

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of :
Local 3465, AFSCME, AFL-CIO : Case 29
To Initiate Arbitration : No. 43267 INT/ARB-5485
Between Said Petitioner and : Decision No. 26670-A
OZAUKEE COUNTY :
(LASATA NURSING HOME) :

Appearances:

Local 3465 AFSCME, AFL-CIO by Helen Isferding, Staff Representative, on behalf of all regular employees of Ozaukee County (Lasata Nursing Home), excluding Managerial, Supervisory, Professional, and Confidential Employees.

Ozaukee County (Lasata Nursing Home) by Davis & Kuelthau, S.C., by Roger E. Walsh, Esq., on behalf of the Employer.

ARBITRATION AWARD

Local 3465, AFSME, AFL-C10, hereinafter referred to as the "Union" or "Employees", and Ozaukee County (Lasata Nursing Home), hereinafter "County" or "Employer", were unable to resolve the remaining issues in their negotiations over the terms to be included in their 1990 - 1991 Collective Bargaining Agreement.

The Wisconsin Employment Relations Commission caused mediation hearings to be conducted pursuant to Wis. Stat. §111.70(4)(cm)6 between February 12 and July 9, 1990.

The previous contract between these parties covered the period from January 1, 1988 through December 31, 1989. The

parties began these negotiations in an effort to reach a new two year agreement through 1991. During the course of negotiations, the parties arrived at a number of changes in the prior contract. These changes have been implemented for the three year period from January 1, 1990 through December 31, 1992. Agreed upon changes which have been implemented include:

1. An across the board pay increase of 4% for all employees commencing on January 1 of each 1990, 1991, and 1992. This increase would be capped for "overrate employees".
2. An additional 2% increase on July 1, 1990 for Licensed Practical Nurses.
3. A shift differential pay increase for second and third shift employees effective July 1, 1990 and increased on January 1, 1991.
4. An additional floating holiday starting in 1991.
5. What appears to be a modification of health insurance coverage and a change from a dollar cap on the Employer's contribution for premiums to a 95% Employer contribution toward premium cost.
6. Other changes which relate to holiday pay and the eligibility of part-time employees for fringe benefits.

The parties were unable to resolve two remaining wage issues. On October 17, 1990, the mediator declared that negotiations were at an impasse. The undersigned was selected by the parties to arbitrate the dispute, and was appointed by the

Commission on January 3, 1991. The Arbitration Hearing was held at the Ozaukee County Courthouse on February 28, 1991. At that hearing, both parties submitted a series of exhibits and the Employer presented sworn testimony into evidence. No transcript of the oral testimony was requested. The record was closed at the conclusion of the hearing. Initial briefs due April 15, and reply briefs due May 6, 1991, were exchanged through the arbitrator.

ISSUES IN DISPUTE

In addition to the annual wage increases of 4% based upon the salary schedule and the additional 2% increase granted to LPNs in July 1990, the Union proposes the following wage increases:

1. In two previous contracts, "overrate employees" have had their percentage pay raises capped in cents per hour. Their annual wage increases were limited to the amount of money the percent increase generated when applied to the top step of the overrate employees' classification grade on the wage scale. The Union proposes that for the period of this contract overrate employees should receive the full percentage increase based upon the employees' actual wage and not limit the increase to the pay scale.
2. The Union proposes an additional wage increase of 2% to the top step on the wage scale for Grades 2 and 3 on July 1, of each 1990 and 1991.

The Employer has resisted these increases. It has agreed only to those wage increases which have been implemented.

THE UNION'S POSITION

The Union argued that this is a unique case because the Employer has been unable to retain employees. It argued that the Employer has had a particular problem attracting and retaining employees in Grades 2 and 3. In order to make up for the shortage of regular employees, the county has had to resort to hiring contract employees through a pool. Hiring pool employees is not economic. In 1989, the Employer paid an average of \$6.06 per hour to its own employees for patient care compared to \$18.68 per hour for pool employees. These factors have adversely effected employee morale.

The agreed upon pay increases which have been implemented did not adequately address the problem of inadequate compensation for nurses aides. The County has had to hire the same number of contract employees, both before and after the implementation of the wage increase. The use of pool employees is bad for employee morale, results in payments that leave Ozaukee County, and destroys continuity of patient care. The Employer's offer ignores these problems; only the Union's offer attempts to address the problems. The employees do not have the right to strike. Mediation-Arbitration is the only vehicle available to the employees to remedy the situation. A catch-up wage increase is necessary. The Union's offer is a reasonable start toward a

necessary catch-up. If there is anything wrong with the Union's offer, it may be that it does not go far enough in light of the shortage of employees at LASATA Nursing Home.

