursing homes with

which to compare the undersigned might be more open to casting a wider net in arriving at a representative pool of external comparables, but that is not the case. The parties agree upon six (6) other counties and the inclusion of Marathon County (North Central Health Care) brings that number to seven. And, as the County has argued, due to the close proximity of the Minneapolis – St. Paul metro area certainly to the St. Croix County seat Hudson, 18 miles away, and even Dunn County, 61 miles away, the wages hours and conditions of employment are necessarily significantly influenced by the large metro labor market. Indeed, it is not unreasonable to conclude that Hudson and St. Croix County are part of the Minneapolis – St. Paul metro area. Furthermore, the financial data for St. Croix County as well, as argued by the County, certainly distinguishes it from consideration as being considered comparable to Lincoln County. And, Dunn County is also, albeit presumably less so than St. Croix, influenced by it proximity to the Minneapolis – St. Paul metro area labor market. The benchmark position is Certified Nursing Assistant, not a high level position in terms of wage rate and with the increased costs associated with commuting it may well be that the labor market area for recruitment of individuals for this position is necessarily not far removed from Merrill Wisconsin. Therefore, even though some of the agreed upon comparables may not truly fall within the County's geographical labor market for a CNA, all of those counties are contiguous to counties that are contiguous to Lincoln County. Thus, the undersigned is not persuaded St. Croix and Dunn counties should be included in the pool of appropriate external comparables.

The County has also argued that the Wood County (Norwood) home should not be considered an appropriate external comparable. It argues that the Norwood facility should not be considered as a comparable because it provides services to individuals with developmental disabilities and is not a nursing home. The Union argues that even though there are no CNA's employed at Norwood it does utilize other job classifications that are also utilized by the County at it Pinecrest facility – dietary, housekeeping, cooks, recreation and medication technician – and because the two facilities have common classifications Norwood should be considered an appropriate comparable. I concur with the Union's assessment. There are classifications that are common to both facilities and Norwood is operated by Wood County, which is contiguous to Marathon County.

Furthermore, the County has agreed to the inclusion of Wood County's Edgewater facility and merely because the Norwood facility does not employ CNA's, in the undersigned's opinion, is not a basis for excluding it from the pool of appropriate external comparables.

The Union also argues that the private sector comparables advanced by the County should be rejected because in the past arbitrators have not found private sector employees comparable to public sector employees and also in this case the data provided by the County regarding private sector employers was not supported by source documents. The Pins Crest Administrator testified that the data presented was obtained from telephone calls to the homes' administrators and the Union objected to the testimony because of a lack of source documentation for his testimony. Subsequent to the hearing the County produced some additional data but, again, it was not a contract, handbook or other source documentation for the data, nor was there any evidence concerning whether the employees of these private sector homes were represented and the contracts collectively bargained. The County argues that while the private sector employees do not bargain under the same conditions as its employees nonetheless the law requires they be considered as a factor. Further, the County argues that the private employer's it has selected are all within the County's labor market and compete for the same employees and are indirectly impacted by the binding arbitration law.

While I agree the section 111.70(4)(cm)7r.f. Wis. Stats. Provides for comparison of private sector wages.

> f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

However, in the case, as the Union has argued, the data supplied by the County regarding the private sector comparable wage rates was obtained orally by the Pinecrest Administrator. Subsequent to the hearing the County submitted a double sided page of information in support of the Administrator's testimony. The Union objected to admission of this supplemental information in the record arguing one was a copy of a page taken out of an other document and the other document was a typed statement confirming the information that was allegedly provided to the Administrator earlier. I

ruled that supporting documentation produced was of questionable authenticity with little, if any, probative value, but admissible. Clearly, the data's reliability is questionable at best because the individual's who supplied the data were not made available for cross-examination nor were any other source documents supplied from which the data could be verified. Consequently, the undersigned is persuaded it should not receive any weight in this proceeding.

