ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between

LOCAL 2492A, AFSCME, AFL-CIO

and

MARATHON COUNTY

Case 181
No. 45183 INT/ARB-5912
Decision No. 27031-B

ARBITRATOR: John W. Friess
Stevens Point, Wisconsin

UNIT: Marathon County Department of Social Services
31 Professional employees

HEARING: January 27, 1992
Wausau, Wisconsin

RECORD CLOSED: May 2, 1992

AWARD DATE: July 3, 1992

APPEARANCES:

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ARBITRATION OPINION AND AWARD

Marathon County Social Service Professionals
and
Marathon County

BACKGROUND AND JURISDICTION

This dispute concerns the negotiation of a collective bargaining contract between the Marathon County Social Service Professionals (Union) and Marathon County (County, Employer) to replace their old contract which expired on December 31, 1990.

The parties exchanged their initial proposals on October 30, 1990 and met thereafter on one occasion in an effort to reach an accord. On January 24, 1991, the Union filed a petition with the Wisconsin Employment Relations Commission (WERC, Commission) requesting arbitration pursuant to the Section 111.70(4)(cm) of the Wisconsin Statutes. On May 20, 1991, Thomas L. Yaeger, a member of the Commission's staff, conducted an investigation which revealed that the parties were deadlocked in their negotiations. On October 1, 1991, the parties submitted their final offers and Investigator Yaeger notified the Commission that the parties remained at impasse and the dispute was certified by the Commission for arbitration. On November 1, 1991, the Commission submitted a panel of arbitrators to the parties. John W. Friess of Stevens Point was selected as Arbitrator and was notified by the Commission on November 21, 1991.

An arbitration hearing was held on January 27, 1992 at the Marathon County Courthouse in Wausau, Wisconsin. At that hearing exhibits were presented and testimony was heard. It was agreed that briefs would be submitted to the Arbitrator and each party through the mail postmarked by April 3, 1992. Reply briefs would be sent to the Arbitrator and each party postmarked by April 24, 1992. The parties agreed the record would be closed as of the hearing date for additional evidence other than some items that both agreed could be submitted after the hearing. Following the hearing, the parties agreed to an extension to April 10 for the original briefs. Briefs and reply briefs were filed with the Arbitrator as agreed, the last one of which was received April 27, 1992. Following filing of the reply briefs, the Union lodged a complaint, which the Arbitrator received on May 1, relating to evidence the Employer had submitted with its reply brief. Subsequently, no other evidence was received and the record was closed on May 2, 1992.

The Arbitrator is granted authority to hear the evidence and issue an arbitration award under Section 111.70(4)(cm) 6 and 7 of the Wisconsin Municipal Employment Relations Act. The Arbitrator is obligated under the terms of the statute to choose the entire final offer of the Employer or the Union. Section 111.70(4)(cm) 7 sets forth 10 criteria the Arbitrator is obligated to utilize in making the decision. These criteria are itemized in the statute and are quoted verbatim in "Appendix A." For this award, these criteria will be identified as: (a) lawful authority; (b) stipulations; (c) interests and welfare of the public; (d) comparisons--other employees; (e) comparisons--other public employees; (f) comparisons--private employees; (g) cost of living; (h) overall compensation; (i) changes; and (j) other factors.

The employees involved in this proceeding are composed of a collective bargaining unit represented by the Union which consists of certain employees of Marathon County. Specifically, all regular full and part-time professional employees of the Marathon County Department of Social Services, excluding managerial, supervisory, and confidential employees. There are 31 professional employees in the unit.

STIPULATIONS AND FINAL OFFERS

STIPULATIONS

During the certification process the parties submitted the issues to which they agreed. These issues are stated in a document entitled "Tentative Agreements Reached Between Marathon County and Marathon County Social Services Professionals, AFSCME 2492A, 1991-1992 Labor Agreement" and marked "Stipulations" by the WERC. In addition, during pre-hearing discussions the parties agreed another issue relating to pay increases to employees above the scheduled rates was essentially similar language and not in dispute, therefore will also be considered part of the stipulations. These issues will not be discussed in this award as disputed issues.

