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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

ARBITRATION AWARD

In the Matter of the Mediation/Arbitration between TEAMSTERS UNION LOCAL NO. 579 and GREEN COUNTY (DEPARTMENT OF SOCIAL SERVICES) and GREEN COUNTY (HIGHWAY DEPARTMENT)	Decision Nos. 17937-B 17932-B Re: Green County (Department of Social Services) Case LII No. 25559 MED/ARB-582 and Green County (Highway Department) Case LIII No. 25560 MED/ARB-583

Appearances: For the Petitioner, Teamsters Union Local No. 579: Timothy J. Costello, Esq., of Goldberg, Previant, Uelmen, Gratz, Miller, Levy & Brueggeman, S.C., 788 North Jefferson Street, P.O. Box 92099, Milwaukee, Wisconsin 53202. Mr. Costello was accompanied at the hearing by Mr. Leonard Schoonover, Secretary-Treasurer, General Drivers, Dairy Employees & Helpers Local Union Number 579, 2214 Center Avenue, P.O. Box 817, Janesville, Wisconsin 53545, as well as by employee members of the bargaining teams of the two units.

For the Employer, Green County Department of Social Services and Highway Department: Jack D. Walker, Esq., of Melli, Shiels, Walker & Pease, Attorneys at Law, 119 Monona Avenue, P.O. Box 1664, Madison, Wisconsin 53703. Mr. Walker was accompanied at the hearing by David G. Deininger, Esq., Corporation Counsel, Messrs. Kenneth H. Meyer, Highway Commissioner, Robert Hoesly, County Board Chairman, and Daniel Benkert and Harold Babler, County Board members.

This proceeding involves two bargaining units, one a unit of social workers, case aides, social service aides, and clerical employees of the Department of Social Services; the other including manual employees of the Highway Department. Both units are represented by the Petitioner in this dispute. Both units had labor agreements that expired on December 31, 1979. After several negotiating meetings during the latter part of 1979 the Union filed a petition on January 4, 1980 for mediation/arbitration pursuant to the provisions of Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. Following mediation sessions on February 6, April 29, and June 3 by a representative of the Wisconsin Employment Relations Commission an impasse was declared. On July 11 the Commission certified that conditions precedent to the initiation of mediation/arbitration under the provisions of the statute had been satisfied and instructed the parties to select a mediator/arbitrator. The undersigned was notified of his appointment by letters from the Commission dated July 31, 1980.

A mediation session was held on August 14 in Monroe. Since the parties were unable to reach agreement, a date for an arbitration hearing was set. Neither party changed its final offer, and a hearing was ultimately held on October 17. The period for exchange of written briefs was extended twice. They were ultimately filed with the arbitrator and exchanged on January 13, 1981. The hearing record is considered closed as of that date.

The Final Offers

The parties have agreed on most terms of the labor agreements in the two units, including a provision that the agreements should extend through the calendar years 1980 and 1981. There is only one issue involving the Social Services unit. The Employer would limit its contribution to the payment of employees' health insurance to 90 per cent of the premium cost for family coverage. Full payment of the premium for individuals would continue. The Union would have the Employer pay 100 per cent of the premium cost for family health insurance coverage from March 1 to December 31, 1980 and would agree to the 90 per cent payment by the Employer for the year 1981. The identical dispute and those identical final offers apply also to the Highway Department unit. There are two other differences between the parties in the dispute involving the latter unit. The Union would eliminate the following clause that appeared in the 1978-79 agreement:

> ARTICLE XXXI, WORK WEEK
>
> . . .Section 5. It is mutually agreed between the parties to remove the afternoon porthole. Any employee who is unnecessarily delayed in returning to the shop due to breakdowns, etc., shall donate the first thirty (30) minutes of his time. All time exceeding 30 minutes shall be paid one (1) hour plus actual time over that.

The Employer would keep that provision in the new agreement.