Reliance upon internal comparables is not an appropriate measure where a catch-up is required to recruit and retain qualified personnel. The Union's proposed increases will not change the rank of these employees with other external comparables in most circumstances. Ozaukee County is in the lower half among comparables. It is appropriate to add Manitowoc and Walworth Counties to the list of comparables because reliance upon a pool of only three comparables is too narrow, particularly where one of these three has not been settled.

The Union said that "The non-stability of employment shown by an average length of stay of only 5.6 years (72 nursing assistants-bench mark position) supports a catch-up". It argued that fringe benefits at LASATA lag behind those offered at other nursing homes. It cited as examples that these employees have the lowest number of holidays; have less vacation benefits; and have to contribute more toward the cost of health insurance. It compared average wages for the nurses aide's position and argued that it takes a long time to reach the maximum salary at LASATA. It argued that comparable employees elsewhere earn higher average wages and receive longevity pay which is not paid at LASATA. The Union concluded that Ozaukee County is the richest county in the state per capita. "If it is true, as alleged by the Employer, that there is no applicants (sic) interested in working at LASATA, then you had better do all in your power to keep what you have."

The Union supported its position that overrate employees should receive the same percentage wage increase as other employees with two arguments. In 1986-87, there were 29 overrate employees in Grades 2 and 3. In 1989 that number had been reduced to 17. It argued that the Union offer would generate only an additional 2¢ per hour on the average 1989 hourly rate of \$7.23 for overrate employees in January 1990.

The average overrate nurses aide in Ozaukee County has been in the employ of the county for fifteen years. The top wage rate that would be paid to LASATA employees with fifteen years experience under the Employer and Union offers was compared to wages paid to similar employees in comparable nursing homes. Average overrate employees at LASATA under the union offer would not surpass comparables with longevity. The Union concluded that, "the interest and welfare of the public would not be lost in recognizing the Union's final offer".

In its reply brief, the union took issue with three points argued by the County. It compared the treatment of overrate employees at LASATA and in the courthouse between 1986 and 1989, and noted that in 1988 LASATA employees received a 20¢ general increase while courthouse employees received a percentage increase. It also noted that contract language of dealing with overrate wage increases varied from year to year.

The Union argued that the fact that the Employer formerly had a "Merit Pay System" has little relevance in these proceedings. It argued since the maximum wage rates in the present scale were established at substantially less than the maximum rates under the old merit system, the present maximums

are inadequate. Because the maximums are inadequate, the Union offer should be adopted to correct the inequity. The Union claims that correcting the inequity justifies treating these employees differently than courthouse employees during this contract period.

It argued that the Union has not agreed to restrict the comparison, in this case, to only Washington County. That comparison is too narrow and distorts the picture. Since the Employer relied upon comparisons with Sheboygan County for some purposes, it should be compared for maximum wage purposes also. The Union offer maintains the relationship and rank with its recommended comparables. It concluded that the best way to keep costs down at LASATA is to retain longer term employees. The Union offer does not do anything "outlandish" to the top rates. Its offer is the best way to solve the problem of retaining employees.

THE EMPLOYER'S POSITION

The County strenuously opposed the Union's position on the overrate pay issue. It outlined the origin of that issue dating back to 1985. Up until that date, the County had utilized a Merit Pay Wage Plan. The Merit Plan contained 16 Grades, each of which had its own Minimum, Midpoint, and Maximum pay rate. An employee's wage rate, based upon merit, was established by an annual performance review. During 1985, Local 3465, AFSCME became the bargaining representative for LASATA employees. Local 3465 negotiated its first contract for these employees effective January 1, 1986.

At the Union's insistence, after long and extensive negotiations, the County gave up the Merit Pay Wage Plan. The 1986-87 contract contained a fixed step wage schedule. In negotiating the new wage plan, the parties agreed to a schedule which fixed the maximum pay rate for each grade near the midpoint of the old Merit Pay Plan. "The reason for this was now the employees had automatic movement to the top step of the contractual wage scale. All employees could reach the top step after working 8,320 hours, the equivalent of four years. There no longer was any merit pay." At the time the new plan was adopted there were 50 employees whose salaries under the old plan exceeded the rate of pay they would have received under the new plan. This difference, which ranged from 1¢ to \$1.61 per hour, is overrate pay. These 50 individuals were referred to as overrate employees.

