BEFORE THE ARBITRATOR

ROSE MARIE BARON

In the Matter of the Petition by

Local 2427, AFSCME, AFL-CIO
Sheboygan County Institutions

and

Sheboygan County

Case No. 263
No. 52123 INT/ARB-7538
Decision No. 28442-A

APPEARANCES

Helen Isferding, Staff Representative, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO, Local 2427.

Louella Conway, Personnel Director, appearing on behalf of Sheboygan County.

I. BACKGROUND

The County is a municipal employer (hereinafter referred to as the "County" or the "Employer"). Wisconsin Council 40, AFSCME, AFL-CIO, Local 2427, (the "Union") is the exclusive bargaining representative of certain County employees in a collective bargaining unit consisting employed at all County institutions, i.e., Sheboygan County Comprehensive Health Center, Rocky Knoll Health Care Facility, and Sunny Ridge Home. The County and the Union have been parties to a collective bargaining agreement which expired on December 31, 1994. On September 15, 1994, the parties exchanged their initial proposals; after four meetings no accord was reached and the Union filed a petition requesting the Wisconsin Employment Relations Commission to initiate binding arbitration. Following an investigation and declaration of impasse, the Commission, on June 21, 1995 issued an order of arbitration. The undersigned was selected by the parties from a panel submitted by the Commission and received the order of appointment dated August 8, 1995. Hearing in this matter was held on September 22, 1995 at the County offices in Sheboygan, Wisconsin. No transcript of the proceedings was made. At the

hearing the parties had the opportunity to present documentary evidence and explanations thereof.

Briefs and reply briefs were submitted by the parties according to an agreed-upon schedule. The record was closed on November 30, 1995.

II. ISSUES AND FINAL OFFERS

The parties agree that the duration of the contract shall be two years, from January 1, 1995 to December 31, 1996. Both parties also propose that all tentatively agreed-upon items shall be incorporated into the agreement. The unresolved issues are across-the-board wage increases, longevity for new employees, and a wage adjustment for LPNs.

A. The Union's Final Offer:

> Effective January 1, 1995, increase the 1994 wage rates shown in Appendix "A", (page 28) by three (3) percent.
>
> Effective July 1, 1995 increase the January 1, 1995 wage rates by an additional one (1) percent.
>
> Effective January 1, 1996 increase the December 31, 1995 wage rates three (3) per cent.
>
> Effective July 1, 1996 increase the January 1, 1996 wage rates an additional one (1) percent.

B. The County's Final Offer:

1. Grandfather longevity for employees hired before 1/1/95

   New Longevity program for employees hired after 1/1/95
   $10.00 per month after 5 years of employment
   $20.00 per month after 10 years of employment
   $30.00 per month after 15 years of employment

2. Adjust wage for LPN as follows: (reflects 1994 rates)

Start	6 mo.	12 mo.	24 mo.
10.93	11.07	11.39	11.79

2. Wage increase--3.00% across the board--each of two years

III. STATUTORY CRITERIA

The parties have not established a procedure for resolving an impasse over terms of a collective bargaining agreement and have agreed to binding interest arbitration pursuant to Section 111.70, Wis. Stats. (May 7, 1986). In determining which final offer to accept, the arbitrator is to consider the

factors enumerated in Sec. 111.70(4)(cm)7:

> 7. Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:
>
> a. The lawful authority of the municipal employer.
>
> b. Stipulations of the parties.
>
> c. The interests and welfare of the public and 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 municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
>
> e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
>
> f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.
>
> g. The average consumer prices for goods and services, commonly known as the cost-of-living.
>
> h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
>
> i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
>
> j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

IV. POSITIONS OF THE PARTIES

The following statement of the parties' positions does not purport to be a complete representation of the arguments set forth in their comprehensive briefs and reply briefs which were carefully considered by the arbitrator. What follows is a summary of these materials and the arbitrator's analysis in light of the statutory factors noted above. Because the selection of the appropriate communities for purposes of comparability will have a major impact on the selection of one of the parties' final offers, that matter will be addressed first.

