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 In the Matter of Arbitration :
 between :
 Maple Lane Health Care :
 Facility Employees, :
 AFSCME Local 2648, AFL-CIO :
 and :
 Shawano County :
 Maple Lane Health Care :
 Facility :
 -----X

Case No. 120
 No. 48613
 Int/Arb 6756
 Decision No. 27691-A



WISCONSIN EMPLOYMENT
 RELATIONS COMMISSION

APPEARANCES

For the Union: James E. Miller, Staff Representative
 For the Employer: Dennis W. Rader, Esq.

The undersigned was duly designated by the Wisconsin Employment Relations Commission to conduct an Interest Arbitration hearing in the above matter. A hearing was held at Shawano, Wisconsin on August 13, 1993 at which time the parties presented very extensive documentation in support of their respective positions. Thereafter, they filed post hearing briefs, which were received by the arbitrator on October 8, 1993. After considering the entire record, the undersigned has prepared the following opinion and award.

The parties had met on four occasions to negotiate a settlement and reached an agreement on a substantial number of issues. However, they remained deadlocked on the issue of a special wage adjustment for the Nurses Assistants. The parties did, however, reach an agreement on a three year contract. Their respective final offers are summarized as follows:

"County Final Offer

1/1/93	3%	7/1/93*	1%
1/1/94	3%	7/1/94**	1%
1/1/95	3%	7/1/95	1%

* All nurses assistants employed after April 1, 1980 shall receive five cents (\$.05) per hour effective July 1, 1993.

** All nurses assistants shall receive five cents (\$.05) per hour effective July 1, 1994.

Union Final Offer

Wage scale to have an additional wage step of 30 months (New Maximum Rate) with a 30 cent increase to the 1992 rate for Nurses Assistants/Orderlies prior to calculating wage increase for 1993.

1/1/93	3%	7/1/93	1%
1/1/94	3%	7/1/94	1%
1/1/95	3%	7/1/95	1%"

Thus, the sole remaining issue to be determined is the appropriate compensation for some 38 Nurses Assistants.

The Union would create an additional wage step in the category of Nurses Assistants, a step at 30 months of an additional thirty cents per hour. The wage progression under the Union's proposal would be a starting rate, a six month rate, an eighteen month rate and a thirty month rate. The Union's proposal would add thirty cents to the 1992 maximum rate of \$7.31 prior to calculating the 1993 wage increase of 3%.

The Employer's proposal would add five cents to the wage rate of any Nurses Assistant hired after April 1, 1980 as of July 1, 1993 and add another five cents to all

Nurses Assistants on July 1, 1994. Again, the contract would cover a three year period.

The statutory criteria to be utilized by an arbitrator in rendering an Interest Arbitration award are set forth in Section 111.70(4) (cm)7 of the Wisconsin Statutes.

"(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 district employer.
- b. Stipulation of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the district 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 district 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 and in comparable communities.
- f. Comparison of wages, hours and conditions of employment of the district 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 price for goods and services, commonly known as cost-of-living.

- h. The overall compensation presently received by the district employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, medical and hospitalization benefits, the continuity and stability of employment, all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in the private employment."

In this dispute, the parties have focused on comparables with the Union proposing the following counties as comparable to Shawano: Brown, Calumet, Fon du Lac, Langlade, Lincoln, Manitowoc, Marathon, Marinette, Outagamie, Portage, Waupaca, Winnebago, and Wood. The Employer proposes the following counties as comparables: Langlade, Marathon, Outagamie, Portage and Waupaca.

All of the Employer comparables are contiguous to Shawano County except for Brown County. The Union would add counties in the nearby region, but which are not contiguous. Such as, Manitowoc, Calumet, Winnebago, Fon du Lac, Wood, Lincoln, and Marinette Counties. The parties have focused on the counties which operate nursing homes with similar working conditions and job classifications. The Employer has not included Brown County because of the disparity and population income and

presumably because the rate paid for Nurses Assistants is \$10.04 as contrasted to the Shawano rate of \$7.31.

For the same reason, the Union has included the non-contiguous counties of Calumet with a maximum rate of \$7.59, Fon du Lac with a maximum rate of \$8.35, Manitowoc with a maximum rate of \$8.15, Marinette with a maximum rate of \$7.59, and Winnebago with a maximum rate of \$8.65.

