STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition
from the
MARATHON COUNTY COURTHOUSE NONPROFESSIONAL EMPLOYEES UNION
To Initiate Final and Binding Arbitration
Between the Petitioner and
MARATHON COUNTY

Case 184
No. 45216 INT/ARB 5923

Decision No. 27034-B

I APPEARANCES

For the Nonprofessional Employees Union
Mr. Philip Salamone

For the County of Marathon
Mr. Dean Dietrich, Esq.

II BACKGROUND

On January 30, 1991 Local 2492E, AFSCME, AFL-CIO, hereinafter called 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. The Petition was filed for the purpose of resolving an impasse between the Union and the County of Marathon, hereinafter called the Employer. A findings of fact conducted by the Commission concluded that the Union was the exclusive collective bargaining agent for regular full and part-time Marathon County Courthouse and affiliated employees, excluding professional, managerial, supervisory, and confidential employees with the Employer.

The parties exchanged initial proposals on October 30, 1990, and thereafter the parties meet on two other occasions in efforts to reach accord on a successor agreement. An investigation into the impasse was conducted by the Commission on May 20, 1991, reflecting a continuing deadlock. The parties submitted their final offers on October 23, 1991. The Commission investigator notified the parties and the Commission the investigation was closed and the parties remained at impasse. Subsequently the Commission rendered a FINDINGS OF FACT, CONCLUSIONS OF LAW, CERTIFICATION OF RESULTS OF INVESTIGATION, and ORDER requiring arbitration.

The parties selected Donald G. Chatman as Arbitrator for this matter November 23, 1991. A mediation meeting was held on January 28, 1992 at the offices of Marathon County in Wausau, Wisconsin, at 10:00 A.M. The mediation efforts were unsuccessful and an arbitration hearing was immediately held at that time and place.

III PROCEDURE

At this hearing all parties were given full opportunity to present their evidence, testimony and proofs. To present witnesses

and to engage in their examination and cross-examination. After the presentation of their evidence and proofs the parties elected to summarize their final arguments in the form of written briefs, and rebuttal briefs. The Briefs were received on May 1, 1992, and rebuttal briefs were received on May 16, 1992. The Hearing was closed on May 20, 1992 at 5:00 P.M.. Based on the evidence, testimony, arguments and criteria set forth in Section 111.70 (4) (cm)6 through 7h, of the Municipal Employment Relations Act, the Arbitrator renders the following award.

IV STIPULATIONS AND ISSUES.

The parties stipulate no other issues besides those presented are at impasse. The issues in dispute are as follow:

1. Changes in Health Insurance Deductibles.

2. Implementation of a Managed Health Care program with a penalty provision.

3. Wages and Wage Adjustments

4. Limitations on the use of Sick Leave for family Illnesses.

V. CONTENTIONS OF THE PARTIES

CHANGES IN HEALTH INSURANCE

County Offer

1. Article 13 - Sick Leave, Paragraph E - Family Illness, delete current language and add language as follows:

Employees will be allowed to use, up to sixteen (16) hours of sick leave per calendar year in 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 appointment.

Union Offer

1. No Change in Existing Language.

Existing Labor Agreement Language

Article 13 -Sick Leave, Paragraph E- Family Illness:

Employees will be allowed to use sick leave in case of serious illness (e.g., child breaks arm on school playground) in the immediate family where the immediate family member requires the constant attention of the employee. The Department head may require that the employee make other arrangements for

the ill family member within five (5) working days. Immediate family member is defined as the employee's spouse, children, parents, or member of the employee's household.

Employer's Argument

The Employer contends its final offer on family illness leave is reasonable and justified. The Employer maintains that this change is particularly necessary in view of the extensive history of litigation regarding this matter. The various unions have filed and been sustained in a series of grievances regarding interpretation of the contract language in the family leave provision. The Employer in November of 1988 attempted to define instances where employees were entitled to paid sick leave for time off due to family illness. This decision has been challenged by various unions of the Employer at least nine times. While the Grievances have been sustained. One of the interpreting arbitrators defined the Employer's right and obligation to determine which employees are granted paid leave for family illness.

> "To require the County to continue the past practice of granting family illness leave automatically without any consideration of the nature of the illness would be to deny the County a clear contractual right." (Burns, p.17, Case 172, 44348, Feb.-91).