A. The Comparables

1. External Comparables

At hearing the Employer utilized fifteen counties as comparables (based upon those relied upon in a prior arbitration award of William Petrie, i.e., Racine, Rock, Brown, Outagmamie, Winnebago, Marathon, Dodge, Kenosha, La Crosse, Fond du Lac, Ozaukee, Manitowoc, Eau Claire, Calumet and Washington) while the Union selected ten counties which had been used by Arbitrator Malamud in a decision involving the highway department, i.e., Brown, Calumet, Dodge, Fond du Lac, Kenosha, Manitowoc, Outagamie, Ozaukee, Washington, and Winnebago). In its brief, the Employer stated that it had no objection to utilizing the comparables suggested by the Union and would rely on that data in its presentation. While the arbitrator is puzzled about the inclusion of Kenosha County (while the closer Racine County is excluded) and no comparable data about its connection with Sheboygan County is provided (e.g., no commuting pattern data), the arbitrator will defer to the wishes of the parties in this matter. Since there no longer remains any dispute as to this factor, the following ten counties shall be the basis for the external comparability analysis:

Brown	Manitowoc
Calumet	Outagamie
Dodge	Ozaukee
Fond du Lac	Washington
Kenosha	Winnebago

2. Internal Comparables

The Union:

Sheboygan County:

Highway Department (1993-95; Union Ex. 36)
Nurses and Health Professionals (1993-95; Union Ex. 37)[1]
Courthouse and Human Services (1992-94; Union Ex. 38)
Law Enforcement (1992-94; Union Ex. 40)
Social Service Workers (1993-94; Union Ex. 41)

3. Other Comparables

The Union:

City of Sheboygan:

AFSCME Local 2039 (1992-94; Union Ex. 44)
AFSCME Local 1564 (1995-97; Union Ex. 45)
AFSCME Local 3306 (Water Commissioners, 1995-97; Union Ex. 46b)

Sheboygan Area School District:

AFSCME Local 1750 (Secretarial/Clerical, 1994-96; Union Ex. 46?)
AFSCME Local 1750 (Custodial-Maintenance 1994-96; Union Ex. 47)
AFSCME Local 1750 (Teacher Aides 1994-96; Union Ex. 48)

Plymouth Joint School District:

AFSCME Local 1749-B (Support Staff 1994-96; Union Ex. 49)

City of Plymouth

AFSCME Local 1749-B (Street, Sanitation, Custodial, City Hall 1994-96; Union Ex. 50)
AFSCME Local 1749-B (Utilities 1994-96; Union Ex. 51)

City of Sheboygan Falls:

AFSCME Local 1749-B (Street, Utility, Municipal Building, Cemetery, and Park Departments 1993-95; Union Ex. 52)

Kohler Company:

U.A.A.A.I.W.A. Local 833 (1990 and 1994 contracts)

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[1]The County provided exhibits at hearing which indicated that the following County units were at impasse: Court House (County Ex. 25); Social Workers (County Ex. 26); Law Enforcement (County Ex. 27); Nurses (County Ex. 28). Subsequent to the close of the record in this case, an arbitrator's award was issued in the Social Workers' case. The County's motion to reopen this record for receipt of the award was objected to by the Union and thereupon denied by the arbitrator.

The County:

Private nursing homes: (County Ex. 24):

Heritage Nursing Center; Meadowview Manor Nursing Home; Sheboygan Retirement Home; Greendale Health Care Center.

4. Discussion

The arbitrator has considered the parties' exhibits relating to internal and other comparables as well as the objections to them. The Union objects to the admission of the "1995 Wage Survey for the Wisconsin Sheboygan Metropolitan Statistical Area" which was submitted along with the County's Brief. The grounds for objecting to this document are that it was not discussed at hearing nor was there any understanding between the parties that new exhibits were acceptable. The arbitrator agrees that it would be improper to admit into evidence which could have been proffered at hearing but was not. The Union's objection to its introduction is therefore sustained and admission of the survey into the record is denied.

Internal Comparables. There has been some reluctance among arbitrators to place considerable weight on a comparison of differing bargaining units in the same community. The concern regarding reliance on internal comparability involves the difference in the occupational make-up of the units under consideration. For example, in considering a unit of professional social services employees in Trempealeau County (Decision No. 26389A-A, 12/13/90), Arbitrator Morris Slavney followed an earlier analysis by Arbitrator Frederick Kessler. Kessler had held that courthouse employees were "white collar" whereas highway department unit employees consisted primarily of "blue collar" employees. Slavney concluded that the internal comparison should be of "white collar" with "white collar." In a case involving a school district's support staff, this arbitrator held: "The disparate nature of the two occupational groups, i.e., teachers versus non-teaching support staff (cooks, custodians, secretaries) leads the arbitrator to conclude that this factor is not sufficiently relevant to be accorded weight in determining which of the parties' final offers is the more reasonable." (Benton School District,

Decision No. 24812-A, 1988). Following that logic in the instant case, it would be inconsistent to compare institutional employees whose skill, effort, and responsibility are applied to work with the elderly and disabled to that of employees working on highway projects or in law enforcement.

