JAN 23 1984

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of

LOCAL 3148, AFSCME, AFL-CIO

To Initiate Mediation-Arbitration Between Said Petitioner and

SAUK COUNTY (HEALTH CARE CENTER)

Case XLVI
No. 31028 MED/ARB-2126
Decision No. 20465-A

Appearances:

Mr. David Ahrens, District Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of Union.
DeWitt, Sundby, Huggett, Schumacher & Morgan, S. C., Attorneys at Law, by Mr. Robert M. Hesslink, Jr., appearing on behalf of Employer.
Mr. Eugene R. Dumas, County Corporation Counsel, appearing on behalf of Employer.

ARBITRATION AWARD:

On April 19, 1983, the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator, pursuant to 111.70 (4)(cm) 6. b. of the Municipal Employment Relations Act, in the matter of a dispute existing between Local 3148, AFSCME, AFL-CIO, referred to herein as the Union, and Sauk County (Health Care Center), referred to herein as the Employer, with respect to certain issues as specified below. Pursuant to the statutory responsibilities, the undersigned conducted mediation proceedings between the Union and the Employer on August 16, 1983, at Baraboo, Wisconsin. Mediation efforts failed to resolve the matters in dispute between the parties, and at the conclusion of the mediation proceedings the Union and the Employer waived the statutory provisions of 111.70 (4)(cm) 6. c., which require the Mediator-Arbitrator to provide written notice of intent to arbitrate and to establish a time frame within which either party may withdraw its final offer.

Arbitration proceedings were conducted on August 16, 1983, at Baraboo, Wisconsin, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were not transcribed, however, briefs and reply briefs were filed in the matter. Final briefs were received and exchanged by the Arbitrator on October 17, 1983.

THE ISSUES:

The issues joined by the final offers of the parties are as follows:

UNION FINAL OFFER:

1. Article X - Holidays, Section 10.02, shall be amended by adding the following language:

   "However, holiday time for Thanksgiving, Christmas Eve, Christmas and New Years (of the following year) shall be allocated on the basis of those requests received by September 1st, provided that no employee shall be granted more than two (2) of these particular holidays on a priority based on seniority."

2. Article XII - Sick Leave, Section 12.06, shall be amended by adding the following language thereto:

"An employee may elect to receive the cash value of the sick leave conversion privilege, in lieu of any right to continued participation in the Employer's group plan."

3. Article XIV - Bereavement Leave, Section 14.03, shall be amended by adding the following language to the first sentence thereof:

". . . or the end of the employee's next regularly scheduled shift, if it commences within twelve (12) hours after the funeral."

4. Article XVIII - Longevity, Section 18.01, shall be amended by increasing the amount to $15.00.

5. Article XXXII - Duration, Section 32.01, shall be amended by changing the first sentence to read as follows:

"THIS AGREEMENT shall be effective as of the first day of January, 1983, and shall remain in full force and effect through the 31st day of December, 1984, except that either party may request to reopen with respect to wages, only, as hereinafter set forth."

6. All wages as shown in Appendix A shall be increased by three percent (3%), across-the-board.

Any additional reimbursement of Medicaid related expenditures by the State to the County above and beyond 3% shall be paid to members of the bargaining unit as of the pay period following notification of said increase. Further, this increase is "on 12/31/82 wage rates".

7. Snacks Pay-out:

As of the week following the elimination of free coffee and toast provided to members of the bargaining unit, the Employer will reimburse employees 50¢ for each working day.

8. Delete existing Article VI and replace with the following:

<u>Article VI - Fair Share Agreement</u>

6.01 The Employer agrees to deduct the Union dues from the employees' checks once each month. Said dues shall be payable to the treasurer of the local union within ten (10) days of such deductions.

6.02 The Employer agrees that it will deduct from the earnings of all employees in the collective bargaining unit covered by this Agreement, the amount of money certified by the Union as being the monthly dues uniformly required of all members. Changes in the amount of dues to be deduced shall be certified by the Union thirty (30) days prior to the effective date of the change.

6.03 As to new employees, such deductions shall be made from the normal check for dues deductions following six (6) months of employment.

6.04 The Employer will provide the Union with a list of employees from whom such deductions are made with each monthly remittance to the Union.