The other item in dispute involves the Sanitary Landfill rate. Wages for that classification also include 50 per cent of the revenue of salvageable materials. The Union would increase the 1979 rate of $4.87 per hour for the Sanitary Landfill classification to $5.32 for 1980 and to $5.82 for 1981. The Employer would increase the rate to $5.22 for 1980 and $5.66 for 1981.

The Union's Position

In the 1978-79 labor agreements between the parties in these two units there was a cap of $100 on the contribution by the Employer to the monthly premium cost of the health insurance. Prior to 1980 the family coverage premium had not exceeded the $100 per month. Because of some changes in the insurance policy (resulting from (1) experience in the previous period, (2) the fact that because of a court decision maternity benefits were changed so as to constitute disabilities, and (3) the hospital room charge in the policy was raised from a limit of $86 for a double room to the rate prevailing for semi-private accomodations at any hospital) the total monthly premium for family coverage went up to $111.79 in 1980. This made the Employer contribution at the 90 per cent rate $100.61. It is the Union's position that in changing from a $100 cap to a 90 per cent limit the Employer is simply asking employees with family coverage to pick up all but sixty-one cents of the increased premium. The Union, therefore, proposes a sharing of the increase over the period of the labor agreement with the Employer paying it the first year and the members of the unit paying it (except for $.61 per month) during the second year.

The Union supports its position with comparisons in the two adjoining counties to the east and to the west. Rock County, on the east, pays 100 per cent of the total family premium cost for both highway and social services units. Lafayette County,

on the west, pays 100 per cent of the cost in the highway unit and has agreed to pay 100 per cent of the cost of family health insurance premium in the social services unit, although the effective date of the payments is now a subject being arbitrated. Dane County, which adjoins Green County on the north, pays 90 per cent of the family premium. The Dane County plan also includes partial payment by the county of the premium for dental insurance, a benefit not included in the Green County group insurance plan. The Union also cited some other counties with populations of the same order of magnitude as Green County but farther removed geographically where employers pay 100 per cent of the family premium. These included Clark, Pierce and Marinette Counties.

The Union points out, however, that the 90 per cent contributory feature of its offer would apply after the 1980 transitional year as the plan moved from a non-contributory to a contributory plan.

As to what the labor agreement and the Union call the "porthole" (portal), the Union argues that requiring the employees to return to the shop in the afternoon on their own time is inconsistent with the policy followed in the morning and on all occasions when work is cut short because of rain or inclement weather. On those occasions employees are transported back to the shop on County time.

As to adjoining county comparisons, the Union cites Lafayette County, where the county pays for all time while employees are in the service of the employer; Dane County, where employees are paid for such travel time and are limited to one-half hour for travel when returning from job sites; and Rock County where employees are paid for the time spent in returning to the shop in the afternoon but are not paid from shop to job in the morning. In Rock County morning travel on employees' own time is limited to twenty minutes.

In countering the Employer's claim that in the period when portal payments had been made, before 1974, the employees had dawdled along the way when returning to the shop, the Union argues, in effect, that this is a supervisory problem and that in any case the Employer could negotiate in the future for a safeguard clause of the kind in the Dane County labor agreement whereby a maximum amount of time for return to the shop is specified.

The Union also argues that the present clause "is of doubtful legality." The court cases cited by the Union apply to the Fair Labor Standards Act, but the Union asserts that the Wisconsin law has the same overtime requirements.

Although the Employer argued that private road construction contractors pay employees only for time spent at the worksite, the Union points out that their hourly rates are substantially higher, that they pay for subsistence and travel expenses while away from home, and that at least in the case of one Madison contractor hourly payment is made for the trip back to the Madison office on jobs where employees do not return to Madison at the end of each working day.

On the subject of the proposed increase for the Sanitary Landfill classification the Union points out that the rate stayed the same during 1978 and 1979 at $4.87 per hour. During those years the weekly rate was less than the weekly semiskilled rate. It is therefore appropriate that in 1980 and 1981 labor agreement the rate for this classification should be somewhat higher than proposed by the Employer.