Another important point when considering internal comparables relates to the essence of separate bargaining units, i.e., the unique quality of each and every unit. Different groups of employees have different goals, i.e., wages may be of vital importance to one bargaining unit while job security (e.g., language limiting subcontracting) is vital to another. In the instant case, it is clear that the Union perceives the longevity benefit to be most important for employees whose future job opportunities are limited by virtue of the positions which they hold. Although the County's desire for uniformity in its settlements with its other bargaining units and non-represented employees is understandable, the arbitrator does not feel that this factor is controlling.

In the instant case the comparable evidence on internal equity is not persuasive. The community of interest in a unit of institution workers is different from that of a highway department, law enforcement department, or other bargaining units. Each unit uses the collective bargaining process to achieve the specific goals of its members to the best of its abilities. Even here, after impasse at the bargaining table, the arbitrator must examine the final offers of the parties in the same light and avoid the temptation to blur the unique aspects of this bargaining unit. The County, in its Reply Brief, also acknowledges that "There are differences in each unit which must be taken into consideration." and that "Each unit is negotiated on the merits of the case" and rejects the Union's desire for a "me too" concept. The County states, and the arbitrator agrees, "Each unit negotiates on the merits of its own situation. This is the correct process." (at pp. 5-6).

It is held therefore that the disparate nature of the occupational groups compels the conclusion that internal comparability will not be afforded the same quantum of weight as the direct comparison with the external

comparables, i.e., employees doing similar work (institution workers) in the stipulated ten counties noted above.

Other comparables. Section 111.70 also lists as a factor a comparison of wages, hours, and conditions of employment of municipal employees with those of employees in the private sector in the same community and in comparable communities (Subsection f). The County provided data from four private nursing homes in the Sheboygan area. However, it was not able to reveal specific wage rates for each of these facilities because it had promised the providers confidentiality. An average of the 1995 rates for nursing assistants and licensed practical nurses is therefore the only data available to the arbitrator. It was stipulated at hearing that these private nursing homes are not organized by any labor organization. At hearing the Union objected to the admission of this exhibit.

The data provided by the County in support of comparison with private sector nursing homes falls short of the mark in the arbitrator's opinion. Because the only information available the average of starting and top rates of four facilities much information is missing, i.e., is not possible to determine how many steps there are between these rates from the limited documentation or the percent, if any, of wage increments in the past several years. These private nursing homes are non-unionized facilities and therefore it is difficult to make a meaningful comparison when employees have no choice but to accept the employers' unilateral offers. Furthermore, the emphasis in this interest arbitration is longevity and nothing in the information supplied speaks to that important issue. It is the arbitrator's opinion that little is to be gained by including data which is so disparate. The Union's objection to the admission of County Ex. 24 is sustained and admission of private sector nursing homes data is denied.

Other private sector data, i.e., the Kohler Company and UAW contracts (Union Ex. 71), were introduced by the Union primarily in support its argument against a two-tiered longevity system. Kohler had a two-tiered wage schedule

(1990 contract) which was modified in the 1994 contract to permit new employees to reach the higher level of the wage scale after three years. The arbitrator has considered this exhibit and believes that it is entitled to only minimal consideration for the proposition that two-tiered wage scales, in general, are not acceptable to unions and attempts are being made to eliminate them. The arbitrator acknowledges that much has been written about the negative effects upon the morale of employees under two-tier systems.

B. Longevity

The final offers of the parties regarding longevity are as follows:

The Union: Maintain the status quo

The County: Grandfather longevity for employees hired before 1/1/95

New Longevity program for employees hired after 1/1/95:
$10.00 per month after 5 years of employment
$20.00 per month after 10 years of employment
$30.00 per month after 15 years of employment

1. The County:

The County cites Arbitrator Vernon's holding in Elkhart Lake-Glenbeulah School District, Dec. No. 26491-1, 1990) as the standard against which its offer should be evaluated: is there a demonstrated need for the change, does the proposal reasonably addresses the need, is there is support in the comparables, and the nature of a quid pro quo, if offered.

