STATE OF WISCONSIN
SOLOMON B. LEVINE, ARBITRATOR

In the Matter of the Interest Arbitration
Between

WALWORTH COUNTY (LAKELAND NURSING HOME)

and

LOCAL 1925-A, WCCME, AFSCME, AFL-CIO

CASE 114
No. 46617 INT/ARB-6244
Decision No. 27356-A

Appearances:

Davis & Kuelthau, S.C., Attorneys at Law, by Mr. Roger E. Walsh, on behalf of Walworth County.

Mr. Laurence S. Rodenstein, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of Local 1925-A, WCCME.

On September 15, 1992, the undersigned was appointed by the Wisconsin Employment Relations Commission as the arbitrator to issue a final and binding award, pursuant to Sec. 111.70 (4) (cm) 6. and 7. of the Municipal Employment Relations Act, in the above-captioned matter. An arbitration hearing was held in Elkhorn, Wisconsin on November 17, 1992, at which time the parties had the opportunity to present evidence, testimony, and arguments. The following witnesses were sworn to provide testimony at the hearing:

For Local 1925-A, WCCME	Mr. Robert Chybowski, Associate Director, Wisconsin Council 40, AFSCME, AFL-CIO.
For the Lakeland Nursing Home, Walworth County	Ms.Janice St. John, Personnel Director
	Mr.John Jantz, Facility Administrator

A transcript of the proceedings was made. Both parties submitted post-hearing briefs and reply briefs. With the receipt of the latter, the record was completed on February 17, 1993.

The issues at impasse in this case involve retirement pay benefits, sale or lease of the Nursing Home, personal days off from work, and retroactivity provisions to be incorporated in the Agreement for 1992 and 1993 between Walworth County (Lakeland Nursing Home), hereafter referred to as the County, and Local 1925-A, Non-clerical, WCCME, AFSCME, AFL-CIO, hereafter referred to as the Union -- along with stipulations already agreed upon by the parties to be incorporated in the 1992-1993 Agreement. The final offers of the parties are appended to this Award. The collective bargaining unit exclusively represented by the Union includes all regular full-time and regular part-time employes of Lakeland Nursing Home excluding supervisory, clerical, professional and casual employes, and all other employes of Walworth County. As of November 16, 1992, this unit included 288 employes as shown on the Nursing Home's seniority roster (County Exhibit # 6).

The parties have already agreed to an Interim Agreement for the calendar years of 1992 and 1993, which was ratified by the Union on July 2, 1992 and by the County on July 14, 1992. Regarding the issues still at impasse, the Union proposes that for the Lakeland Nursing Home employes in the collective bargaining unit hired prior to May 1,1986 the County would pay the employe share of 6 % of employe gross earnings, in addition to the County's share of 6%, to the Wisconsin Retirement System (WRS) for the period from January 1, 1992 through June 30, 1992; and for the same period, for employes hired on or after May 1, 1986 but with less than five years of service, 1% of gross earnings, in addition to the County's share, while for those who completed five years 2% in addition to the County's share. Then, for the period from July 1, 1992 to January 1, 1993, the Union proposes that the County pay 6.2% of gross earnings, in addition to the County's share, for those hired prior to May 1, 1986, and 3% for those hired on or after May 1, 1986. From January 1, 1993 to October 1, 1993 , the Union proposes, the County would continue to pay 6.2% for those hired prior to May 1,1986, but raise its payment for those hired on or after that date to 4% and, from October 1, 1993 to December 31,1993, to 6.2% for all employes. For its part on this issue, the County proposes for the two years of the Agreement to pay up to 6.2% of gross earnings, in addition to the County's share, for employes hired prior to May 1, 1986, 1.2 % for those hired on or after that date with less than five years service, and 2.2% for those hired on or after that date with five years of service completed.

The Union, further, proposes deletion of a provision, known as Section 27.02, contained in the preceding Agreements for 1986-1988 and 1989-1991, whereby the County agreed that for the duration of those respective Agreements it would not lease or sell the Lakeland Nursing Home facilities, nor lease or sell the responsibility of caring for the patients/residents of the Home. The County, however, proposes to include that provision in the 1992-1993 Agreement.

Also, the County proposes that improved wage and benefit payments already agreed upon for the 1992-1993 Interim Agreement would be made only to employes on the payroll as of July 14, 1992, the date of ratification by the County referred to above. In its final offer, the Union is silent on this matter. On the other hand, the Union proposes to adopt again, for the life of the proposed 1992-1993 Agreement, a Side-Letter of Agreement, dated May 3, 1989, between the County and the Union, whereby a Personal Day-off System was instituted for the remaining duration of the then current Agreement. The final offer of the County makes no reference to this matter.

The arbitrator is required by the Statute to favor one offer or the other in its entirety for an Award. Section 111.70 (4) (cm) 7. sets forth several factors, in paragraphs (a) through (j), which the arbitrator is directed to consider in reaching a decision. Among these statutory factors, the parties are not in dispute over (a) lawful authority of the employer; (b) stipulations of the parties; and (i) changes in circumstances during the pendency of the arbitration proceedings. The arbitrator, therefore, concentrates attention upon statutory factors (c), (d), (e), (f), (g), (h), and (j).

Comparables

Under the statutory factors to be discussed, various comparisons are required to be made for the wages, hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with those of other employes performing similar services in public as well as private sector employment. Thus, it is necessary to identify what other Wisconsin counties operating nursing homes should be utilized as comparables for such an analysis. The parties are not in agreement regarding this matter. The Union takes the position that in this case the arbitrator should follow precedents established in the five interest arbitration cases which involved Walworth County and its employes in the 1980's. Those awards all included comparisons of Walworth County with Jefferson, Rock, Washington, Waukesha, Kenosha, and Racine Counties -- all except for Washington contiguous to Walworth -- although neither the Union nor the County would not now include Waukesha, since it no longer operates a county nursing home. Also, the Union would not add Dodge and Ozaukee Counties to that group, as Arbitrator Krinsky did in a case involving the Walworth County Social Services Employes (Case 80, No.36309 MED/ARB -3771. Dec. No.23627-C. 3/24/87), especially because of the other arbitral precedents as well as the lack of contiguity to and geographical remoteness from Walworth County. However, the County argues that Dodge and Ozaukee should be included, especially since Waukesha is no longer counted among the comparables for nursing homes, and since the two share characteristics -- notably, population size, full equalized property value, county tax levy, county tax levy rate, per capita property value, and per capita income -- in common with Walworth and/or the other five counties.

