ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between GREEN COUNTY PLEASANT VIEW NURSING HOME And WISCONSIN COUNCIL OF COUNTY AND MUNICIPAL EMPLOYEES, LOCAL UNION NO. 1162, AFSCME, AFL-CIO	Interest Arbitration Case XLIX No. 25269 MED/ARB-532 Decision No.17775-A

Impartial Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, Wisconsin 53185

Hearings Held

May 29, 1980
June 10, 1980
Green County Courthouse
Monroe, Wisconsin

Persons Present

For the Employer

MELLI, SHIELS, WALKER & PEASE, S.C.
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For the Union

Mr. Darold O. Lowe
District Representative
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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between Green County (Pleasant View Nursing Home) and Local Union #1162 of the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO.

The parties' prior labor agreement was scheduled to expire on December 31, 1979. After independent preliminary negotiations between the parties had failed to result in a new agreement, the Union filed a petition with the Wisconsin Employment Relations Commission on October 10, 1979, alleging the existence of an impasse, and requesting statutory mediation-arbitration of the matter. The matter was assigned for investigation to a Commission staff member, and after the Investigator's initial meetings with the parties, a tentative contract renewal agreement was reached; the agreement was thereafter rejected by the union membership in a ratification vote.

On April 25, 1980, the Commission issued the appropriate findings of fact, conclusions of law, certification of the results of investigation and an order requiring mediation-arbitration of the matter. On May 5, 1980, the Commission issued an order appointing the undersigned to act as mediator-arbitrator, pursuant to the provisions of Section 111.70(4)(cm)6 of the Wisconsin Statutes.

Preliminary mediation took place between representatives of the parties and the Mediator-Arbitrator on May 29, 1980, at which time the matter remained at impasse. On the same date, the undersigned determined that a reasonable period of mediation had taken place, and that it was appropriate to proceed to final and binding arbitration of the dispute; appropriate written notification of these determinations was supplied to both parties and to the Commission.

The interest arbitration hearing took place on June 10, 1980, at which time both parties received a full opportunity to present evidence and argument in support of their respective positions. Following the receipt of the transcript of the mediation-arbitration proceedings, both parties submitted post-hearing briefs, after which the hearing was closed by the Arbitrator on August 11, 1980.

THE FINAL OFFERS OF THE PARTIES

The impasse items before the Arbitrator in this proceeding include disputes relative to wages, group insurance, holiday pay eligibility, sick leave eligibility and a fair share agreement.

In connection with the wages dispute the parties' offers are as follows:

(1) The Union proposes general wage increases totaling forty-five cents per hour for each year of the proposed two year agreement;

(2) The Employer proposes general wage increases totaling 3 percent plus twenty-five cents per hour in the first year and an additional 3 percent plus thirty-five cents per hour in the second year of the projected two year agreement. (The Employer proposal would provide average increases of thirty-six cents per hour and forty-seven cents per hour for the two year agreement.)

In connection with the group insurance dispute, the positions of the parties are as follows:

(1) The Union proposes that the Employer pay the full cost of medical and hospitalization insurance premiums for both family coverage and for single employee coverage;

(2) The Employer proposed that it pay 90% of the premium costs for family coverage, and 100% of the premium costs for single employees.

In connection with the sick leave eligibility dispute, the parties' positions are as follows:

(1) The Employer proposes that those employees with less than twelve days of accumulated sick leave, would not receive sick leave allowances unless they presented medical verification of any claimed illness;

(2) The Union proposes no changes in present sick leave eligibility requirements.

In connection with the holiday pay eligibility dispute, the parties' final offers are as follows:

(1) The Employer proposes that an employee's eligibility for holiday pay be dependent upon his or her working the holiday, and/or working the last scheduled working day before and the first scheduled working day after the holiday; the working requirements would be excused in the event of proven illness or a mutually agreed upon absence;

(2) The Union proposes the continuation of the past holiday pay eligibility requirements which require work only on either the day before or the day after the holiday in question.

The positions of the parties in connection with the fair share agreement dispute are as follows:

(1) The Employer agrees to the introduction of a fair share agreement into the labor agreement with an effective date of the first of the month following a WERC conducted referendum to determine the wishes of the employees in the bargaining unit;

(2) The Union proposes the introduction of a fair share agreement into the collective agreement, without a preliminary vote, and with an effective date of January 1, 1981.

THE STATUTES

The merits of the dispute are governed by the provisions of the Wisconsin Statutes, which in Section 111.70(4)(cm)7 direct the Mediator-Arbitrator to 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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.
e) The average consumer prices for goods and services, commonly known as the cost-of-living.
f) The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, and continuity and stability of employment, and all other benefits received.
g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
h) 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 POSITION OF THE EMPLOYER

In support of its contention that its final wage increase offer was the more appropriate of the two positions before the Impartial Arbitrator, the Employer presented a variety of arguments.

(1) It pointed out that its final wage offer was identical to that contained in the rejected tentative agreement, also pointing out that it had increased its final offer in the mediation that preceded the tentative agreement.

It suggests that the Union's refusal to stay with the tentative settlement on wages, and its coming back, "risk free", for a possible additional increase will tend to undermine the interest arbitration process.

(2) It emphasized the importance of the comparison criterion, and presented the following additional arguments relative to this factor:

(a) It suggested that the Employer's offer of a percentage increase plus a flat increase was more appropriate than the Union's suggested flat increase for all employees in the bargaining unit.

(b) It cited the fact that the vast majority of the Employer's work force is drawn from rural Green and LaFayette Counties; it urged that this fact justifies its emphasis upon a rural comparison, and its suggested exclusion of any urban Dane County and Rock County Comparisons.

(c) It cited the rates paid by private nursing homes in LaFayette and Green Counties, which employers pay less than the final offers of either the Employer or the Union.