The Employer seeks to simplify this language and process, and the Employer's proposal eliminates the difficult language defining "serious illness". The Employer argues that the definition of "serious illness" has presented difficulty in interpretation, however, the Employer argues that should not be at the whim of the employee.

The Employer proposes to grant two (2) days per year to employees for use in the event of illness in the Employee's family. The Employer maintains with its proposal the benefit continues, but reasonable limitations are placed on its usage without the difficult definition of "serious illness." The Employer maintains that the proposal is a reasonable alternative to the continued litigation between the Employer and Union. The Proposal of the Employer on Family Leave should be selected.

Union's Argument

The Union contends that Family Leave language has existed in the collective bargaining agreements for this unit since its inception. This language has existed in other Employer bargaining units for nearly twenty years. The Union presented evidence that such provisions existed in Employer - Union contract language since 1973-74. Further, the Union contends that Family Illness Sick Leave is a contractually provided benefit. The Union argues this benefit is earned and accrues in the same manner as vacation. The Union maintains sick leave has other residual benefits, i.e, sick leave credits may be used in part to pay premium costs of medical insurance. Sick leave also may be used to supplement workers

compensation, in the event of on-the-job-injury. The Union contends there have been no changes in this Agreement language since the first contract and such change is unnecessary and unwarranted.

The Union maintains that family leave was not an issue until 1988. Now the Employer wishes to limit the benefit to sixteen (16) hours a year despite the seriousness of the illness to the family member. The Union maintains the Employer provided no evidence of excessive usage, or that family leave usage presented difficulty in staffing or scheduling.

The Union contends that the Employer's proposal argument is to provide consistency across bargaining units. The Union presents evidence that bargaining units are substantially different in administration fees, separation benefits, different paid holidays, sick leave accrual, and age differences for utilizing certain benefits. Thus, the Union argues any employer claim of consistency among bargaining units must fail.

The Union maintains Family Leave was a non-issue until raised by the unilateral implementation of a family leave policy, and repudiation the existing past practice, without adequate notice by the Employer. The Union maintains the Employer caused the grievances by its acts and lost. The need to change the language is unnecessary and the Employer's position on Family Leave should fail. The Union argues the existing agreement language should remain in place for the successor agreement.

The Union also argues that the implementation of the Employer's provision on Family leave will wreck undue hardship on those employees who may have exceeded two days of family leave since January 1, 1991.

Discussion of the Family Leave Issue

Family Leave is as much and emotional issue as it is a practical facet of the working community. The Employer's proposal to substitute sixteen hours per year for illness or injury to the immediate family member of the employee is a considerable change in contract language. In effect the Employer is restricting the employee's utilization of sick leave for family purposes from a theoretical twelve (12) days per year to two days per year. This change is proposed without relinquishing controlling determination of how the leave may be used. The Employer argued that because of the extensive challenges to the policy on when family leave could be utilized, this proposed change was necessary. The arbitrator agrees that some consideration to this issue is valid.

The evidence and argument presented at the hearing and in the briefs suggests, it was the implementation of the personnel policy and the subsequent review for validity of use that precipitated the mass of grievances. The Employer referred to its management rights clause to implement this policy, and monitor the use of family leave. This right has been sustained by an Arbitrator (Burns, WERC- 44348, 1991), while finding the Employer's application of that review was

not equitable. There was no evidence or testimony presented that indicated the total number of employees denied family leave. Particularly, during the period when the nine grievances were filed.

However, this arbitrator notes two facets in the body of these arguments. First, the Employer never presented any evidence or testimony that it intended to disestablish a clearly existent past practice. The Employer never indicated in writing or otherwise that the practice of taking family leave at the employee's discretion was ended, and subsequent Employer review of leave would occur at some specific date and time. Divorce in whatever manner requires notice. The Employer maintained the policy was implemented. The subsequent arbitrations show that the Employer proposed a family leave usage procedure during negotiations in 1988. Since the language remained unchanged the language was not incorporated into the subsequent agreement. The Employer than sent a letter to the Union in July of 1989, indicating intent to implement the review procedures for family leave, with the vacation liberalization usage policy. The Union's response expressly acknowledges receipt of both procedure statements and expressly and specifically does not respond to the family leave procedure. The Employer was not totally clear in dis-establishing the past practice. Further, the Employer has never stated that the Past practice, if it existed was over.