In the arbitrator's view, there is no overwhelmingly persuasive argument to limit the comparables to the five counties rather than the seven proposed by the County -- except perhaps for the importance of arbitral precedent. Even then, the arbitral precedents are not crystal clear. The question of including Ozaukee and Dodge apparently was not put to Arbitrator Ziedler (Case LVII. No. 29407. MIA-659. 2/17/83) in the first of the above-mentioned interest arbitrations, which involved the Walworth Country Deputy Sheriffs, although he added Waukesha, Kenosha, and Racine to the list initially proposed by the County and then included Milwaukee and Dane Counties as "illuminating" even if not comparable. In the next case, also involving the Walworth County Deputy Sheriffs, Arbitrator Grenig (Case LXI. No.31602. MIA-783. Dec. N. 20794-B. 5/18/84) did add Milwaukee and Dane to the Ziedler list. Three cases occurred in 1987. Arbitrator Krinsky, as already noted above, on March 24, 1987 ruled inclusion of Dodge and Ozaukee as appropriate comparables for the Walworth County Social Services Employes; while two days later Arbitrator Kerkman (Case 77. No. 36306. MED/ARB-3768. Dec. N. 23615. 3/26/87) adopted the Ziedler list in a case involving the Walworth County Highway Department Employes, stating that "once comparables have been established for the purposes of bargaining, they are best left undisturbed so as to avoid the comparability shopping in which parties often

engage". Arbitrator Kerkman also excluded data for Milwaukee and Dane counties even for their illumination. Soon afterward, on May 21,1987, in a pair of interest arbitration cases including one which involved the Walworth County Courthouse Employes and the other the Walworth County Lakeland Counseling Center Employes, Arbitrator Imes (Case 81. No. 36310. Med/Arb-3772. Dec. No. 23620 and Case 78. No. 36307. Med/Arb-3769. Dec./ N.. 23621. Both 5/21/87), relied on the Ziedler list, stating "there is merit in maintaining a consistent set of comparables in order to assist the parties in engaging in meaningful collective bargaining."

This arbitrator is impressed that in actuality the list of comparables from the beginning has not been so set in concrete that it has been closed to possible modification. Variation appears to be related in part to the type of occupational group involved in a particular dispute. It cannot be expected that comparables must remain inflexible for any particular occupational group or any particular collective bargaining relationship where there have been significant shifts in relevant labor market or sectoral structures. Moderate change in the comparables as the result of such developments does not necessarily undermine consistency in established collective bargaining relationships. Under the kind of circumstances which have transpired the past several years for publicly operated nursing homes, there is little reason to exclude Dodge and Ozaukee any longer in this particular instance. As pointed out by the County, they are reasonably nearby Walworth County in geographic proximity, even though like Washington County not contiguous, and enough alike to the Ziedler group in the basic demographic and socio-economic characteristics usually taken into consideration to serve as replacement in this case for Waukesha County. The similarities also include AFSCME-affiliated union representation of nursing home employes for collective bargaining purposes in all eight counties except Washington, where the Services Employees International Union, AFL-CIO is the collective bargaining representative. Addition of Dodge and Ozaukee to the county rankings under various criteria compiled by the Union (Union Brief p.22) shows little or no significant change in the position of Walworth County. In its own brief (p.11 and pp.24, 25), too, the Union has occasion to utilize comparisons of Walworth with Dodge and Ozaukee -- let alone refer to the issue over the comparables as "academic". The arbitrator, therefore, chooses to include Dodge and Ozaukee in the analysis that follows.

For other comparisons, the parties are not in disagreement about the comparables for the Lakeland Nursing Home employes although they differ over the weight to be assigned to them. Those comparisons are taken up in the section below devoted to the application in this case of statutory factors (d), (e), and (f).

Interests and Welfare of the Public

Statutory factor (c) directs the arbitrator to give weight in making a decision to the interests and welfare of the public and the financial ability of the unit of government, in this instance Walworth County, to meet the cost of any proposed settlement. These aspects permeate the instant case. Indeed,as both parties testify, the origins of the current impasse go back at least to 1985 and 1986, when the question explicitly emerged of County responsibility to the public and its financial ability to continue operation of the Lakeland Nursing Home. To summarize the record for those events (Union Exhibits#'s 3 through 9 and County Exhibits #'s 52 a, b, and c

through 58), the County seriously considered the matter in public deliberations and took preliminary official action in March 1986 toward selling or leasing the Home, when it appeared that continued operation might require for the first time relying upon the County's property tax levy to defray expected deficits unable to be met by alternative revenue sources. The County's position was to avoid subsidizing the Lakeland Home operations with a property tax levy. However, steps for the sale or lease of the Home were halted after April 18, 1986, when, following consideration of a variety of potential labor cost reducing measures, the Union and County drew up a tentative agreement for (1) a succeeding three-year contract; (2) an increase from 18 months to five years for employe advancement to the top wage rate in his/her job category (without any reduction in wage rates in effect and with advancement to the top rate in a job category for those reaching a year and a half service during 1986); (3) payment of 6% of gross earnings for the employe contribution to the Wisconsin Retirement System (WRS, then called Fund) by employes hired on or after May 1, 1986, with those hired prior to that date paying 1% for the employe contribution; (4) time-and-one half pay rather than double-time for work on holidays plus an additional 8 hours accumulated time off (prorated for part-time employes); (5) the no sale/no lease provision already referred to; and (6) withdrawal by the Union of a then-pending grievance relating to the question of County payment of an additional 1% of gross earnings required by law for the employe WRS contribution. These agreed upon provisions were duly incorporated in the 1986-1988 Agreement signed by the County and the Union on March 30, 1987. While deficits in operating the Lakeland Nursing Home occurred in the following three years, according to the County, they were not so severe as to require a property tax levy to meet them. It has been especially since 1989, the County reports, that operating losses have risen rapidly -- notably with the failure of Medicaid payments to keep pace with cost increases.

