STATE OF WISCONSIN

Before the Interest Arbitrator

In the Matter of the Petition of AFSCME, AFL-CIO Local Union, 1162 For Final and Binding Arbitration Involving Personnel in the Employ of Green County Pleasant View Nursing Home	Case 114 No. 45212 INT/ARB 5921 Decision No. 26994-B

APPEARANCES

For the Union:

Thomas Larsen, Staff Representative

For the County:

Howard Goldberg, Attorney

PROCEEDINGS

On October 24, 1991 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.70 (4) (cm) 6 and 7 of the Municipal Employment Relations Act, to resolve and impasse existing between

Local 1162, hereinafter referred to as the Union, and the Green County Nursing Home, hereinafter referred to as the Employer.

The hearing was held on December 13, 1991 in Monroe, Wisconsin. The Parties did not request mediation services and the hearing proceeded. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on March 9, 1992 subsequent to receiving the final briefs.

ISSUES

The Union Offer:

1. Except for the tentative agreements of the parties, all other provisions as are currently constituted.

2. Provide for a duration of two years, July 1, 1990 through June 30, 1992.

3. Modify Article XXIII - Hospital Insurance to include the following:

   "Effective January 1, 1992 the health insurance coverage shall be changed to the 'CARE SHARE' plan."

4. Effective 7/1/90 wages shall be increased by 3% ATB;
   Effective 1/1/91 wages shall be increased by 3% ATB;
   Effective 7/1/91 wages shall be increased by 6% ATB.

The Employer Offer:

1. Effective July 1, 1990, the employer proposed to increase all wages by 4.25% across the board.

2. Effective July 1, 1991, the employer proposes to increase all wages by 6.0% across the board.

3. Effective as of October 1, 1990, the employer proposes to implement a new health insurance plan which would be the equivalent of the Care Share plan presently in place for certain employees in the county which is currently being administered by PAS as follows:

   The new plan would have annual deductibles of $150 for single coverage, two $150 annual deductibles for those employees with family coverage with only two persons covered by the plan, and up to three $150 annual deductibles for persons with family coverage who have three or more persons covered under the plan.

   Effective as of October 1, 1990, the plan would increase the co-pay provisions pertaining to prescribed items from $2.00 to $5.00.

4. Implementation of tentative agreement of the parties.

5. All other provisions set forth in the contract shall remain the same to the extent not modified hereunder.

BACKGROUND FACTS

A review of the final offers of the Parties indicates that the Parties have reached agreement on a number of issues: the duration of the contract, July 1, 1990 through June 30, 1992; the percentage increase in the second year of the contract, 6%; and the implementation of the Care Share health insurance plan. The Parties disagree as to the percentage wage increase in the first year of the contract with the Union proposing 3% across the board

July 1, 1990 and 3% across the board January 1, 1991. The Employer, however, has offered a 4 1/4% increase across the board effective July 1, 1990. The Parties disagree as to the implementation date of the health insurance plan. The Union proposes an implementation date of January 1, 1992, whereas the Employer proposes that the Care Share plan be implemented in the month following the date of the interest arbitrator's decision, but that the deductibles and co-pay provisions of the Care Share plan be implemented as of October 1, 1990.

UNION POSITION

The following represents the arguments and contentions of the Union in this matter:

The Employer's proposal is structured in such a way as to provide up to three annual deductibles during the term of the contract. The potential expense for employees with family coverage would be $900 plus any co-pays. The Union noted that in a recent decision Arbitrator Kerkman ruled for Green County in a matter involving the Sheriff's Department, and the deputies were only subject to one deductible and co-pay during the term of their contract. The Employer is attempting to buy out the same change in the health benefit plan by offering the same percentage increase that was given to higher paid deputies and the Employer

is attempting to recoup the wage increase by reaching back into the first year of the contract and imposing the deductibles.

Both the Union and the Employer agree that the following counties be considered in the comparable pool: Columbia, Iowa, Lafayette and Sauk. The Union has proposed that the following counties be included: Dane, Rock, Jefferson, Walworth, Grant and Richland. The Union argued that, while Dane County is larger than Green County, commuting patterns show significant sharing of the labor market between Dane and Rock Counties. The per capita income is similar among the three counties and there is commonality of the labor market. Both Dane and Rock Counties are contiguous to Green County, and in a 1986 decision Arbitrator Briggs found that Dane and Rock Counties were appropriate to include in the comparability pool for the Green County Human Services Department bargaining unit. With respect to the other counties on the Union list, they are geographically approximate to Green County and have similar economic conditions. Grant County was also included in the comparability pool in the 1986 decision.