WAGES:

The primary issue in dispute is the amount of the across the board wage (ATB) increase to be awarded for calendar years 2008 and 2009. The County's final offer is for a 2.5% increase to all rates effective January 1, 2008 and another 2.5% on all rates on January 1, 2009. The Union's final offer calls for a first year increase of 2.5% across the board (ATB) on January 1, 2008 and another 1% ATB on July 1, 2008, while in the second year the Union's final offer is for a 1.5% ATB increase effective January 1, 2009 and an additional 1.5% ATB increase on July 1, 2009. Thus, the Union's offer costs ½% more than the County's offer in the first year of the contract, but the Union's second year offer costs ¼% less than the County's offer in the second year. The Union's final offer also generates a wage lift for the first year of 1% more than the County's first year wage offer and the Union's second year wage offer generates a ½% more in wage lift than the County's final offer for the second year.

The Union argues that its final offer is supported by both the County's internal settlement pattern as well as settlements among the external public sector comparables. It asserts that a consistent internal settlement pattern exists for ATB wage increases for 2008 and 2009, which strongly supports the Union's final offer in this case. Of the six other represented units the Courthouse, Highway, Social Service Non-Professionals, and Sheriff Department have all settled at the same ATB percentage increase in wages for 2008 and 2009 as the Union's final offer. There is no settlement in the Social Services Professional bargaining unit and the County's Developmental Disability bargaining unit is in interest arbitration, but wages are not in dispute as the County offered the same ATB wage increases as it settled for with the other five bargaining units. Regarding the internal settlement pattern in past years, the Union contends that Pinecrest has received the same ATB increase as the other represented bargaining units in the last four years.

And, it notes that in 1999 Pinecrest employees received a 3% ATB increase, as did 3 of the 5 other represented units. It asserts that since 1998 there has never been a year when Pinecrest employees received a smaller increase than the other internal units. It argues that now the County wants to treat Pinecrest employees differently without a valid reason. It avers that the County's contention that the difference in its wage offer from what it settled for with other units is arguably because of its reliance upon Medical Assistance in funding the Pinecrest operation, yet it has never made such an argument before in collective bargaining. The Union's response is that Medicare reimbursement is not the sole funding source for Pinecrest and that the County has made a public policy decision to maintain and operate a nursing home. It argues further that there is no correlation between the percentage changes in the County's Medicare funding reimbursement since 2001 and the percentage increase to wage rates it has negotiated with its employees during those years. The Union also contends that contrary to the County's assertion it is not a wage leader among the external comparables in the CNA classification and in fact is significantly below the comparables for the employee's first 25 years of employment.

The County argues that its final offer on wages is supported by the external comparables. It asserts that the CNA is the benchmark classification and that the average CNA rate in both the public and private sector is a dollar an hour below its rate at Pinecrest, and $0.57/hour or 4.39% above the average of the public sector comparables. ($12.96 vs $13.53 on 1/1/08) And, it asserts that while the Union has presented data showing the percentage of the ATB wage increases among the public sector comparables there also is arbitral support for the proposition that it is more important to look at the actual wage rates being paid than the percentage increases being generated. The County also states that the Union attempted to blend the wage rate and longevity pay together, and when not doing so it can be seen that County's employees fare better than employees of the other comparable counties in terms of wage rate when that is not done. The County also argues that the interests and welfare of the public dictate selection of its final offer. It asserts that Pinecrest's financial situation does not support adopting the Union's final offer, because its funding sources are not keeping up with expenses. It states that Pinecrest has been historically supported by the tax levy and the amount contributed to

Pinecrest from the tax levy has grown 445% from 2000 through 2008, or an average of 56% each year, yet its tax levy has only increased 28% in that time. And, it claims that medical assistance funding has not kept pace and grew by only 22.74% over the same period while expenses increased over 43% or $3,052,904. It argues the arbitrator must take into account the trend of double digit tax increases for Pinecrest while the County's overall levy is limited to 2%. And, contrary to the Union's argument and data Pinecrest's financial picture is bleaker than the Union portrays. Also, it argues that even though the County is not making an ability to pay argument it does not follow that merely because it may have the ability to pay the Union's offer should be selected.