In negotiating their first contract, the parties dealt with the issues relating to overrate employees in the following manner. The employees' previous base wage remained in effect. During 1986, overrate employees were awarded the same cents per hour increase that was granted to other employees in the top step of the overrate employees' pay classification. That first contract provided that in 1987 the overrate employees would receive 5¢ per hour less than other employees at the top step of their classification. The parties' second negotiated contract, covering 1988-1989, treated overrate employees in a similar manner.

The County argued that the foregoing "is typical of how new wage schedules are created". It stated that:

The purpose of this approach is that at some time in the future, either through attrition or incremental lessening of the differential, there no longer will be overrate employees, and then all employees will be paid at the same top rate step. No longer will there be older employees paid at a wage rate that newer employees cannot attain.

The Employer argued that its strategy to reduce and eventually abolish differential pay had been working. During the five years since the new wage schedule has been adopted, the number of overrate employees has declined to 28 from the original 50 who were overrate in 1986. The Union's offer would exacerbate the situation by increasing the differential by a range of 2¢ to 23¢ per hour.

The County argued that its proposal in this instance is consistent with its treatment of another newly created bargaining unit in Ozaukee County. It reviewed the fact that Courthouse employees, who had the same merit pay system up to 1985, became organized under a different union in 1985. The Courthouse employees also negotiated a fixed-step wage schedule commencing with 1986. That agreement resulted in 52 overrate Courthouse employees during the first year of the contract. In subsequent negotiations, the county's wage offers to Courthouse employees have been consistent with offers the County has made to Local 3465 with regard to the overrate pay issue. The Courthouse employees have accepted the County's approach on this issue. The most recent contract, voluntarily agreed to with the Courthouse

employees, contains a provision which is identical to the overrate pay provision offered to LASATA in these proceedings.

The Employer argued that the Union is proposing to change the status quo. In order to justify such a change, it must provide strong reasons and a proven need to significantly change the collective bargaining relationship. It argued that the Union has provided no such justification. Overrate pay is a major issue in dispute, it involves salary increases for 28 employees. Sixteen of these 28 employees are in Grades 2 and 3; the Union offer would have a double impact upon their salaries. Five of the remaining 12 overrate employees are LPNs who received an additional 2% increase on July 1, 1990, when the County implemented its offer. The County concluded its argument by reiterating that overrate pay should be eliminated. Selection of the Union offer would repudiate the voluntarily accepted procedure for resolving this issue. It would also be a slap at the Courthouse employees' union which had settled on the basis proposed by the County.

The County noted that the other wage issue related to the Union's proposal that employees at the top step of Grades 2 and 3 should receive an additional 2% increase on July 1, 1990 and again on July 1, 1991. Of 35 employees in Grade 2, only 8 are at the top step, 4 of those 8 are also overrate employees. Of 56 Grade 3 employees, 22 are at the top step, 12 of these are overrate. The County said that its offer of 4% for the period 1990 through 1992 was comparable to the agreements it had reached

with AFSCME for deputies in 1991 and 1992, and with the Courthouse employees' union for 1990 and 1991. Each of those increments is 4% per year. In a Highway Department arbitration for 1990 the Employer offered 4%, but the Union offer of 4.4% was selected. Internal comparables support the County's offer.

The County argued that Manitowoc and Walworth Counties should not be included in the pool of external comparables. While this is the first arbitration proceeding between these two parties, there have been several arbitration proceedings between this Employer and other bargaining units. It cited four other arbitration proceedings which occurred between 1979 and 1990, and noted that Manitowoc had not been utilized as a comparable in any of those proceedings. Walworth had been considered in a 1990 Highway Department arbitration proceeding, but its impact had been "given lesser weight". It concluded that, "the comparables should be limited to those agreed to by both parties; i.e., Sheboygan, Fond du Lac, and Washington".