The Union stated that the average percentage increase for 1990 for the comparables is a 3.8% lift and a 3.4% cost. The average percentage increase for 1991 is a 4.0% lift and a 3.7% cost. The trend towards increased settlements for 1991 over 1990 is shown by this analysis. The difference in the 1991 offers

should be used as the base in calculating how much the Parties' offers exceed the comparables in order to provide a quid pro quo for the insurance changes. The deputies received a 2 1/2% incremental increase over the comparables which equates to a 29.6 cent an hour quid pro quo, whereas the employees involved in this case received only a 2% differential which equates to a 14.6 cent per hour increase. This calculates to an annual gross increase of $303.68, while the annual cost of the change in the deductible could be $450. The Employer would impose two annual deductibles during the first contract year, potentially costing an employee $900 plus any drug co-pays. Yet the total wage increase for the first year will only provide the average employee about $618.80 in gross pay. The employee will actually have a loss in net income under the Employer's proposal. The Union's proposal on the other hand does more to insure that the County's lowest paid employees are not as adversely affected by the change in the health benefit plan.

In reply to the Employer's brief, the Union disputed the Employer's contention that the 100% contribution is presently being negotiated away. The Union disputed the contention by the Employer that the difference between the two health plans was $480 per year. This was arbitrarily set by the Employer and not set by an insurance actuarial. This may not represent the Employer's actual cost. One cannot assume that all deductibles in the group will be fully utilized each year, nevertheless, the

Employer has made this assumption when it decided to set the premium equivalency at $480 more than the Care Share plan.

The Union's position regarding the implementation date of the Care Share plan has always been January 1, 1992 and the Union expected this matter to be resolved prior to that date. If there is any ambiguity in the implementation date of the Care Share plan, it would be in the Employer's proposal. The Union also noted there is an ambiguity regarding the Employer's proposal with respect to the relationship of the employee's contribution and the timing of the Employer's proposal to have a retroactive deductible and co-pay increase to October 1, 1990. This matter might result in litigation and should be, therefore, resolved in the Union's favor.

The Union asked the Arbitrator to ignore the WAHSA data since they are comparing costs in nursing homes which are not among the comparables used in these negotiations and should be discounted. In addition, the numbers shown for Green County include costs which tend to distort the comparison, such as overtime costs which were incurred due to a staffing shortage. The Arbitrator should not allow the Employer to succeed in establishing through arbitration the adequacy of a quid pro quo as a percentage increase with its highest paid group of employees and then force the lower paid employees to accept the same percentage while having to pay the same out-of-pocket costs, as

this is inherently unfair. Therefore, the Union asked that the Arbitrator find that the evidence, testimony and equity support the conclusion that the Union's offer is the most reasonable before the Arbitrator.

COUNTY POSITION

The following represents the arguments and contentions made on behalf of the County:

The County determined to attempt to change its previous health insurance plan and implement the Care Share plan due to the substantial increase in premiums in recent years. In particular, the County was interested in having deductibles and co-pay provisions in the new plan. Since these would result in increased costs to the employee and savings to the Employer, the County offered an appropriate quid pro quo, an increase in wages to all County employees 10.25%. The negotiations with the nursing home were put on hold pending an award by Arbitrator Kerkman involving an interest arbitration with the Sheriff's Department. Arbitrator Kerkman issued a decision adopting the Employer's final offer. Subsequent to that decision, Local 1162 and the Employer recommenced bargaining but were, however, unable to reach an agreement as to the implementation date of the new insurance plan and the quid pro quo.