The County asserts that there is a significant need for change in the longevity program since Sheboygan County offers the richest in the state. The add-on to the wage rate skews the comparables and burdens the County. It is contended that the comparables support a reduction of the program as no other employer pays longevity at 12.5% except Sheboygan County. The County offers the highest average pay rate of the comparables and its benefit package is one of the most generous.

The proposal will not affect any employee hired prior to January 1, 1995 as they will be "grandfathered in" and the longevity proposal will not affect any new employee until after five years of employment. The proposal addresses

the need for a change and is a reasonable solution to the problem.

The County concludes that it has answered all of Arbitrator Vernon's criteria in the affirmative: there is a need for a change, the proposal reasonably addresses the need, the comparables support the need for the change, the employees already receives the highest pay rate of the comparables and the new program for employees hired after January 1, 1995 grants a longevity benefit greater than all comparables at the 15 year level.

In its Reply Brief, the County addresses the Union's assertion that the purpose of longevity is to provide incentive in dead-end jobs. It is argued that this is not supported by the comparables, five of which offer no longevity at all while performing similar work. Some employees in comparable counties receive a flat dollar amount as longevity, however, none receive the amount paid by Sheboygan County. At the time longevity was implemented, there may have been rationale for this concept, however, pay rates in Sheboygan County have increased and are presently greater than the average of all comparables.

The County asks the arbitrator to consider its argument and select its final offer as a logical response to the need for change.

2. The Union:

The Union describes the County's final offer as "the good old perennial longevity take away proposal" and points to the fact that the County has not made an "inability to pay" argument, just an unwillingness. It is the Union's position that the initial reasons for longevity, i.e., to serve as an inducement for making employment with the County a career and as a supplement to modest wages, is still valid today, particularly in light of shortages in positions such as nurses aides. Longevity serves as an incentive to dead-end jobs such as those in the institutions where there is little opportunity for promotion or advancement.

It is also asserted that the Employer's final offer could lead to inequity between part-time and full-time employees since the language of the

Employer's longevity proposal does not clarify how the flat dollar amount would be applied to part-timers. Furthermore, it is argued that the Employer's longevity proposal would create a two-tier wage system. Such a system would prevent employees doing equal work from ever receiving equal pay. Citing Arbitrator Malamud's decision in Village of East Troy, Case 35, No. 45051, INT/ARB 58882, the Union asserts that a two-tiered system causes friction and problems in the work setting. The Union also notes that the Kohler Company has changed its previous two-tier wage system to a new progression wage system.

The Union argues that the Employer's offer to adjust the wages of the Licensed Practical Nurses (LPNs) is not a quid pro quo for the longevity proposal, but is a "catch-up." During bargaining, the Union concurred with the Employers proposal, but when settlement was not reached at the bargaining table, the Employer put the increase into its final offer. Data provided by the Union show that Sheboygan LPNs rank at second to the lowest of the County comparables (Union Brief, p. 6).

The Union contends that the County has failed to justify its reasons for a change in the status quo. It has not demonstrated a need and it has the money to fund the current system. The public welfare and the interests of the clients at the Institutions are better served by keeping this benefit intact during a time of shortage of nurses aides. Finally, giving a "catch-up" to a specific group of employees is not a quid pro quo.

3. Discussion:

The arbitrator has carefully reviewed the extensive exhibits and arguments of the parties on the issue of longevity. The record clearly shows that of the ten County comparables, five contracts do not contain any longevity language. Of the five which provide longevity (Brown, Dodge, Manitowoc, Washington, and Winnebago) none are similar to Sheboygan County which admittedly provides a greater benefit. The difficulty these data cause in an attempt to compare benefits is that there is simply no information available to the arbitrator as to bargaining history. That is, is the reason

no longevity exists in five of the counties that there was some trade-off at the bargaining table for something which the Union valued more? As for the counties which have longevity, but at a flat dollar rate, was the Union willing to accept a benefit lesser than Sheboygan's in return for other items on their agenda? Despite these unanswerable questions, the arbitrator must rely upon data in the present record in order to reach a decision. It is clear that the County's final offer of a flat monthly dollar amount of $10 after 5 years, $20 after 10 years, and $30 after 15 years ($120, $240, and $360 per year respectively) more closely reflects the comparables than does the Union's wish to retain the status quo ranging from 2 1/2% at 5 years to 12 1/2% at 25 years). Thus one of Arbitrator Vernon's criteria is met by the County.