The Employer said that when the first wage scale was adopted in 1986, the primary comparisons were with Waukesha and Washington Counties. Since Waukesha sold its health center, the primary comparison should be to Washington County. It reviewed geographic and census data which supported the conclusion that Ozaukee County is very similar to Washington County. Because of that similarity, it proposed that a separate comparison of its maximum wage offer with maximum wage rates in Washington County would demonstrate that Ozaukee County's offer is very

competitive. The comparison showed that at maximum pay scales for Grades 2 and 3, Ozaukee ranked third behind Fond du Lac and Sheboygan, but ahead of Washington County from 1989 through 1991. At Grade 2, Ozaukee wages were 19¢ per hour above Washington County in 1990 for housekeepers, laundry workers and food service workers. Those salaries are 25¢ per hour higher in Ozaukee County in 1991. In Grade 3, Cook I was 9¢ an hour higher in Ozaukee in 1990, and raised to 17¢ per hour in 1991. Nursing Assistant wages were 28¢ an hour above Washington County's in 1990, and are 36¢ higher in 1991.

The Employer stated that its 4% wage increase for 1990 and 1991 was equal to the 4% granted in Sheboygan and greater than 3% granted in Washington County during those two years. Fond du Lac County froze wages in 1990 and does not have a settled contract for 1991. The County argued that its offer maintains the wage relationship which has existed between Ozaukee County and all three comparables. Its offer even widens the gap with salaries in Washington County. Citing a previous arbitrator's decision in support of its position, the county argued that "Arbitrators should not disturb existing wage rate relationships, especially those which resulted from voluntary collective bargaining.

The County responded to the Union's argument that inadequate wages in Ozaukee County are the reason that LASATA is unable to attract new employees or retain older employees. It stated that the turnover at LASATA is similar to employee turnover statewide. LASATA is located in a small residential community with no urban

area from which to draw applicants for employment. There is no public transportation from Milwaukee County to LASATA.

Increasing pay would not solve the problem of a shortage of applicants. Most new employees quit because they do not like the kind of work at LASATA. The Union offer would not attract more applicants, because it would not effect starting wages.

The Union offer would only effect employees who had worked more than 8,320 hours at LASATA. That offer is nothing more than a ruse to give more money to a few employees at the top of the wage schedule. Both aspects of the Union offer benefit the same few employees at the top of the schedule. That offer should be rejected.

The Employer's reply restated the position that demographics, which are unique to Ozaukee County, and a tight labor market are reasons LASATA has had a shortage of nursing home help. It noted that Washington County solved its help problem by limiting the number of residents in its nursing home. Ozaukee County chose not to limit residents and met the labor shortage with contract employees. Though these pool employees receive higher wages than regular employees, they receive no fringe benefits. When the cost of fringe benefits is considered, regular LASATA employees fare as well or better than contract employees. There is no evidence that pool employees provide inferior service to residents of the nursing home. The use of pool help is a temporary situation which peaked in September 1990 and appeared to be waning in February 1991.

The County said that high employee turnover is common in the nursing home industry. Its one year retention rates are almost equal to the state average. There were relatively few openings in Grade 2, and the number of Nursing Assistant vacancies are fairly consistent. It pointed out that terminations generally occur in the first year of employment. Most new employees in Grades 2 and 3 quit because they do not like nursing home work. Money has nothing to do with their quitting.

The Union proposal to pay more money to longer term employees will not attract or retain new employees. The Union proposal is a sham. The Employer said that it had agreed to a number of contract changes to help attract new employees. (See page 2 above) The Union proposal would benefit 12 overrate employees in categories which the Union has not argued that there is a problem. The Union offer is overboard and should be rejected.

ANALYSIS OF THE ISSUE

The parties have argued that there are two issues to be decided in this proceeding, wage scale and overrate pay. In reality, there is only one issue. That issue is the union wage offer. This Union represents "approximately 152 employees". Based upon the evidence, it appears that the outcome of this proceeding will not have any effect upon the salaries, benefits, and working conditions of 72% of these employees. Those issues have been resolved, in so far as they effect 110 employees

through December 31, 1992. This has been accomplished through the tentative agreement between the parties which incorporated a number of changes into their comprehensive labor agreement. The issues which the parties have agreed to after extended efforts to achieve a settlement are summarized at page 2 above.