FINAL OFFERS

Both parties have submitted proposals for a two-year contract. Based upon the final offers there are three issues involved in this dispute: wages and wage adjustments, change in health insurance deductibles, and changes in use of sick leave for family illness. The following are the positions of the parties on these issues:

Wages and Wage Adjustments

The Union is proposing a 3% - 2% split increase in both 1991 and 1992 wage rates. In addition, the Union wants an adjustment for the Social Worker II and III positions of 5% effective January 1, 1991.

The Employer proposes a 3% - 1% split increase in 1991 plus on July 1, a $282 increase to the 30 month rate, $271 to the 6 month rate, and $259 to the starting rate. In 1992, the County proposes a 3% - 2% split increase plus effective July 2, 1992, equity adjustments of $750 to the 30 month rate for Social Worker II and III positions, and $690 equity adjustment to the starting step for Social Worker II and III positions.

Health Insurance Deductibles

The County wishes to increase the health insurance deductibles from $100 per person, $200 per family per year to $200 per person, $600 per family per year.

The union offers to raise the family deductible from $100 to $300 per family, and to keep the single deductible rate the same at $100.

Family Illness Leave

The Employer is proposing a language change in the sick leave provision that allows the employees to use sick leave in cases of illness in the immediate family. The change would place a maximum number of hours (16) of sick leave an employee can use per year for family illness leave, as well as change the language relating to the seriousness of illness that qualify for family illness leave. The Employer proposes:

"Employees will be allowed to use up to sixteen (16) hours of sick leave per calendar year in a case of illness or injury in the immediate family where the immediate family member requires the attention of the employee. Immediate family is defined as the employee's spouse, children, parents, or a member of the employee's household. This provision shall not apply to employees accompanying family members to any routine medical or dental appointments."

The Union wishes to keep the current language:

"Employees will be allowed to use sick leave in cases of serious illness in the immediate family where the family member requires the constant attention of the employee. The Director may require that the employee make other arrangements for the ill family member within five (5) working days. Immediate family is defined as the employee's spouse, children, parents, or member of the employee's household."

ISSUES SUBJECT TO ARBITRATION

As mentioned above, there are three main issues related to the final offers of the parties: wages and wage adjustments, health insurance deductibles, and family illness leave. At the hearing and during the briefing process the parties raised two other issues relevant to this arbitration that will be addressed in this decision: the submission by the Union as an exhibit a Prohibited Practice Complaint Report, and the submission by the County of a "transcript". These issues will be addressed individually in the DISCUSSION below.

DISCUSSION

INTRODUCTION

The Arbitrator in these cases is charged with determining the more reasonable of two offers, and to order the implementation by the parties, in full, either one or the other. In this case the parties both have certainly developed very reasonable offers--ones that are fairly close both in terms of economics as well as principle. With the exception of the handling of the wage adjustments, the wage increases are almost identical. The Employer is proposing a greater increase in health insurance deductible, but both are proposing increases. The County wants changes in the family illness leave policy, but apparently only seeks to clarify problematic language. So, the job of the Arbitrator will be to decide which of two fairly reasonable offers is more reasonable in relation to the ten statutory criteria.

The report of my thinking and decisions will be accomplished in this DISCUSSION section. I will provide a brief summary of each of the parties arguments and positions for the issues as I discuss them. "////" follows the summary of the parties' positions and indicates the start of the Arbitrator's analysis and opinion. Before discussing the substantive issues, the parameters for the analysis of the evidence and argument will be established.

EVALUATION OF EVIDENCE

The Union, in its letter objecting to the Employer's inclusion of a "transcript" in its reply brief, asked the Arbitrator to decide the evidence issues first, prior to the substantive issues. I will deal with the two major evidence issues here.

