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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

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In the Matter of the Petition of :
 :
LOCAL 5084, WISCONSIN FEDERATION OF :
NURSES AND HEALTH PROFESSIONALS, :
AFT, AFL-CIO :
 :
To Initiate Arbitration Between : Case 155
Said Petitioner and : No. 50205 INT/ARB-7109
 : Decision No. 28141-B
 :
COLUMBIA COUNTY :
----- :

Appearances:

Local 5084, Wisconsin Federation of Nurses and Health
Professionals, AFT, AFL-CIO by Ms. Carol Beckerleg, Field
Representative
Columbia County by Donald J. Peterson, Corporation Counsel

ARBITRATION AWARD

Local 5084, Wisconsin Federation of Nurses and Health
Professionals, AFT, AFL-CIO (Union or Federation) is the collective
bargaining representative for the unit consisting of certain
employees being registered nurses designated as Public Health Nurse
I and Public Health Nurse II (PHN I and PHN II) employed by
Columbia County Health Department (Employer or County). The Union
and the Employer have been unable to agree to the terms to be
included in the successor to their contract which expired on
December 31, 1993. Initial proposals for a 1994-95 agreement were

exchanged on November 3, 1993; after two bargaining sessions, the Union filed a petition for arbitration on December 16, 1993. A representative of the Wisconsin Employment Relations Commission conducted an investigation and determined that a deadlock in the negotiations existed on August 2, 1994. The Commission entered its order for arbitration on August 8, 1994. The parties selected Rose Marie Baron as the arbitrator. Ms. Baron was appointed to act on August 31, 1994; she recused herself prior to further action on December 9, 1994. The parties selected the undersigned from a new panel of potential arbitrators on January 6, 1995. The Commission confirmed that appointment by order dated January 10, 1995. The hearing was conducted at the Columbia County Administration Building on February 10, after which the record was closed. Briefs were exchanged through the arbitrator on March 13 and April 3, 1995.

DISPUTED ISSUES

The principal disagreement between the parties is the size of the wage increases to be granted over the two year contract period. The Employer has offered split increases of 3% on January 1, 1994, with 2% on July 1, 1994; and 2.5% on January 1, 1995 with an additional 2% on July 1, 1995. The Union offered split increases of 3% on the first days of January and July in each year of the contract.

The Union's offer also provides that employees who are exposed to communicable disease in the performance of their duties would be granted a leave of absence with pay during the period of their

contagion if such leave is medically necessary. The Employer would also be responsible to pay the cost of the employees' preventive care. If the employees became eligible for workmen's compensation, they would reimburse the Employer for any double payment they received.

The Employer's offer proposes to make two changes in contract language relating to employer payments for the employees' continuing education benefits. It appears that the Employer's final offer relating to these provisions is ambiguous or contradictory because of clerical error.

The parties also disagreed which counties are appropriate for the purpose of comparison with the Columbia County nurses who are involved in this proceeding.

THE FEDERATION'S POSITION

The Union stated that there is no dispute about the fact that it is within the lawful authority of the county to abide by the terms of the Union's offer. It said that there is no evidence that the county does not have the ability to pay the cost of the Union's offer. Union exhibits show that Columbia County ranked second from the bottom in full value tax rates in both 1992 and 1993. The County ranked 40 out of 49 counties in full value tax rates. Its mill rate decreased by 7.6% in 1995. Columbia County could have increased its budget by \$601,294 under the State's cost controls, but, it had an increase of only \$137,759. The Union said that Columbia County is a prosperous, growing county with a low tax

rate. "The county does not have an inability to pay but rather an unwillingness to pay."

The Federation said that two prior arbitration awards have established that the counties of Dane, Marquette, Green Lake, Dodge, Adams, Sauk, Juneau, Jefferson and Rock are comparable to Columbia County. Other evidence that supports the Union's proposed list of comparables is that, in one prior arbitration case involving professionals, the County proposed Dane County as a comparable. A Union witness testified that six public health nurses have left the Employer to take better paying health care jobs in Dane County. Jefferson and Rock counties are more similar to Columbia County than the smaller Marquette, Adams and Juneau counties.