The Employer stated that the Union's unwillingness to implement the CARE plan for the period October 1, 1990 through December 31, 1991 resulted in $47,625 of extra premium paid by the Employer. There are a total of 64 employees with family coverage and 41 employees with single coverage. The Employer noted that it had to transfer $85,000 into the insurance costs fund in the latter half of 1991, and although these costs are spread out among all County employees, the amount attributable to this unit would not be offset by the new deductibles that would be paid if the Employer's final offer is accepted. The Employer also noted that it is probable that not all employees would maximize their deductible during the period. Assuming that all employees would pay the maximum amount possible under the Employer's deductible plan, the total cost to the unit based on the current types of coverage purchased would be $30,750. This means that the Employer was forced to pay approximately $17,000 more than the total possible of deductibles during that same period. The issue of whether or not to adopt the Care Share program is not at issue in this case. Only the timing of the implementation of the plan and of the implementation of the deductibles is at issue. The Union has apparently decided to adopt the strategy of refusing the implementation of the new plan until the receipt of the Arbitrator's decision. The Employer stated the Union strategy is irresponsible and needlessly

expensive, and the Union should not be rewarded for using such tactics.

Regarding the wages, the Employer's proposed wages are higher than those paid in most other nursing homes, and the Employer provided a number of documents and analyses in support of that position. The Employer's offer does provide an adequate quid pro quo to compensate employees for their additional costs of deductible. Wage increases in nursing homes in other counties averaged approximately 6.2% during 1990 and 1991. The proposed wage increase by the Employer is 10.25%, which is a net gain of over 4% to the Green County employees. This additional compensation more than offsets the costs to the employees of the new deductibles, and the additional compensation totals approximately $100,000 for both years. The Employer noted that all bargaining units in Green County were offered the same wage increase of 10.25% over a two year period, therefore the internal comparables favor the Employer's position as does the comparison to the cost of living data.

In response to the Union's arguments, the Employer stated that, contrary to the Union's claim, there are not three deductibles periods applicable here. There is one deductible period that goes into effect on October 1, 1990 and ends on December 31, 1991, which is for 15 months. The second deductible period is for 1992 calendar year. This period includes the final

six months of the contract, plus the first six months of the next contract; and it is the Employer's position that there are really only 1 1/2 deductible periods applicable. The Employer reiterated its position that the additional wages provided are a sufficient quid pro quo for the additional deductibles that are part of the Employer's offer.

The Union argued that the Employer is only offering 2 1/2% additional wages during the second year in order to provide a quid pro quo. In fact it is the Union's wage proposal that is unsupportable on the facts of this case. Since the employees in this bargaining unit enjoy wages which are significantly higher than those paid in other nursing home facilities, both public and private, there is no basis to conclude that the employees in Green County are underpaid and need a lift to catch up to the salaries at other institutions.

The Employer also disputed the Union's contention that there are improved benefits under the CARE plan. The plan is basically the same as the previous plan with some minor differences. It is the Union which has acted irresponsibly in utilizing delaying tactics in order to stall the implementation of the new plan. Arbitrators in other cases have condemned such tactics. Therefore, the Employer asked that the Arbitrator find in its favor and order the implementation of the Employer's final offer.

DISCUSSION AND OPINION

This case is distinguishable from many interest arbitrations in that the Parties have basically agreed on what they want to accomplish but are well apart on how those agreements should be implemented. The Parties agree on a two-year contract. They have agreed that a new health insurance plan (Care Share) will be implemented. The dispute centers on the following: the effective date of the Care Share Plan, the effective date of the deductibles and co-pay changes and the quid pro quo to pay for those changes. The Arbitrator notes that both Parties have accepted the concept of quid pro quo, therefore, the Arbitrator need not discuss this point except as to determine what the appropriate quid pro quo would be under the circumstances of this case.

In order to find the appropriate quid pro quo, the Arbitrator must determine what would have been the appropriate pay increase for this group of employees during the two-year period of this contract, then deduct that from the Union's offer and from the Employer's offer to determine if what remains would be an appropriate quid pro quo. The Arbitrator will also have to consider the date of implementation of the plan and of the deductibles and co-pays under those plans.

Regarding the implementation date, the Arbitrator finds that either Party's position might be appropriate under the circumstances of this case. The Union has proposed January 1, 1992 based on its feeling that the arbitration would have been resolved prior to that date. Since that has not occurred in this case, indeed the final briefs were not received until the second week in March, 1992. That date has passed. However, if the Union's offer is accepted, there would be no undue hardship on the Employer to implement the plan as of that date. The Employer's offer, likewise, is reasonable, and that would be to implement the new plan shortly after the Arbitrator's award is received.