The Employer's Position

The County argues that adoption of the 90 per cent premium limit is a rational system both for sharing the costs without annual bargaining about how to share increases and also a system wherein the individual employee has some incentive to hold down increases in the cost of health care. The Employer is not asking for any kind of retroactivity in application of the 90 per cent, only that the new benefits and their increased costs be shared in this way for the years 1980 and 1981. In addition, since 1980 is past, an award in favor of the Union would mean that employees under the family plan would receive back from the Employer $134.16 apiece which they have already paid.

The principle of a 90 per cent contribution for identical coverage has already been adopted in the Employer's labor agreement with AFSCME covering employees in the County Nursing Home unit. In that agreement the County pays $100 per month for the first two months of 1980 and 90 per cent of the premium thereafter throughout the life of the two year agreement. In this connection the Employer points out that other arbitrators have opined that internal comparisons of this kind should be given greater weight than external comparisons and that to do otherwise is to invite use of the arbitration process to shop for a better settlement than has been obtained in other units and thus to undermine collective bargaining.

The County introduced numerous comparisons with other counties adjacent to Green County or in the vicinity to show that Green County health insurance costs are high in comparison to these others (except for the Lafayette County Highway Department unit where the employer will pay 100 per cent of the $114.45 monthly premium but where the benefits of the plan were not put in evidence in this proceeding). The Lafayette County Social Services Department unit is now in arbitration over the effective date when that county will pay 100 per cent of the premium cost for family coverage. Current premium, however, is only $73 per month, which is considerably less than the 90 per cent of the Green County premium proposed by this Employer. In Rock County, although the employer pays the entire premium for family coverage, the premium is only $87.90. In Dane County the employer pays 90 per cent of the family premium.

In sum, although the County argues that internal precedent in the Pleasant View Nursing Home should be more persuasive in this case, the external comparables, and especially the dollar amounts, also support the Employer's position on the issue of health insurance family coverage premium payment by the Employer.

On the portal pay issue the County refers to its history. Prior to 1974 the Highway Department employees had a 45 hour week with no overtime premium. Employees were paid for travel time to and from the work site. After passage of Federal legislation bringing the employees under the coverage of the Fair Labor Standards Act the County was advised by its Corporation Counsel that unless it paid overtime premium for the five hours of the week over 40 hours it would be in violation of Federal law. At about the same time the State warned the County that it would no longer reimburse the cost of overtime premium on State of Wisconsin work. Thereupon the work week was reduced to 40 hours and these parties negotiated an agreement that changed the hourly rates so as to maintain the employees' weekly income. This involved adding some 70 cents per hour to rates plus the increment extended to other County employees that year. In exchange for what the County considered to be a windfall for these employees resulting from the change in applicable

law the Union agreed to the County's proposal of inclusion of the portal provision quoted above, whereby the former policy of Employer payment for travel time back to the shop was eliminated and a system adopted whereby employees worked up until quitting time and were returned by County vehicle to the shop on their own time. In 1976 the 1974 amendments to the Fair Labor Standards Act were declared unconstitutional (in National League of Cities v. Usery, U.S. 1976). So although there was no longer any Federal legal obligation to pay overtime premium beyond 40 hours per week, there now existed a contractual obligation. In the opinion of the Employer this is all the more reason to keep the portal provision, since it was originally negotiated in exchange for liberal increases in the hourly rates that even yet are higher than the rates in nearby counties with similar populations.