The Federation argued that the public health nurses in this proceeding are comparable to RNs at the Columbia County Home by virtue of educational requirements, duties and responsibilities. It reviewed the testimony of a witness that, as a Public Health Nurse I she worked 27 weekends and holidays during 1993, compared to working only one out of three weekends when she worked at the County Home. Public Health Nurses are required to work into evening hours while some RNs work day shifts. The Union reviewed job responsibilities for both categories of nurses and argued that, Home Health Nurses have a demanding job which requires independent assessments without the immediate assistance of a supervisor. They work evenings and weekends, "There is no justification for the

large disparity in pay between registered nurses employed at the nursing home and those employed by the Public Health Department."

The Union said that during 1994 and 1995 some bargaining units received higher wage increases than others. Sheriff's Department employees received larger increases than other represented employees in 1994. The Union's proposal for a split increase in this case would allow for a greater lift at a similar cost to the Sheriff's Department increases.

The Union said that "the central issue in this dispute is wages." The nurses in this proceeding rank near the bottom of comparables. The Union's proposal would not eliminate the disparity. Under that offer, PHN Is would earn 97¢ an hour less than their counterparts at the nursing home. "The Union's proposed 1995 home health rate falls 6¢ below the rate being paid in 1994 to the RNs at the nursing home." The Union argued that, the average 1994 wage for external comparables was \$15.54. If the Union's proposal is selected, a PHN I in Columbia County would earn 69¢ less than the average. Only much smaller counties, Marquette and Green Lake, will be paying less than Columbia County. It said that Juneau County, with half of Columbia County's population and per capita income of \$2,000 below Columbia County's, ranks second in PHN I wages.

The Union said that the comparable average wage for a PHN II in 1994 was \$16.71 an hour. The Union's offer is for \$1.43 less than the average 1994 wage. Only Marquette and Sauk counties paid lower PHN II wages than Columbia County in 1994. The Union argued

that these nurses will fall even further behind the average and may become the lowest paid of all comparables in 1995. It said that the Union's proposal would not "provide parity between Public Health Nurse II and RNs employed at the county home." These nurses are required to have a Bachelor's Degree. They work independently, see a wide variety of patients and must be proficient in a variety of areas to ensure patient care. They, like Home Health Nurses, are solely responsible for assessing patients' needs and developing plans for patients' care.

The Federation explained that its proposal to increase benefits for employees exposed to communicable disease was motivated by an actual case. An employee who had been exposed to whooping cough was required to take medications. Only \$45 of her \$50 medical expense was paid for by insurance. The employee was responsible for paying five dollars. It said Sauk County provides this benefit. "It should be the employer's responsibility to ensure employees exposed as a result of their job duties are reimbursed for required care."

The Union reviewed the Employer's proposal to modify contract language relating to continuing education benefits. One part of the proposal would add language to Article 19 to require employer approval for paid time off to attend educational functions. The second part of the proposal would delete the entire benefit. The Union argued that the county did not offer any explanation or justification for its proposal. It said that the county's offer

would eliminate the benefit, "this alone justifies selection of the Union's final offer."

The Federation concluded by arguing that, "The county's own proposal indicates a need for catch-up. The dispute is not over whether catch-up is necessary. The dispute is over how much is necessary to provide adequate catch-up. The Union believes its offer is the more reasonable based upon comparability criterion."

In its reply brief, the Union cited a previous arbitration decision to support its proposed comparables. In that case, the arbitrator noted that it is not customary to perform a detailed analysis to approve the continued use of the same comparables previously utilized by the parties. It noted that the County had not given any reason for not including contiguous Green Lake County among comparables. It argued that it is necessary to include Dane, Rock and Jefferson counties among the comparables in order to give a more accurate comparison. There is no reason for including the smaller contiguous counties and excluding Dane County.

The Union said that there is no evidence that these parties had negotiated improved vision and dental benefits in lieu of improved wages. Nor is there evidence how many RNs take the County's insurance package. It said "Additional insurance doesn't make up for a deficient wage if you don't need it." It said the benefits received by these nurses are provided to all of Columbia County's represented employees. It said that the Employer had not provided evidence to support its total compensation argument. The Union reviewed the improved vacation, sick leave and longevity

benefits provided by this contract. It argued that these improved benefits "add little to the overall compensation of the nurses."