Submitted Evidence

Prohibited Practice Complaint Report

The Union submitted during the hearing as Union Exhibit 78 a report from the WERC on the ruling of a Prohibitive Practice Complaint between the County and the Highway Employees Union. The report, in the form of a WERC "Findings of Fact, Conclusions of Law, and Order", relates to a prohibited practice

complaint filed by Marathon County alleging a failure to bargain in good faith on the part of the Highway Employees Union and its Local President.

At the hearing the Employer strenuously objected to this report being entered into evidence. The County claimed the document is irrelevant and prejudicial. Because of the nature and intensity of the objection, the Arbitrator sealed the document and separated it from the rest of the evidence. The parties were informed by the Arbitrator to argue in their briefs the relevance of the document and whether it should be consider as part of the record.

In its brief the Employer renewed its objection, claiming that the complaint had little to do with the issues before this Arbitrator. The Employer maintains the only reasons the Union placed the document in evidence was to show the bargaining history between the County and the Highway Department Employees and to show a discussion regarding the change in health insurance carriers in the City of Wausau--both of which bear no relevance to the issues in this case. Furthermore, any consideration by an interest arbitrator of a document that reports on any party exercising its right to challenge conduct of another party during negotiations would have a chilling effect on the future decisions of parties to challenge, in good faith, inappropriate bargaining conduct. The Employer asks the Arbitrator to reject the report as irrelevant and prejudicial.

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In arbitration proceedings good evidence is usually hard to come by. It is not usual for most arbitrators, including me, to exclude exhibits without exceptionally good cause. Generally, the questioned evidence is accepted into the record and the relative importance (sometimes based on relevance) is established after it has been examined by the arbitrator.

In this instance I think the Employer has a strong case to reject the evidence and keep it out of these proceedings. I agree that the document seems to have little to do with the issues in this case. The bargaining history of the County with the Highway Employees has little relevance here, especially related to prohibitive practices (which are not even within the jurisdiction of this Arbitrator). As pointed out by the Employer, the report could also be inflammatory and prejudicial if even seen by the Arbitrator.

Therefore, I find Union Exhibit 78 is irrelevant, will not be part of the record in this case, and will remain sealed and ignored by this Arbitrator in deciding this case.

"Transcript"

The Employer attached to its Reply Brief a nine page document entitled "Transcript of Testimony Marathon County Social Services Professional Arbitration Hearing". The document purported to be the testimony of Robert Nicholson that took place during the Arbitration hearing on January 27, 1992. The County in its Reply Brief made numerous references to the document. Upon receiving a copy of the Employers Reply brief, the Union filed a letter of objection with the Arbitrator, objecting to the inclusion of the "transcript" and the Employer's references to it, and moving that the Arbitrator remove all references to it from the record.

The Union objects to the inclusion of the "Transcript of Testimony" material based upon the following: 1) there was no court reporter or official transcript taken at the hearing; 2) there was no agreement by the parties to allow for any official record other than the exhibits presented at the hearing; 3) the Union disputes the accuracy of the document based upon its (the Union's) notes.

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The Union makes some very valid points. There indeed was no court reporter at the hearing to transcribe the proceedings. My recollection is that the session was not even being tape recorded. I think to submit this document was inappropriate for several reasons. First, and most importantly, briefs are for argument. Unless otherwise agreed, parties should submit exhibits and evidence at the hearing or exchange it through the mail so that each has a chance to check for correctness, etc. and respond through their brief. A transcript is evidence and the Employer is well aware of this--it submitted, with concurrence of the Union and this Arbitrator, a lengthy transcript as part of its exhibits (Employer Appendix C). Submitting evidence in briefs is really unfair to the other party, as well as to the arbitrator.

Second, the Union is right. No provisions were made to transcribe the testimony in this case. It was agreed, based on a specific query by me, not to have a court reporter. The parties wanted an informal proceeding, and the addition of transcribed testimony would have had a chilling effect on the process. This "transcript" could only have come from the Employer's notes. Traditionally, if no official transcript is taken, the arbitrator's notes become the official record of testimony.