The County also argues that elimination of the portal provision will further reduce productivity of these employees. The County asserts that resurfacing work on township roads that was formerly performed by these employees is often being underbid and performed by private contractors. The County attributes this at least in part to the fact that the employees of private contractors do not receive portal pay and therefore have eight hours of productive work each day whereas the employees in the Highway Department unit lose at least fifteen minutes of their work day by being paid for transportation time to the jobsites. To eliminate the present afternoon portal provision would further reduce productivity and the Employer's competitiveness in bidding against private contractors for township work. The County points out that the size of the Highway Department work force has declined from 60 a few years ago to about 40 now. At this level the County is at risk of not having enough employees for clearing roads in the winter, when all employees are often fully occupied. The County declares that another provision of the labor agreement added at the time of the 1974 Federal legislation and the consequent reduction of the work week is a guarantee of 40 hours of work to each employee each week. Thus, by losing township jobs to private contractors the Employer faces the real possibility that there will be redundant employees during the summer months or not enough employees to perform the necessary work in the winter months.

As indicated above, the Employer points out that private road-building employers do not make portal-to-portal payments. As to the assertion by the Union of doubtful legality of the present afternoon portal provision, the Employer emphasizes that National League of Cities v. Usery has put to rest the application of the Fair Labor Standards Act to these employees. Since the portal-to-portal provisions are a part of that Act, they cannot apply here. Even if they did apply, the County argues that the kind of riding time involved in this dispute is not proscribed by those provisions. And finally, the County argues that this arbitrator should not attempt to interpret a question of legality in these circumstances, that the normal practice of arbitrators is to leave such questions to the courts.

The County introduced evidence purporting to show that in comparison to other nearby or adjacent counties with similar populations Green County Highway Department rates are substantially higher and that Green County is more liberal on aggregate employment benefits.

As to the rate for the Sanitary Landfill classification the Employer states that its offer would equate the classification's weekly rate with that of the semiskilled labor classification. At the time of reduction of the work week in 1974 the Sanitary

Landfill Operator continued to work a 45 hour week for the reason that these were the hours of public access to the site. The person in that classification has continued to be paid for 45 hours and has had premium pay added for the hours over 40 each week. Consequently, his hourly rate was lowered so as to maintain his weekly wage at the previous level. The Employer's offer for 1980 and 1981 would establish the weekly wage at the level of the semiskilled labor classification. Part of this individual's wage payment is one-half of the salvage value of materials sold at the site. This is said to amount to about $2,000 per year. One Employer witness at the hearing asserted that he had heard talk that the classification was overpaid. The Employer also argues that although its own proposal is based on the equivalency of the weekly wage with that of the semiskilled classification, the Union has given no rationale for its ten cents an hour greater proposal in 1980 and sixteen cents an hour greater proposal in 1981.

OPINION

The statute under which this proceeding arises instructs me to give weight to the following factors in arriving at an award:

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 and with other employes 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 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.

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.

There are no conditions in this dispute that require any special attention to the factors set forth in "a.", "b.", or "c"., although "the interests and welfare of the public" in "c." must be a consideration in all my deliberations. No issue of ability to pay has been raised, nor are there any special stipulations of the parties. The Union has raised a question about the

legality of the portal pay provision which it seeks to eliminate from the labor agreement, but I agree with the Employer that this is not the appropriate forum for judging the legality of the provision.

Although any award will bring an economic benefit to one party or the other, it does not seem to me that the cost-of-living factor in "d." should be a significant consideration here. Neither party stressed that factor directly. Nor does it seem that "changes. . .during the pendency of the arbitration proceedings" in "g." present a problem requiring any special consideration. This leaves factors "d.", "f.", and "h." for comment and consideration.