The two issues which the parties have been unable to resolve effect a limited number of employees who are either at the top step of 2 of the 7 existing pay grades, or who are currently receiving wages which are above the highest wages which have been established for each of the 7 pay grades. Because of the way the data was presented, it has been difficult to determine the precise impact upon the 42 employees who would be effected by the Union's offer. It would benefit 28 overrate employees and 30 employees who are at the top steps of Grades 2 and 3. Since 16 of the overrate employees are also at the top step in Grades 2 and 3, only 42 employees would benefit from the Union offer. The impact upon these 42 employees would vary depending upon the employee's circumstances. Neither party presented either total cost information or specific cost information for each employee or class of employees. The following analysis demonstrates that 42 individuals would benefit in different ways.

The greatest increases would go to 16 overrate employees in Grades 2 and 3. They would receive two 2% incremental wage increases based upon their present salaries, part of which is above the wage scale. The remaining 14 employees at the top step of Grades 2 and 3 would receive two 2% incremental increases

based upon the wage schedule. Twelve additional overrate employees would benefit to the extent that already agreed upon wage increases would not be capped at the top step of their classification pay grade. The impact upon these 12 employees would vary by the amount of their salary that is above the wage scale.

In order to obtain a partial estimate of the cost of the Union offer, Tables I and II compare the cost of the 1990 through 1992 incremental increases for the top steps in Grades 2 and 3. For the purpose of this analysis, this is the cost of the Union's wage offer.

TABLE I

Grade II - Housekeeper, Laundry Worker, Food Services Worker:

<u>Date</u>	<u>Employer</u>	<u>Union</u>	<u>Hourly</u>	<u>1040 Hours</u>
1/1/90	\$6.61	\$6.61	----	-----
7/1/90	6.61	6.74	13¢	\$135.20
1/1/91	6.87	7.01	14¢	145.60
7/1/91	6.87	7.15	28¢	291.20
1/1/92	7.14	7.44	30¢	312.00
7/1/92 to 12/31/92				<u>312.00</u>
Additional Cost of Union Offer Per Grade II Employee 1/1/90 through 12/31/92				\$1,196.00

Grade III - Activity Aide, Receptionist, Nursing Assistant, Ward Clerk, Cook I

<u>Date</u>	<u>Employer</u>	<u>Union</u>	<u>Hourly</u>	<u>1040 Hours</u>
1/1/90	\$7.09	\$7.09	----	-----
7/1/90	7.09	7.23	14¢	145.60
1/1/91	7.37	7.52	15¢	156.00
7/1/91	7.37	7.67	30¢	312.00
1/1/92	7.66	7.98	32¢	332.80
7/1/92 to 12/31/92				<u>332.80</u>
Additional Cost of Union Offer Per Grade III Employee 1/1/90 through 12/31/92				\$1,279.20

There were 8 employees at the top step of Grade 2, and 22 employees at the top step in Grade 3. If all of these were full time employees, the increased cost of the Union wage offer not including fringe benefit costs would be as follows:

TABLE II

ADDITIONAL COST OF UNION'S WAGE OFFER

1990 Impact

Grade II Employee	\$135.20 x 8 =	\$1,081.60
Grade III Employee	\$145.60 x 22 =	<u>\$3,203.20</u>
Total 1990 Impact		\$4,284.80

1991 Impact

Grade II Employee	\$436.80 x 8 =	\$ 3,494.40
Grade III Employee	\$468.00 x 22 =	<u>\$10,296.00</u>
Total 1991 Impact		\$13,790.40

1992 Impact

Grade II Employee	\$624.00 x 8 =	\$ 4,992.00
Grade III Employee	\$665.60 x 22 =	<u>\$14,643.20</u>
Total 1992 Impact		<u>\$19,635.20</u>

Total 3 Year Impact		<u>\$37,710.40</u>
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In fact some of these employees work less than 40 hours per week. The cost would therefore be somewhat less than is reflected in Table II.

In addition to the wage offer costs, which are approximated above, there would be costs associated with the overrate pay issue. Each of the 28 overrate employees would receive the benefit of not having their wage increases capped. They would receive three annual 4% wage increases, and overrate employees in Grades 2 and 3 would receive the additional benefit of two full

incremental 2% increases outlined in Table II above. In order to approximate the impact of these overrate costs, the arbitrator has relied upon the information contained in County Exhibit 34. It appears that the 16 individuals listed on the first page of that Exhibit are the overrate Grades 2 and 3 employees. These employees are receiving a total of \$5.57 per hour in overrate pay. The cost of overrate pay for these employees has been calculated at \$583.91 during 1990, \$1,203.46 in 1991, and \$1,725.12 in 1992. The three year total is \$3,512.49 for these 16 overrate employees.