It also referenced the rates paid by private nursing homes outside of the immediate geographical area, in support of the argument that the Employer's final wage offer is more than competitive with private sector competitors.

(d) It emphasized the fact that the Employer's final offer is competitive with a two year settlement between the Union and Columbia County, which also borders the more urban Dane County.

(e) It suggested that the Employer's final offer is quite competitive with the rates paid by other rural counties such as Iowa County and Richland County.

(f) It cited the fact that neither the Union's nor the Employer's final offer would place those in the bargaining unit close to the rates paid for comparable employment by Dane or Rock Counties; this, it asserts, shows mutual agreement of the parties that no valid comparison exists between Rock, Dane and Green County public nursing home wage rates.

(g) It pointed out that the Employer's final wage offer averages 9.76% in the first year (ranging from 8.1% to 10.5%), and averages 11.6% in the second year (from 9.6% to 12.5%); these figures, it alleges, compare quite well with private sector increases in general, and with comparable public sector settlements in Dane, Columbia, Rock, LaFayette and Iowa Counties.

(3) In connection with the cost-of-living criterion, it suggested the exaggeration of certain overall cost-of-living increases reported by the Bureau of Labor Statistics; in this respect, it particularly cited the index figures dealing with home purchases and with health care.

(4) In addressing the ability to pay and the interest of the public criteria, it emphasized the following basic arguments:

(a) That the rates paid and proposed by the County have resulted in attracting and holding qualified employees to serve the public;

(b) That the public interest is best observed by some consideration being directed toward the observance of federal guidelines, and that these guidelines more closely favor the Employer's final offer;

(c) That the County is already assuming more than its fair share of tax burdens; specifically that the tax per capita is the most significant measure, and that the data show Green County taxes to be higher than comparable rural counties and higher than the more urban Rock and Dane Counties.

(5) That the urban family budget data cited by the Union should have limited application to the dispute at hand for the following primary reasons:

(a) It includes medical costs which are largely taken care of by the County's superior medical insurance program;

(b) The cited budget figures are intended to apply solely to urban families, and the BLS reports specifically provide that such budgets are not available for rural families;

(c) The cited figures fail to take into consideration recent decreases/non-increases in Wisconsin State Income Taxes for the employees in question;

(d) There is only a small percentage of employees in the bargaining unit who are sole providers for a family, thus further distinguishing the situation from that envisioned in the reporting of family budget data;

(e) Apart from imperfections in the application of the criterion, that the Employer's figures come close to the BLS idealized budget figures.

In support of its final Fair Share Agreement offer, the Employer offered the following major arguments:

(1) That the comparison factor favors the Employer, in that three other units in Green County had referenda prior to the adoption of fair share agreements;

(2) That fair share referenda have been favored by arbitrators in various cited cases;

(3) That equity favors the Employer's offer, in that less than one-half of the bargaining unit employees are currently on check-off; that although this factor does not indicate union membership, it is a persuasive figure;

(4) That the change in the County's final offer relative to the referendum, is the only change made in its rejected final offer;

(5) That democratic considerations favor a secret ballot referendum on the issue of fair share;

(6) That the Union failed to substantiate its demand for fair share with appropriate comparison data from other units.

In support of its final offer in the area of holiday pay eligibility, the Employer offered the following basic arguments:

(1) That it was seeking to eliminate an ambiguous and highly unusual contract provision from the prior labor agreement;

(2) That the prior agreement was illogical in that it granted holiday pay to an employee for working either the final day before or the first day after a holiday, despite being scheduled to work on both days;

(3) That thirty-one people failed to work either the scheduled day before or the scheduled day after a holiday in 1979, without losing holiday pay;

(4) That part of the motivation for offering an additional holiday under the rejected agreement, was the elimination of the above referenced abuse;

(5) That the Union's position on this issue amounts to gamesmanship, and that the change could do nothing other than eliminate an obvious abuse.

In support of its health insurance premium demands, the Employer presented the following basic arguments:

(1) That the Green County plan is the most comprehensive and the best in the area, specifically cited were its first dollar coverage and HMP (health maintenance plan) coverage;

(2) That comparative data relative to LaFayette County, Grant County, Rock County, Iowa County, Dane County, and Columbia County demonstrate the superiority of the present coverage;

(3) That the premiums have gone from $100 per month in 1979 to $111.79 per month in 1980; that the increase is due to adopting semi-private rates at any hospital, to higher local hospital rates, and to the treatment of maternity as a disability in 1980;

(4) That a $100.00 per month cap was added to the 1978-1980 contract during the prior negotiations;

(5) That, at the behest of the Union and the employees, the Employer provided the increases in insurance coverage during calendar year 1980, and relied upon the tentative agreement for bargaining unit employees to pay 10% of the premium costs for family coverage; that the previous $100 cap was slightly raised to accomodate the payment of a new monthly premium of $100.61 by the Employer;

(6) That a percentage split will give the health insurance issue some stability, and will operate more or less automatically in the future;

(7) That the Union had rejected modification of the first dollar coverage concept earlier in the negotiations, and it was now rejecting the other alternative to control rising premiums;

(8) That the Green County contribution for medical insurance, even with the proposed 10% contribution, is more costly than various plans cited by the Union where the Employer pays the entire cost of coverage;

(9) That the comparison criterion strongly supports the Employer's proposed monthly contribution for health care insurance, regardless of whether or not a contribution is required of employees in the bargaining unit.