Third, the Employer and Union had agreed to certain deadlines for the submission of evidence. Only evidence that the parties specifically identified could be submitted after the hearing up to April 24th. The parties had no agreement that the Employer would submit a transcript of hearing testimony. The integrity of the process dictates that parties follow agreements they make regarding evidence and briefs.

And finally, I agree with the Union that the accuracy of the document certainly can be questioned. Both parties, and the Arbitrator, need to have a neutral source for the production of transcripts.

Based on this, I find the "Transcript of Testimony" submitted by the Employer in its Reply Brief to be evidence that was improperly placed into the record. No weight will be placed on this material, no attention will be given to it, and no reference will be made to it by this Arbitrator in this decision and award.

REASONABLENESS TESTS

Normally the ten statutory criteria are sufficient for determining the reasonableness of the final offers, but when a language change is proposed by one or both parties, criteria and level of burden of proof need to be established by the Arbitrator. Therefore, two reasonableness tests' criteria will be discussed in this section: change tests and comparative tests.

Change Tests

Family Illness Leave Language Change

A major issue in this case is the language change being proposed by the Employer for the Family Illness Leave provision. First the proposal must be analyzed to determine whether or not what's being proposed is in fact a change, and if so, what kind (or degree) of change it is.

In a previous decision (Howards Grove School District, No. 43261 INT/ARB-5483, 9/25/90, pp. 10-12) I discussed in (gruesome?) detail the idea of change in collective bargaining and arbitration. I will not repeat that discussion here, but will rely on the principles described there for deciding what, if any, change test is needed in this case. The questions are: Is a

change actually being proposed? If so, what kind of change is being suggested? And based on this, what level of burden of proof is required by the proposing party?

The Employer is proposing new language for the Family Illness Leave section of the contract. I think both parties agree, and I concur, that there is a change being proposed here. There are actually a number of changes being proposed. The major change proposed seeks to reduce or limit the amount of sick leave time an employee may use in a year for family-related illnesses. Based on this, I conclude that the change proposed is a *substantial* change and will require a substantial burden test.

The test that I will apply will be a three-pronged test suggested by Arbitrator Robert Reynolds (1988) and utilized by me previously (Ripon School District, No. 42530 INT/ARB-5318, 4/10/90). This test requires proof that: 1) the change is required; 2) the change will remedy the problem; and 3) there is no unreasonable burden. This test will be implemented under the following:

1) all three of the criteria must be passed in order for the test to be passed and the proposed language found reasonable;
2) "remedy the problem" must include a close look at the proposed language to see if it is clear, concise, unambiguous and that it matches the intent of the proposing party; and
3) an "unreasonable burden" can be offset or diminished by a "buy-out" or "quid pro quo".

Comparative Tests

Relevant Statutory Criteria

The parties presented little or no evidence relating to some of the criteria. Thus, these criteria will receive little or no weight in this arbitration decision: (a) lawful authority of the Employer; (f) comparisons--private employees, and (i) changes. The other criteria will be weighted and considered for each of the issues and discussed separately under each issue.

For comparisons with other employees, I will use the comparable grouping suggested by the Employer and used previously by Arbitrator Stern (Marathon County, No. 42014 INT/ARB-5219, 2/26/90).

ANALYSIS AND OPINION

In this section I will discuss the issues in this dispute using the tests and criteria described above. Based upon the opinions of the parties from the evidence and argument, I rank and place weight on the issues this way: health insurance deductibles (highest/major); family illness leave (next/major); wages and wage adjustment (lowest/minor). Most of the discussion and emphasis of this decision will be place on the issues of highest priority and weight.

Health Insurance Deductibles

A major issue in this case is the changes being proposed to the health insurance deductibles. To review, the Employer wants to increase the single plan deductible from $100 to $200 and the family plan from $100 per person, total $200 per family to $200 per person, total $600 per family. The Union also offers an increase: change the total $200 per family to total $300 per family.