Six years after the 1986 Agreement the County argues that it continues to face the same, if not worse, financial problem in operating the Home as it did beginning in the mid-1980's and that accepting the Union proposal, especially for employe retirement benefits, without compensatory quid pro quo reductions in wages or other benefits from the Union would further exacerbate the situation. The County points out that, given the turnover of personnel in the Nursing Home collective bargaining unit that has occurred since 1986, with more than half those employed at that time now gone and increasing numbers of employes hired on or after May 1, 1986 composing a majority of the total work force, only recently has the County begun to accumulate savings in the payment of employe retirement contributions to stem the rising deficit. Putting the Union proposal into effect, the County stresses, would be extremely costly and would wipe out anticipated gains, thus leading to the possibility of considering sale or lease of the Nursing Home once again, since there would be no longer any requirement under the collective bargaining agreement for operation by the County. The County adds that it may well face the need in these circumstances to use a property tax levy subsidy if it is to continue to operate the Home -- a choice it does not wish to elect.

This position, in the arbitrator's view, indicates the County's strong belief in the need to operate the Nursing Home with its more than 300 patients/residents at current quality levels so long as the existing financial burden upon the County is not unduly increased. At some point, it may be said however, it could become the public interest and welfare for the County to terminate its operation of the Nursing Home rather than rely upon a property tax subsidy, just

as several other Wisconsin counties apparently decided to do in the mid-1980's. It is not clear whether such a point would be reached in this case if the Union's proposal were accepted. The County does not plead inability to meet the cost of the Union's proposal; and it has been willing to agree to or trade-off improvements in wages and benefits for Nursing Home employes since the 1986-1988 Agreement even as the deficits have continued and grown.

For its part, the Union points out that the County has already operated the Home since 1986 with continuing annual deficits which place a burden upon County resources. As one of the best well-off among the comparable counties, the Union holds, Walworth County is relatively able to support the Home even in the face of continuing shortfalls in revenues. Further, it believes that the County has already demonstrated that its policy, backed by public approval, is to maintain the Home despite operating deficits and even without a mandatory State requirement. However, the Union argues, the burden of the deficits should no longer fall on employes who average among the lowest of the represented units in the County (at $7.65 per hour as of August 1992, County Exhibit# 8). The Union alleges that this burden, at least to some extent, was placed upon the Nursing Home employes in "a coercive climate"in 1986, which led to wage and benefit concessions in exchange for employment protection. It says that its offer to discontinue the no sale/no lease provision, while risky for the job security of the Home employes, is made partly in light of what the Union believes is the County's current basic policy commitment to continue operation of the Home. By inference, the Union holds that such a policy serves the public's interest and welfare, similar to other functions -- police or sheriffs, for example -- the County supports with County resources like the property tax levy. The Union, however, does not indicate what financial limits, if any, there should be in adopting such a policy when it is not mandatory; but rather than burdening the County all at once it does propose "incremental" raising of the County's payment of the employe WRS share in three steps over the life of the proposed 1992-1993 Agreement until reaching the full amount for all employes on October 1, 1993.

For this statutory factor, the arbitrator concludes that neither the County's nor the Union's argument is the weightier in this case. The County carries a heavy responsibility to serve the needs of a growing elderly population without overburdening the County taxpayers; but at the same time it has an equally heavy responsibility to treat its own employes with fairness in sharing the cost burden arising from the operation of the Home. On balance, there is no clearly prevailing position here -- at least without far more analysis and data than either party has provided. Also, it should be noted, issues like these have long confronted units of local American government for decision, especially in the areas of public safety, health, and equity. They are usually resolved through democratic deliberative processes other than interest arbitration proceedings.

Comparisons

Statutory factors (d), (e), and (f) in essence direct the arbitrator to compare the wages, hours and conditions of employment of the Lakeland Nursing Home employes represented by the Union in Local 1925-A with those of other employes performing similar services, of other employes generally in public employment in Walworth County and comparable counties, and of other employes in private employment in Walworth County and in comparable counties. Data provided by the parties for all of the issues at impasse lend themselves in varying degrees to the

following comparisons: (1) with the comparable counties as previously identified, (2) with other public employes of Walworth County, and (3) with nursing home employees in the private sector within Walworth County. Below each is discussed in turn.

Regarding the County's payment of the employe WRS contribution, the Union maintains that Walworth County would continue to fall below virtually all the comparable counties identified for this case under the County's proposal for the 1992-1993 Agreement that the County pay 1.2% of gross earnings toward the employe contribution for employes hired on or after May 1, 1986 and 2.2% when such employes have at least five years of service. According to the Union, also, 32 other union-represented public nursing homes in the State of Wisconsin pay at least 6% of the employee retirement contribution without distinction among employes for their hiring-in date or length-of-service. Among only the comparable counties identified for this case, the Union points out, all pay 6% or more or, as in the case of Kenosha County, will do so by 1994. Union-provided data (Union Exhibit#32) show Dodge, Jefferson, and Racine paying the full required employe contribution of 6.2%, or even above as in the case of Racine, which pays as much as 7% but only for full-time employes. The trend, the Union claims as well, is for most counties to add the new .2% to the employer's payment of the employe WRS share. The gap between Walworth and the comparable counties, the Union notes, would be eliminated incrementally under the Union's proposal for an eventual 6.2% County payment of the employe share. As mentioned, the Union proposes to raise the payment in stages by October 1, 1993 , with three months then remaining for the 1992-1993 Agreement to run.