6.05 The Union, as the exclusive representative of all employees in the bargaining unit, will represent all such employees, Union and non-union, fairly and equally, and all employees in the unit will be required to pay their proportionate share of the costs of representation by the Union. No employees shall be required to join the Union, but membership will be made available to all employees who apply. No employee shall be denied Union membership because of race, creed, color, age, or sex.

EMPLOYER FINAL OFFER:

1. Article X - Holidays, Section 10.02, shall be amended by adding the following language:

   "However, holiday time for Thanksgiving, Christmas Eve, Christmas and New Years (of the following year) shall be allocated on the basis of those requests received by September 1st, provided that no employee shall be granted more than two (2) of these particular holidays on a priority based on seniority."

2. Article XII - Sick Leave, Section 12.06, shall be amended by adding the following language thereto:

   "An employee may elect to receive the cash value of the sick leave conversion privilege, in lieu of any right to continued participation in the Employer's Group Plan."

3. Article XIV - Bereavement Leave, Section 14.03, shall be amended by adding the following language to the first sentence thereof:

   ". . . or the end of the employee's next regularly scheduled shift, if it commences within twelve (12) hours after the funeral."

4. Article XVIII - Longevity, Section 18.01, shall be amended by increasing the amount to $15.00.

5. Article XXI - Health Insurance, Section 21.01, shall be amended to read as follows:

   "A group hospital, surgical and major medical insurance plan shall be available to employees. The Employer agrees to pay ninety percent (90%) of the premium for hospital and surgical insurance plans for employees and their dependents, including any major medical portions thereof. Such change shall be effective April 1, 1983."

6. Article XXV - Personnel Files, Section 25.02, shall be created to read as follows:

   "All warning notices shall be removed from the employee's personnel file three (3) years after issuance if the employee has not been guilty of subsequent disciplinary or work rule infractions."

7. Article XXXII - Duration, Section 32.01, shall be amended by changing the first sentence to read as follows:

   "THIS AGREEMENT shall be effective as of the first day of January, 1983, and shall remain in full force and effect through the 31st day of December, 1984, except that either party may request to reopen with respect to wages, only, as hereinafter set forth."

   Section 32.02, shall be created to read as follows:

   "If the Medicaid reimbursement formula provides for more than a three percent increase in the reimbursement provided the Employer during the calendar year, 1983, the Union can reopen negotiations with respect to wages payable in 1983, upon three months' notice, unless the Employer agrees to increase wages paid under the Agreement, in accordance with the additional increase provided under the reimbursement formula."

8. All wages as shown in Appendix A shall be increased by three percent (3%) across-the-board.

9. All snacks presently furnished to employees shall be discontinued.

DISCUSSION:

The statute directs that the Mediator-Arbitrator, in considering which party's final offer should be adopted, give weight to the factors found at 111.70 (4)(cm) 7, a through h. The undersigned, in evaluating the parties' final offers, will consider the offers in light of the foregoing statutory criteria, based on the evidence adduced at hearing, and the arguments advanced by the parties in their briefs.

The Union's final offer in this matter sets forth eight separate issues, and the Employer's final offer sets forth nine separate issues. While there are a total of nine issues raised by the final offers of the parties, not all of the issues are disputed, because certain of the issues raised by each party contain identical provisions for inclusion in the Collective Bargaining Agreement. Specifically, the holiday issue at Article X, Section 10.02; the sick leave issue at Article XII, Section 12.06; the bereavement issue at Article XIV, Section 14.03; the longevity issue at Article XVIII, Section 18.01; and the duration issue at Article XXXII, Section 32.01 set forth identical terms in each party's final offer. Therefore, regardless of which party's final offer is adopted, the results will be the same with respect to the foregoing. Consequently, the undersigned will provide no discussion nor analysis with respect to the foregoing issues. In addition to the foregoing common provisions in the parties' final offers, the parties also both propose a 3% across-the-board wage increase as shown in Appendix A. There is a distinction, however, as to additional increases in 1983, in that the Union proposes further increases in the event reimbursement of Medicaid related expenditures by the State to the County exceed 3%, whereas, the Employer proposes that the Union may reopen on wages with three months' notice in the event Medicaid reimbursement formulas provide for more than 3% increase, unless the Employer agrees to increase wages paid under the Agreement in accordance with the additional increase provided by the reimbursement formula. Therefore, since the general wage increase of 3% is identical in both parties' final offer, no attention will be given to the amount of the increase, and consideration will only be given to the method of reopening on wages as proposed by the Employer vis a vis the automatic improvement in wages proposed by the Union, in the event the 3% formula on Medicaid reimbursement is exceeded.