In support of its sick leave eligibility proposal, the Employer presented the following principal arguments:

(1) That during the term of the expired agreement, the Employer found that 31% of the employees in the unit do not accumulate sick leave, and a large number of employees tend to be "sick" before or after a weekend, or on the same day of the week;

(2) That the inability to cut back "production" in a nursing home had resulted in staff shortages, service shortages and in increased overtime costs as a result of misuse of sick leave;

(3) That the Employer tried a counseling program to reduce absenteeism during the term of the expired agreement, but it proved to be ineffective;

(4) That the Employer's offer to increase the maximum accumulation of sick days from 52 to 72 days and to pay for 50% of the accrued days in the event of retirement, death or permanent disability was designed to reward service and discourage absence; that the Union accepted the modified sick leave package, and now wants only the benefits, without the changes requested by the Employer and agreed upon in negotiations;

(5) That there is no comprehensive evidence of comparable practices in this area, although various individual practices exist elsewhere to cope with the overall problem of absence;

(6) That the Employer's proposed solution is not burdensome, is objective, and is preferable to the imposition of employee discipline;

(7) That only employees who have less than a year of service, or those that have less than a twelve day accumulation of sick leave would be subject to the requirement.

In support of its overall final offer, the Employer cited the overall compensation criterion. It suggested that Green County was far ahead of comparable employers on the basis of its overall level of wages and benefits. In this connection, it cited Columbia County, Dane County and Rock County.

It also cited other increases in benefits under the forthcoming contract, including one new holiday, two increases in sick leave benefits, guaranteed call back pay, and employer supplied meals for certain extended assignments. It characterized the County's final offer as exceeding 10% per year in wages/benefits increases.

THE POSITION OF THE UNION

In support of its contention that its final wage increase offer was the more appropriate of the two before the Impartial Arbitrator, the Union presented a variety of arguments. Prior to the consideration of any comparisons, it adjusted the nominal hourly rates upward by 10%, in consideration of the fact that bargaining unit employees regularly work one Sunday within each eighty hour period, for which they receive double time. It additionally deducted seven cents per hour from the Employer's final offer due to its proposal that employees contribute approximately seven cents per hour toward their family

medical and hospitalization insurance coverage.

The basic arguments advanced in support of its final wage offer were the following:

(1) It submitted that flat increases of forty-five cents per hour in each year of the agreement would better accomodate those at the bottom of the wage structure, those with incomes allegedly falling below the poverty level identified by the BLS;

(2) The percentage approach was further defended by suggesting the lack of any significant compression of wage differentials between classifications; in this connection it cited the limited number of classifications in the bargaining unit;

(3) It objected to the use of private sector nursing home comparisons, alleging that those comparisons are colored by long standing patterns of discrimination against women workers;

(4) It submitted that the most valid comparisons for wage purposes would be with public sector nursing homes in geographically contiguous counties, suggesting comparisons with Dane, Rock, LaFayette and Iowa Counties;

(5) It cited the impact of inflation upon the real income of bargaining unit employees, alleging that due to the low average earnings, these employees were suffering an inflation rate closer to 24% than to 14%; it cited the major impact of expenditures for energy, food, housing and medical care for these individuals, which represents a much higher percentage of their disposable income, than in the case of those in higher earnings brackets;

(6) It suggested that bargaining unit employees had suffered declines in real earnings over the past three years, citing 1977, 1978 and 1979 CPI figures. It suggested declines in purchasing power of 5% in 1977, 7% in 1978 and 13% in 1979. Through November of 1980, it projected a further decline of approximately 10%.

(7) It suggested that current wage levels provided incomes well below the lower family budget for the North Central Region as published by the BLS; the Union's final offer, it suggested, would better provide for a movement toward a viable standard of living;

(8) It suggested that the Employer's ability to pay is best indicated by the fact that it is one of the wealthier counties in the state, both in terms of property within the County and in terms of income earned by its residents;

(9) It suggested that much of the Home's budget is reimbursed through Medicaid and Social Security, and does not impact upon the County taxpayers.

In support of its final offer relative to the fair share agreement, the Union presented the following basic arguments:

(1) That the fair share agreement requested by the Union is consistent with agreements already reached between Green County and other Unions;

(2) That the demand for a referendum was unprecedented in Green County, relative to other Unions and other County workers, and characterized it as both a harsh and an unreasonable demand.

In support of its final position with respect to holiday pay eligibility, the Union presented the following basic arguments:

(1) That the Employer's proposal would doubly penalize an employee sick on a qualifying day, in that he would lose both a day of sick leave and a day of holiday pay;

(2) That the County exhibit showing the number of employees not working on a holiday or on their regularly scheduled day before or after the holiday, does not include much needed information; specifically it does not indicate how many were excused, what percentage of absences were represented in the list, whether it was a higher or lower absence percentage than normal, and whether the need for Home services was increased or decreased due to the absence of ambulatory patients or the presence of large number of visitors;

(3) In comparable counties, that only Rock has a requirement for working prior to and after the holiday; but that even Rock has no medical verification requirement.

In connection with the request for employee contribution for medical insurance premiums, the Union presented the following basic arguments:

(1) That payment of 10% of the premium by employees amounts to a .07 cent per hour cost to the bargaining unit employees;

(2) That the day of employee contribution for health and welfare benefits has passed; that the Employer's attempt to establish a 10% contribution where one previously did not exist is unreasonable and regressive;

(3) That no $100 cap was actually agreed upon in the 1978-1980 labor agreement;

(4) That 71% of all employers surveyed have non-contributory health insurance plans, and that this procedure should be continued by the County.

In support of its position with respect to sick leave eligibility, the Union presented the following basic arguments:

(1) That the changes proposed by the County would entail a serious reduction in the rights and privileges currently enjoyed by the staff at Pleasant View;

(2) That the Employer's proposal would involve seriously penalizing large numbers of employees in various respects:

(a) That 122 of 173 employees have less than 12 days of sick leave accumulated, and that these employees would be required to furnish MD certification of illnesses in the future;

(b) That the health insurance coverage does not cover out-patient visits for fees under $100, thereby increasing out-of-pocket costs to those employees seeking sick leave reimbursement;

(c) That the demand for medical verification after an employee has used three days of sick leave would penalize substantial numbers of employees;

(d) That it is inequitable to demand medical verification for partial days of absence.