As the proponent of change, the County bears the burden of proof. In his precedent-setting award regarding a change to the status quo, Arbitrator Choroid Malamud determined that this burden requires a greater quantum of weight than the basic "preponderance of the evidence" standard and held that party proposing the change must meet its burden by "clear and convincing" evidence. He also held that the proponent must demonstrate a need for the change (i.e., that a legitimate problem exists), and that a quid pro quo has been provided for the change. (D.C.Everest, Dec. No. 24678-A, 1988); see also, Northeast Wisconsin VTEA, Dec. No. 26365-A, Rice, 1991). Thus it is held that while the comparables are entitled to great weight, that is only one part of the burden on the Employer when it attempts to change contract language which has existed for a lengthy period of time and upon which the members of the bargaining unit have consistently relied. Thus, we must determine in the instant case whether a need exists to take away a benefit previously negotiated.

Arbitrator Joseph Kerkman addressed the question of need as follows:

> [Regarding arguments that changes in status quo should be bargained and not arbitrated]...The undersigned agrees that is preferable that such changes be made via the voluntary agreement route rather than it being imposed by arbitration. To refuse to consider a proposed change in the status merely because it should

> be bargained and not arbitrated defeats the purposes of theses proceedings, because if no change in the status quo can be made via the arbitration route, an impasse will always be resolved in favor of no change even though a compelling case for change might be supported by the evidence....there is also extensive arbitral authority to support the proposition that the status quo may be changed if the proponent of change establishes a compelling need for the change which it proposes. (emphasis added). Plum City School District, Decision No. 26824-A, 1991.

The arbitrator will apply the "compelling need" standard in this case. The County believes that its offer will alleviate the skyrocketing cost of longevity and argues that none of the present employees will be harmed since they will be grandfathered and no employee will be affected over the past five years. This may well be true, however, despite these assurances the Union was unwilling to accept this change during collective bargaining. The County has not been successful in reaching agreement on longevity for many years and has turned to arbitration for resolution of this knotty problem. The County argues eloquently that times and conditions have changed over the years and that the added incentive of a longevity add-on to formerly low wages is no longer required since Sheboygan County wages and benefits are among the highest of the comparables. Employer Ex. 29 reveals that the County has attempted to remove this benefit during contract negotiations from 1979 to the present.

The County asserts that the add-on to the wage rate "skews the comparables and greatly burdens the County." (Brief, p. 15). However, a mere assertion of a burden, without a showing, for example, of an inability to pay, is not persuasive. Even though Sheboygan County has shown that it is the leader among comparables in its longevity program and would prefer not to maintain that position, it has not produced any evidence that it cannot fund the program. The Union's argument that a job at the County Institutions still does not provide for advancement and that, given the shortage of nurses aides, it is important to retain its present employees, is well taken. When one takes into account the unfilled position in the County homes, the present longevity benefit appears to be a reasonable response to attracting new employees and

one which is in the public interest. Indeed, as recently as August of 1995, Ms. Conway, Personnel Director, contacted the Union regarding a special cooperative program with the high schools in order to alleviate the nursing assistant staffing shortage (Union Ex. 59). Applying the standard cited above to the facts of this case, the arbitrator is not convinced that the County's desire to minimize its costs for longevity rises to the level of a compelling need. If it were necessary to raise taxes to cover the costs of this program, such need might be assumed, however, this is not the case in Sheboygan County.

Even if the County had demonstrated a need to change the status quo, there still remains the question of whether there was an offer of a quid pro quo, i.e., something for something, used in law for the giving of one valuable thing for another. The arbitrator has searched the record in for some explicit evidence that during the bargaining and/or mediation process the County offered the Union something of value for the loss of the percentage system of longevity currently in effect. The only indication of an improvement to the contract was in the County's offer of a wage adjustment for LPNs, however, there is no language which would support the conclusion that this was a quid pro quo offered by the County. The Union has made extensive argument that the LPN wage improvement should not be considered as a quid pro quo but rather that it is a "catch-up." The County describes its rationale for the LPN adjustment in wages:

> The position of Licensed Practical Nurse was the one position with rates below the average. Several years ago there was a shortage of Registered Nurse and LPN candidates. Sheboygan County attempted to address this situation by renegotiating the pay rate and allowing the LPN with experience to start at the step matching his/her experience. This situation is somewhat alleviated, however, the rate adjustment of the LPN in the final offer moves to address the rate differential within the comparables. County exhibit a gives the adjusted rate for the LPN's which increases the rates above the average for LPN comparables.[2]

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[2]The arbitrator notes that there was no 1994 LPN wage schedule in either County Ex. 17 or 17A ; the LPN new longevity program for 1995 was provided in County Ex. 18a.