The Union's first year wage offer results in $0.07/hour wage lift more for CNA's than the County's final offer. ($13.53/hour vs $13.60/hour at the 120 mos.- step) and its second year offer would result in CNA's earning $.014/hour more on July 1, 2009 than they would under the County's final offer. ($13.87/hour vs $14.01/hour at the 120 mos. step) However, the cost difference between each of the two wage offers in the each year is negligible because the Union's offer delays implementation of a portion of it proposed increase by six months in each year. But, the additional $0.07/hour lift in the first year of the contract will generate its full cost to the County in the second year over what its final offer would cost.

Comparing the wage rates that will result for the CNA under either party's offer when compared with the wage rates of the external public sector comparables shows that neither offer will give Pinecrest the highest wage rate for a CNA with or without longevity included.[2] Clark County will continue to have the highest CNA wage rate including or excluding longevity, as it did at the end of 2007. ($13.53 vs $13.47)[3] Pinecrest's CNA wage rate will also be $0.07/hour less than Clark County at the end of 2008 if the Union's offer is selected and $0.14/hour less if the County's offer is selected when longevity is included. ($13.94 vs $13.87 Union or $13.80 Employer)[4] And, at the end of 2009 it will be $0.09/hour less if the Union's offer is selected and $0.22/hour less under the County's offer, again with longevity included. Pinecrest's CNA wage rate

[2] The rates quoted are for the schedule maximum in the other counties and the 120 month step on the Lincoln County schedule, which is longer than it takes to get to the schedule maximum in any of the other counties e.g. ranges from 6 months in Waupaca to 84 months in Rusk.
[3] The comparison excludes Wood County (Norwood), which does not have a CNA classification.

ranked 2nd among the external comparables, $0.01/hour more than Portage County at the end of 2007 with longevity included, but ranked 5th out of 6 when longevity is not included. Pinecrest will still be ranked 2nd at the end of 2008 if the Union's final offer is selected, but would drop to 3rd if the County's offer were selected if longevity is included. If longevity is excluded Lincoln would rank 6th of 6 in 2008 regardless which offer is selected. Portage County is not settled for 2009 so a ranking comparison is not possible in that case and there are only two reported settlements among the external comparables for 2009.

Examination of the wage settlements among the external comparables in terms of percentage increase to wages shows that Clark, Portage, Shawano, and Waupaca Counties all granted a wage increase of 3% lift to its nursing home bargaining units in 2008. Rusk County granted a 4% wage lift, whereas Wood County granted a 6% wage lift in 2008 at its Norwood facility and a 2% wage lift at its Edgewater facility. The predominant percentage increase among the comparables was at least a 3% ATB wage lift.

Thus, the undersigned is persuaded after comparing the County's CNA wage rates with the rates among the external comparables and comparing the percentage increases granted by the external comparables for 2008 with the parties' final offers the Union's offer is the more reasonable. There is insufficient data for 2009 to enable any comparison with the external comparables or a discussion of whose offer would be supported by the external comparables.

While the bargaining history certainly supports the County's contention that Pinecrest's contract terms and settlements have not moved in lock step with other County bargaining units, it is not axiomatic that, therefore, the County's internal settlement pattern should be ignored and its final offer that deviates from that pattern be selected. Analysis and justification of such an offer must be provided in support of the deviation from a clear and established internal settlement pattern if it is to be selected. The undersigned has stated in prior decisions that an employer's ability to negotiate to a successful voluntary agreement with other unions the terms that it proposes in arbitration is a factor to be accorded significant weight, if not controlling weight, absent some

[4] Union Exhibit # 8c.

unusual circumstance surrounding such an agreement(s) that diminishes it persuasive value. The tables are turned in this case inasmuch as it is the Union that is arguing that an internal settlement pattern has been established and the Employer is arguing that it should not be bound by the pattern it has bargained with a majority of its other represented bargaining units. Under such circumstances, in order for its offer to be selected it must persuasively establish that there is/are substantial reason(s) to deviate from the established internal pattern.