In addition to the foregoing limited wage dispute in the first year, the Union proposes payment in lieu of snacks previously furnished by the Employer, whereas the Employer proposes that all snacks presently furnished to employees shall be discontinued. Further, the Union proposes that a fair share agreement be incorporated into the Collective Bargaining Agreement, whereas the Employer proposes that the language of the predecessor Contract remain in place, providing for a modified fair share agreement. With respect to health insurance premium participation, the Employer proposes that the Contract be modified so that the Employer contribution for all health and major medical insurances be at the rate of 90% of premium, with employees participating to the extent of 10%. The proposed change would replace the terms of the predecessor Agreement, which the Union proposes to maintain, which provides for 100% of Employer participation for hospitalization premium and 100% of the employee's share of major medical coverage. Finally, the Employer here proposes Contract terms for the removal of warning notices in employees' files. The Union makes no proposal on this issue.

Five issues separate the parties in their final offers. Each of the issues will be discussed separately prior to making a determination as to which final offer should be adopted in its entirety.

FAIR SHARE ISSUE

Both parties in their briefs cite prior arbitration awards of this Arbitrator dealing with the fair share issue, wherein this Arbitrator has determined that in multiple issue interest arbitration disputes the outcome should not be decided on the basis of fair share, but rather, where other issues are also disputed between the parties, the fair share issue will be determined by the decision with respect to the other disputed issues. (Nicolet Education Association,

Decision No. 17581-A (6/12/80); Fox Point Joint School District No. 8, Decision No. 16352-A (11/21/78); Portage Community School District, Decision No. 16608-A (4/10/79); Appleton Area School District, Decision No. 17202-A (1/17/80)) Additionally, Employer cites Rosendale-Brandon School District, Decision No. 18375-A (Weisberger); Two Rivers Education Association, Decision No. 16357-A (Zeidler); West Bend Joint School District, Decision No. 17365-A (Mueller). The undersigned has considered all of the evidence and argument in this matter, and concludes there is no reason to change his earlier views with respect to this issue. Thus, there is no finding here for either party's position on the fair share issue, and it will be controlled by the outcome of the other disputed issues.

PERSONNEL FILES - WARNING NOTICE REMOVAL

Employer here proposes a method for removal of warning notices from employees' personnel files three years after issuance, if the employee has not been guilty of subsequent disciplinary or work rule infractions. The Union makes no proposal on this subject, and the predecessor Agreement is silent on this matter. Obviously, the Employer proposal here carries with it protection for members of the bargaining unit, and consequently, it is axiomatic that the Employer's proposal is more beneficial to the employees. Consequently, the undersigned concludes that the Employer's offer should be adopted on this issue.

SNACKS PAYOUT

Union proposes that since Employer is deleting snacks which have previously been furnished to all employees that the Employer reimburse the employees at the rate of 50¢ each working day for the elimination of the snacks, the value which the Union places on this benefit. Employer evidence at hearing satisfies the undersigned that Employer cost of furnishing the snacks is approximately 25¢ per shift. Employer argues that the 50¢ sought by the Union is more than double the actual cost of the benefit which it had previously provided. The Employer further argues that since it is his intention to establish a cafeteria service for the employees, and because it is the Employer's opinion that cafeteria prices are subjects of collective bargaining, any issues with respect to these type costs should be left for bargaining over cafeteria prices.