Thus, it is the contention of the Union that the increases the Union proposes are warranted by the payments of the comparable counties toward the employe contribution for employes similar to those at the Walworth County Nursing Home. Rather than a departure from the status quo, the Union also argues, the proposed change to abolish the two-tier system for the employe WRS contribution would be a return to the status quo ante in existence before the 1986-1988 Agreement, when the County paid the full employe contribution of 6% then required by state law for all such public employes.

Taking issue with the Union on interpreting the retirement contribution data, the County maintains that the payments the Union proposes for the Nursing Home employes is out of line with the comparables for this case. It points out that, when the full payment would be reached on October 1, 1993 under the Union proposal, the 6.2% payment level then would become the highest compared to six of the comparable counties (Dodge at 6.3% would be the highest) and that all or some of the public nursing home employes in those counties will still be making some payment on their own toward the employe retirement contribution. Among those employes paying toward the employe contribution, according to the County, are shorter-term full-time employes and part-timers as well as long-service full-time employes, similar to the Walworth work force. Thus, the County holds, Walworth County, with its comparatively large numbers of part-time employes at the Lakeland Nursing Home, is not unique in having a two-tier system for pension payments. The County emphasizes, moreover, that, just as the County did in the preceding 1989-1991 Agreement, its proposal for the 1992-1993 Agreement would provide partial restoration of the County's payment of the employee contribution by raising it by .2% for all employes in the collective bargaining unit, whether hired before or after May 1, 1986.

In terms of comparisons with the comparable counties identified for this case, the arbitrator finds the Union proposal the more persuasive. While the Union's proposal would place Walworth County close to the top by October 1, 1993, as the County rightfully points out, the statistical evidence indicates that Walworth County has been considerably behind the others in this particular aspect of employe benefits for a growing majority of the employes in the collective bargaining unit. To continue a differential of 4% or 5% applying to such a relatively large group of employes requires strong justification as an anomaly in relationship to the comparable counties. Justification might include the relative level of wages and benefits in their entirety and the question of quid pro quo trade off. Wages and other benefits of the Walworth Home employes in relation to all the comparables will be examined immediately below, while the trade-off issue is taken up later under statutory factor (j).

Both parties claim that the relative level of wages and benefits of the Nursing Home employes In Local 1925-A justifies their respective proposals. Each provides data to support its position. The Union in its reply brief (p.17) compares the 1992 Year-End Maximum Wage Rates already agreed to for the proposed 1992-1993 Agreement for six benchmark job classifications (nursing attendant/aide, laundry worker, cook, food service worker, building maintenance employee, and housekeeper) with the average rates for the so-called Ziedler comparables cited above. For the sake of accuracy in making the comparisons, according to the Union, the Walworth rates should be reduced under the County retirement proposal by an amount estimated for the employes' own payment to the employe retirement contribution. When that is done, the Union calculates that only three of the benchmark job rates are but slightly above the average in both dollars and percents, while the other three are slightly below. These calculations, the Union contends, avoid the County's exaggerated claim that the Walworth Home employes are at the top among the comparable counties.

The foregoing contention is the Union's rebuttal to the inference advanced by the County that, comparatively, the Walworth Home employes are well compensated. The County calculates that in all the above-mentioned six job classifications the 1992 Year-End Maximum Rates range from 35 cents per hour to $1.56 per hour, or from 4.4% to 15.4%, above the averages for the comparable counties identified for this case. According to the County, "Walworth County maximum rates are the second highest wage rates paid by these counties in each and every job classification compared." (County Brief p.25). The high standing of the Walworth employes, the County also notes, has been fortified by above-average increases in the Maximum Year-End Rates for all six job classifications in the 1992-1993 Interim Agreement.

Without more data than the parties have provided, the arbitrator's assessment of the conflicting claims about the comparative wage level for the Walworth employes remains limited. Still other variables should be taken into account for comparative analysis, such as weighing in the proportion of employes who reach the maximum rate, hiring-in dates and length-of-service of such employes, and lapse of time to progress from starting to maximum rates. However, on the basis of the data furnished by the parties, the arbitrator's view is that, taking account of employe payment of the employe WRS contribution, "actual" 1992 Maximum Year-End Rates in all probability fall in between the Union and County estimates. Although that conclusion would still place the Walworth employes above the average for those wage rates, it would be hazardous to affirm that a relatively high wage level in Walworth makes up for the below

average County payment for the employe retirement contribution under the County proposal in the case of those hired on or after May 1,1986. The judgement of the arbitrator on this matter is that neither the Union's nor the County's calculations give decisive support for their respective final offers.

Except for the County payment of the employe share for retirement, much the same can be said about fringe benefits, including those at issue, regarding Walworth Nursing Home employes in relation to the comparable counties identified for this case. The County argues, as it does for the Maximum Year-End Rates, that compared to the other counties Walworth employes, whether full or part-time, have the highest or close to the highest of benefits for life insurance, health and dental insurance, longevity pay, shift differential rates, sick leave plan, sick leave pay upon termination, workmen's compensation supplement, funeral leave, holidays, and vacation, some of which are improved in the 1992-1993 Interim Agreement. The Union does not dispute the data presented by the County for most of these benefits. However, the arbitrator's assessment of the range of benefits is that in the case of several of the benefits -- eg. life insurance, shift differential, holidays -- it is difficult to make rankings among the comparable counties for these items, or else the rankings may be closer to the average than the top because the benefits are quite similar. What is also problematic is the relevance of the benefit levels to the issues at impasse except as possible trade-offs for improvements in the County's payment for the employe retirement contribution proposed by the Union -- a matter taken up later.

Besides the retirement benefit question, the other three issues in this case are also in the nature of fringe benefits: Personal Day-Off System proposed by the Union; retention of the no sale/no lease provision proposed by the County; and retroactivity for terminated employes, also proposed by the County. For none of these issues were any cogent data provided for comparisons with the comparable counties. The arbitrator concludes that they are essentially singular to Walworth County and should be judged primarily in making comparisons with the wages, benefits, and working conditions of other employes within Walworth County.