The Employer argues that insurance rates continue to increase at a high rate and the excessive rates warrant taking steps to reduce costs. Marathon

County in 1991 had the second highest rate of the sixteen plans offered by the comparables. The County must take steps now to control its health insurance costs according to David Radke, a health care analyst retained by Marathon County. Based upon an extensive health care analysis completed by Radke, the County should institute higher deductibles to stem its costs. The County argues that the internal comparables support its offer in that all of the settled County units have accepted the Employer's deductibles. In view of the history of uniformity among its various units, the County's offer should be selected. Furthermore, the County has offered a quid pro quo (a substantial increase in salary at the 30 month rate) when one is not even called for.

The Union maintains that the employees are already sharing in considerable portions of their health care costs (e.g many services that are only provided on an 80% or 90% basis, or not covered at all). The Union has already agreed to a managed care/utilization review program designed to control costs which will likely save the County at least 3% to 5%. The Union argues that while the County's costs are currently on the high side, they are neither the highest, nor increasing much more rapidly from 1990 to 1992 than the comparables. There are also reasons to be skeptical about the County's reports relating to the fund balance, with a number of unexplained inconsistencies and questions. Mostly, the Union points out that the external comparables overwhelmingly support the Union's offer, with the employees in this unit being at a disadvantage to the vast majority of other units around the state that enjoy a "major medical" deductible, rather than the more costly (to the employee) "basic" deductible.

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This is an important issue for both the Employer who funds most of an expensive insurance plan and the employees who will end up paying more for health insurance under either offer. Important in the decision here is that there appears to be is a long history of strong internal consistency, but there is no current pattern among the county units. With only three of ten organized units settled and the rest in the arbitration process, it is hard to tell where the internal pattern may end up. Reams of evidence were submitted by both parties in support of the other criteria which provide little conclusive guidance on this issue.

The high costs to the Employer of this health plan is very evident in this case. Even the Union acknowledges this (Union Brief, p. 9). Marathon County has an exceptionally good, and expensive, plan to maintain. The Employer does deserve to implement cost saving measures to counter the high and increasing costs. But I wonder if increasing the deductible will do much to "stem the tide" in health care costs. And as the Union points out, this is not really a cost *saving* measure, it is a cost *shifting* procedure.

The comparisons of this unit with other comparable units--internal and external--has mixed results and is inconclusive. Other settled units in Marathon County have selected the County's proposal to increase the family deductible to $600. This would support the Employer's offer, considering that the County has a long history of internal consistency. But, as pointed out above, 3 out of 10 do not make a settlement pattern. And even if the Employer would like to have a consistent pattern among its units, this is only one of many criteria that must be considered by an arbitrator.

Looking at the external comparable group, no other county of the ones that are settled has a deductible as high as the Employer is proposing. And only one other employer (Eau Claire) is proposing to increase the health insurance deductible as high as $600. The external comparables strongly support the Union offer.

Overall, based upon the considerations mentioned above, I find the Union offer to be somewhat more reasonable than the Employer offer on the health insurance deductible.

Family Illness Leave

This is another major issue with significant importance to both parties. The language change being proposed by the Employer will impact on the costs of the County as well as effect many employees who may experience sick family members that requires their assistance and time away from work. The Union points out that this family leave section has been in the contract for 19 years, and has not been changed by the parties since 1978. Thus, this is a long established practice based on agreed upon contract language. This makes any change proposed through arbitration significant, and because the Employer is proposing a *substantial* change, a substantial burden test is required as discussed and outlined above.

Positions of the Parties

The Employer argues that the existing language is ambiguous and problematic, and needs to be simplified. The substantial record of grievances and arbitration awards shows that the interpretation and application of this contract provision has been subject to substantial litigation. The County points out that the Union itself, based upon Union arguments in grievance proceedings, also believes that the language is ambiguous and is in need of change. The Union apparently wants unrestricted and unlimited use of sick leave for family illnesses, an idea which runs contrary to common sense and the best interests of the public. The County maintains that its language is reasonable and appropriate because it insures that the benefit continues while placing reasonable limits on the usage of sick leave without having to define exactly what constitutes a "serious" illness.