The Union, in its explanation, stated that it made its proposal for a special wage adjustment because of the relationship that Nurses Assistants have to several other job classifications at the Maple Lane Health Care Facility. The current wage is the same for all of the four classifications at Maple Lane: Nurses Assistants, Housekeeper, Food Service Worker, and Laundry Worker, namely a maximum rate of \$7.31. None of the other comparable counties have identical rates for all of the positions. In fact, only Outagamie County pays another job title, Housekeeping, the same rate as the Nurses Assistant. Most of the other counties have a differential between the Nurses Assistants and Housekeepers, Food Service Workers, and Laundry Workers. The average differential, according to the Union, paid to Nurses Assistants in its thirteen contracts, which it considered comparable, is approximately \$.34. The Union points out that, even if Employer's proposed comparables are considered, the average differential is \$.295 in favor of the Nurses Assistants versus the other occupations.

Therefore, the Union states that it proposed the differential to recognize the different job duties and responsibilities of the Nurses Assistants.

The Union stressing that from January 1, 1990 all Nurses Assistants were required to be certified as having completed required course work in order to be employed. Furthermore, since January 1, 1993 a Nurses Aide Registry has been established which proposes rules governing the employment of Nurses Assistants. The Union argues that this legal requirement suggest a greater level of responsibility for the Nurses Assistants and justifies a premium for Nurses Assistants.

The Union also stressed that Shawano County, in it's negotiations with other bargaining units, had created some differentials for special categories of employees. For example, Income Maintenance employees of the Shawano County Department of Social Services, were granted an additional wage step. The Department of Social Services also granted Social Workers I and II an additional step at 4 years of service of 5% above the 3% negotiated rate. And Social Workers III received a further step at 5 years of service which represented an increase of 13.5% over their previous rate of pay. The Union points out that it's cumulative proposal for this three year period would mean an increase to Nurses Assistants of 17.2% while the County's proposal would be 14%.

The Union also noted that in the 1991-1992 contract with the Shawano County Highway Department, the rate increases was changed to provide four steps: probationary, six months, eighteen months, and thirty months. Thus, the Union argues that there is precedent for having a sound wage progression and a differential between the Nurses Assistants and the other categories of employees.

The Union states that based on two sets of comparables, the external County nursing homes and the internal comparables, demonstrate that the significant increase sought by the Union is necessary and consistent with the established practice of the County of adjusting rates for particular classifications. The Union also stresses that the Employer's proposal would have the affect of removing the current contract provision calling for Nurses Assistants hired before April 1, 1980 to get a 5% premium from the contract as of July 1, 1993. The Union states that the average for its comparables is \$8.21 where as Maple Lane is \$7.31. The Employer's average comparable, however, is \$7.71, which means that Maple Lane is only paying 94% of that figure.

The Union also rejects the private sector comparisons offered by the Employer as not being representative. In the first place, most private sector nursing homes are not organized. Therefore, the Union stresses that the comparisons should be made with county nursing homes which are represented by various unions.

In summary, the Union stresses that its offer provides for a meaningful differential for Nurses Assistants as compared to other employees and it also provides for similar wage adjustments which had been granted by Shawano County.

It is the County's position that its list of comparables are more appropriate than the Union's because, first of all, Brown County is much more populated and has a much higher per capita income basis than Shawano and because of the other comparables sought by the Union are not contiguous to Shawano County. By its example, Maple Lane Nurses Assistants at the 18 month rate were paid \$.66 more than the comparables which it chose. The County offers the following wage comparisons:

"Wage Comparisons
1993

		<u>Min</u>	<u>18 Mos</u>	<u>Max</u>
COMP. AVG.		5.68	6.56	7.59
SHAWANO CO:	1/1	6.03	7.53	7.53
RELATIONSHIP	7/1	6.14	7.66	7.66
	Relationship:	+.46	+1.10	+.07
UN:	1/1	6.03	7.53	7.84
	7/1	6.09	7.61	7.92
	Relationship:	+.41	+1.05	+.33"

According to the County, its wage offer shows that Shawano would exceed the comparables by \$.07 per hour while the Union's would exceed it by \$.33 per hour. The County asserts that its average increase for the 3 years will be 13.04% while the Union's will average 14.94%.

Furthermore, the County argues that the Union's proposal to restructure the salary schedule for the Nurses Assistants creates internal inequities.

Next, the County stresses that Maple Lane employees enjoy a superior longevity schedule which provides additional compensation. The County introduces the following schedule to illustrate its longevity proposal:

"LONGEVITY RATES
1992 & 1993
(ER. EX 19)

	1992			1993		
	<u>5 Yrs.</u>	<u>10 Yrs.</u>	<u>20 Yrs.</u>	<u>5 Yrs.</u>	<u>10 Yrs.</u>	<u>20 Yrs.</u>
MEDIAN:	96.00	156.00	276.00	96.00	156.00	276.00
SHAWANO:	127.00	253.00	507.00			
				COUNTY OFFER:	133.00	266.00
				UNION OFFER:	137.00	275.00
						549.00"

Next, the County stresses that its offer is consistent with its internal wage adjustment in that all of the units with which the County bargains has settled for a three year contract on 3%/1%, 3%/1%, and 3%/1%.

