BEFORE THE ARBITRATOR

ROSE MARIE BARON

In the Matter of the Petition of

BROWN COUNTY MENTAL HEALTH CENTER, LOCAL 1901
AFSCME, AFL-CIO

Case No. 454
No. 45310
INT/ARB-5950
Decision No. 26867-A

To Initiate Arbitration Between
Said Petitioner and

BROWN COUNTY (MENTAL HEALTH CENTER)

APPEARANCES:

On behalf of the Brown County Mental Health Center, Local 1901, AFSCME, AFL-CIO, James Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO.

On behalf of Brown County, Dennis Rader, Esq., Godfrey & Kahn, S.C., and Suzanne J. Dishaw Britz, Legal Assistant, Godfrey & Kahn, S.C.

I. BACKGROUND

Brown County, a municipal employer, (hereinafter referred to as the "County" or the "Employer"), and the Brown County Mental Health Center, Local 1901, AFSCME, AFL-CIO, (the "Union"), representing all regular full-time and regular part-time employees as certified by the Wisconsin Employment Relations Board on April 17, 1967, have previously been parties to collective bargaining agreements, the latest covering the period from January 1, 1989 to December 31, 1990 (Union Ex. 1).

Negotiations for the 1991-1992 contract began on October 7, 1990 when the parties exchanged initial proposals on matters to be included in a new collective bargaining agreement; thereafter the parties met on five occasions but were unable to reach an accord. The Union filed a petition with the Wisconsin Employment Relations Commission to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. Subsequent intervention by the Commission's staff resulted in a finding that the parties were deadlocked in their negotiations and that an impasse existed. An order requiring final and binding arbitration was issued on April 22, 1991. The parties selected

the undersigned from a panel of arbitrators; an order of appointment was issued by the Commission on May 20, 1991. Hearing in the matter was held on August 22, 1991 at the Brown County Mental Health Center, Green Bay, Wisconsin. No transcript of the proceedings was made. At the hearing the parties had opportunity to present evidence and testimony and to cross-examine witnesses. Briefs were submitted by the parties according to an agreed-upon schedule.

II. ISSUES

The parties have resolved many of the contractual issues through collective bargaining. The remaining issues of the parties as stated in their final offers are as follows:

A. The Union

1. LPN Wage Adjustment

   Thirty-five cents ($.35) per hour 12/22/90 (+ ATBs)
   Thirty-five cents ($.35) per hour 12/21/91 (+ ATBs)

2. Retention bonus for Licensed Practical Nurses of Four Hundred Dollars ($400.00) per year (pro-rated according to posted position).

3. "On-call" employees wage progression as follows:

   Starting rate As per Labor Agreement
   90-day rate (1040) hours worked As per Labor Agreement
   6-month rate (2080) hours worked As per Labor Agreement

B. The County

1. Revise new hire insurance eligibility as follows:

   New employees will be eligible for insurance coverage the first of the month following thirty (30) days of employment.

2. Revise the chiropractic care provision as follows:

   Chiropractic coverage deductible of One Hundred Dollars ($100.00) per calendar year, up to three (3) family members per calendar year.

III. STATUTORY CRITERIA

The parties have not established a procedure for resolving an impasse over terms of a collective bargaining agreement and have agreed to binding interest arbitration pursuant to Sec. 111.70, Wis. Stats. In determining which final offer to accept, the arbitrator is to consider the factors enumerated in Sec. 111.70(4)(cm)7:

> 7. Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:
>
> > a. The lawful authority of the municipal employer.
> >
> > b. Stipulations of the parties.
> >
> > c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
> >
> > d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
> >
> > e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
> >
> > f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

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

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

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

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

IV. POSITIONS OF THE PARTIES AND DISCUSSION

In this section the positions of the Association and the County on the issues in dispute will be summarized and discussed by the arbitrator.

A. Comparables

1. The Union

The following counties have been utilized by the Union in preparing its exhibits and argument regarding appropriate external comparable communities: Calumet, Dane, Fond du Lac, Manitowoc, Outagamie, Racine, Rock, Sheboygan, and Winnebago.