Considering such internal comparisons, the County points out that, in the most recent collective bargaining agreements it has reached voluntarily with six County units other than Local Union 1925-A, final -- and in one case interim -- settlements for wages and health insurance are basically the same as already reached in the 1992-1993 Interim Agreement between the Union and the County. Only one other unit, the County notes, has not followed suit and is involved in separate interest arbitration proceedings. On the item of County-paid employe retirement contribution, the County continues, there are agreements with five other collective bargaining units to maintain the same County payments as obtained at the start of their respective preceding agreements. The County points out that in three AFSCME-represented units (Highway, Courthouse, and Human Services Non-Professional) employes will continue to pay nothing as will employes in two other independent units (Deputy Sheriffs and Human Services Professionals). It especially notes that Union Local 1925-B (Nursing Home Clerical Employes) will follow the outcome on all issues for the instant case, but Local 1444 of the United Food and Commercial Workers (UCFW Lakeland Hospital employes) will continue the provisions of its preceding agreement whereby employes hired prior to May 1,1986 will pay nothing and those hired on or after that date will pay the entire required employe contribution, actually an increase from 6.0% to 6.2% of employe gross earnings. Thus, the County emphasizes, the County will

pay .2% more toward the employee contribution than in the past for the employes in six of the bargaining units -- the very same increase it proposes in its final offer in this case. To grant the Union more, the County argues, would be inequitable to other Walworth County collective bargaining units.

Examining the same internal comparables, the Union argues that the comparisons favor its own final offer because in five of the six collective bargaining units the County already pays at least 6.0% of the employee retirement contribution and that three other AFSCME-represented units have agreements for the County to pay 6.2%. It dismisses the two-tier arrangement at the Lakeland Hospital unit organized by the UFCW as being worse than that for the Local 1925-A employes, since the County pays nothing toward the employe WRS contribution for employes hired on or after May 1, 1986, whereas for the similar Lakeland Nursing Home employes the County pays 1% or 2% depending on length-of-service since that date.

Turning to the issue of retroactivity, the County points out that it has negotiated provisions similar to what it proposes in this case with the collective bargaining units of the Deputy Sheriffs, Lakeland Medical Center employes, and Human Services Professionals, although not with the AFSCME-represented Highway unit ; while the County and Union have agreed not to refer to the retroactivity settlements reached for the AFSCME-represented Courthouse and Human Services Professionals units. The Union argues that, as a matter of principle widely practiced and accepted, seen in several cited arbitration awards, retroactivity in this case should begin with January 1, 1982, the starting date of the new Agreement, for all employes on the payroll at that time even though thirty-five subsequently departed from the Nursing Home work force prior to the County's ratification of the Interim Agreement.

As for a Personal Day-Off System, the County notes that no other bargaining unit in Walworth County has such a provision except the AFSCME-represented Nursing Home Clerical employes, which has agreed to follow the outcome of this arbitration. The Union, too, advances no comparisons within or, for that matter, outside the County in support of its proposal, although it claims that the System has had the effect of reducing labor costs at the Lakeland Nursing Home. For the no sale/no lease proposal, also, there are no comparable provisions cited for any other Walworth County collective bargaining unit except, of course, Local 1925-B.

Another argument stressed by the Union is that comparisons should be made among the employes within the County Nursing Home itself, including non-union personnel, and that especially employes performing the same work should receive the same wages and benefits without distinctions among them. Without equal treatment, the Union maintains, the County runs the risk of an increase in labor cost and decline in operating efficiency as the result of poor morale and low productivity. Referring to Arbitrator Krinsky's award in a recent case (City of Marshfield, Dec. No. 26752-A, 05/23/91), the Union urges that greater weight be given to internal comparisons than to external data.

Neither party furnishes data in a sufficiently detailed way to compare the wages, hours, and conditions of employment of Walworth County Nursing Home employes with private sector employees in regard to any of the specific issues in dispute. The County provides some limited comparisons with the wage rates and fringe benefits of the private nursing homes within

Walworth County (County Exhibits# 22 through 24) and for several of their key job classifications (County Brief p.22), but not as thorough a comparative analysis as one might hope for -- other than showing the consequences of the average differentials for labor costs, to be discussed further under statutory factor (h).

In terms only of the statutory factors which require comparisons, the arbitrator concludes that for the issue of the employe retirement contribution the Union proposal is preferable to the County's because it better fits the established pattern of settlement levels both for the comparable counties and for collective bargaining units within Walworth County itself. This relationship to settlement levels carries greater weight than does similarity of the increases offered in the most recent round of collective bargaining, as argued by the County. Comparisons with the private sector nursing homes and within the work force of the Walworth Home itself are of less relevance under these statutory factors, but as mentioned will receive further discussion under other factors considered below. For the remaining issues at impasse, the positions of the parties regarding retroactivity are found to be about equally frequent among the internal comparables and, therefore, neither is decisive when weighted against one another on this issue. Since comparisons for the no sale/no lease and personal day-off issues are virtually non-existent, those issues are irrelevant in considering statutory factors (d), (e), and (f). Overall, on balance under these statutory factors the Union's final offer is favored.

Consumer Prices

The parties make no direct or explicit reference to statutory factor (g) in arguing their respective positions. With the major money items already voluntarily decided upon by the parties in their 1992-1993 Interim Agreement, the issues remaining in dispute make relatively little difference for that statutory consideration. The Union does not contend that the Nursing Home employes who themselves pay 4% or 5% for the employe retirement contribution need the addition the Union proposes in order to meet rises in living costs. Implied in the Union argument, however, is an allegation that these employes suffered a sizable loss in real wages when the Union and County agreed to eliminate the County's payment as well as to a cut in holiday overtime pay rates and elongation of the period to rise to the top wage rate of one's job classification -- all losses which relatively low paid workers such as the Nursing Home employes could ill afford. In the Union's view, these losses have yet to be fully recovered even though some of the County's payment was restored and wage and benefit increases were granted in subsequent collective bargaining agreements.