In 1998 the Sheriff and Highway Departments each received a 3.25 ATB wage increase whereas Pinecrest and Courthouse received a 3% ATB. Three other units received 2.9%, 2.8%, and 2.75% ATB wage increases respectively. In 1999 Pinecrest and three other of the County's bargaining units received 3% ATB wage increases, one unit received a 3.25% increase, one unit received a 2.9% increase and the remaining unit received a 2.8% increase. In 2000 all 6 of the other bargaining units received a 3% ATB wage increase and the Sheriff's Department Deputies also received an additional $0.10/hour adjustment, while the Pinecrest employees, other than CNA's received a 3.25% ATB, and CNA's received a 4.75% ATB. In 2001 all bargaining units except Deputies and Pinecrest received a 3% ATB wage increase. Deputies at the 96 month step received a 2.26% increase and those at the 120 month step received a 4.71% increase. At Pinecrest in 2001 the County negotiated the same increases that it had granted in 2000 (3.25% and 4.75%). In 2002 all bargaining units except Pinecrest received 2% ATB increases on January 1st and four units received an additional 1% ATB on July 1st and two units received and additional 1.5% on July 1st. Pinecrest employees in 2002 received a 3% ATB wage increase on January 1st. In 2003 four bargaining units received a 3% ATB wage increase, two other two units received a 2.25% ATB wage increase and Pinecrest employees were granted a 2.75% ATB wage increase. In 2004, 2005, all County bargaining units received a 3% ATB wage increase. In 2006 and 2007 the Developmental Disabilities bargaining unit received a 2.75% ATB wage increase and all other bargaining units including Pinecrest received a 3% ATB wage increase.

For 2008 and 2009 the County has reached agreement on wages with all of its bargaining units except Pinecrest and Social Services Professionals, which is unsettled and apparently not in arbitration at the time of hearing in this matter. The agreements

reached are all at the same percentage ATB wage increases as the Union's final offer. That means that the County has reached settlement on wages covering 174 of its 185 other represented employees covered by the subject bargaining law, or in other words 94% of its remaining represented employees. So clearly, there is an established internal settlement pattern for the ATB wage increases in 2008 and 2009 covering almost all of the other represented employees.

The County argues that because the agreements it has bargained in the past with Pinecrest employees have not moved in lock step with its negotiated settlements with its other represented units in both wages and fringe benefits this justifies ignoring the internal wage pattern it has established for 2008 and 2009. However, no evidence was to adduced to explain the reasons for the past deviations, which in some cases were larger that other units received and in other case were less. There obviously were reasons underlying why those settlements were reached, but they are not in this record. It would be naïve to assume that the settlements reached were arbitrarily arrived at without regard to the external and internal settlements of that time. Clearly, as I have stated before, if there is a persuasive reason to deviate from an unambiguous established internal pattern it would support selection of such an offer over the internal pattern. The rationale holds true whether it be the union or the employer that wishes to go outside the pattern. Who advocates doing so must establish a persuasive reason(s) for doing so. That same standard is applicable in this case.

There is record evidence of the medical assistance reimbursement rates and changes thereto dating back to 2000. That evidence shows that it increased in every year since 2000 except in 2005 and 2007 when it declined. The evidence also establishes that at Pinecrest in 2007, 88.33% of the residents were classified as medical assistance residents, and in 2000 83.94% were so classified. In 2006 the statewide average was 68.60%, but there is no data regarding the statewide average in 2007. When one compares the wage settlements at Pinecrest with the change in medical assistance received from year to year dating back to 2000 there is no apparent correlation. In 2005, the first year the reimbursement declined since 2000, Pinecrest employees received the same ATB wage increase as all of the other represented bargaining units. The same was true in 2007, the next year the rate declined, when Pinecrest employees received the same

3% ATB wage increase as every unit except the Developmental Disabilities unit. Also, there is no record evidence establishing that Pinecrest's experience in this regard differs from its external comparables or that the financial stresses that it has and is experiencing differ from its external comparables. A record would need to be made establishing what was occurring among the external comparables regarding reimbursement rates and financial stresses that differentiated Pinecrest to make a persuasive case that the interests and welfare of the public support adoption of its final offer. That was not done in this case.