The Union's position is that the use of such counties as Dane, Racine, and Rock (which are geographically remote from Brown County) is appropriate because a shortage in the health care field in the state affects both large and small counties which will "hire from where they can."(Union Reply Brief, p. 1). The Union further argues for the inclusion of Calumet County even though it has a much smaller population than Brown County since it is geographically proximate, it has the same type of facility

as Brown County, it employs LPNs, and is organized. The County's reliance on the 1983 Fleishli award which did not include Calumet County should not influence the arbitrator; the Union believes that the County does not wish to include Calumet County because the LPNs are paid at a higher rate. Moreover, the Union argues that there is a need to move beyond 1983 to reflect changes in the times and the needs of the employees.

2. The County

The comparables relied upon by the Employer are those set forth in Arbitrator Fleishli's 1983 interest arbitration award between the parties: Fond du Lac, Manitowoc, Outagamie, Sheboygan, Washington, and Winnebago.

The County submits that this comparable pool should not be disturbed since it fulfills the relevant criteria set forth by Arbitrator Yaffe (citation omitted) of similarity in the level of responsibility, services provided, training or education; geographic proximity, and similarity and size of employer. Further, the Employer cites considerable arbitral precedent for leaving previously established comparables intact. The Employer believes that unless there are strong countervailing factors suggesting that the Fleishli comparables are inappropriate, they should not be disturbed.

The County points to the fact that three of the comparables proposed by the Union, Dane, Racine, and Rock are so far distant from Brown County as to make their use inappropriate. It is also noted that Dane County is almost twice the size of Brown County. Calumet County, which the Union has also proposed, is only one-sixth the size of Brown County. Since the Union has failed to offer any rationale for changing the 1983 comparables, the County asks the arbitrator to select its more relevant set of comparable communities.

3. Discussion and Findings

As the County has pointed out, arbitrators are loath to disturb the selection of comparable communities previously relied upon by the parties in collective bargaining. This arbitrator is no exception, however, based upon the evidence in this instance, several factors exist which make a reconsideration of the comparables necessary. Examination of Employer Ex. 6 raises an obvious question: Why is Calumet County excluded from the group? It is contiguous to Brown County, shares borders with four of the County's comparables, i.e., Outagamie to the north, Manitowoc to the east, Sheboygan and Fond du Lack to the south, operates an institution similar to the Brown County Mental Health Center, is within the Fox River Valley area, and appears to share the same

labor market. Indeed, the only differentiating factor is that the population of Calumet County is considerably less than Brown County (34,480 to 190,996)(Union Ex. 11). Nonetheless, arbitrators have long held that while size is one factor to be considered, it is not the only criterion. Such variables as proximity, having a similar institution and delivering similar services, as well as a host of socio-economic factors are also to be evaluated.

A careful review of Arbitrator Fleishli's 1983 award uncovers absolutely no mention of Calumet County. The section setting forth the County's Position on wages states:

> According to the Employer, its exhibits demonstrate that the wage rates contained in its final offer compare favorably with those already granted to comparable employees for 1983 in comparable communities. According to the Employer, there are six other counties which are "comparable" to Brown County. These counties, Outagamie, Manitowoc, Winnebago, Sheboygan, Fond du Lac, and Washington, were selected on the basis of geographic location and the existence of comparable health care facilities as places of employment. Two counties, Outagamie and Manitowoc, are contiguous to Brown County and have health care facilities employing nursing assistants performing similar services. The other counties are all generally located in the Fox River Valley. (Fleishli award, p. 8, emphasis added).

In his discussion, Arbitrator Fleishli selects the Employer's proposed list of comparables as being the more reasonable, because it takes into account geographic proximity as well as population although he comments that the inclusion of Washington County is questionable because of its distance from Brown County.