Preliminary Discussion

The parties disagree both as to the counties with which employment conditions in these units should be compared and whether comparisons should be made with other Green County employees. On the health insurance issue the Union would compare Green County with the adjoining counties of Lafayette, Rock, and Dane. Its comparisons also include Marinette, Pierce, and Clark Counties. But although those latter counties have somewhat similar populations, in my opinion they are so far removed from Green County geographically as to negate their usefulness. Since Lafayette and Rock Counties pay the entire cost of the insurance and Dane County pays 90 per cent, the Union position is fairly well supported by these comparables, although the dollar costs differ. The Employer, however, would give greater weight in the comparables to other counties in the vicinity that have populations more similar to Green County. These include Iowa, Grant (not organized), Crawford and Columbia as well as Lafayette, Rock and Dane Counties. Columbia County pays 75 per cent of the family premium, Iowa County pays about 87 per cent, and Grant County pays only the amount of the single rate for all employees. Since I think that Columbia and Grant Counties should be given no greater consideration than the three outlying counties cited by the Union, and since even the Employer agrees that Dane and Rock Counties have to be given some consideration, despite their much greater populations, it is my view that the appropriate comparables are the surrounding counties in Wisconsin: Lafayette, Iowa, Dane and Rock. Although two of these counties pay 100 per cent of costs, the other two do not. The dollar amounts vary widely, and there was insufficient testimony to allow making comparisons of the kinds of the provisions of the different plans. The prevailing practice in the surrounding counties in Wisconsin is for the employers to pay 90 per cent or more of the family health insurance premium. The comparables, however, provide very little guidance concerning the unusual aspect of the Union's offer, which would have this Employer pay 100 per cent of the cost in 1980 but to revert to 90 per cent in 1981.

On the issue of the portal clause only one of the counties surrounding Green County in Wisconsin has anything similar: Rock County's clause requiring employees to be transported from shop to job on their own time in the mornings. Dane, Lafayette and Iowa Counties pay employees of their highway departments for travel both ways. Thus, on the simple comparison of the portal issue with the surrounding counties, the Union position is supported.

There were no comparables introduced by either side concerning their positions on the proper hourly rate for the Sanitary Landfill classification.

Also included as a factor to be considered under subparagraph "d." is the phrase "comparison with other employes generally in public employment in the same community. . ." On this issue the Employer has made a strong argument that on the issue of 90 per cent payment of the family health insurance premiums internal comparables are more important than external comparisons. In Green County the employees at Pleasant View Nursing Home have a labor agreement calling for the Employer to pay $100 per month for family coverage under the identical health insurance policy for the first two months of 1980 and to pay 90 per cent thereafter throughout the remainder of the 1980-81 labor agreement. I agree here with the Employer that an arbitrator should be very careful about awarding conditions that are more favorable than those already adopted for the same period for other employees of the same employer. In this case, however, my arbitrator's reluctance to go that route is mitigated by the fact that the Union's 100 per cent proposal applies only to 1980 and thus the 90 per cent payment would be identical for employees in all three units during 1981 even if the Union's proposal is adopted.

As to the factor described in subparagraph "f." and subsumed here as "overall compensation," the Employer makes an impressive argument that overall conditions of these employees (especially those in the Highway Department unit) are substantially better than employment conditions in Lafayette County and in terms of rates not far below those of Rock County Highway Department employees. Most persuasive, perhaps, with reference to overall compensation of the Green County Highway Department employees is their guaranteed 40 hour work week. There appear to be no other counties in the vicinity with a guaranteed 40 hour week. On this issue of overall compensation and other employment conditions the Union has presented no evidence nor argument.

As to subparagraph "h." ("such other factors. . .which are normally or traditionally taken into consideration. . .") it seems significant to note that testimony at the hearing indicated that a tentative settlement that contained the conditions of the Union's final offer was agreed to by the Employer's bargaining committee but was rejected when taken to the County Board. Although this occurrence may be unusual, it is certainly within the authority of the County Board to repudiate its own representatives. From the standpoint of an arbitrator, however, it is hard to ignore the obvious conclusion that since the County Board had members on the Employer's negotiating committee, the tentative settlement must have had substantial support on both sides of the table. This circumstance must be weighed along with the other factors discussed above.

I have not discussed the rate for the Sanitary Landfill classification in this opinion other than to indicate that no comparables had been introduced by either side relating to this rate. While I am impressed with the Employer's position that the rate should be aligned with the weekly wage of the semiskilled classification, no evidence was set forth to show a tradition of tying the two rates to each other. During the 1978-79 period, as the Union argues, the classification received no increase and was below the semiskilled rate. Since neither side has shown any strong support or precedent for its position, this issue can go either way. In my opinion the choice between the final offers of the parties must be made with reference to the other two issues.