COLUMBIA COUNTY'S POSITION

The Employer said that the appropriate comparable groups should be limited to Health Nurses in Sauk, Juneau, Adams, Marquette and Dodge counties. It cited prior arbitration decisions which had discussed the importance of geographic proximity and the similarity of size of the employer. It argued that its proposed comparable pool met those criteria, because, each suggested comparable is contiguous with Columbia County. The populations of the proposed comparables range from 12,321 to 76,559, averaging 34,637 compared to Columbia County's 45,088. "It is important to note here that Sauk County is almost identical to Columbia County in terms of population and adjusted gross income."

The County argued that three counties cited by the Union as comparable "each fail the test for comparability." It said that Dane County which is eight times larger and has ten times the adjusted gross income of Columbia County, cannot be considered comparable merely because it is contiguous. It cited prior arbitration decisions which discussed the importance of size, demographic characteristics, and wage comparisons in establishing comparability. The Employer argued that Rock County must be "rejected as a comparable on the basis of size, proximity and socio-economic factors. It has almost four times the population of Columbia County and borders on Illinois." It argued that the main reason to not include Jefferson County is its central location

between Madison, Milwaukee, Janesville and Beloit. "Such a central location provides labor with a greater access to a larger number of employees than does Columbia County." Jefferson should be rejected.

The County argued that its proposal guarantees equitable wage increases to Public Health Nurses. It said the nurses would maintain their rank among comparables under the County's offer. It said that improved benefits combined with its wage offer "have strengthened the County's standing among the comparables in terms of hourly compensation." It said that in reviewing Public Health Nurse I and II classifications "among the comparables...Columbia County's wage offer hovers around the median amongst its comparables for both 1994-95." The county's offer of a split 3%-2% increase in 1994 exceeds Dodge County's 3.6%, and it is identical to 1994 increases in Adams and Marquette. "Only Sauk County offers a slightly more significant increase of a straight 6% for 1994." Its 1995 split offer of 2.5% and 2% is identical to Sauk's, and it "tracks closely" with Dodge County's 3.6% and Marquette County's 3% and 2% split for 1995.

The County said that it would be unfair to evaluate the Employer's offer on the wages alone. It said that the County had included substantial improvements in benefits and total compensation in its final offer. Columbia County's contributions toward health insurance is "essentially equivalent to contributions by comparable counties." Only Sauk and Adams counties join Columbia County in offering vision insurance, and only Adams, Dodge

and Columbia counties provide dental insurance. The Employer argued that only it and Adams County provide a comprehensive health insurance package for their nurses. It said that this factor combined with improvements in sick leave and vacation benefits show the Employer's offer to be the more reasonable.

The County anticipated that the Union would argue that its wages are below average. It argued that this is not the case, wages are competitive. It cited a prior decision where an arbitrator discussed the fact that an offer which maintained the differential between a lower paid bargaining unit and its comparables appeared to be adequate. It argued that the conclusion in that case is applicable here. "The County's offer does not result in its Public Health Nurses losing ground." It said that its offer improved the relationship of these employees with comparables in terms of total compensation.

The County said that its offer was consistent with both internal and external comparable settlements. It said that the higher wage increases granted by some of the external comparables were a result of buy-out language for benefit concessions and "catch-up to other counties." It said that its wage offer to this unit is higher than its offer to 4 out of 6 bargaining units and roughly equivalent to the other two units for 1994-95 contract years. The Employer said it is remarkable that the Union's offer exceeds all comparable county settlements. It said that this is especially important in light of expensive concessions in vacation, holiday and sick leave benefits. The County said that a basic

principle of collective bargaining requires a proponent of change to offer something in return for a concession. It has not requested concessions in return for the improved benefits that it has agreed to. The Union is demanding a higher than average wage increase at the same time it has demanded major changes in benefits.

The Employer argued that it is not appropriate to compare the wage offer for Public Health Nurses to the offer to nurses at the County Health Center. "The responsibilities and working conditions between these two groups of nurses is grossly disparate." It said that the Union's own witnesses had demonstrated differences in the duties performed by the two groups of nurses. It also pointed to the differing position descriptions to underscore the distinct nature of each position. It said that nurses who work at the health center work second and grave yard shifts and weekends and holidays on a regular basis. Public Health Nurses work a basic 8:00 to 4:00 shift and only work holidays and weekends if they choose to do so.