Of the 12 remaining overrate employees, 5 are LPNs who were overrate a total of \$4.17 on December 31, 1990, and received an additional 2% increase on July 1, 1991. The first year cost of not capping these increases is \$437. The additional cost for overrate pay in 1991 and 1992 would be \$798 and \$1,173, respectively. The three year cost for the 5 LPNs totals \$2,408.

The final 7 overrates include 2 cooks, 2 maintenance custodians, a nursing clerk, an account clerk II, and a medical records person. These seven employees' total hourly wages are \$5.27 above schedule. It appears that one custodian works 12 hours per week, and the records person works 5 hours a week. In order to adjust for these part-time workers, the annual cost has been calculated upon \$102.74, total weekly overrate pay for these employees. The cost is \$214 for 1990, \$436 in 1991, and \$667 in 1992 for a three year cost of \$1,317. The overrate wage only cost is summarized on Table 3.

TABLE III

Total Overtime Wage Cost

	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>Total</u>
16 Grade 2 & 3	\$584	\$1,203	\$1,725	\$3,512
6 LPNs	437	798	1,173	2,408
7 Others	<u>214</u>	<u>436</u>	<u>667</u>	<u>1,317</u>
TOTALS	\$1,235	\$2,437	\$3,565	\$7,237

The total additional cost of the Union offer, not including fringe benefits, is as follows:

TABLE IV

	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>Total</u>
Wage	\$4,285	\$13,790	\$19,635	\$37,710
Overtime Pay	<u>1,235</u>	<u>2,437</u>	<u>3,565</u>	<u>7,237</u>
TOTALS	\$5,520	\$16,227	\$23,200	\$44,947

The benefit of these additional costs would be shared by 42 of the bargaining unit's 152 employees in different amounts. The arbitrator recognizes that the amounts calculated on TABLE V are not accurate. They are, however, a reasonable estimate of the wage benefits that would be distributed to those 42 employees who stand to benefit under the Union's offer. It was considered necessary to attempt to recognize where the additional cost would be distributed in order to evaluate the arguments of the parties.

TABLE V

Approximate Benefit to 42 Employees

	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>Totals</u>
4 overrate Grade 2 Employees each				
	\$150	\$467	\$667	\$1,284
x 4 =	\$600	\$1,868	\$2,668	\$5,136
12 overrate Grade 3 Employees each				
	\$190	\$558	\$795	\$1,543
x 12 =	\$2,280	\$6,696	\$9,540	\$18,516
4 Grade 2 Employees not overrate - each				
	\$135	\$437	\$624	\$1,196
x 4 =	\$540	\$1,748	\$2,496	\$4,784
10 Grade 3 Employees not overrate				
	\$146	\$468	\$666	\$1,280
x 10 =	\$1,460	\$4,680	\$6,660	\$12,800
5 LPNs rough approximation of overrate wage				
	\$ 87	\$160	\$235	\$482
x 5 =	\$435	\$800	\$1,175	\$2,410
7 others rough approximation of overrate wage				
	\$ 31	\$ 62	\$ 95	\$ 188
x 7 =	<u>\$214</u>	<u>\$436</u>	<u>\$667</u>	<u>\$1,316</u>
TOTAL COSTS	= \$5,529	\$16,228	\$23,206	<u>\$44,963</u>

DISCUSSION

The arguments demonstrate that this has been a bitterly contested contract negotiation and arbitration proceeding. The parties appear to have negotiated in good faith to resolve a large number of bona fide issues. Those negotiations were successful and the tentative agreements have been implemented. The final issue or two issues to be resolved in this proceeding seem to have strained both parties into arguing extreme positions. The Association has seized upon employee retention

problems at LASATA to argue for a catch-up pay increase. The Employer has labeled the Union's offer a sham and argued that the Union offer is an assault upon the status quo. The arbitrator has reviewed the evidence and the arguments carefully and rejects both of those extreme positions. This is, rather, a case where the Association has attempted to negotiate a greater wage increase for some of its longer term employees over the three year term of the contract than the Employer thought was justified. The fact that the employees were placed in seven agreed upon categories when the first contract was agreed upon does not prevent either party from negotiating increased wages or benefits for any single category of employees in future negotiations. Though both parties in this proceeding have agreed not to argue the point, the voluntary agreement extended additional benefit to one category of employees, LPNs.