Based upon a careful review of the evidence of the record, the arbitrator has determined that sufficient question has been raised by the arguments of the parties regarding appropriateness of the comparables to require a reconsideration of the matter. First, the arbitrator will adopt the six counties set forth in the 1983 Fleishli, noting also the marginal acceptability of Washington County. Since no persuasive argument was raised against its inclusion, its status will not be changed. Second, the inclusion of Calumet County and the exclusion of Dane, Racine and Rock Counties will be addressed.

No explanation can be gleaned from the evidence of record as to why Calumet County was not included in the previous pool; that omission, however, does not foreclose this arbitrator from considering the evidence presented in this case. The record does not contain certain information comparing Calumet's tax levy rates or adjusted gross income with the other counties which would be helpful. In spite of that, the arbitrator believes that there is sufficient evidence which compels the inclusion of Calumet County in the list of comparables, the most important of which is proximity. As the County noted in its argument against the inclusion of Dane, Racine and Rock Counties in its Brief (p. 9), proximity deserves great weight. Arbitrator Fleishli's award in Marathon County (citation omitted) is directly on point:

> Even so, the available evidence would not appear to justify the use of comparables as widely dispersed and diverse, (sic) the social, economic and political sense, as those advanced by the Union. Clearly, the greater weight should be given to proximity. (emphasis added).

The arbitrator, therefore, finds that Calumet County is an appropriate comparable community and will include it in the pool.

The County has argued that the Union has presented no rationale except higher wages for its choice of comparables. The arbitrator does not agree; the Union has made quite clear that it believes that there is a health care shortage affecting Brown County Mental Health Center, that large and small communities are affected, near or far, and that employers will hire from where they can. Whether this argument will carry the day or not will be determined shortly, but it has been made.

Applying the principles discussed above regarding Calumet County, the logical conclusion is that Dane, Racine and Rock Counties are far too distant from Brown County to be considered an appropriate comparable. In spite of the Union's contention that a state-wide shortage in health care employees exist, there is no supporting evidence that Brown County is soliciting employees in any of these three counties or that applications for employment have been submitted by individuals from these far-flung communities. In other words, no labor-market nexus or relationship has been proven.

Based upon the weight of the evidence and the discussion above, it is held that the comparables to be utilized in this matter are:

Calumet	Sheboygan
Fond du Lac	Washington
Manitowoc	Winnebago
Outagamie	

Having determined which comparables will be utilized, the final offers of the Union and the County will be considered. The issues raised by each party will be discussed first, with the arguments of each party then summarized, followed by the finding of the arbitrator on each specific matter.

B. The Union's Final Offer: a $.35 per hour add-on for LPNs.

1. The Union

The Union asks for an additional $.35 per hour for each of the two years of the contract for LPNs claiming that there is a need for an improvement in wages for these employees. It is alleged that Brown County Mental Health Center is having difficulty recruiting and retaining LPNs because their wages, even with the already agreed-upon across-the-board wage increase, is significantly lower than the comparables.

2. The County

The County asserts that its proposed wage rate more closely reflects the LPN wage paid by the comparables. Since there is no wage inequity to be corrected in the LPN category, and no evidence from the Union to support its position, the arbitrator should select the County's offer on wages.

3. Discussion and Findings

Any discussion of wage data comparison must include an acknowledgement of the lack of consistency between those supplied by the Union (Union Ex. 12, 13, 14, and 15) and by the County (Employer Ex. 12a, 12b, 14, Brief, p. 10). In addition, the final settlement data for Outagamie County was received by the parties and the arbitrator after the hearing, but prior to receipt of the briefs. In order to show the comparable data in graphic form the arbitrator has taken these data (using minimum and maximum wage rates) and constructed Table I. The use of the Union's maximum figures for 1991 creates certain problems since it has included

longevity add-ons in some cases, but not all, since some counties do not have longevity). The Employer does not utilize longevity in its exhibits and points out the statistical unreliability of comparing such disparate data. The arbitrator will show in Table I where these differences occur by printing the Union's figures in bold type and the Employer's in regular type. The arbitrator has determined that the Union's higher figures may be utilized in the comparison without significant deviation because the arithmetic mean will not be used to arrive at the "average" of the comparables. Rather, in order to arrive at the average wage paid by the comparable communities, the median will be utilized. This statistical technique avoids the skewing of the average where one community's figure is significantly higher or lower than those of the pool. The median is the figure exactly in the middle, i.e., in a group of seven counties, the fourth from the top/bottom is the average.