The Union maintains that this benefit is based upon the language established nearly 20 years ago, is well established, and was problem free until 1988 when the Employer started denying requests for use of sick leave based upon unilateral interpretations of the contract language. The Union argues that it is extremely significant that the Union's interpretation of this contract language was favored by the arbitrators of seven grievance arbitration awards issued recently for Marathon County units. The Union suggests that the County allowed and participated in a liberal application of the language over the years; the County decided to change that by unilaterally instituting a contrary policy; and the County then enforced the policy in a manner designed to generate grievances and create what they can now allege is a "compelling need" to change the language. The Union says that sick leave is a benefit employees have earned with certain understandings and expectations as to its purpose and usage, and to significantly change the rules would be patently unjust and unfair.

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Is the Change Required?

Whenever parties have disagreements that end up in "court" it could be said a change is needed. Here, as the Employer points out, the litigation has been significant. Apparently the County, in 1988, decided to move from a "liberal" interpretation of the use of sick leave to a "stricter" interpretation of the contract clause. This prompted a series of grievances and ultimately some arbitration awards. The question (as raised by the Union) is whether these disputes were "trumped up" by the Employer just to convince this Arbitrator that there is a compelling need for a change.

It is hard to answer questions like this related to motive directly; there is no real evidence in the record (if one can ever produce evidence related to motive). Most importantly, I think the Union misses an important point. Even if the Employer did "trump up" the disputes, it is apparent the County wants a change to the status quo--there are abuses, or there are higher costs now than 20 years ago, or whatever. If the Employer would go to all the trouble and expense to take these cases to arbitration, it (the County) has serious problems with the language and wants a change. The parties should have found a way to come to terms on these issues.

I find the evidence presented here indicates a change is needed.

Will the Proposed Change Remedy the Problem?

The "problem" here revolves around requests by employees for the use of sick leave for "serious" family illnesses. The County proposes to eliminate the disputes over the interpretation of "serious" by eliminating the word and then placing a cap (of 16 hours) on the use of sick leave. Presumably the employees then could use sick leave for any type of family sickness/condition other than doctor and dental appointments. I think the Employer here is not really trying to remedy a problem of interpretation of language by providing substitute language, but rather is trying to eliminate the problem by completely changing the mutually negotiated benefit. This solution certainly is a remedy to the problem, but it also raises questions about the intent of the County.

In order to pass this test, the language being proposed must match the intent of the party making the change. In 1988, the County tried to provide a way to interpret the word "serious" by providing examples of what could/would be considered serious and therefore qualify for sick leave pay. The intent was clearly to try to provide guidance to the employees and supervisors on interpreting that troubling word "serious". Now the Employer is proposing to do away with the idea of serious all together, and to simply place a cap on the use of sick leave for family illnesses, with the clear intent to restrict the usage and thus costs of this clause to the County. On this point the language proposed appears to match the current intent of the Employer to reduce contract language ambivalence and to reduce organizational costs related to sick leave pay out.

However, further analysis of the proposed language raises another concern. The first sentence reads: "Employees will be allowed to use up to sixteen (16) hours of sick leave per calendar year in a case of illness or injury in the immediate family where the immediate family member requires the attention of the employee." The words "...in a case of illness or injury..." seem to imply that an employee can only use sick leave only for one illness or injury of a family member per year. Construction of the sentence in the singular, rather than plural, at this point, seems to indicate eligibility for only one illness or injury per year. Is this what the Employer meant? Did the County want to place a double cap on the usage of family illness leave: one at 16 hours and one at the number of cases (1) of illness or injury? This is unclear to me and so raises questions as to whether this proposed language actually matches the Employer's intent on this point.