Also, examination of the CPI supports selection of the Union's final offer on wages. All of the CPI-U and CPI-W averages (National, Midwest size B/C, and Midwest size D) exceeded 4% in 2007 and 5% in 2008, whereas the Union's final offer results in 3% wage lift in each year.

FLOATING HOLIDAY:

The Union's final offer also contains a proposal to add one floating holiday starting in 2008 in addition to the one employees already receive. The County proposes to maintain the *status quo* regarding employees' entitlement to contractual holidays and leaves the total number at 9.

The Union argues that its proposal for an additional floating holiday is supported by the both the internal and external comparables, and Pinecrest employees are merely seeking to be treated consistently with other County bargaining units. It also argues that any cost associated with the additional holiday are de minimus because there are ample part-time employees available to cover for the absence. It also asserts that there are other County employees working in a 24/7 environment like those at Pinecrest and they have 10 paid holidays, none of which are personal holidays that can be spread throughout the year. The County argues that the other bargaining units' 10 holidays resulted from the give and take of collective bargaining and the Union's proposal fails the test for justifying movement away from the status quo because it has not established any need for an additional holiday, has not offered any *quid pro quo* for this increased benefit, and ignores the cost attached to granting an additional holiday, albeit a personal holiday,

because the County will have to cover for the absent employee at a cost of $23,554 during the term of the contract.

The evidence is that all of the other 6 represented units receive 10 paid holidays with none having receiving any floating holidays. Pinecrest has received 9 paid holidays dating back at least to 1980. Among the external comparables four receive 10 paid holidays, two receive 11 paid holidays, and one has nine paid holidays. Thus, both the internal and external comparables support adoption of the Union's final offer on holidays. But, contrary to the Union's assertion there will be a cost to the County for the additional holiday if it is operationally required to replace the employee when taking his/her personal holiday. So obviously cost is a consideration.

The County also believes that because the Union is proposing a change to the *status quo* it is required to propose a *quid pro quo* and the Union has not done so in this case. The undersigned is not persuaded that under the circumstances present in this case where all of the internal comparables already receive 10 paid holidays and all but one of the external comparables have at least 10 paid holidays a *quid pro quo* is necessary. As both arbitrators Yaffe and arbitrator Weisberger concluded, the concept of a *quid pro quo* is

> "applicable where a Union seeks exceptional or unusual benefits or where an employer seeks concessions from its employees in the form of take backs. It does not apply where, as here, an Association is simply asking that employees be brought into the comparable mainstream." Bristol School district No. 1, Dec. No. 27580-A, Weisberger, 10/30/93

Consequently, I am persuaded, as they were, that because the Union's offer is reasonable and supported by both the external and internal comparables it selection is preferable to the County's offer, which maintains the existing 9 paid holidays.

ARTICLE 27.8:

The County has proposed modifying Article 27.8 to provide that employees must have 25 years experience with Pinecrest to be eligible to be placed at step 25, the top step on the wage schedule. Neither party argued this proposal in their brief, and no evidence was adduced in support of the proposal. If, as I assume, the reason for the proposed

change is because at one time 20 years was the top step on the wage schedule and when the 25 year step was added this language was inadvertently not modified to be consistent with the parties intent at the time, then the change should be made to fulfill the parties intent. If, on the other hand, my assumption is incorrect then the parties will have to attempt to resolve the matter in future bargains.

In any case, regardless of which party's final offer was the preferred on this issue, it is not so significant that it would alter the outcome in this case,.

Therefore, based upon the evidence, testimony, arguments, and application of the statutory criteria contained in Section 111.70(7)r. Wis. Stats. to the facts of this dispute the undersigned enters the following

AWARD

That the Union's final offer is selected along with any tentative agreements of the parties and shall be incorporated into the parties' 2008-2009 collective bargaining agreement.

Entered this 2nd day of December 2008.

Thomas L. Yaeger
Arbitrator