The County said that nurses at the institution have "responsibilities for the total care of the assigned patients." Public Health Nurses perform assessments and give advice and encouragement to families. It said that the enhanced duties and restrictive hours faced by the County by the County Health Care Nurses justify the higher wages that they receive.

In its reply brief, the Employer reasserted its position that Dane, Jefferson and Rock counties are grossly dissimilar to

Columbia County and should not be considered comparable. It denied that the registered nurses who work at the Columbia County Home constitute appropriate internal comparables. The County repeated its contention that its total benefit package offer was the most comparable and is in the interest and welfare of the public.

DISCUSSION

Since this is the first arbitration proceeding between these parties, it is not surprising that they have been unable to agree to a pool of external comparables. Prior decisions relating to other bargaining units have limited relevance to this state certified professional unit. The disagreement relates to the requirement of Wis. Stat. 111.70(4)(cm)7e, that the wages, benefits and impacts of the two offers in this proceeding must be compared to wages and benefits "of other employees generally in public employment in the same community and in comparable communities." Though neither party in this proceeding introduced evidence of other employees generally in public employment in comparable communities, Wisconsin arbitrators have traditionally based great reliance upon comparisons of other employees performing similar services in comparable communities. In this instance, the Union based its case upon the argument that a catch-up wage increase is necessary. The Employer based much of its argument upon the theory that its offer was most comparable to wage increases granted to Public Health Nurses in comparable counties. Since both parties relied heavily upon external comparisons, it is necessary to address that issue.

The Employer said that it considered all of the "contiguous similarly sized counties" as comparable to Columbia County. It argued that Dane County though contiguous, was too large and was otherwise an unsuitable comparable. It neither gave any reason for not including Green Lake County nor included it as a comparable. The Union considered all of the contiguous counties including Green Lake and Dane as comparable. Evidence in the record makes it clear that Juneau, Adams, Sauk, Marquette, Dodge and Green Lake counties which are contiguous to Columbia County, are comparables for the purpose of this proceeding. The Employer's arguments that Dane County is larger and has a higher equalized value than Columbia County, do not demonstrate that these counties are not comparable. It may have been possible to pursue that argument by presenting reliable, recent comparative data relating to full value tax rates, levy rates, per capita income or other data which is traditionally relied upon to demonstrate either comparability or a lack thereof. That data was not placed in evidence in this case. The only evidence of per capita adjusted gross income for all of the Employer's proposed comparables is U. Ex 10 which contains data for the period 1985-1989. That dated information shows that there is a greater disparity in income between one of the Employer's recommended comparables, Adams County (\$6,766) and Columbia County (10,429) than there is between Columbia and Dane (\$13,881).

The more convincing evidence in the record is that Dane county should be considered comparable. That evidence is the large common border shared by the counties and testimony that five of the six

public health nurses who left Columbia County for other nursing positions since 1989, found employment in Madison. Two of those employees took positions in public health departments in Dane County and the City of Madison. There is neither evidence that Rock County and Jefferson County are comparable, nor is there need to search for additional comparables. Those seven counties which are contiguous or most closely adjacent to Columbia County, Juneau, Adams, Marquette, Green Lake, Dodge, Dane and Sauk will be considered comparable for external wage comparisons herein.

The most recent data about this bargaining unit relates to calendar years 1992 and 1993. As of August 1993, there were 18 registered nurses of which seven were PHN-I and eleven were PHN-II. Testimony established that both of these classifications are considered part time positions. The nurses are apparently permitted to limit the number of patients for whom they accept responsibility. However, once a patient has been accepted, the assigned nurse, while free to schedule patient visits to meet the nurse's timetable, is responsible for meeting all of the assigned patient's home health nursing requirements. Of the 18 nurses who belonged to the unit in August 1993, only 15 worked during the calendar year 1992, eight worked from 1,636 hours to 2,162 hours. The other seven worked from 628 hours to 1,137 hours during 1992.

Under the terms of the parties' last contract, which covered calendar years 1992 and 1993, the six step wage schedule which topped out after 4 years in 1992 was expanded to seven steps and

topped out after 5 years commencing in 1993. Relevant parts of that agreement are set forth as follows:

<u>Service</u>	<u>Classification</u>	
	<u>PHN I</u>	<u>PHN II</u>
Start	\$12.15	\$12.49
After 6 months	12.59	12.95
After 1 year	12.85	13.17
After 2 years	13.22	13.40
After 3 years	13.59	13.98
After 4 years	13.79	14.19
After 5 years	14.00	14.40

Employees shall advance on the wage scale in the appropriate classification according to their calendar months of service.