The Employer has had its biggest problem with the overrate pay portion of the Union's wage offer. The County is clearly annoyed that this benefit would be extended to 28 employees under the Union offer. That offer, while galling to the Employer, does not upset the status quo. The category of overrate employees was created by a prior agreement of both parties. The Employer has stated that one of its objectives is to lessen the differential until there are no longer any overrate employees. The Union does not share that goal in this proceeding. It insists that its targeted wage offer is the more reasonable. The Employer in support of its argument cited the 4% settlement with Deputies in

1990-1991, and the County's offer to Highway and Courthouse employees. It argued that its offer to LASATA employees was supported by internal comparable offers and settlements. That argument is not supported by the evidence. There is no comparability between the law enforcement pay scale and LASATA wages. Law enforcement employees were hired from \$1,871 to \$2,148 per month in 1990 and progressed through 6 steps over 54 months to between \$2,286 and \$2,716 each month. Upon the recommendation of the Sheriff, a new employee could be granted a step increase after 6 months. LASATA employees were hired from \$5.03 to 8.04 and progressed through 5 steps for every 2,080 hours worked to maximum wages between \$6.74 and \$9.70 per hour. The contract with County Highway employees established a starting wage of \$9.97 in 1990, but the Employer could "at its sole discretion, compensate employees with less than 2 years of service . . . up to a maximum rate of . . . \$12.05 per hour in 1990". This wage scale had 3 steps with employees with 2 or more years of service reaching the top step. The 1990-1991 agreement between the County and its courthouse employees does support the Employer's internal comparability argument. That OPEIU contract by itself, however, is not sufficient to establish a pattern of settlements between this Employer and its bargaining units.

The Union argued that the use of contract employees is uneconomic and bad for morale. Medicaid data showed that in 1989 it cost the County an average of \$6.06 per hour in wages and non-monetary fringe benefits for its own nurses aides and nursing

assistants. That average cost included a wage range from \$4.84 for starting Grade I trainees to \$6.82 for NAs after 8,320 hours of service. The same exhibit (U-14) reflected the County's cost at \$16.69 per hour for contract Nurses Aides and Assistants. In 1990, the County contracted for 21,082 NA hours at a cost of \$291,768, an average of \$13.84 per hour. Union NAs at the top pay grade received \$7.09 an hour in 1990. In January 1991, LASATA contracted for 1,775 hours of NA time compared to 1,410 hours in January 1990.

There were 51 Nursing Assistants on the payroll on January 3, 1991 (C-7). Of these, 21 were at the top step in Grade 3 and 11 were overrate. NAs at the top rates received \$7.52 per hour. Of the eleven overrate NAs, 6 were 54¢ overrate and received \$8.04 per hour. Five others were between 2¢ and 46¢ per hour overrate, and received from \$7.54 to \$7.98 per hour. Thirty of 51 nursing assistants who were on LASATA's payroll on January 3, 1991 would not benefit from the Union offer until such time that they have completed a total of 8320 hours of employment. On January 3, 1991, they were paid from \$5.82 to \$6.99 per hour.

According to Association Exhibit #15, one contract provider paid NAs up to \$9.50 per hour. In order to qualify, one year of experience is necessary. That provider solicited for employment in Ozaukee County and stated that a range of fringe benefits including "accumulated vacation pay - annually" was provided. While specific detail has not been provided, it appears safe to assume that at least a part of the greater cost for contract

employees, reflected in the Medicaid report, is to provide those employees with fringe benefits.

Twenty-one of the 42 LASATA employees who would benefit under the Union's offer are Nursing Assistants. The remaining beneficiaries are Housekeepers, Laundry and Food Service Workers, a Receptionist and overrate employees. The largest number of overrate employees other than NAs are LPNs, where 5 of them are overrate. The top rate for LPNs on January 3, 1991 was \$10.09 per hour. Overrate LPNs earned from \$10.26 to \$11.70 per hour. Contract LPNs were solicited to work, "LPNs to \$20.00". In 1990, LASATA contracted for 6,085 hours of LPN time at an average hourly cost of \$26.85. It appears that 26 of the 42 employees, or 62% of those who would gain immediate benefit from the Union offer, are directly involved in patient care. It also appears that the County has been willing to pay high outside costs in order to contract for patient care providers rather than limit patient census (C-9). The Employer recognized the need to pay an outside contractor an average of \$13.84 per hour for Nursing Assistants and \$26.85 for LPNs in order to operate its facility at capacity during 1990. That fact bears heavily upon the "comparisons of wages, hours, and conditions of employment of the employees involved in this proceeding with the wages, hours, and conditions of employment of other employees performing similar services." In this context, the Union offer appears to be more reasonable.