TABLE I
LPN WAGE RATES

	1990		1991		1992	
	Min.	Max.	Min.	Max.	Min.	Max.
Calumet	**8.12**	**9.00**	**9.62**	**10.50**	**10.37**	**11.25**
Fond du Lac	7.95	9.43	**9.44** 9.44	**11.19** 10.94	**9.87** 9.97	**11.72*** 11.47
Manitowoc	8.06	9.37	**8.40** 8.30	**9.84*** 9.66	--	--
Outagamie	6.30	7.82	**7.94**	**10.46*** 9.53	8.18**	10.01 10.78**
Sheboygan	8.10	9.69	**8.42** 8.42	**11.34*** 10.08	--	--
Washington	8.34	9.74	9.06	10.90	--	--
Winnebago	8.06	9.78	**8.65** 8.65	**10.43** 10.43	--	--
Median	8.06	9.42	8.65	10.50	9.97	11.25
Brown	9.19	10.06				
Final Offers:						
Union			**9.92**	**10.83**	**10.68**	**11.63**
County			9.56	10.46	9.94	10.88

*Includes longevity

**Data derived from Outagamie settlement materials; figures reflect entry level and maximum with longevity on December, 1992.

Inspection of Table I shows that in 1990 Brown County paid its LPNs at a wage rate higher than the average of the comparable counties, i.e., $1.13 more at the minimum and $.64 at the maximum. Comparing the wage offers of the parties for 1991, the county's offer at entry level of $9.56 more closely approximates the average of $8.65 than the Union's $9.92. At the maximum, the County's $10.46 is four cents less than the median while the Union's figure of $10.83 is $.33 greater. The County's 1991 offer is therefore closer to the average and the more reasonable offer. The data for 1992 is not as persuasive since it is based on only three settlements. However, even including the 1992 data in the analysis, we find that the County's offer at the minimum is only three cents less than the median while the Union's offer exceeds the average by $.71. At the maximum level, the offers vary at almost the same rate, i.e., plus $.38 for the Union and minus $.37 for the County--a virtual draw.

It should be noted that the Union has argued against the use of internal comparisons regarding wages for LPNs and refers to one of this arbitrator's awards as support. County Exhibit 18a and 18b shows a pattern of internal settlements in Brown County from 1990 to 1993. The Union points out that nurses received a far larger increase in 1990, i.e., 8.00%, than the other units which had a range of 3.21% to 3.53%. It must be pointed out that the parties have agreed to a 4% increase in wages in 1991 and 1992--the only wage issue unresolved is the $.35 adjustment for LPNs. The County has referred to internal comparisons regarding wages and insurance in its argument, including discussion asserting that the position of Brown County registered nurse cannot be compared with that of LPN (County Brief, p. 20-21). It is also pointed out that the County has traditionally followed the City of Green Bay's wage and insurance settlements. On the context of their insurance proposal, the County refers to a pattern of settlements (County Brief, p. 31; Employer Ex. 18a-b); the insurance question will be dealt with below.

This arbitrator continues to believe that internal comparisons ignore the special essence of each bargaining unit and its particular circumstances. Merely knowing that Brown County Sheriffs or electricians or social service professionals all received a 4% increase does not provide a complete picture of the employment situation. As indicated in the Sheboygan County case (citation omitted) it is possible that one of the units listed might have been willing to "trade off a portion of a wage increase for an improvement in retirement benefits or expanded payout of sick leave upon retirement." The County's wish to establish a wage pattern among its collective bargaining units and the City of Green Bay will be given only minimal weight in the decision-making process.