(3) It submitted that substantial portions of reported absences were probably due to the use of up to three days per year for personal leave days;

(4) That the Employer has attempted neither corrective discipline nor counseling, nor has it called the problem to the attention of the Union;

(5) That the Employer has failed to justify its demand with actual rates of absence and related cost information;

(6) That comparisons with comparable communities does not support the adoption of the medical verification requirements.

FINDINGS AND CONCLUSIONS

For the sake of clarity, and despite the fact that the Mediator-Arbitrator is faced with the responsibility for the selection of one of the final offers of the parties in its' entirety, each of the impasse items will be separately treated where feasible. The Impartial Arbitrator will also direct separate preliminary attention to the statutory arbitral criteria, particularly those emphasized by the parties in the presentation and argument of their positions.

The Arbitral Criteria

During the course of the proceedings, the Arbitrator has given consideration to each of the arbitral criteria specified by the Legislature in Section 111.70(4)(cm)7 of the Wisconsin Statutes; the statutory criteria that received the primary focus of the parties' attention in the dispute were the following:

(1) The interests and welfare of the public and ability to pay criteria, as referenced in sub-paragraph (c);

(2) The comparison criterion as referenced in sub-paragraph (d);

(3) The cost-of-living criterion as referenced in sub-paragraph (e);

(4) The overall compensation criterion as referenced in sub-paragraph (f);

(5) The living wage criterion and the negotiations history criterion, as permitted by sub-paragraph (h).

The Ability to Pay/Interests of the Public Criteria

The Employer cited and relied upon the County's already relatively high tax per capita, arguing that the data showed higher taxes than normal for comparable rural counties and did not justify the imposition of additional taxes for the purposes of meeting the Union's final offer in these proceedings.

The Union argued that Green County had the ability to pay, arguing that it is one of the wealthier counties in the state, both in terms of property within the county and in terms of income earned by its residents. These factors, it argued, indicate that the Union's final offer could be adopted without negative impact upon the public interest.

The above factors must be given consideration by the Arbitrator, but they cannot be assigned decisive importance in the resolution of the dispute. Ability to pay disputes most typically arise in a context where inability to pay is in issue. No inability to pay question was presented in the case at hand, and the arguments advanced by both parties could be persuasively advanced in almost any similar interest dispute; in the case at hand, they present no issues unique to either the Employer or to its employees. The Arbitrator additionally cannot attribute major importance to the arguments advanced by the Union, relative to which expenses of the Employer may or may not be reimbursed through other units of government.

The Comparison Criterion

Although the statutory criteria were not weighed in importance by the legislature, there is little doubt that the comparison factor is the single most extensively used, and the most significant criterion in resolving most interest disputes. This point is very well described in the following extract from the book by Elkouri and Elkouri: 1./

> "Without question the most extensively used standard in 'interest' arbitration is 'prevailing practice'. This standard is applied, with varying degrees of emphasis in most 'interest' cases. In a sense, when this standard is applied the result is that disputes indirectly adopt the end results of the successful collective bargaining of other parties similarly situated. The arbitrator is the agent through whom the outside bargain is indirectly adopted by the parties."

Irving Bernstein is his excellent book on wage arbitration makes the same points, and expands upon the rationale as follows:2./

> "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill. In the presence of internal factionalism or rival unionism, the power of comparison is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will be able to recruit in the local labor market. Small firms (and unions) profit administratively by accepting a ready-made solution; they avoid the expenditure of time and money needed for working one out themselves. Arbitrators benefit no less from comparisons. They have 'the appeal of precedent and... awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public'."

A mere recitation of the relative importance of the comparison criterion does not address the basic question as to which groups of employers and employees would offer the most meaningful comparisons. Understandably, both parties offered comparisons which tended to favor their final offers, and both tended to suggest the relative inappropriateness of certain comparisons offered by the other party.

The Employer suggested that the most meaningful public sector comparisons would be found in the wages paid by comparable public institutions in rural counties in the State of Wisconsin. It argued the inappropriateness of comparisons with urban Dane and Rock Counties, alternatively suggesting the appropriateness of public sector comparisons with Iowa, Richland, LaFayette and Columbia Counties. It particularly emphasized the latter comparison due to the existence of a collective agreement between the Union and Columbia County.

The Employer also urged the Arbitrator to consider the wages paid by various private sector nursing homes located both in the referenced rural counties, and in Dane and Rock Counties.

The Union strongly urged the exclusive use of public sector comparisons, suggesting that the private sector data were invalid, due to alleged, long standing patterns of discrimination against women workers, and the improper impact of this factor on their wages. The Union additionally urged the consideration of Dane and Rock County wages, along with certain rural county comparisons.

The very fact that there are wide disparities between the wages paid in Dane, Rock and Green Counties supports the position of

the Employer in the matter of the appropriate comparisons to be used by the Impartial Arbitrator. The parties failure to adopt and apply the Dane and Rock County wage rates in their past negotiations is perhaps the best indication that the suggested rural comparisons are the most appropriate.

The existence of and justification for geographical and urban/rural wage variations is briefly addressed as follows by the Elkouris:3./

> "Geographic Differentials - Although the individual worker does not always understand why higher wages should be paid to another worker doing the same work but in a different area, there is believed to be sound reason for geographic differentials, as simply stated by one arbitration board: '* * *[E]veryone knows our country cousins, workmen, professional men, all, on the average, earn less than urbanites; and need less. They get on the whole more comforts, services, and commodities for their dollars.'"

Under the circumstances, the Impartial Arbitrator finds that the most appropriate comparisons are those which compare the Employer with other, similarly situated rural counties.