The parties expended some energy arguing which external comparables should be appropriate for comparison purposes. Because of the limited number of comparisons available, the arbitrator has reviewed the data and the arguments carefully and notes that the available limited information is not adequate for comparison. This is a three year contract, running from January 1, 1990 through December 31, 1992. A copy of Fond du Lac's 1989-90 contract with a 1989 wage scale and cash bonus provisions was provided along with a stipulation that 1990 wages in Fond du Lac were the same as in 1989. Information is available for wages in four of the Union's recommended comparables through 1991. The comparability of employee classifications in these counties is problematic. In both Ozaukee and Fond du Lac Counties, employees reach the top salary grade after four years or 8,320 hours. Walworth requires 5 years; Washington, 30 months; Sheboygan 15 months and Manitowoc 1 year. Three of the five counties have varying provisions for compensating longevity. While longevity pay is not an issue in these proceedings, it is tangential to the overrate issue in this case.

After reviewing the data from other nursing homes, it appears that employees at the top step in Grades 2 and 3 in Ozaukee received less pay than in any "comparable county" other than Washington County in 1990. That would also be the case if the Union's offer was selected. Neither the Union offer nor the Employer's offer would effect the relationship of these LASATA employees in wage rankings with other counties that are settled

for 1991. The fact that the Employer has offered an increase equal to the 4% that Sheboygan County employees are receiving under their 1990-91 contract and greater than the 3% increase Washington County employees are receiving, and the 1990 wage freeze in Fond du Lac supports the County's offer generally. The comparison with other nursing home salaries for employees at the top of the pay scale is not favorable, however. The more experienced employees who would benefit from the Union offer are relatively low paid when compared to similar employees at all other nursing homes except in Washington County. The fact that this contract will extend through 1992 and the comparative data is limited to 1990 and 1991 contracts limits the value of the comparison. The Union offer appears to improve the wage base for a minority of the employees over the three year period of the contract. The financial analysis discussed above has related primarily to those nursing care employees who are at the top of the pay scale or are overrate because those are the employees who would benefit directly from the Union offer.

Because of all of the discussion about employee turnover during the first year of employment, the arbitrator is compelled to discuss that issue. The Employer argues, "[M]ost of the employees in Grades 2 and 3 quit because they first do not like the type of work they have to do at a nursing home, and money has nothing to do with their quitting." In order to meet its commitment to operate at capacity, the County has contracted for employees. The Employer states: (U-9) "However, to meet our

staffing levels without pool help we would need to reduce our census to 175-180 bids. This would mean equal reductions in other departments like dietary and housekeeping. This would also mean that less senior day shift nursing people would work p.m.'s and nights." The Union argues that because pool employees working along side regular employees earn larger wages there is a morale problem. There simply is not sufficient evidence in this record to permit the arbitrator to draw any conclusion about how to attract and retain Nursing Assistants at LASATA or other nursing homes. One is compelled to conclude that a vacancy rate of 16 to 19 positions in this field is not desirable. The Employer having chosen not to limit its census must fill those NA vacancies in some manner. The arbitrator does not believe the argument that money does not have anything to do with filling these vacancies. The Union has suggested that the way to begin addressing the shortage of NAs is to implement a targeted pay increase which will have the greatest amount of impact upon longer term NAs and other patient care personnel. That proposal appears to have a reasonable financial impact which would cost the Employer less than \$45,000 in direct wages over the three year term of this contract.

If the Union had proposed a higher across the board wage increase, the cost of its proposal would have escalated. Its offer appears to have been designed to limit the cost impact and provide increased wages to a group of more senior employees, most of whom are involved in patient care. Other patient care

employees will benefit from the Union offer if they continue to be employed for a period of four years.

Based upon the foregoing analysis, the arbitrator has compared the offers of the parties to the criteria in Sec. 111.70(4)(cm)6, and concluded that the offer of Local 3465 AFSCME, AFL-CIO is the more reasonable. That offer shall be incorporated into the parties 1990-1992 agreement.

Signed at Madison, Wisconsin this 5th day of June, 1991.



John C. Oestreicher, Arbitrator