It is this arbitrator's opinion that the Employer has always had the right and prerogative to review the use of family leave, regardless of past practices. However, that review and subsequent actions must occur within the framework of the existing agreement between the parties. The existing agreement on Family Leave says "Employees will be allowed to use sick leave in case of **(SERIOUS)** illness" (Emphasis, mine). The grievances presented as part of these proceeding (WERC # 44348, 45651, 45652, 45843, 45844, 45845, 45846, 45847,) were all determined by the arbitrator's resolution of what type of illness constituted serious. The Employee's that took the family leave had one opinion, and the Employer who initially refused payment was of another opinion. This suggests to this arbitrator there was no impartial standard present. However, there are impartial standards available, particularly in the medical field among hospitals. Some hospitals have care units set up for these standards, Triage, Critical, Serious, Standard (Emphasis mine). An impartial standard that might be reasonable used in these instances, are those of the Metropolitan Joint Hospital Councils of New York & Chicago definitions of serious.

These councils have defined this term so that there is consistency in reporting a patients' condition to family, public agencies, (Police) and the press. Serious is defined as follows:

> Serious: An acute illness or injury with a questionable outlook without treatment, requiring constant medical personnel attention. Some vital signs may not be within normal limits. Chances for an improved outlook are favorable. (Jt. Metro. Hosp. Coun. Chgo. 1992)

Thus, the issue appears to this arbitrator as the necessity for a consistent and impartial definition of the contract term Serious. The Employer's proposal to eliminate the language entirely and insert a sixteen hour per year maximum appears to be overreacting. Particularly since the Employer has presented no evidence of employee abuse. The nine instances presented all are for differences in language interpretation, rather than alleged abuse. The current status quo of the existing agreement is preferred on this issue.

ARTICLE 19-Insurance, Section A, Medical and Hospitalization Benefit.

Employer Offer: Revise the article by adding two additional paragraphs on health care cost containment:

> Managed Care: Effective January 1, 1991, or as soon as possible thereafter, in accordance with the attached Summary, Marathon County will implement a Managed Care Program. A five hundred dollar ($500) Penalty will be assessed for failing to follow procedures for pre-certifying medical treatments.
>
> Deductibles: Effective January 1, 1991, deductibles are one hundred ($100) per person, two hundred ($200) per family per year. Effective January 1, 1992 deductibles are two Hundred($200) per person, six hundred ($600) per family per year.

Union Offer: Insurance - Effective January 1, 1992 or as soon thereafter as the County Deems practicable, increase deductibles to three hundred dollars for the family plan.

Current Agreement: Medical and Hospitalization Benefits: The County agrees to pay One Hundred Percent (100%) of the cost of the medical hospitalization program . . ..

The Employer contends its proposed change in health insurance plan features are supported by the existing record of comparable counties for employee participation in health plan payment. The Employer maintains its proposal is a reasonable response to the increased premium costs. The Employer contends that its proposed increase of $100 per person annually, to $200 per person annually is not without corresponding compensation. The Employer additionally is proposing to increase the deductibles in the family plan from $200 per family to $600 per family.

The Employer contends that these minor changes in health plan will make the employees' better consumers, but will save the employer money. The Employer argues that comparable situations have been agreed to by other arbitrators, (Vernon, 26491A, 90; 26549, 90). The Employer argued that its excessive health care insurance rates warrant a change in overall health care plan design. The Employer

submitted as evidence, the results of a consulting firm report that substantiates the employer's contentions. While the Employer recognizes that the Union's final offer proposes some change in health payment benefits, it maintains its proposal is most appropriate. The Employer contends that a deductible lower than $200 and $600 would not be incentive enough for employees to use the plan wisely.

Finally, the Employer maintains it has offered a generous Quid Pro Quo for the increase in deductibles. The Employer is offering an additional $282 per year should more than adequately meet the proposed $600 family minimum. The Employer argues that many employees will not use or incur, any cost during the year. That a majority of its employees are currently eligible to receive this benefit (66%), and an additional (15%)would derive full benefit within a year. Finally, the Employer argues their health care proposal is a more than generous, in that it does not have to offer a quid pro quo for issues of economic necessity. Therefore the Employer's proposal should be accepted.

The Union contends the magnitude of the Employer's proposals renders these proposals to be major transformations in health care insurance. The Union contends that such changes would change a somewhat standard health care plan into a catastrophic plan that would be applicable only to the most serious of Illnesses.