As to the health insurance it seems clear that the comparables which I think are appropriate come very close to supporting

a 100 per cent contribution by the Employer, which is more than the Union here is asking, at least on a permanent basis. I think that the four adjacent counties of Lafayette, Iowa, Dane and Rock constitute appropriate comparable areas. Two are larger in population and two are smaller. One of the larger ones pays 100 per cent, as does one of the smaller ones. The other larger county pays 90 per cent, while the other smaller county pays close to 90 per cent. Although it is true that there are variations in the size of the monthly premiums and that the evidence did not compare the benefits in all cases, I believe that the Union's argument that the parties should share the increased expense at the time the cap is removed and the percentage limit is added is reasonable. And while it is important to consider that employees in these units would get a refund for the ten months of 1980 when they paid the difference between $100.61 (90 per cent) and $111.79(100 per cent) whereas the employees of Pleasant View presumably would not, there is no difference in the result in the year 1981. On this issue it seems to me that the evidence and the arguments yield a preliminary result slightly in favor of the Union.

One more comment is appropriate on the insurance issue. It has been the parties, not the Wisconsin Employment Relations Commission, who proposed holding the mediation session and hearing on the same dates for both collective bargaining units. Since I have expressed the view in this report that the evidence and the arguments support the Union on the insurance issue, it is conceivable that I could select the Union's final offer for the Department of Social Services and the Employer's final offer for the Highway Department. In that case no doubt all parties other than the employees of the Department of Social Services would object. But for the reasons recounted below I need not face that kind of troublesome problem.

On the portal issue the comparables support the Union position. This is not a common employment condition in the Green County area, although Rock County does have it for traveling to the jobsite in the morning. On the other hand the inclusion of the pertinent paragraph was freely negotiated by the Union in 1974 in exchange for a 70 cents per hour increase in wage rates that went with the reduction of the work week from 45 to 40 hours and the guaranteed 40 hour week. As a continuing consequence the Green County Highway Department rates are substantially higher than those in Lafayette and Iowa Counties, which are more rural than Green County and only slightly lower than the highway department rates in Rock County, which has a more urban population.

I am not particularly swayed by the Employer's argument concerning the effects of paying the afternoon portal on the productivity of these employees. The Employer is not proposing to take away the morning portal. If indeed there is a steady loss of township contract work, it is hard to see how maintaining the status quo, which is what the Employer's offer would do, will affect the trend. I am also not convinced that the guaranteed 40 hour week prevents the Employer from increasing the size of the work force in the winter. As I read the clause, it is not a guaranteed annual wage. It only says that for those who are employed in any particular week, payment of 40 hours is guaranteed.

Although I consider this issue, like the insurance issue, to be a very close one, I must come back to the circumstance under which this condition was negotiated, i.e., it was adopted in exchange for a large increase in hourly wages and a reduction of five hours of work per week. On balance, therefore, I would prefer to leave the portal clause undisturbed.

Conclusions

Since my preferences are split between the parties' final offers on the two important issues, and since I think the third minor issue is a toss-up, I am inclined to return to a further consideration of "h." ("Such other factors. . . 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. . ."). Although neither party referred to it at the hearing or in its brief, the Green County Pleasant View Nursing Home dispute with the Wisconsin Council of County and Municipal Employees, Local Union 1162, AFSCME, AFL-CIO, also went to arbitration. It seems appropriate that I should take arbitral notice of that award: Case XLIX, No. 25369, MED/ARB-532; dated September 18, 1980 (Arbitrator William W. Petrie). In those negotiations the union members had rejected a settlement made by their bargaining team. According to Mr. Petrie's report the County argued that for the arbitrator to accept the union's final offer "will tend to undermine the interest arbitration process," since it would mean that the union members could reject the settlement of their own representatives and then obtain a better settlement from an arbitrator. My reading of Mr. Petrie's award indicates that he agreed with that argument. In his award in favor of Green County he also cited Elkouri and Elkouri, How Arbitration Works, page 789, in support of the proposition that the tentative settlement probably represented the best resolution that the negotiators thought was possible at the time they made it.