In connection with the public sector/private sector comparison question, it must be observed that the Wisconsin Statutes specifically direct the consideration by the Arbitrator of the wages, hours and conditions of employment of the public sector employees in question with "....employees...in private employment in the same community and in comparable communities". The considerations of comparable private sector employees is, therefore, mandatory. The Impartial Arbitrator, however, feels that primary consideration and weight should be accorded to public sector comparisons.

Prior to applying the comparison criterion to the wages impasse, it is necessary to determine what wage increase factor to consider in connection with the Employer's final offer. The Union submits that the Employer's final offer should be increased to reflect the fact that a Sunday double time premium is paid, and that employees work alternate Sundays, thus receiving eighty-eight hours each two weeks for a period of eighty hours worked. It additionally suggests that the Employer's final offer be reduced by seven cents per hour to reflect the approximate amount represented by the proposed Employee contribution for family hospitalization and medical insurance coverage. On this basis, the Company's proposed wage increase for the first year of the two year agreement is suggested to be equivalent to 29.6 cents per hour, or an approximate 7.1% improvement.

The Employer used a more traditional approach to costing-out the proposed general wage increases of the parties. It computed the previous average hourly rate of $3.69 for those in the bargaining unit, and determined that its proposal would result in an average thirty-six cents per hour increase in 1980, and an average forty-seven cents per hour increase in 1981. The Employer submitted that its final offer would average 9.76% in wage increases the first year and 11.6% the second. The Union's flat forty-five cent increase each year would constitute a 12.2% wage increase the first year and an increase of 10.9% the second year. The costing method employed by the Employer and referenced in Employer Exhibit #1 and #2 are the more typical costing methods employed,and are the figures that the Arbitrator finds most accurately reflect the actual final wage offers of the parties.

The 9.76% increase in wages proposed by the Employer for 1980 compares with the increases of 9.2% in LaFayette County and 9.5% in Iowa County as reported on Union Exhibit #1. The Employer's average first year increase of thirty-six cents per hour compares with the thirty cents per hour increase in LaFayette County and the thirty-two cents in Iowa County, presented in Union Exhibit #1A .

Apart from the above, the Employer introduced a copy of the Columbia County agreement, and referenced the appropriate wage comparison data at pages 12 and 13 of its comprehensive post-hearing brief. The Employer's wage proposals for both 1980 and 1981 are

above those paid by Columbia County.

While the Union's brief and exhibits did not deal extensively with the proposed 1981 rates, the Employer's offer of an increase of forty-seven cents per hour in the second year is somewhat above that offered by the Union and was quite competitive with the 1981 rates for the rural facilities referenced above.

Although evidence was introduced which indicated favorable comparisons for the County's wage offers relative to private sector employers in general, and for private sector nursing homes, the Impartial Arbitrator observes that there is no evidence that the parties have used these figures for comparison purposes in the past and there is little reason to assign critical importance to the figures in these proceedings.

Based upon the factors referenced above, the Impartial Arbitrator has reached the preliminary conclusion that the basic comparison to be used is the Employer versus other rural county public nursing homes. In making this comparison, it is apparent that the Employer's final wage offer is closer to the working rates and to the 1980 and the 1981 increases for the other employers, than the final offer of the Union. The comparison criterion, therefore, strongly favors the final wage offer of the Employer.

In considering the comparison criterion relative to the issue of employee contribution for family medical and hospitalization insurance, the Union's brief cited BLS statistics which purport to show that seventy-one percent of employers pay the entire costs of medical insurance coverage. Union Exhibit #9 shows that Iowa County has an employee contribution, while LaFayette County has none; even in considering the urban counties of Dane and Rock, one requires employee contribution and one does not. It should be noted that the Employer's proposed premium contribution of $100.00 per month, would be the second highest of the five counties.

In looking to the comparison data before him, the Arbitrator must conclude that the Employer's proposed monthly contribution for insurance premiums is very competitive, and the concept of employee contribution is still present in about one-half of the comparable counties.

In connection with the Employer's sick leave verification demands, Union Exhibit #10 shows that while some documentation is required in some jurisdictions for absences extending beyond three days, the Employer's demand for first day verification is not supported by comparison data.

No comprehensive comparison data was introduced in connection with the holiday eligibility or the fair share issues, and the record in this respect does not significantly favor the positions of either party.

The Cost-of-Living Criterion

The Union relied strongly upon increases in the Consumer Price Index, in support of its contention that the members of the bargaining unit have been losing significant ground to inflation in recent years. Specifically, it cited movements in the index which, as compared with nominal wages in the bargaining unit, had assertedly resulted in declines in real wages of 5% in 1977, 7% in 1978, 13% in 1979 and in an additional estimated decline for 1980 of between 9.8% and 10.1%. Further, it observed that a large percent of the increases in cost-of-living as measured in the appropriate BLS statistics, were attributable to the purchase of necessities; since those in the bargaining unit are in the lower end of the earnings spectrum, argued the Union, the actual impact of inflation is far greater than for the population in general.

The Employer conceded that consumer prices had risen over 13% in 1979, but observed that the rate of increase had declined in recent months. It suggested that the Consumer Price Index had exaggerated the rate of inflation, due to the fact that it included

certain factors which do not apply equally to those in the bargaining unit. It additionally questioned the application of the urban consumers rate of inflation to largely rural Green County Employees. It suggested that its 9.76% wage increase, plus additional fringe improvements in 1980 came closer to the actual rate of inflation than did the Union's suggested 12.2% wage increase plus additional fringe cost increases for 1980.

There can be no dispute that current and recent inflation rates are major factors in labor negotiations and in interest arbitration, but the arguments of the Union contain two questionable assumptions. First, that the movement in the C.P.I. for the past several years is properly before the Arbitrator for consideration and, second, that the C.P.I. accurately reflects actual increases in cost-of-living that can directly affect the average consumer.