The Union contends that the Employer as a self insurer with control of the funds that are partially employee provided, has not provided clear and adequate explanation for the health funds, usage. They maintain that since self funding more than $800,000 has been removed from the fund with no explanation. As such, the Employer should not be rewarded be making the employees provide for the funds recovery.

The Union maintains that the raised rates may well provide disincentives for using health insurance with possible tragic results. They maintain that increased deductibles do not necessarily aid in cost reductions to the insurers. Finally, the Union maintains that health insurance is designed to be utilized, that it is of little or no value if, no one, or very few employees benefit from its use. The Union maintains it has already agreed to a change in the Family plan of 300 dollars per year.

Discussion of the Issue

No more volatile issue arises in recent public sector negotiations than the share, of health insurance each party to the agreement should provide. It is inescapable that health insurance continues to rise at a rate far exceeding any rational norm or criteria, and those with the least amount of impact are paying the brunt of these increases.

The issue is further complicated, particularly in the public sector with the increasing number of employers who elect to become self insurers. While in theory self insurance for health care could

be a cost savings for the public employer, by saving administration, and management costs. It is also an almost irresistible pool of funds to cover other short-term problems of the municipal corporation.

Some primary documents in support of the Employer's position were The Marathon County 1990 Health Care Analysis (Employer Exhibit 1) F.F. Haack & Associates, 1990; And Appendix C, of Employer's Exhibits, Depositions of David Radke & Brad Karger. These documents are useful in some data they present. However, they are totally self-serving in testimony and as evidence. The Documents apparently were commissioned by the Employer to arrive at a predetermined conclusion and in this arbitrator's opinion the testimony lacks probative value. There was no evidence or testimony presented that the study was designed to provide information on better health care, equal health care, or even health care. Only possibilities of saving money. The data from these reports show that hospital admissions increased from 1987-89, but length of hospital stay decreased in this same period by 16%. Further, hospital stays for catastrophic claims declined by 30%. Thus, the Employer's data indicates that length of hospital stay decreased.

Table 1
1989-91 Data for Comparable Counties

	Langglade	Lincoln	Marathon	Portage	Waupaca	Wood
Pop. 1990	19,505	28,993	115,400	61,405	46,104	70,605
%Pop. 5-14 yr.	22%	22%	23.7%	21,7%	22.6%	23.5%
%Pop. 65 + yr.	19%	16.2%	12.7%	10.8%	17.7%	14.2%
Per Capita Inc.	8,548	9,680	10,608	10,135	9,926	11,218
Med. Fam. Inc. 90	21,797	25,168	29,172	27,465	26,006	29,727
1990 Health Care						
Exp. (Mil)	8.9	11.8	77.8	26.3	20.2	129.2
Physicians/100,000	81	94	155	120	80	403
Exp.Per-Cap.	456.29	406.99	671.26	428.30	438.13	1,841.0
1989 Local Govt.						
Med. Exp. (Mil)	4.6	6.2	12.3	11.1	7.0	10.1
Local Govt. Med.						
Exp. Per-Cap	4,713	3,974	2.040	2,290	2,638	2,610

Source: City County Data Handbook 1992

* * Data for Clark County was incomplete for these catagories.

The data clearly indicates that among its comparables, (excepting Clark County) the local governmental bodies medical payments are the lowest of the group. This does not mean that the other public employer's within Marathon are exceedingly low. In fact 1986-87 data indicates that The County and the Wausau School District were paying somewhat comparable rates.

In summary the presented and available data on health insurance payments do not convince this arbitrator that they are exceedingly high. While the Employer may conceive of this health payment program as "exceedingly generous,"it appears to be a perception with no supporting data. The report commissioned by the Employer and presented as evidence in support of its position, is flawed in data support and objectivity. The Employer's position on the issue of increasing individual and family minimums is further damaged by the failure to provide any explanation on the Employer's utilization of a substantial fund balance. The Arbitrator is aware that as a self insurer and a political sub-division of the State, there is no requirement for disclosure. However, failure to disclose doesn't build creditability.

The Union's position on this issue is a dim and reluctant recognition that employee support in health care payments is and will be an increasing obligation. The Union's Final offer raises the minimum for the Family plan $100. Yet the data suggests that from 1987-1989 the Family insurance took 67.8% to 81.2% of the medical charges. Other supporting data shows Marathon County has the highest percentage of the population under 14 years of age of any of the comparable counties. This is a clear indication that family health care is an increasing and continuing obligation in this County. Therefore, the Union's proposal on this issue is inadequate. The Employer's position on the issue of Health Insurance payments by Employees is preferred.