Except that the shoe is on the other foot, I am not able to see much difference between that situation and this one. The County's negctiating committee took a tentative settlement to the County Board. The Board rejected that settlement. There is no indication that either party changed its basic position after that. The issue is now before the arbitrator. Since the decision in this dispute is a close one, as I have indicated above, it is my view that it should now be decided in line with what the designated representatives of the Employer thought was a fair settlement from the standpoint of the County and the best resolution of the dispute that could be obtained from the Union. Under these circumstances I do not feel that an award in favor of the Union would do any violence to the County's interests.

I do not propose this rationale as a general rule for interest arbitrators. If I thought the County Board had turned down the tentative settlement for the reason that they believed it was outrageous or because their representatives had somehow betrayed their public trust by agreeing with the Union, then I would not want the incident to influence my decision. Likewise, if in my opinion the County offer, measured against the factors in the statute, was clearly more reasonable than the Union's offer, then I would be inclined to decide for the County. That was not the case here. The bargaining committee agreed freely to the tentative settlement made in the mediation session. It cannot be viewed as an unreasonable settlement. But the Employer's negotiating committee was simply unable to get a majority of the County Board to accept it.

In my view the decision in this dispute is a toss-up. Therefore, it is appropriate (and there is arbitral precedent for this course of action) to make an award based on the rationale I have just described.

In a 1973 interest arbitration Dean Reynolds Seitz, in a situation very much like this one, decided in favor of a union's final offer on grounds similar to those expressed in this proceeding. In making his award he added the following paragraph, which is worth quoting:

> In grievance disputes an arbitrator does not want to know anything about proposed settlements. This is because a party may be willing to wash out a particular grievance without surrendering on principle or binding itself in respect to positions taken in the future. This situation is entirely different when a party agrees to contract terms at a mediation session or council meeting. Such an agreement is pertinent in connection with evaluating the reasonableness of an offer. Of course, it is true that parties can change their minds and change their votes, but a change does not with certainty indicate that an offer is unreasonable unless it is established that new facts were presented which were not available at the time of a particular vote. (Beaver Dam Police Department and The City of Beaver Dam, Case V, No. 16700, MIA-46, Decision No. 11760-C. August 13, 1973)

The only new facts that have come to my attention in this proceeding (which were not known by anyone at the time of the County Board's disapproval of the tentative settlement) are that the arbitrator in the Pleasant View Nursing Home case chose the Employer's final offer, which included the same insurance proposal being considered here. But as I have observed above, although members of these units will get some reimbursement of the amounts above $100.61 per month that they paid out during the last ten months of 1980, the 1981 insurance benefit -- whereby the Employer pays 90 per cent of the family premium -- will be the same for employees in all three units.

AWARD

1. The final offer of the Union is chosen in each of the disputes. The previous agreements of the parties, along with the final offers of the Union, as set forth in its letters to the Wisconsin Employment Relations Commission, dated June 12, 1980, shall be incorporated in the labor agreements for the two units for calendar years 1980 and 1981.

2. Since neither party raised the issue at the hearing or in the briefs, it is well to make clear the arbitrator's intention concerning the application of this award to the circumstance of removing the portal provision. It is my intention that the removal of Article XXXI, Section 5, from the 1980-81 labor agreement between the parties will be effective as of the date when this award is received and that Section 5, as it appeared in the 1978-79 labor agreement, will be considered to have been effective and valid up until that time.

Dated: January 27, 1981
at Madison, Wisconsin

Signed: David B. Johnson
David B. Johnson
Mediator/Arbitrator