Also, this part of the language, because of the long standing practice of allowing multiple cases of illness or injury under the current language, may actually lead to ambiguities and problems in the application of the language. Employees, and some supervisors, based upon past practice, may interpret that more than one illness or injury is covered by the clause. Because of these concerns, the proposed language is not as unambiguous as it could be.

On this question, I find the proposed language somewhat ambiguous and may actually not match the intent of the Employer. Thus, the language would probably not remedy the problem, and in the end, could aggravate it.

Does the Proposed Language Create an Unreasonable Burden?

The major problem with the Employer's proposed language is that I think it creates an unreasonable burden on the employees, and indirectly, on the County itself.

There is nothing in the record (that I could find anyway) relating to the average usage of the employees in this unit of sick leave for family illnesses and injuries. The Employer is proposing to restrict the usage to 16 hours. Is this reasonable? How does this compare to the average usage over the years. But even if this sixteen hours compares favorably to the average, how does this relate to the emergency conditions that was the concern of the original language. How can an employee control the emergencies and medical crises that happen in his/her family?

The County's proposal is so counter to the original language that I believe it will place an extreme burden on the employees who use up their benefit (16 hours) and experience another or more emergencies. It is not stated in the language, but the assumption is that once an employee uses up the sixteen hours and experiences another emergency (such as a child's broken arm), the employee might get off work to attend to it, but would need to take vacation time, compensatory time off, or time off without pay (Employer Brief, p. 43). This seems to be an unreasonable burden on the unsuspecting employee, given the past practice of the parties.

Perhaps the County does not quite understand all the beneficiaries of this contract clause. Sure the employee is compensated (from an earned pool of sick leave) for being away from work, but the County gains benefits from this too. We must not loose sight of the fact that what we have here are professional social workers. These people work with clients all day long and need to be in peek emotional health to do their work. A mother worried that her child may not be receiving the emergency care that is needed, or worried that if she leaves work her pay will be docked, could be so emotional hamstrung so as to not be worth much to her clients. In a case like this, I could not imagine a professional being very productive, at least in the sense of providing assistance and support to his/her clients. And this is an extremely important issue management ought to be concerned about. It is hard to measure, but I suspect that instituting the proposed change could have a very negative impact on the productivity of some individuals in this professional group. This creates an unreasonable burden on the employees and Employer alike.

It is possible for the proposing party to overcome or offset an unreasonable burden through a "buy-out" or quid pro quo. While the Employer characterized its extra dollar increase to the rates effective 7/1/91 as a quid pro quo for the health insurance deductible increase, nothing in the record indicates a buy-out of the family illness leave benefit.

Based upon these reasons, I find the County's proposed change to the family illness leave clause fails to meet the change test. Thus, the Union offer on this issue is found to be more reasonable.

Wages and Wage Adjustments

Because this issue has less weight than the two other issues, and because the parties are relatively close in their offers, little space will be

dedicated here to a discussion of the wage increases and wage equity adjustments.

Based on the relevant criteria neither offer on the wage increase is found to be more reasonable that the other. And, with the most weight being placed on the external comparables, and considering the work of Arbitrator Stern, I find the Union offer on the equity adjustments to be somewhat more reasonable than the County offer.

CONCLUSION

Based upon the reasons stated above, and taking into consideration all the evidence before me, weighing the issues and statutory criteria, and deciding the reasonableness of each of the parties' proposals on each of the issues, I find, overall, the Union's offer is more reasonable than the County's offer and make the following:

AWARD

The final offer of the Marathon County Social Services Professionals, Local 2492A, AFSCME, AFL-CIO, along with the agreed upon stipulations, shall be incorporated into the 1991-1992 collective bargaining agreement between the parties.

Dated this 3rd day of July, 1992 at Stevens Point, Wisconsin.

John W. Friess
Arbitrator

STATUTORY CRITERIA

The criteria to be utilized by the Arbitrator in rendering an award under Section 111.70(4)(cm) 7 of the Wisconsin Statutes are as follows:

"(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 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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

(e) Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

(f) Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees 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 employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, 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 and otherwise between the parties in the public service or in private employment."