Longevity: Employees who have completed three (3) years of continuous service shall be entitled to longevity pay in the amount of fifteen dollars (\$15.00) for each year of employment to a maximum of four hundred fifty dollars (\$450.00).

Part-time employees shall receive longevity benefits on a pro-rated basis.

Comparable counties have varying wage classifications, which range from 4 steps over 30 months in Sauk County to 7 steps over 60 months in Juneau County and 5 steps over 145 months in Green Lake County. Ten of the nurses in this unit have between 5 and 25 years of service and are at the top of the pay schedule. The other eight nurses have less than 5 years of service with Columbia County. Adams and Dodge counties do not have PHN I classifications. Sauk, Adams and Green Lake counties have not settled for 1995. The following analysis is a comparison 1993 wage data for Columbia County and the external comparables. Wages at three benchmarks:

starting, three years+ and top of the scale have been included in the analysis.

PHN-I 1993 WAGE

	START	AFTER 3 YRS.	TOP
Dane	15.22	17.39	17.95
Juneau	12.69	14.81	15.87
Sauk	12.50	13.45	13.45
Marquette	11.42	13.44	13.44
Green Lake	11.34	11.87	13.58
Average	12.63	14.19	14.86
Mean	12.50	13.45	13.58
Columbia	12.15	13.59	14.00

PHN-II 1993 WAGE

	START	AFTER 3 YRS.	TOP
Dane	15.22	17.39	18.52
Dodge	14.44	15.98	17.00
Juneau	13.79	16.09	17.23
Green Lake	12.99	13.60	15.55
Sauk	12.98	14.26	14.26
Adams	12.56	14.33	15.14
Marquette	11.99	14.11	14.11
Average	13.42	15.11	15.97
Mean	12.99	14.33	15.55
Columbia	12.49	13.98	14.40

The foregoing table demonstrates that there is a wide range between prevailing wages at all three benchmarks among the comparables. PHN-I wages in Columbia are right in the middle of the pack at all three benchmarks. Though Columbia County's

beginning PHN-I's earn less than the comparable average, they rank 4 of 6 in starting wages. They are 3 out of 6 after 3 years, and at the top of the wage scale. Columbia County's wages are also above the mean at these latter benchmarks.

At the PHN-II level, Columbia County's nurses \$12.49 starting wage and \$13.98 after three years, ranked 7 of 8. Its highest PHN-II wage rate ranked 6 of 8. Columbia County's wage rates for these nurses are below both the average and mean for the 7 other comparables. The foregoing wage comparison, which indicates that one segment of this bargaining unit has comparatively low wages while the other segment earns mid range wages, does not support the conclusion that a catch-up wage increase is required.

In reviewing the comparative reasonableness of the two offers in this proceeding, there are two considerations. Those are the amounts of the proposed 1994-95 wage increases and the extent of the long term lift arising out of the offers. Both parties have proposed split increases for each year of the contract. The Employer's proposal for 3% and 2% during the first year and 2.5% and 2% during the second year, would increase wages by 4% during 1994 and by 3.5% in 1995. The Union's request for split 3% increases on each January 1 and July 1 of both 1994 and 1995, would increase wages by 4.5% each year. The Employer's offer would result in 9.5% lift over the two year period compared to 12% lift under the Union's proposal.

Only 3 of 7 comparables have settled contracts for both 1994 and 1995. Dodge County settled for 3.6% each year, Marquette

settled at 4% each year and Dane County settled at 3.5% for both years. Juneau County's offer for settlement is for 3% both years; we do not have data for the employee's request. Only Marquette County's settlement for 8% over 2 years exceeds Columbia County's offer for 7.5% over the term of the contract. The Union's request which would result in a 9% 2 year wage increase exceeds all two year settlements among comparables. Sauk, Adams and Green Lake counties all settled at 4% for contract year 1994. This is the same amount as Columbia County's first year offer and 1/2% less than the Union's request. Columbia County's offer would result in a larger increase in lift than employees received in other settled districts. The amount of the two year wage increase that the employees would receive under the Union's offer is not out of line with external comparable settlements. The future cost of that offer's 12% lift upon professional salaries in the \$13.00 to \$15.00 an hour range is a matter of concern. The fact that this proposed lift in base wages exceeds the lift in comparable districts by 50%, and the fact that the Employer's offer is in line with comparable settlements, appear to make the County's offer most reasonable.