As noted earlier, the County believes, on the other hand that, despite the 1986 wage and benefit concessions, the Nursing Home employes involved in this dispute remain among the best paid for the comparable counties and, relatively speaking, have not fallen behind the others with the rise in consumer prices since 1986. Wage and benefit improvements in the 1988-1991 Agreement and 1992-1993 Interim Agreement, the County further infers, have kept abreast, if not ahead, of the rise in consumer prices.

Without much more relevant data than made available for analyzing the relationship of cost-of-living to the disputed issues, this statutory factor gives no conclusive support to either the County's or Union's final offer.

Overall Compensation

Statutory factor (h) directs the arbitrator to consider the overall compensation presently received by the Nursing Home employes involved here, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, continuity and stability of employment, and all other benefits received. Virtually all of these items have already been subject to analysis and require little further examination here -- except for the costs they represent for operating the Nursing Home. While this question overlaps with the consideration under statutory factor (c) of financial ability of the County to meet the costs of the Union's final offer, it might be examined separately in terms of trends as well as comparisons. The comparative data presented by the County pertain only to the privately operated nursing homes in Walworth County. There is none offered for other counties.

It is the contention of the County that a large cost differential exists between the Walworth Home and six private nursing homes in Walworth County and should be taken into account in making an award in this arbitration proceeding. According to the County, the cost differential arises in large part from the comparatively high wage rates and benefits for Walworth Home employes relative to their counterparts in the private homes. For the several key job classifications already mentioned, the County estimates the Walworth Home wage rate at least 20% above the average for the private sector employes, exceeding all but one of the private homes. (County Brief pp.21-22). Direct fringe benefits, too, the County points out, cost the County more than twice the percentage of the average wages in the private homes, while" time-off" fringe benefits are higher by 50%. Translating the wages and fringe benefits into cost per " productive" hour, or simply labor cost per hour, the County estimates that the Walworth Home cost level exceeds the private home average by between 45% and 52%. Acceptance of the Union's final offer, the County argues, will only widen this cost differential.

The Union counters the County position by declaring that there is no basis for comparing the private sector nursing homes in Walworth County with the County Nursing Home. It rejects the comparison on the grounds that each private home is a mere fraction of the size of the Walworth Home; that the quality of patient/resident care is likely not as high as at the latter; that none is publicly funded and held to the same standards as the county-run homes, such as required participation in the WRS; that the employes of all but one of the six homes have no collective bargaining representation; and that, even if they did, they would not be subject to the Municipal Employment Relations Act and its provisions for mediation and interest arbitration. The Union cites several arbitration awards which reject comparisons of unionized units, especially in the public sector, with non-union units, especially in the private sector.

While it is instructive to know that private nursing homes tend to have lower labor costs than a public home such as Walworth County's, the arbitrator is not persuaded that the differential is a decisive element in this case because there is a lack of data and analysis to explain why the differential has emerged and whether such a trend will continue. Also, it would be necessary to have measures of the differences in labor cost, if any, between the Walworth County Home and its counterparts in comparable counties compared to privately operated homes in those counties. Finally, the pertinence of comparing the private sector homes in Walworth County with the Lakeland Nursing Home has not been clearly demonstrated. Given these

reservations on the part of this arbitrator, neither final offer prevails with respect to overall compensation cost under statutory factor (h).

Other Factors

The arbitrator is required by statutory factor (j) to consider still other matters not already examined 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." Three such matters have been advanced by the parties and are analyzed here. One, argued by the Union, is to reinstitute a Personal Day-Off System for perfect attendance originally set forth in a Side Letter of Agreement under the 1989-1991 Agreement. A second, also raised by the Union, is the principle of equal-pay-for-equal-work in the case of some Walworth Nursing Home employes in Local 1925-A. The third, emphasized by the County, is the question of an appropriate quid pro quo for granting the Union proposal regarding the County payment of the employe retirement contribution. Each is discussed in turn below.

The Union's proposal to reinstitute the Personal Day-Off System, in the arbitrator's opinion and as the County points out, suffers from vagueness and ambiguity. The system, in which an individual employe would be awarded a day off, similar to vacation, in each quarter if he/she has had perfect attendance, was initially adopted in the Side Letter of Agreement on May 3, 1989 as a type of experiment to reduce employe use of sick days and save on labor cost. The Side Letter establishing the system clearly stated that the County could discontinue the program at the end of 1991 unilaterally if it concluded that the system was not effective in bringing about the sought-for decline in absenteeism. This the County did and now opposes reintroduction. The Union, however, contends that the system actually succeeded in reducing absenteeism as seen in a decline in employe call-ins for sickness once the system was implemented. The County, on the other hand, finds that, even without the system in effect, since January 1, 1991 the absentee record has remained about the same.

As both parties recognize, absenteeism is too complex a phenomenon to be attributed to a single factor such as a Personal Day-Off System. In any event, even if the causes for the absenteeism at the Nursing Home could be clearly established and the Union contention proved correct, there is no requirement in the Side Letter for the system's continuance as it was left up to the County alone to decide. On the issue, therefore, the arbitrator finds in favor of the County.

However, it should be noted that granting the final offer of the Union in its entirety will make it difficult to determine exactly what the Union's proposal regarding the Personal Day-Off System implies as to timing its implementation. The County essentially points this out in terms of the wording of the May 3, 1989 Side Letter. For example, it would not be practical to make the system retroactive to the beginning of the proposed 1992-1993 Agreement or, for that matter, any time during the life of the proposed Agreement prior to the Award date. The reason for this timing problem is that the Personal Day-Off System as an incentive for employe attendance is based at least in part on employe motivation and related behavior in the future, not in the past, conditioned by the existence of the system itself. It would be meaningless to backdate such motivation and behavior. The Union has not furnished persuasive argument for reintroducing the

system especially in face of these difficulties.