While the undersigned has concluded that the approximately 25¢ per shift per employee, which the Employer calculates as the cost of furnishing snacks, is a valid figure, the actual cost of furnishing the snacks does not take into account the value of the snacks to the employee, since the employee would be required to purchase the snacks which have previously been furnished at no cost to him at a retail price rather than at Employer cost. The undersigned, therefore, concludes that both figures have validity. The Union proposal here for 50¢ per shift is a cumbersome proposal. The undersigned would have preferred a cents per hour increase added to wages in lieu of the Employer furnished snacks. Notwithstanding that preference, even relying on the employees' figures, the elimination of snacks at the Employer's cost represents a reduction of the equivalent of 3¢ per hour, based on an eight hour work shift. In view of the Employer's stated intention of opening a cafeteria and his intention to bargain the prices of goods served in the cafeteria with the Union, it would seem more logical to the undersigned to defer the snack discontinuation until the cafeteria operation is ready to commence. That, however, appears not to be the case. The undersigned finds, after considerable reflection on this issue, that neither party's offer is preferred. As a result, the inclusion of the Union proposal with respect to snack payout, or the exclusion of same, will be determined by the outcome of the remaining issues disputed between the parties.

WAGES

Both parties to this Agreement propose a 3% wage increase in the first year of a two year Agreement, and a wage reopener for the second year. Thus, the basic wage structure is undisputed between them. What is disputed with respect to wages is wage improvements during the 1983 year in the event additional reimbursements of Medicaid related expenditures by the State to the County occur

over and above 3%. Union proposes that any percentage in excess of 3% be added as a percentage to the wage structure as of the pay period following the date of notification of said increase. Employer proposes that in the event Medicaid reimbursement formula provides more than a 3% increase during the calendar year 1983, the Union can reopen negotiations with respect to wages payable in 1983 upon three months' notice, unless the Employer agrees to increase wages paid by the amount of Medicaid reimbursement in excess of the 3%.

The undersigned notes that the percentage of increases offered for 1983 to other work units of this Employer is 4½% for social workers and nurses; 4½% for deputy sheriffs; 4.2% for highway department employees and 4% for non represented employees. Here, the wage offer agreed to between the parties, effective January 1, 1983, is 3%, a full percentage point or more lower than any of the other units described above. Given the disparity of the basic wage agreement here compared to the wages established in the foregoing units, the undersigned concludes that the Union offer in this matter is preferred. The foregoing is buttressed when considering the settlements entered into on this same issue in Columbia County. Columbia County, by the acquiescence of both parties, is the primary comparable to Sauk County. In Columbia County, the parties agreed that an increase received by the County above and beyond 3% for Medicaid reimbursement will be passed along to employees in the form of wages retroactively to April 1, 1983. Obviously, the Union proposal here is below the agreement in Columbia County, where Union here makes the effective date of any potential increases for 1983 effective the pay period following the date of notice of increase. The undersigned, therefore, concludes for all of the above reasons that the Union's position on wages is superior, and should be adopted.

HEALTH INSURANCE PREMIUM PARTICIPATION

Prior to any discussions on health insurance by the undersigned, comment with respect to a submission made by the Union on December 16, 1983, is appropriate. On that date the undersigned received a letter with respect to health insurance premiums, which will become effective for the year 1984 as it affects employees in this bargaining unit. On December 19, 1983, Counsel for the Employer wrote opposing any consideration to this introduction of what he considered to be new evidence after the hearing had been closed. The undersigned disregards the submission from the Union on December 16, 1983, with respect to health insurance premiums for the year 1984 since it was not an evidentiary item submitted at hearing and cannot be considered because it was submitted after this record was closed.

Without question, this is the salient issue in these arbitration proceedings. As Employer states in his brief at page 7: "In addition to the major issue (emphasis added), the health insurance contribution question, the final offers of the parties contained four other issues." It is this issue which is the primary issue that foreclosed settlement between the parties, in the opinion of the undersigned. Under the Employer proposal for premium participation on health insurance, the employees' share of contribution for health insurance would increase from $8.99 per month for a family contract under the terms of the predecessor Agreement to $15.60 per month under the Employer proposal, an increase of $6.61 per month. Based on a 173 hour working month the increased contribution on the part of employees would amount to the equivalent of 4¢ per hour. Employer justifies his proposal on the basis of an effort at cost containment, citing arbitrators' awards in Dane County by Arbitrators Krinsky, Mueller, Kerkman, Bellman and Petrie. Three of the five arbitrators there rejected the Dane County proposal for changing from a percentage to a dollar number in the collective bargaining agreement as far as premium contributions by the Employer are concerned. Employer argues that the Bellman reasoning in finding for the employer in Dane County on the health insurance question, as well as the dicta contained in the awards of Krinsky and Mueller support his position. Furthermore, the Employer relies on arbitral authority in City of Brookfield, Dec. No. 19573-A (9/30/82-Rice) and Barron County, Dec. No. 18597-A (2/10/82-Imes) to support his argument that when considering fringe benefits internal comparables as to how fringe benefits are to be awarded should be controlling.