Based upon the analysis of the wage data and discussion above, it is clear that the County's wage proposal more closely approximates that of the comparables, that is, the seven comparable counties whose employees perform similar services. It is, therefore, held to be the more reasonable and shall be given great weight pursuant to the statutory criteria.

C. The Union's final offer of a $400 per year retention bonus for LPNs.

1. The Union

The Union urges the arbitrator to adopt its proposal for a new benefit for LPNs, i.e., a retention bonus. Registered nurses have received an $800 retention bonus for over three years and this has led to no turnover in either full or part-time nurses. It is the Union's position that there is a problem getting and retaining LPNs and this proposal will correct the problem. The Union cites data on the number of employees who applied for positions in 1990 (Employer Ex. 37) and notes the fact that half the applicants withdrew from consideration. It was further noted that employers advertising for health care positions often offer bonuses and that, given the problems Brown County has in hiring and retention, this proposal is a workable solution (Union Ex. 7).

2. The County.

It is the Employer's position that the Union's demand for a retention bonus is a new benefit, and thus a change in the status quo. Arbitral precedent is cited which requires the party requesting the new benefit to show, inter alia, a compelling need. The burden is on the Union and the Employer contends that it has failed to do. Data submitted by the County indicate that none of the six comparables it proposed provide such a bonus (Employer Ex. 33). The County also argues that the Union's reliance on "sign-up" bonuses, which are one-time only (and primarily for RNs in the classified ads) is significantly different than a yearly retention bonus. The County denies that there is any problem with retention of LPNs and provides documentary evidence to support its position. 1990 Reports of the Wisconsin Division of Health indicate that for the Brown County Nursing Home there was a 0% turnover rate among full-time LPNs and an 11% turnover rate for part-time LPNs. This compares with statewide rates of 30% full-time and 43% part-time LPNs. Thus the retention rate was 100% full-time and 89% part-time, compared with a statewide retention rate of 68% and 70% respectively (Employer Ex. 34b). For the Bayview Developmental Center (FDD report) for 1990, there was no turnover for either full-time or part-time LPNs. The retention rate was 100% in each

category, compared with statewide rates of 50% full-time and 41% part-time (Employer Ex. 35b).

3. Discussion and Findings

The Union makes an eloquent argument for providing LPNs with a retention bonus of $400, which is half the amount which the RNs receive, however, no persuasive evidence has been introduced to justify granting their request. There is nothing in the record which describes how the nurses' bargaining unit was able to negotiate such a benefit, that is, whether it was the result of hard bargaining, what kind of trade-off or concession was made, etc. The arbitration forum is not the appropriate one for granting new benefits. There is no evidence of compelling need in this case, but rather a concern on the part of the Union that it is difficult to retain LPNs which is not shared by the Employer. Although Union witnesses supplied anecdotal material about LPNs resigning, contrary data collected by the Wisconsin Division of Health (Employer Ex. 34, 35) showing high retention rates in Brown County is more compelling and is given greater weight.

Employer Exhibit 33 shows that none of the six counties relied upon by the County provide retention bonuses. The Union has provided no information on Calumet County, which was proposed as a comparable by the Union, and added to the pool.

Although the Union asserts that problems of hiring and retention of registered nurses at the Brown County Mental Health Center has been ameliorated by the granting of a retention bonus, that fact alone does not persuade the arbitrator that the situation of the LPNs is analogous to the nurses. Although there is some evidence that LPNs, particularly the part-time or on-call staff, have left their employment, other data show that Brown County has far less turnover than similar institutions. Thus the contention of the Union that a serious retention problem exists in this job category is not supported by the evidence. Further, none of the six of seven comparable communities provide such a bonus to their LPNs.

Based on the discussion above, the arbitrator finds that the Union has failed to meet its burden of proof. The offer of the County, that is, no retention bonus for LPNs, is found to be the more reasonable.