The issue of equal-pay-for-equal-work, as argued by the Union to support its proposal for the County payment of the employe retirement contribution, is addressed under this statutory factor rather than factor (d) because it does not involve comparisons with similar employes in other collective bargaining units as that factor calls for. While it is a hallowed traditional principle in much of the American system of industrial relations for workers who perform the same job in an organization to receive the same wages and benefits, it has also been long accepted to permit different gradations or steps of compensation within a given job classification -- very often related to the amount of service, experience or longevity in the particular job category. This practice of differentiating according to time in the job since initial hiring or assignment is usually adopted, notably for service sector occupations, because of the need to accumulate skill and knowledge with experience useful for performing the work involved. Even in the Walworth County Agreements with the Union prior to the Agreements for 1986-1988 and 1989-1991 and the 1992-1993 Interim Agreement as well as those Agreements themselves, this time factor has been recognized for pay gradations within each job classification. Such pay steps related to time also are found in all the agreements among the comparable counties for this case.

In the arbitrator's opinion, the same principle was followed when the Union agreed not only to elongate the period to rise to the top wage rate of each job classification from 18 months to five years, but also to make a distinction between more senior and less senior employes regarding the County payment of the employe retirement contribution. The equal-pay-for-equal work principle is maintained even with such differentials so long as the lower compensated employes in a job category have the opportunity to advance to the top wage rate within a reasonable period and are not permanently assigned to a lower tier. From that point of view, a five-year term to rise to the top is reasonable, especially if there are interim steps for advancement. Both are provided for in the wage schedules, but only partially so -- despite restoring some of the benefits in the 1988-1991 Agreement -- for the County-paid employe retirement pay levels. In only this last regard, then, is the Union argument somewhat more persuasive here. However, it is recognized, as the County argues, the Union was as much a party to establishing the two-tier arrangement as the County despite now pleading the need for union solidarity.

It is the County's contention that deletion of the no sale/no lease provision from the proposed Agreement does not constitute a sufficient or even meaningful quid pro quo trade off for the Union's proposal regarding the County's payment for the employe retirement contribution. The County suggests that, if the Union were willing to give up other monetary benefits like sick pay, the County would find such reductions a satisfactory quid pro quo. Without a monetary value, the County implies, there is no relief from the County's hard-pressed financial situation in operating the Home. The County cites the fact that in negotiating the 1989-1991 Agreement the Union did not then propose to delete the no sale/no lease provision in exchange for improvements in the County payment for the employe retirement contribution for those employes hired on or after May 1, 1986 with five or fewer years of service. In fact, the County points out, instead the Union accepted lower wage increases than in other County collective bargaining units in exchange for those improvements. Given that more than half of the employes in the bargaining unit are still in the employment status of less than five years employment since

May 1, 1986, the County contends that the burden of the Union's proposal, especially with the added .2% newly required by law, would remain as heavy as it has been, if not more so, unless there is a commensurate reduction in other labor costs.

For its part, the Union stresses that the no sale/no lease provision is itself more than adequate quid pro quo for the additional retirement contribution the Union proposes for County payment. It accuses the County of treating the provision as no longer having value, when in 1986 the County was willing to grant the no sale/no lease commitment not only for the reduced retirement payments but also for the wage schedule elongation and holiday overtime pay cut. The Union notes that it is not proposing that the entire 1986 quid pro quo be returned but only the remaining unpaid employe retirement contribution portion plus the .2% addition which did not exist in 1986. In order to ease the resulting financial burden placed upon the County, the Union avers, it is not asking for the restoration of all the items which were given up, and it is proposing a transition in incremental steps to the full retirement payment. The Union says that the Nursing Home employes are willing to take the risk of a sale or lease of the Lakeland Nursing Home if the provision is dropped. Also, the Union states that it is somewhat mystified that the County is not eager to regain control of a "management right" to sell or lease the Home and to recognize how valuable that right is. This, it should be noted, the County rebuts in contending that the no sale/no lease provision was not a mandatory subject for collective bargaining which the Union could initiate and, as a matter for the County alone to propose, did not even embody an obligation for the County to bargain over its inclusion in the proposed 1992-1993 Agreement. Each party accuses the other of holding out for its position rather than engage in voluntary collective bargaining. Both, however, give instances of their willingness to negotiate provisions of the Agreements, past and recent, including the employe WRS share and other fringe benefits as well as wages.

In the arbitrator's opinion, as previous arbitration awards have noted, there is no necessarily precise trade off in monetary terms when there is a quid pro quo issue. It is even possible that one side might give up nothing when it is seen to be at a severely inequitable disadvantage in a collective bargaining relationship, as shown, for example, in relation to comparables. In this case, following the opinion of arbitrators in other awards, there is need for a quid pro quo trade-off. The basic question is what constitutes a reasonable quid pro quo. In 1986 the parties did agree that incorporating the no sale/no lease provision in their collective bargaining agreement was an acceptable way to achieve a reduction of the labor costs at least eventually, in operating the County Nursing Home, given the looming "deficits" facing the County at that time. The no sale/no lease provision was linked directly to potential savings from reducing the County payment of the employe WRS share, especially for new hires on or after May 1, 1986, while at the same time assuring continuity and stability in their employment at the Home.

In recognition of the particular history of Section 27.02, the arbitrator concludes that, having been included in the 1986-1988 and 1989-1991 Agreements, the no sale/no lease provision still remains a reasonable quid pro quo for the employe retirement payment benefits proposed by the Union. The Union proposal is not inconsistent with the previous collective bargaining experience of the parties in trading off the no sale/no lease provision for retirement benefits. At the time that settlement was made, the precise dollar value of the trade-off was not exactly

known. The reasonableness of the no sale/no lease provision as a bargaining item the value of which is uncertain has not waned simply because the County has continued to face deficits in Nursing Home operations or, as the Union alleges, may now be committed to the operation of the Home as a matter of public policy. This is not to rule out that the reduction of sick leave benefits could also be a reasonable quid pro quo trade-off. Both items are possible alternatives. Whatever provisions related to conditions of employment the most recent collective bargaining agreement contains may become a subject for negotiations and trade off at the initiative of either party. Collective bargaining is a two-way street with each side free to put forth reasonable proposals and make sincere offers and counteroffers. That principle logically would include the no sale/no lease provision in this case. If the parties in a municipal government unit reach an impasse on such a matter after good-faith attempts at voluntary collective bargaining, the State provides for mediation and interest arbitration to achieve resolution.