Generally speaking, Arbitrators are limited in consideration of cost-of-living factors to the base period represented by the effective date of the parties' last collective agreement; this concept is described in the following reference from Bernstein's book which was referenced earlier: 4./

> "Base period manipulation...presents grave hazards. Arbitrators have guarded themselves against these risks by working out a quite generally accepted rule; the base for computing cost-of-living adjustments shall be the effective date of the last contract (that is, the expiration date of the second last agreement). The justification here is.... the presumption that the most recent negotiations disposed of all the factors of wage determination. To go behind such a date,...would require a re-litigation of every preceding arbitration between the parties and a re-examination of every preceding bargain concluded between them..."

In light of the fact that the parties are dealing with renewal negotiations for a two year agreement that was effective for calendar years 1978 and 1979, the base period for any cost-of-living consideration is properly January 1, 1978. The cost-of-living data cited by the Union for periods prior to that time must be disregarded due to the presumption that the parties treated these factors in their prior negotiations.

For a variety of reasons, the consumer price index is generally considered to somewhat overstate the actual rate of increase in living costs to the average consumer. Increases in medical costs, for example, do contribute significantly to recent increases in CPI; those in the bargaining unit, however, due to their excellent group medical and hospitalization insurance have been largely shielded from the full impact of these medical cost increases. Major recent increases in housing costs as reflected in the index, are not fully felt by all persons, as most do not buy a home every year.

In considering the wage increases over the proposed two year contract term, the Union's wage offer would entail increases of 12.2% and 10.9% for a total of 23.1%, while the Employer's offer anticipates increases of 9.76% and 11.6% for a two year total of

The Overall Level of Compensation Criterion

The Employer cited what it characterized as a superior overall level of benefits for those in the bargaining unit, in support of its contention that this statutory criterion favored its, rather than the Union's final offer. In support of this contention, it particularly emphasized the overall benefits level in the bargaining unit versus those present in Columbia County, which, as referenced earlier, also has an agreement with the Union. It alleged higher wages, a shorter probationary period, a better insurance package, and the availability of paid personal days as being benefits superior to those in Columbia County.

The Employer cited 1980 increases in the bargaining unit in the number of holidays, improved sick leave benefits, guaranteed call back pay, Employer supplied meals on certain occasions, and certain medical and hospitalization insurance improvements. Overall, the Employer alleged that its first year wage and benefits increase exceeded ten percent.

The Union did not separately argue this criterion in detail in its post-hearing brief; in conjunction with its treatment of the comparison criterion, however, it was far from agreeing that the overall level of compensation criterion favored the position of the Employer.

In looking to the evidence and the arguments of the parties, the Arbitrator is unable to conclude that the application of this criterion definitively favors the position of either party. Despite the fact of excellent benefits in many areas, most notably in the level of medical and hospitalization coverage, the evidence in the record does not comprehensively bear on the overall compensation factor.

The Living Wage Concept

The Union defended its suggestion of a flat wage increase each year, and also justified its overall demands on the basis of an asserted need to begin to bring those in the bargaining unit up to a viable standard of living. In support of this concept, it cited Bureau of Labor Statistics figures which purport to identify the necessary family income in the North Central Region of the United States.

The practical applicability of the living wage criterion to interest arbitrations has, for a variety of reasons, been rejected by most arbitrators. The reasoning behind this concensus is described by Bernstein as follows: 5./

> "The concept behind this criterion is that workers and their families deserve a standard of life at least at the minimum level of health and decency. This factor has been variously described, for example, as 'a level of adequate living,' 'a commonly accepted standard of living,' 'a fair wage,' 'an American standard,' 'a living wage.'
>
> * * * * * *
>
> A generation ago the concept was usually called 'the living wage' in contrast to such current terms as 'sub-standards or 'worker's budgets.'
>
> * * * * * *
>
> As might be expected, the substandard criterion is quite frequently referred to by unions, constituting about one-twelfth of their citations. Employers almost never invoke it and arbitrators are not far behind them in abstemiousness. The typical arbitral view of the substandards criterion was expressed by Pierson in the Restaurant-Hotel Employers case:
>
> 'Except to indicate a general goal or direction which almost all groups in our economy have come to

> recognize, the Arbitrator can give little weight to the Joint Board's arguments regarding the importance of maintaining....adequate living standards; [this criterion] may well be [a] proper guide....for social policy but [it is] not much help in determining the specific amount by which employment standards should be increased or decreased in a case such as this.'

The reluctance of arbitrators to lend significant weight to this criterion rests upon a variety of objections. The first is that the result supported by the budget may have little or no relevance to the money range of difference between the parties.

* * * * * *

The second reservation is with respect to the conception and construction of the budgets. Decisions as to what should or should not be included are inherently subjective. Should the family consume 10.1 or 15.1 or 20.1 quarts of ice cream each year? More important, is the intention of the budget to maintain these people at bare subsistence, at a somewhat superior level of health and decency, or at a still higher 'American' standard of living, whatever that may be? The objective, obviously, will affect the result. Further, costs vary from locality to locality, rather less than most people assume between large cities in different regions and somewhat more than they think between big and small communities. The available budgets may not measure the community at issue. Finally, and this is a common criticism, the budget is constructed about a synthetic family which seldom comports with reality. It assumes, for example, that the father is the only breadwinner, whereas mothers often work full or part time and even children may have some income. The notion that a family of four is typical is particularly vulnerable....

* * * * * *

The third criticism is that the national income is not large enough to accomodate a distribution of all recipients at the budget level. Or, phrased another way, if at one moment all members of the labor force were given a dollar income sufficient to purchase the items in the BLS budget, there would not be enough goods and services to go around. Hence prices would rise and there would be no net gain in aggregate real income.

* * * * * *

The fourth objection is the difficulty of translating a budget estimate into a specific wage adjustment. Even assuming that the budget figure were precise--and we know how rough an approximation it is--there is a serious statistical impediment to its conversion into wage rates.