D. The Union's final offer of "on-call" employee wage progression.

1. The Union

This issue relates not only to LPNs, but also to all on-call employees in this bargaining unit at the Brown County Mental Health Center. The Union's proposal would increase the on-call wages from the starting rate to the 90-day rate upon completion of 1,040 hours of work, and to the 6-month or maximum rate upon completion of 2,080 hours. It is the Union's position that by offering this new benefit, the problem of hiring and retaining on-call personnel at the institution would be remedied. At this time, there are no on-call employees on staff, a condition which affects the ability of LPNs to plan and take vacations and which often causes LPNs to be pulled from their regular assignments to work on other wards. The Union argues that these on-call employees get no fringe benefits and no set hours; providing wage progression represents fundamental fairness and would cause little economic impact for the employer.

2. The County

The County objects to the Union's proposal contending that it would be a departure from the status quo of paying on-call employees at the starting rate. Such employees provide relief coverage for regular absent employees and receive no benefits, no guaranteed minimum number of hours. The County admits that there is considerable turnover in this job category, with people obtaining other jobs with the Employer through postings or finding other employment. It contends that the reason for the turnover is the lack of benefits and guaranteed hours, not moving through a wage progression which may take, e.g., two years to reach the second step.

The arbitrator is urged to reject the Union's offer since it would be tantamount to changing the salary schedule, something arbitrators generally refuse to do. Arbitral precedent is cited for the proposition that such a major reformation should be left to the parties for voluntary negotiation.

3. Discussion and Findings

The on-call employee wage progression proposed by the Union is as Arbitrator Kessler stated, "a major structural change in the economic relationship" between the parties. (County brief, p. 48-49). There has apparently been no quid pro quo offered for this benefit at the bargaining table and this arbitrator is unwilling to impose such a fundamental change on the parties in arbitration.

Nor has the Union demonstrated that granting on-call wage progression would substantially alter the present undisputed high turnover in the job category. It appears to this arbitrator that by the very nature of such a position, that is, no guarantee of a specific number of hours a week or month, no specific shift to be worked, and no benefits, that there will be high turnover. In her testimony on cross-examination, Dorothy Riley, Nursing Home Administrator, stated that it was "...hard to get on-calls, mainly because they get no benefits."(Arbitrator's hearing notes). Two Union witnesses, Mary Chaudoir-Lison, LPN since 1964, and Cheryl Ropson, on staff since 1983, testified to the fact that there were no on-call LPNs at the present time in spite of attempts to hire. Ms. Chaudois-Lison stated that problems arose when there was insufficient coverage causing employees to be denied vacations and that if two LPNs were absent, it could throw the hospital into an emergency. It must be noted that neither of these witnesses indicated that the present scarcity of on-call LPNs or the difficulty in hiring was due to the present wage structure.

The Union argues, "It is common practice in hospitals to recruit "On-call" employees with higher wages in leu (sic) of fringe benefits." (Union Brief, p. 3). The only data supplied by the Union related to this point is found in Union Ex. 8, Hospital Salary Survey Report 1990-1991. Region 4, East North Central, covers Illinois, Indiana, Michigan, Ohio, and Wisconsin for profit and non-profit hospitals. The category of LPNs shows a weighted average hourly rate of $10.15 plus an on-call addition of $1.28, a total of $11.43. This figure is indeed higher than Brown County's present and proposed minimum wage rates. Nevertheless, this material is not appropriate for comparison purposes since it represents states other than Wisconsin, and provides no intra-state data from which we could segregate the seven comparable counties noted in Section IV (A) above. Because there is no supporting evidence for the Union's assertion regarding "common practice" the arbitrator cannot give it any weight in her determination.

Based upon the evidence of record and the discussion above, the arbitrator finds that the Union has failed to meet its burden of proof regarding on-call employee wage progression. The final offer of the County, that is, no wage-progression, is therefore held to be the more reasonable.

E. The County's final offer to revise certain insurance benefits: (1) Chiropractic coverage deductible of One Hundred Dollars ($100) per calendar year, up to three (3) family members per calendar years and (2) New employees will be eligible for insurance coverage the first of the month following thirty (30) days of employment.

1. The County

The proposals for changes in insurance benefits are made as a cost containment measure in response to continuing increasing insurance premiums.