The Union argued that a comparison of PHN wage schedule with the wage schedule of the nurses who work at the Columbia County Home supports the Federation's higher wage offer. The starting wage at the nursing home was \$12.98 and the top wage was \$15.54 in 1993. Starting wages for PHN-I and PHN-II were \$12.15 and \$12.49 an hour, their wage schedules topped out at \$14.00 and \$14.40 respectively in 1993. The Union's argument that all of these

nurses meet the same educational requirements is recognized. The argument that their duties and responsibilities are comparable, however, is not convincing. While all of these nurses do meet the requirements established by the State of Wisconsin for certification as Registered Nurses, their job descriptions are very different. The best evidence of the fact that there are differences in the duties, responsibilities and working conditions of Certified Registered Nurses was the direct testimony of two Union witnesses.

One witness described the difference in work schedules and responsibilities between the nurses who work in an institutional setting and those who provide services as Public Health Nurses. She testified that she preferred not to work at the Columbia County Health Center in spite of the fact that "they paid more there." The distance that she would have to drive to work and the fact that she would have to work weekends made the difference in pay "not worth it." The other Public Health Nurse had previously worked at the County Home. She testified that when she left her position at the County Home to become a Public Health Nurse, she accepted a reduction in wages from \$13.65 an hour to \$11.13 an hour. The testimony of these witnesses along with the testimony that 6 other nurses left this unit to take positions at Meriter Hospital, St. Mary's Hospital, U.W. Hospital, the Dane County Public Health Department, the City of Madison Public Health Department and the Waisman Center Clinics in Madison, indicates that there are numerous employment opportunities available to registered nurses.

The record appears to indicate that various factors influence nurses to choose the benefits and responsibilities associated with their professional affiliation. It appears that these factors have created a situation where registered nurses employed at the Columbia County Home have traditionally received somewhat higher compensation than Columbia County's Public Health Nurses have received. There is no justification for changing that wage relationship through arbitration in the record of this proceeding. The fact that the Employer's offer to the Public Health Nurses in this proceeding is at least equal to its two year settlements with other bargaining units and exceeds its settlement with nurses at the County Home makes the Employer's offer appear to be more reasonable.

There are two other matters in the record which require comment. That part of the Union's offer which would require the Employer to pay for the cost of the employee's preventive medical care is clearly preferable to the existing practice. The inequity of the existing policy is not, however, of sufficient economic impact to effect the outcome of this decision.

There is an obvious clerical error in the Employer's offer relating to Article 19 - Continuing Education. One part of the County's offer would modify the existing continuing education program to require management approval for paid time off to participate in training, seminars, workshops and other programs. The next part of the Employer's offer would delete the section its previous proposal modified. The County's initial proposal, Union

Exhibit #6, makes it clear that the second part of the Employer's offer was intended to eliminate the last sentence of Section 19B and not the last sentence of Section 19A. The elimination of the employee's right to accrue continuing attendance from year to year has not been discussed by either of the parties. It does not appear that this item should have significant impact upon the outcome of this proceeding. Since the Employer's offer is ambiguous as a result of the clerical error, that offer should be read in the only manner that would eliminate that error. The language relating to Article 19 - Continuing Education contained on page 2 of Union Exhibit #6, shall be included in the Employer's final offer.

For the reasons set forth herein, the final offer of Columbia County including the following language:

ARTICLE 19 - CONTINUING EDUCATION

A. Add to end of sentence:

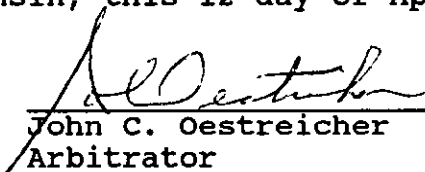
Upon approval by management.

B. Eliminate last sentence which reads:

~~This amount per individual will accrue on a year to year basis.~~

shall be incorporated into the 1994-95 collective bargaining agreement between these parties.

Dated at Madison, Wisconsin, this 12 day of April, 1995.



John C. Oestreicher
Arbitrator