* * * * * *

The final disadvantage of the substandards criterion is that its logic is economy-wide, while its application is sought for a particular firm or group of firms. The individual employer, therefore, can argue forcefully that he is the subject of discrimination. If a budget-supported standard of life justifies a given minimum income, all those below it have an equal right to its enjoyment. Hence it should be enforced generally rather than differentially.

These objections, then, constitute the grounds for the unwillingness of arbitrators to accord the substandard factor serious weight in wage cases."

The Elkouris offer the following observations with respect to the utilization of the living wage criterion: 6./

> "The 'budget approach' is sometimes used by parties advancing the living-wage standard. A similar approach underlies the state and federal minimum wage laws. Generally speaking, budgets have been used primarily as background and supplementary material rather than as a specific criterion in the formulation of wage demands. But in some cases unions have relied directly upon the budget approach. A board of inquiry for the meatpacking industry, for instance, was asked to give serious consideration to the 'City Worker's Family Budget' issued by the Bureau of Labor Statistics. The board stated that a budget approach to wage determination was not invalid or unprecedented and that the union could properly offer it for consideration as a criterion for resolving the dispute. The board concluded, however, that a proper application of the budget approach to that dispute would require more information than the parties had supplied or could supply from their limited study of the subject up to that date, and more than the board could obtain from governmental or other sources.
>
> This illustrates a major disadvantage of the living-wage standard; namely, its indefiniteness. What may be considered a decent standard of living is largely dependent upon time and circumstances. The aforementioned board also concluded that even with the necessary information, a number of broad policy decisions would have to be made by agreement of the parties. The most important of these decisions were said to be:
>
> > '(1) whether the size of the family alone * * * or the composition of the family, including size and other characteristics, should be used; (2) whether the necessary income should come only from earnings of the employee or whether income from all sources should be considered; (3) whether income from earnings should be computed on the basis of 2,080 hours (52 x 40 hours) at straight-time, without incentive earnings or 'fringe' benefits, * * * or on the basis of earnings from overtime plus incentive earnings and 'fringe' benefits, as well as straight-time earnings; (4) whether the resulting increase should be related only to the job performed or should also vary with number of dependents of individual employees.'
>
> It is recognized that budgetary experts are not in agreement as to the composition of an adequate budget. One arbitrator declared that the particular budget submitted to him had 'served the purpose more of a goal to be attained over a period of time than the next step in the improvement of the living standards' of America's wage earners, and that the actual attainment of the budget would be had 'through full and efficient production and distributive justice.' He concluded that the budget would not, at that time, 'serve as the sole, or even a significant, basis for wage adjudication.' Similarly, where teachers asserted that their salaries should be 'commensurate with the standard of living' in their community, the arbitration tribunal stated that this 'should be a goal rather than a controlling criterion.'
>
> It can be expected that as long as the living-wage argument is presented only in general terms, giving arbitrators no specific basis of application to the concrete problems before them, the standard will be given little effect in awards. However, there are public sector cases in which the arbitrator did find the presentation adequate to give some weight to the living-wage standard."

In common with the vast majority of interest arbitrators, the undersigned finds the living wage criterion much too general to play a significant role in the resolution of specific interest disputes. While the Union's evidence and arguments relative to a living wage were appropriately introduced and received into the record, the Arbitrator cannot assign any significant weight to them in the resolution of this dispute.

The Negotiations History Criterion

Although the negotiations history criterion is not specifically referenced in the Statutes, it falls well within the general coverage of paragraph (h) of Section 111.70 (4)(cm)7, and was cited by both parties to this proceeding. This factor is of particular significance in the case at hand, due to the fact that the Employer is attempting to modify certain past approaches to insurance, sick leave and holiday pay matters, while the Union is attempting to make significant changes in the negotiated agreement reached by the parties prior to the failure of ratification.

In specific terms, the Union objected to the Employer's attempt to modify practices or benefits that had been agreed upon by the parties during the negotiation of past labor contracts:

(1) It suggested that the day of employee insurance premium contribution had passed, characterizing the proposal as unreasonable and regressive;

(2) It characterized the Employer's sick leave eligibility proposal as a serious reduction in the current rights and privileges of employees, additionally characterizing the proposal as a serious penalty for many employees;

(3) It suggested that the holiday pay eligibility requirements would result in an inequitable double penalty in certain cases, and urged that the Employer had failed to justify the need for such a change in this benefit.

The Employer repeatedly cited the history of the current negotiations in support of its position:

(1) It emphasized that the three changes being criticized by the Union had been mutually agreed upon by both parties, and were only under consideration due to the membership's failure to ratify the agreement;

(2) It referenced the fact that one additional holiday was part of the motivation for agreeing to the eligibility changes, that increased insurance coverage was part of the motivation for the employee contribution agreement, and that improvements in sick leave benefits partially accounted for the Union's agreement to certain changes in these eligibility requirements; it accused the Union of accepting the benefits and then attempting to disavow the quid pro quo for the benefits increases.

At this point, it is appropriate for the Impartial Arbitrator to emphasize the fact that interest arbitration is not an exact science where certain arguments and statistics can be plugged into a formula, and a correct result tabulated. Rather, it is an attempt to reach the same decisions that the parties themselves would have reached had they been successful in bargaining to a conclusion; in applying this principle, arbitrators pay significant attention to past agreements and to tentative matters of agreement from the labor negotiations giving rise to the arbitration. In applying these principles to the case at hand, it should be kept in mind that an interest arbitrator will normally be quite reluctant to overturn an established benefit and/or will be equally reluctant to add new benefits or to innovate unless the arbitral criteria are clearly met. This factor was described as follows by Elkouri and Elkouri: 7./

> "The past practice of the parties has sometimes, although infrequently, been considered to be a standard for 'interests arbitration'....
>
> Arbitrators may require a 'positive reason' for the elimination of a clause which has been in past written

agreements. Moreover, they sometimes order the formalization of past practices by ordering that they be incorporated into the written agreement."