With respect to the deductibles and co-pays, the Employer's position is that the deductibles and co-pays should be effective October 1, 1990. The Union was very concerned that this could result in three potential full deductibles being paid by employees in the bargaining unit. In its reply brief the Employer clarified that position, indicating that there would be one deductible for the period October 1, 1990 through December 31, 1991, and then a deductible period that would run January 1, 1992 through December 31, 1992. This would mean that a full deductible for the first period could impact on bargaining unit employees, but presumably some of the impact of the second deductible would be saved for the first six months of the new contract. It is the Union's position that the deductible and co-

pays should be implemented at the same time that the Care Share Plan is put into effect. As to which side's position is most appropriate, it really depends on which side's wage proposal is accepted by the Arbitrator and whether or not in his determination there is an appropriate quid pro quo provided by that increase. In other words, either side's position with respect to the implementation of the deductibles and co-pays could be appropriate depending on the offsetting wage increases.

This leaves us then with which side's wage increase proposal is the most appropriate under the circumstances of this case. With respect to the comparables, after reviewing the evidence and arguments provided by both sides, the Arbitrator has determined that the appropriate comparables would be those determined by Arbitrator Briggs in his 1986 Green County Human Services Department arbitration. Although this Arbitrator has some strong reservations as to whether Dane County is truly a comparable to Green County, he does not find enough evidence in this case to determine a different set of comparables from Arbitrator Briggs. The Employer also provided some external comparables utilizing a WAHSA analysis. The Union strongly objected to the inclusion of this data. After reviewing the evidence, the Arbitrator finds that interest arbitrators do consider external comparables in both the public and private sectors provided they have similar work under similar conditions and that we consider their entire economic package. However,

these external comparables which go beyond the counties that were considered in Arbitrator Briggs' award are given substantially less weight than those County nursing homes which are directly comparable to this unit.

The Employer brought forward evidence as to the settlement reached in the County Sheriff's bargaining unit as a result of an interest arbitration award by Arbitrator Kerkman. In that case Arbitrator Kerkman found in favor of the employer and ordered that the employer's offer, which was similar if not identical to the Employer's percentage offer in this case, be implemented. Normally, that would be given significant weight by the Arbitrator, but in this case the Union argued and argued effectively that comparing percentage increases in pay to a flat dollar deductible would only be appropriate if both units received comparable pay so that their percentage increases would result in similar dollar benefits to the bargaining unit members. In this case we do not have that circumstance. The County Sheriff's unit is more highly paid than the County nursing home, and any comparison of the quid pro quos of both units must take that factor into account.

We are then left with a determination as to what would have been an appropriate increase for this unit if the insurance question were not involved. Deduct that from the total increases proposed by both sides and then determine which of those comes

closest to offering an appropriate quid pro quo for the insurance change.

As with many of these cases, after reviewing the extensive data and excellent arguments made by both sides, the Arbitrator has concluded that neither proposal entirely meets the criteria as set forth in the applicable Wisconsin statutes. The Employer's proposal does not provide a complete quid pro quo for the change it is proposing, although the understanding of its proposal with respect to the implementation of the deductibles and the co-pays was somewhat modified in its reply brief. In any event, its proposal does not provide a complete quid pro quo. The question that the Arbitrator will have to determine is, does it provide an adequate quid pro quo. Likewise, the Union's position would give employees something of a windfall in that all of the wage increases will have been put into effect at least six months before the implementation of the new insurance plan with the resulting increases in cost to the employees.

All in all, this is a very close call, but in reviewing all of the evidence provided, the Arbitrator has concluded that it is the Employer's proposal that more nearly conforms to the statutory criteria. The Arbitrator is basing his decision on the Employer's representation that employees will be charged only one deductible for the period October 1, 1990 through December 31, 1991 and a second deductible for the 1992 calendar year; and it

is on the basis that the Arbitrator finds that it is the Employer's position which will prevail in this case.

AWARD

On the basis of the foregoing and the record as a whole and after full consideration of each of the statuatory criteria, the undersigned has concluded that the final offer of Green County is the more reasonable proposal before the Arbitrator, and directs that it, along with the predecessor agreement as modified by the stipulations reached in bargaining, constitutes the July 1, 1990 through June 30, 1992 agreement between the Parties.

Signed at Oconomowoc, Wisconsin this 15th day of April, 1992

Raymond E. McAlpin, Arbitrator