With respect to the specific individual adjustments made in addition to the general wage settlement for other bargaining units, the County stresses that there were specific, justifiable situations that existed that prompted the parties to negotiate a settlement which deviated from the pattern. The County stresses that it has had no problem whatsoever in filling vacancies for Nurses Assistants for years. The County asserts that

under its offer the maximum step will receive an increase of \$.35 per hour above the comparable average; by \$.46 at the minimum and by \$.07 above the average at the maximum rate. In contrast, the Union proposes employees at the maximum would receive an increase of \$.61 per hour in the first year bringing their wages \$.33 above a comparable average rate. The County argues that no justification has been shown for such a substantial increase.

With respect to the private sector, in 1990 Maple Lane Nurses Assistants earned an average of \$.84 per hour more than those Nurses Assistants employed in the private sector, and on a statewide average, Maple Lane Nurses Assistants earned \$.73 more per hour than their statewide private sector counterparts.

With respect to the issue of cost of living, the County's cumulative wage offer surpasses the CPI averages by over 27% for the period 1987 to 1993.

Thus, in summary the County has concluded that its offer is more appropriate based upon comparability, both external and internal; that the County's wage offer brings Maple Lane Nurses Assistants wages near the comparable average; and that the Union has failed to establish a compelling reason as to why the Nurses Assistants should be allowed to deviate from the settlements established by the County with other bargaining units. Lastly, the County argues that not only has its wages exceeded the CPI, but that the Nurses Assistants hourly wages are superior to those received by the private sector.

DISCUSSION

The arbitrator is persuaded that the County's final offer should be accepted for the following reasons. First of all, however, he discounts the County's rejection of Brown County as an appropriate comparable. While the fact that Brown County is substantially larger in property valuation and population, is a fact which must be recognized, by the same token that same argument could be made for the other major adjoining county of Outagamie. Outagamie, which is the center of the Fox cities, has the highest per capita value of \$31936 for 1992, exceeding Brown County by over \$1000. Yet the County did not exclude Outagamie, presumably because its maximum rate for Nurses Assistants for 1992 was \$7.75. Portions of northwestern Brown County are also rural and closer to Shawano and Maple Lane than some of the northwestern parts of Shawano County. Such selectivity on comparables is rejected by the arbitrator. This comment is not to be made for the purpose of saying the County should pay Brown's wages, but merely to point out that it is relevant under the statute and should be considered.

The County's across the board wage offer of successive 3% and 1% increases will bring the current maximum rate of \$7.31 to \$7.66 as of July 1, 1993, to \$8.02 as of July 1, 1994 and to \$8.34 as of July 1, 1995. Given the current round of wage increases in both public

and private sectors, the offer is fair and will result in an increase at the maximum of \$1.01 per hour as of July 1, 1995.

The arbitrator is also persuaded that the County has recognized the Union's central issue, that a differential to the other classification needs to be established because of the training and responsibility, including the legal registry now required of Nurses Assistants. The County's differential offer, though small, would establish for the first time a differential for Nurses Assistants as compared to Housekeepers, Food Service Workers, and Laundry Workers. This is a principle which is recognized by virtually all of the other counties. Although, Outagamie apparently pays Housekeepers the same as Nurses Assistants, but it does have a differential versus Food Service and Laundry.

Another significant factor in this determination is the substantial value of Shawano County's longevity schedule, which at the 10 year level is worth approximately \$.05 per hour more than that paid by the average county. Furthermore, with continued service, its value substantially increases.

The arbitrator has also considered the fact that the County has not experienced any recruiting problem whatsoever with respect to the classification. Likewise, the factors of cost of living argues strongly in favor of

the County's position, as well as the comparability with private sector employees, which shows that the County, like other organized counties, is paying substantially above the private sector average.

Thus, for the reasons stated, including the relevant criteria, the arbitrator has concluded that the final offer of Shawano County should be accepted. Therefore, he

A W A R D S

"All Nurses Assistants employed after April 1, 1980 shall receive five cents (\$.05) per hour effective July 1, 1993. All Nurses Assistants shall receive five cents (\$.05) per hour effective July 1, 1994." These proposals are in addition to the matters already agreed upon.

October 21, 1993
Fort Myers, Florida



Arvid Anderson