With respect to the latter arguments the undersigned takes notice of arbitration awards that have issued during the pendency of this decision for other units of this same Employer with respect to the same health insurance question. In the Courthouse employees unit, Arbitrator Zeidler awarded the County's final offer, thus implementing the proposal made by the Employer in this matter. In the Sheriff's Department, Arbitrator Krinsky awarded for the Union's final offer, adopting the Union position with respect to this issue, and in the Highway Department, Arbitrator Krinsky also adopted the Union's final offer, incorporating the Union's position in this matter. Thus, in considering internal comparables with respect to the issue at hand, we have a voluntary settlement in a small unit of nurses, which has agreed to the Employer offer as contained in its final offer in this dispute and the Zeidler award for the Courthouse unit, finding for the Employer offer. On the other hand, we have two awards affecting the Sheriff's Department and Highway Department adopting the Union's position on this issue. Consequently, the undersigned concludes that internal comparables can no longer be persuasive, since there is no consistency of approaches for health insurance premium sharing among all employees of this Employer.

The undersigned has considered all of the opinions in the Dane County arbitration cited by the Employer, and agrees with the majority of those opinions in that matter. Therefore, based on arbitral authority in Dane County, the Union position in this matter is preferred. It should be noted that while the undersigned in Dane County found for the Employer's final offer position, he found on the issue of health insurance contribution in favor of the Union position. It was based on the totality of the final offers that the Employer final offer was adopted.

The undersigned considers the impact of the Employer offer on health insurance as it affects the total compensation question in this matter. The record establishes that the average hourly rate for this unit is $5.26 per hour. (County Exhibit No. 25) The 3% agreed to between the parties generates an approximate 16¢ per hour average increase per unit member. It has already been determined that if the Employer final offer here is adopted the insurance proposal will result in a reduction of the equivalent of 4¢ per hour in wages, thereby reducing the 16¢ average increase per employee in this unit to 12¢. In considering that reduction and the net amount of the increase, the undersigned concludes that the further reduction of income to the employees by reason of the decrease in health insurance premium participation by the Employer is unwarranted, particularly here where the parties have agreed to a 3% increase, where other units are enjoying 4 to 4½% as cited earlier in this Award.

Therefore, based on all of the foregoing, the undersigned concludes that adoption of the Employer offer on this issue should be rejected, and that the Union's position with respect to the status quo is preferred.[1]

SUMMARY AND CONCLUSIONS:

The undersigned has concluded that neither party's offer is preferred with respect to fair share and snack reimbursement; that the Employer's final offer with respect to removal of disciplinary notice from personnel files of employees is preferred; that the wage offer and health insurance offer of the Union are preferred. It follows therefrom that the Union's final offer in its entirety should be adopted in this matter.

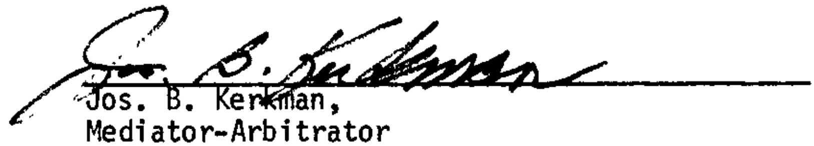
1/ The undersigned in evaluating the worth of the parties' wage offers recognizes the potential of further increases for the year 1983 in the event that Medicaid reimbursement from the State is increased. Notwithstanding the foregoing, the undersigned believes his conclusions are valid.

Therefore, based on the record in its entirety and the discussion set forth above, after considering the arguments of the parties and the statutory criteria, the Arbitrator makes the following:

AWARD

The final offer of the Union, along with the stipulations of the parties, as well as the terms of the predecessor Collective Bargaining Agreement which remain unchanged through the course of bargaining, are to be incorporated into the written Collective Bargaining Agreement of the parties.

Dated at Fond du Lac, Wisconsin, this 18th day of January, 1984.



Jos. B. Kerkman,
Mediator-Arbitrator

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