Comparability

The parties have mutually agreed during the hearing on this dispute that the comparable groups shall be the roughly contiguous counties. These are the Counties of Clark, Langglade, Lincoln, Marathon, Portage, Shawano, Waupaca, and Wood. While the demographic data does not offer significant parallels, they are the unanimous choice of the parties and are adhered to in comparisons.

Article 20 - Travel Reimbursement.

The parties have mutually agreed that Article 20, Paragraph A Mileage Allowance be revised by adding the following:

> Effective January 1, 1992, those individuals who maintain a personal insurance policy of not less than one hundred thousand dollars ($100,000) combined single limits of bodily injury and property damage, and who provide the Department Head with a photocopy of their policy cover sheet shall qualify for a higher level of reimbursement equal to the IRS business mileage rate as of January 1, of each year. The higher reimbursement rate shall

be adjusted on January 1 of each year and shall remain in effect for the entire year. Request for reimbursement shall be made on forms which indicate that the Department head has been provided with the necessary documentation certifying that the driver's personal insurance coverage meets or exceeds the established standards.

Letter of Understanding

The Employer proposes to continue the letter of Understanding dated February 24, 1989, between the parties for the term of the 1991-1992 Labor agreement.

The Union proposes to renumber the entire Memorandum of Agreement t Article 30 of the labor agreement. The Union has also included this item in its final offer package as a tentative agreed upon item.

Discussion

Since there is substantial agreement between the parties on this item, with no argument on this issue presented by either party. The language in the successor agreement shall incorporate whichever side's final offer is selected.

Appendix A
Wages

Employer's Proposal

Modify the salary schedule to provide the following increase:

Effective January 1, 1991 - 3% increase
Effective July 1, 1991 - 1% increase in all rates (based on 12-31-90 rates) and add $282 to the annual step D rate effective after the percent increase with appropriate percentage adjustments to Steps A-C.
Effective January 1, 1992 - 3% increase
Effective July 21, 1992 - 2% increase (based on 12/31/90 rates).

Union's Proposal

Effective January 1, 1991 - 3% increase
Effective July 1, 1991 - 2% increase

Effective January 1, 1992 - 3% increase
Effective July 1, 1992 - 2% increase.

Discussion

The final offers on wages between the parties are very similar. In addition the parties have mutually agreed to move Building Maintenance Worker classification from level Eight to Level Ten, and Clerical Assistant I, classification from Level 3 to Level four. These two proposals are consistent and amount to tentative agreement.

The difference in wage offers arises from the Employer's offer

to pay Two Hundred Eighty Two Dollars to the Annual Step four rate along with a one (1%) percent increase in July 1, 1991. This wage increase is slightly greater than the direct two (2%) percent the Union is requesting in its final offer. The difference is generally less than one hundred dollars per year, per position. As such, there should be no significant difference. However, the Employer's final offer on wages though incrementally greater has the caveat of incorporating the limitation on Family Sick leave usage. Since, in the considered determination of the arbitrator the Family Leave issue presented by the Employer was reactive, then the wage issue of the Employer subsequently fails. This must occur because they are intimately linked in the final offer. The position of the Union is preferred for this issue.

To end, the final offers of the parties on direct economic issues are very similar, and either offer could have been selected fulfilling all the criteria of Section 111.70(4)(cm). However, the Employer has elected to introduce an agreement language change on a Family Leave provision that was lost in Nine grievance arbitrations. This agreement language change was sought without a demonstrated attempt to define the terminology that governs the agreement in any of these arbitrations. Indeed in this proceedings the Employer attempted to remove the issue without defining the cause. The Employer's argument that Employees could use Vacation, Compensatory Time, or Time Off without Pay, all leave the determination of <u>Serious</u> to the Employer without explanation. As such, the Employer's position on this issue fails. Because this is final offer arbitration with no separability, this omission is deemed by this arbitrator as too serious to pass. The Final Offer of the Union is accepted.

AWARD

In the Matter of the Interest Arbitration between the Marathon County Courthouse Employees Local 2492E, AFSCME, AFL-CIO and Marathon County. The final offer in its entirety of the Union is accepted.

Dated this 26 th day of August, 1992, at Menomonie, Wisconsin.

Donald G. Chatman
Arbitrator