> This is the only position which is below the comparables. The employer recognized the need to make an adjustment.... (Brief of Sheboygan County, p. 8).

The evidence clearly shows that the County's offer of a wage adjustment for the LPNs was based upon a completely different rationale that which could be construed as a quid pro quo for voluntary agreement to relinquish the longevity benefit. Despite the County's assertion that it has answered all of Arbitrator Vernon's criteria in the affirmative, the arbitrator finds that it has not. There was no clear and convincing showing of a quid pro quo being offered to the Union nor has there been a satisfactory showing of need for the change.

It is the arbitrator's finding that the County has failed to carry its burden of proof on the issue of longevity. The Union's final offer to maintain the status quo on longevity is found to be the more reasonable.

C. Across-the-board wage increase

The Union proposes to increase the 1994 wage rates by 3% on January 1, 1995, by 1% on July 1, 1995, by 3% on January 1, 1996, and by 1% on July 1, 1996.

The County proposes a wage increase of 3% on January 1, 1995 and 3% on January 1, 1996.

1. The County

The Employer asserts that its offer of 3% for each of the two years of the collective bargaining agreement exceeds settlements in public sector union contracts, e.g., first 6 months of 1995 = 2.3% (Employer Ex. 38). The County offer exceeds the CPI-W of 2.7% and other union settlements in the fourth quarter of 1994, 2.74% weighted average and 2.77% by employee (Employer Ex. 40). The County also refers to private sector data including nursing homes and Kohler Company which the arbitrator has previously held were not to be given weight in this consideration. The County indicates that its final offers to four other County bargaining units is consistent with that of the Institutions unit at 3% for each year. Data for the external comparables is

provided in updated exhibits 17A and 18A.

2. The Union

In addition to its citation of school settlements ranging from 3.7% to 4.4%, the Union presents data showing increases from 1994 to 1995 among some of the county comparables in its Brief at 13-14 (apparently derived from its Exhibit 15) for nurses aides. The range of percent increases is from 3% in Brown, Fond du Lac, and Winnebago to 4% in Dodge, Manitowoc, and Washington (split).

3. Discussion

In analyzing the data submitted regarding the county comparables, the arbitrator has attempted to confirm these percentage wage increases submitted by the Union by means of a similar comparison of wage figures for nurses aides based upon County evidence. However, a search of the record does not provide the requisite information. Nor has the County rebutted the Union's assertion in its Reply Brief.

The available data demonstrates is that there is a variation of percentage raises among the comparables counties, some of which are greater than the County's offer and some which are smaller than the Union's offer. These data do not offer the arbitrator a sufficient basis upon which to make a determination of which offer is the more reasonable. In addition, it has been clear from the outset of these proceedings that the issue of the across-the-board wage increase for the two contractual years is secondary to that of longevity. Therefore, the selection of one of the parties' offer of a wage increase will be determined by which parties' longevity proposal is selected.

V. CONCLUSION

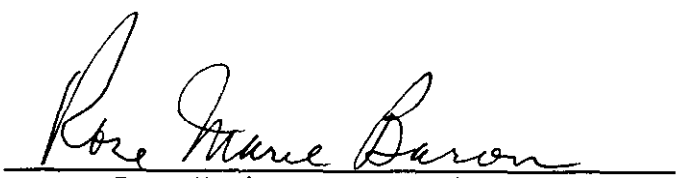
As discussed above, it was determined that the County was the party attempting to change the status quo by modifying Article XII, Longevity Pay, and therefore had the burden of proving by clear and convincing evidence that there was a need for the change and that there was an offer of a quid pro quo to the opposing party. The County had not met this burden of proof.

There was no basis in the evidence to support selection of either parties' final offers on across-the-board wage increases for the two contractual years. In addition, it has been held that the issue of the wage increase was secondary to that of longevity. Having selected the Union's final offer on longevity, it therefore follows that the entirety of the Union's final offer must be adopted pursuant to Wisconsin statute.

VI. AWARD

The final offer of the Union, i.e., Local 2427, Sheboygan County Institutions, AFSCME, AFL-CIO, shall be adopted and incorporated in the parties' Collective Bargaining Agreement for January 1, 1995 through December 31, 1996.

Dated this 13th day of January, 1996 at Milwaukee, Wisconsin.



Rose Marie Baron, Arbitrator