Regarding the change in date of eligibility for coverage of new hires, the County states that the adoption of its proposal will have no impact on current employees. This proposed change is found in two of the seven comparables, Sheboygan and Manitowoc. Employer Ex. 28 shows that the other counties (with the exception of Calumet for which data was not provided) have even more stringent eligibility criteria than that proposed by the County. The County notes that among the internal settlements, all units except those represented by AFSCME Local 1901 have agreed to the change in waiting period (Employer Ex. 27). Data has been provided showing the increasing cost of health insurance and the Employer's contribution to premiums (Employer Ex. 23, 24, 25). It is argued that this is an attempt to reduce the Employer's cost of health insurance in one limited area of the entire plan, without reducing any benefits to the employees.

As to the addition of a $100 deductible for chiropractic care, this too is a modest attempt to reduce costs which has been adopted voluntarily by all the Brown County units which have settled thus far. None of the other bargaining units, i.e., Professionals, Teamsters, and Electrical workers have received any additional consideration for accepting the County's proposal. Arbitral precedent is cited for the proposition that internal comparables are given great weight and are to be favored since it adds a measure of predictability to the bargaining process and promotes equity among the various employee groups. Further, the County has shown that of the comparable communities (Employer Ex. 23), it ranks first in employer contributions to the basic plan.

Although the Union has raised the issue of retroactivity, the County asserts that, unlike wages, the proposed deductible will not take effect until the 1992 plan year (Employer Brief, p. 37).

2. The Union

The Union argues that there is no evidence that adoption of this proposal will decrease insurance rates or that there will be cost savings. The Union contends further that the effect of the County's final offer would be the taking away of a benefit, and that it would be retroactive to December 1990 with no way to reimburse or to determine the amount of reimbursement. Further, there has been no quid pro quo offered by the Employer. The Union also believes that such a proposal will affect the ability of the County to recruit and hire new employees.

3. Discussion and Findings

The discussion which follows covers both parts of the County's final offer on insurance benefits, the chiropractic deductible and the eligibility date of new hires for coverage. The Union has correctly stated that the County has the burden of proof in requesting a change in an existing benefit.

The Union argues, inter alia, that the County's "insurance rates seem quite reasonable and competitive," and that this proposal is a "shot in the dark" and could cost the employee and not have any savings for the Employer." (Union Brief, p. 9). The evidence clearly shows that costs in Brown County have increased at a rate significantly higher than those of the comparables between 1990 and 1991 and will continue to rise in 1992 (see, e.g., Employer Ex. 24 and 25). While it is true that no actual cost-savings figures were produced by the Employer, simple logic would compel a conclusion that a delay in signing up a new employee for health insurance and beginning premium payments, even if for only a few weeks, would save some money. Since there is no way to foresee how many new employees will be hired, no absolute savings data can be formulated. There is no evidence to support the Union's concern that implementation of the eligibility criterion would be retroactive or that the Employer would demand reimbursement from employees. The County makes clear that adoption of this proposal would have no impact on current employees and would only apply to new hires (Employer brief, p. 39).

As to the chiropractic deductible, no data was provided by the Employer to show the actual amount of savings; rather it is said that it is "...an innovative means of attempting to reduce the cost in only one limited area of the entire health plan, without reducing any benefits..." (Employer Brief, p. 40). Even without actual figures on how much will be save, logic would compel a conclusion that the Employer would not be proposing this deductible if there would be no reduction in the costs it now bears. However, the arbitrator does not agree with the County

that adding a deductible for chiropractic care is not reducing a benefit. How much of a reduction is not easily determined from the evidence. For example, under the County's proposal an employee and two family members who utilize such services will pay $300 per year out of pocket. Inspection of Employer Ex. 29a does not reveal the amount of the present deductible, or if one actually is in effect: "Chiropractor--Basic Plan. 80% to coinsurance limit after deductible." Even if a deductible is presently in effect for an amount smaller than the proposed $100, the difference will still reflect a lost benefit to the employees. As in the discussion above, it is the Employer's intent to implement the deductible prospectively, that is in the 1992 plan year.