The role of the interest arbitrator, and his normal reluctance to plow new ground or to modify past practices is very well described in the following excerpt from a frequently cited interest arbitration decision by Arbitrator John Flagler: 8./

> "The role of interest arbitration in such a situation must be clearly understood. Arbitration, in essence, is a quasi judicial not a legislative process. This implies the essentiality of objectivity--the reliance on a set of tested and established guides.
>
> In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of the extraordinary pressures which led to the exhaustion or rejection of their traditional remedies.
>
> The arbitrator attempts to accomplish this objective by first understanding the nature and character of past agreements reached in a comparable area of the industry and in the firm. He must then carry forward the spirit and framework of past accommodations into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to either party that which they could not have secured at the bargaining table."

Apart from the particular history of the current negotiations and the resulting tentative agreement reached between the parties, the Impartial Arbitrator would credit the arguments of the Union with respect to the Employer's request for modification of the sick leave and holiday pay eligibility requirements, and its request for adoption of employee contribution for family health insurance. In the case at hand, however, the Arbitrator must pay significant attention to the fact that these changes were specifically agreed upon by both parties as part of the agreement which failed ratification. The impact of pre-arbitration negotiations and tentative agreements, and the relationship of these factors to the expectations of the parties is referenced by the Elkouris as follows: 9./

> "Pre-Arbitration Negotiations
>
> It has been said that the award in a wage dispute seldom falls outside the area of 'probable expectancy' and that this area is the normal resultant product of the parties' negotiations and bargaining prior to submitting their differences to arbitration. In this regard, too, one arbitration board concluded:
>
> > 'An examination of the wealth of evidence submitted in this matter in conjunction with the provisions of settlement worked out by the parties indicates that the most satisfactory award which the Board could render would be one in general agreement with those terms on which the parties were able at one time to substantially agree. Obviously, these terms are not what either party wanted. They represent compromise by both parties. However, since the general terms indicate a meeting of the minds, the Board considers that they hold the basis of a just award.'" (emphasis added)

Under the circumstances present in this case, it would be illogical in the extreme for the Arbitrator to reject the Employer's proposals as falling outside the expectations of the Union, when the changes were, in fact, fully agreed upon by the parties in face-to-face negotiations. The Arbitrator must also credit the Employer's observations with respect to the inequities inherent in one party accepting the benefits of certain improvements, after

repudiating a portion of the price agreed to be paid for the improvements.

Under the circumstances described above, the Impartial Arbitrator has concluded that the negotiations history criterion strongly favors the position of the Employer, in connection with its offers relating to holiday pay eligibility, sick leave eligibility and employee contribution for family medical insurance premiums.

By the same line of reasoning outlined above, the Employer's agreement to fair share without an election, which agreement was withdrawn after the non-ratification, strongly favors the position of the Union on this impasse item. Certainly the fair share agreement, reached across the table, was well within the expectations of the Employer, and was part of the price paid by the Union for the overall tentative agreement voluntarily agreed upon by the parties.

Summary of Preliminary Conclusions

As outlined above, the Impartial Arbitrator has reached the following preliminary conclusions with respect to the various arbitral criteria:

(1) The interests and welfare of the public and the ability to pay criteria cannot be assigned major importance by the Arbitrator in the selection of the final offer of either party;

(2) The comparison criterion strongly favors the position of the Employer with respect to the wages and insurance impasses, favors the position of the Union relative to sick leave eligibility, and does not favor the position of either party relative to the holiday pay eligibility and the fair share impasses;

(3) The application of the cost-of-living criterion somewhat favors the position of the Union with respect to the wages impasse;

(4) The overall level of compensation criterion does not definitively favor the position of either party;

(5) The living wage concept, while it has some general validity, is too general to be effectively utilized as an arbitral criterion in this dispute;

(6) The negotiations history criterion strongly supports the final offer of the Employer with respect to wages, insurance, holiday pay eligibility, and sick leave eligibility; it strongly supports the position of the Union with respect to the fair share impasse.

The remainder of the statutory criteria were not strenuously argued by the parties; while they have been carefully considered by the Impartial Arbitrator they do not significantly favor the position of either party, and cannot be assigned definitive importance in the resolution of this impasse.

Selection of Final Offer

In consideration of the entire record before me, including the preliminary conclusions summarized above, it is apparent to the Impartial Arbitrator that the final offer of the Employer is clearly more appropriate. While certain of the statutory criteria favored aspects of the final offer of the Union, the preponderance of major considerations favored the overall final offer of the Employer. This is particularly true in connection with the Arbitrator's application of the comparison and the negotiations history criteria.

The Employer's modification of its agreement with respect to the fair share issue is regretable. Although the Impartial Arbitrator is limited to the selection of the final offer of either of the parties in its entirety, and has no authority to order the Employer to comply with its original fair share agreement, I would strongly urge the Employer to voluntarily undertake this step.

1./ How Arbitration Works, BNA Books, Third Edition - 1973 p. 746. (footnotes omitted)

2./ The Arbitration of Wages, University of California Press 1954, p. 54. (footnotes omitted)

3./ Ibid. p. 757.

4./ Ibid. p. 75.

5./ Ibid. pp. 92-95.

6./ Ibid. pp. 768-769.

7./ Ibid. p. 788.

8./ Des Moines Transit Company, 38 LA 666, 671.

9./ Ibid. p. 789.

AWARD

Based upon a careful consideration of all the evidence and argument, and pursuant to the various arbitral criteria provided in Section 111.70(4)(cm)7 of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Employer is the more appropriate of the two final offers;

(2) Accordingly, the Employer's final offer, herein incorporated by reference into this award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Mediator-Arbitrator

September 18, 1980
Waterford, Wisconsin