On the basis of statutory factor (j), the weight of these other factors favors the County regarding the Personal Day-Off System and favors the Union on the equal-pay-for-equal-work and the quid pro quo issues. While it is difficult to balance these easily against one another, the arbitrator concludes that the judgement for the equal-pay-for-equal-work and quid pro quo issues is relatively more important in this instance than for the personal day-off question.

Conclusion

To sum up, the conclusion of the undersigned is that neither final offer is clearly preferable under statutory factors (c), (g), or (h); but for the relevant comparisons under factors (d), (e) and (f) and for other factors (j) as discussed above the Union final offer on balance prevails. This preference is not a strong one. However, since the arbitrator must select one final offer or the other in toto, after consideration of all the materials and arguments presented the arbitrator makes the following

AWARD

The Union's final offer is selected.

Dated at Madison, Wisconsin, this 24th day of March, 1993.

Solomon B. Levine
Arbitrator

APPENDIX

Name of Case: 114 No. 46617 INT/ARB 6244

The following, or the attachment hereto, constitutes our final offer for the purposes of arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me. Further, we **(do)** **~~(do not)~~** authorize inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted to the Commission.

July 15, 1992 (Date)

Laurence S. Rodenstein (Representative)

On Behalf of: Lakeland Nursing Home Employees (Non-Clerical)
Local 1925-A, WCCME, AFSCME, AFL-CIO

ZMARB9.FT

7/15/92

FINAL OFFER
OF
LAKELAND NURSING HOME EMPLOYEES (NON-CLERICAL)
LOCAL 1925-A
WCCME, AFSCME, AFL-CIO
Case 114 No. 46617 INT/ARB 6244

to

COUNTY OF WALWORTH, WISCONSIN

I. Section 11.01 County Contribution

A. Effective January 1, 1992 - June 30, 1992:

1) Employees Hired Prior to May 1, 1986.

The County will pay, in addition to the County's share, 6% of gross earnings to the Wisconsin Retirement System.

2) Employees Hired On or After May 1, 1986.

The County will pay, in addition to the County's share, 1% of gross earnings to the Wisconsin Retirement System. Effective in 1991, upon completion of five years of service, the County will pay, in addition to the County's share, 2% of gross earnings to the Wisconsin Retirement System.

B. Effective July 1, 1992, amend Section 11.01 County Contribution to read as follows:

1) Employees Hired Prior to May 1, 1986.

The County will pay, in addition to the County's share, up to 6.2% of gross earnings to the Wisconsin Retirement Fund.

2) Employees Hired On or After May 1, 1986.

The County will pay, in addition to the County's share, 3% of gross earnings to the Wisconsin Retirement System.

C. Effective January 1, 1993, amend Section 11.01 County Contribution to read as follows:

1) No change from B(1) above.

2) Employees Hired On or After May 1, 1986.

The County will pay, in addition to the County's share, 4% of gross earnings to the Wisconsin Retirement System.

D. Effective October 1, 1993, amend Section 11.01 County Contribution to read as follows:

The County will pay, in addition to the County's share, up to 6.2% of gross earnings to the Wisconsin Retirement System.

II. Continue the Letter of Agreement dated 5/3/89 regarding Perfect Attendance/Personal Day System for the life of this Agreement.

III. Except for the foregoing, the Union agrees to the terms and conditions embodied in the 1992-93 Agreement as ratified by the Union on July 2, 1992, and as ratified by the County Board on July 14, 1992 for a period commencing January 1, 1992 and continuing in full force and effect through December 31, 1993 (see Attachment A).

IV. Delete Section 27.02 No Lease or Sale.

Name of Case: WALWORTH COUNTY - CASE 114, No 46617, MA/ARB 6244
AFSCME LOCAL 1925/A
(NURSING HOME REGULAR)

The following, or the attachment hereto, constitutes our final offer for the purposes of arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me. Further, we ~~did~~ **(do not)** authorize inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted to the Commission.

7/31/92
(Date)

Lora Ehdl
(Representative)

On Behalf of: WALWORTH COUNTY

ZMARB9.FT

FINAL OFFER OF WALWORTH COUNTY
TO LOCAL 1925A, AFSCME, AFL-CIO

July 31, 1992

The provisions of the 1989-91 Contract are to be continued in a new two year Contract except as revised by the Tentative Agreement dated June 24, 1992, which was ratified by the Union on July 2, 1992, and by the County on July 14, 1992, and except as revised by the following:

1. Revise Section 11.01 to read as follows:

"11.01 County Contribution.

(A) Employees Hired Prior to May 1, 1986. The County will pay, in addition to the County's share, up to 6.2% of gross earnings to the Wisconsin Retirement System.

(B) Employees Hired On or After May 1, 1986. The County will pay, in addition to the County's share, up to 1.2% of gross earnings to the Wisconsin Retirement System. Upon completion of five years of service, the County will pay, in addition to the County's share, up to 2.2% of gross earnings to the Wisconsin Retirement System."

2. Add Section 27.02 to read:

"27.02 No Lease or Sale. During the term of the agreement, Walworth County agrees that it will not lease or sell the Lakeland Nursing Home facilities; nor will Walworth County lease or sell the responsibility of caring for the patients/residents of the Lakeland Nursing Home."

3. Retroactivity. Any retroactive wage or benefit payments related to economic improvements contained in the June 24, 1992 Tentative Agreement will be made only to employees on the payroll on July 14, 1992.

walworth\fo-1925A