The County's reliance on internal comparables, that is, the fact that all of the Brown County bargaining units which have settled have agreed to the change in waiting period and chiropractic deductible, must be addressed. While the arbitrator gives little weight to internal settlements when considering wage patterns, the matter of fringe benefits such as insurance is viewed from a different perspective and may be entitled to weight in making a determination. Basic insurance needs do not vary significantly across bargaining units, that is, the health insurance needs of a social worker will not differ from those of a nurse or an electrician. The insurance package purchased or provided by the employer generally will not differ meaningfully in terms of days of hospitalization, physician charges, or need for prescription drugs depending on the job category of the employee. In this instance, the community of interest of workers is the same regardless of which union represents them. Here the issues involve the timing of a benefit to employees and a specific dollar deduction for chiropractic care--concerns shared by all Brown County employees regardless of which position they fill.

The question of whether the Employer is required to offer a quid pro quo to the Union for changing an existing benefit has been raised. It is this arbitrator's opinion that where the change is de minimis, that is, not of great magnitude, the arbitrator may look to such other factors which are traditionally taken into consideration to arrive at a decision. Thus if the party making the request has provided sufficient evidence to meet its burden of proof (here the appropriate quantum is a preponderance of the evidence), then it is not always necessary that there be a trade-off. As Arbitrator Robert Mueller opined in Racine County Dept. of Public Works (citation omitted), "The status quo and quid pro quo arguments are but two of the many considerations applicable to resolution of issues at impasse. The statutory factors along with the merits of the issues are equally relevant." In the present case, the County has shown first that

its proposal is supported by the external comparables, a factor which is given substantial weight by this arbitrator. Second, the factor of the internal comparables, and its relevance for this topic discussed above, further supports the position of the Employer and is also worthy of weight.

Finally, the concern of the Union that the Employer will fail to recruit or hire new employees because of the additional delay in insurance eligibility and/or the chiropractic deductible can be best characterized as conjectural. Apparently having similar or less generous eligibility criteria is a fact of life in six of the county comparables (Employer Ex. 28) and no evidence has been submitted to support the proposition that hiring has been affected by this condition. Brown County's higher contribution to the premium for family plan (Employer Ex. 23) than its comparables might well provide a balance for the additional delay or deductible. However, it must be concluded that there is no supporting evidence for the Union's contention that the change in insurance coverage will affect the Employer's ability to recruitment and hire LPNs.

Although the arbitrator does not concur with the Employer's position that the $100 deductible for chiropractic care does not reduce a benefit, on balance, the changes in insurance are deemed to be reasonable attempts to contain the extraordinary increases in health care costs. The County has met its burden of proof by a preponderance of the evidence and its final offer on insurance is adopted.

V. SUMMARY AND CONCLUSIONS

The arbitrator selected the six communities proposed by the County: Fond du Lac, Manitowoc, Outagamie, Sheboygan, Washington, and Winnebago and added the Union's proposed Calumet County to the pool of comparables. The three items in the Union's final offer, (1) a $.35 per hour add-on for LPNs, (2) a $400 retention bonus for LPNs, and (3) "on-call" employee wage progression, were considered and discussed above. It was found that the statutory criteria did not favor the Union's position and their final offer on these three items was rejected; the County's final offer to make no change in these three items was found to be the more reasonable. The County's final offer proposed changes in two insurance benefits, (1) a change in the eligibility criteria for coverage and (2) a $100 deductible for chiropractic care. It was found that the statutory criteria supported the County's proposals and they were, therefore, given weight in the final determination that the County's final offer was the more reasonable. Based upon these findings, the arbitrator makes the following award:

VI. AWARD

The final offer of Brown County, along with the stipulations of the parties, shall be incorporated into the parties' written 1991-1992 collective bargaining agreement.

Dated at Milwaukee, Wisconsin this 20th day of December, 1991.

Rose Marie Baron, Arbitrator