BEFORE THE ARBITRATOR

In the Matter of the Petition of

BROWN COUNTY MENTAL HEALTH CENTER
REGISTERED NURSES, AFSCME, LOCAL 1901-E

To Initiate Arbitration
Between Said Petitioner
and

Case 572
No. 52650 INT/ARB-7637
Decision No. 28690-A

BROWN COUNTY

Appearances:

James Miller, Staff Representative, appearing on behalf of the Union.

Godfrey & Kahn, S.C, Attorneys at Law, by Dennis Rader, appearing on behalf of the Employer.

INTEREST ARBITRATION AWARD

Brown County Mental Health Center Registered Nurses, AFSCME, Local 1901-E, (herein "Union") having filed a petition to initiate interest arbitration pursuant to Section 111.70(4)(cm), Wis. Stats., with the Wisconsin Employment Relations Commission (herein "WERC"), with respect to an impasse between it and Brown County, (herein "Employer"); and the WERC having appointed the Undersigned as arbitrator to hear and decide the dispute specified below by order dated May 7, 1996; and the Undersigned having held a public hearing, followed by an evidentiary hearing in Green Bay Wisconsin, on August 28, 1996; and each party having filed post hearing briefs, the last of which was received November 9, 1996.

ISSUES

The following is a summary of the issues presented with respect to the parties' agreement in effect for calendar 1994 and 1995. The parties' final offers on file with the WERC constitute the statement of the issues. There is only one issue in dispute. The current agreement has two memorandums of understanding attached to it providing that RN's who work two twelve hour shifts on weekends are to be paid as if they worked a full forty hours, (herein "24/40"). There is a another memorandum which clarifies benefits for part-time employees. A copy of each of these memorandums is attached hereto and marked Appendix A. The Employer proposes to end this 24/40 system. A copy of the Employer's proposal on this issue is attached hereto and marked Appendix B. The Union proposes to incorporate the current memorandums attached

to the agreement into the body of the agreement. It proposes: "With the exception of Section III on page 22 of the 1993 contract, the Memorandums of Understanding on staffing patterns shall be incorporated into a separate Article of the contract. These memorandums are subtitled as follows: "24/40 Weekend Staff RN Guidelines" on pages 19-22 of the 1993 contract and "Staffing Patterns for the Nursing Home" on page 23 thru 27 of the 1993 contract.

BACKGROUND

The Employer operates a mental health center in Green Bay, Wisconsin, which is a combination of a specialized nursing facility and an acute care psychiatric hospital. It has two psychiatric units, one for children and one for adults. It also has nursing home units for the developmentally disabled and for those with geriatric needs. The Union represents the professional unit of registered nurses. There are 29.3 full time equivalent employees in the bargaining unit.

Prior to the adoption of the 24/40 registered nurses worked a biweekly schedule in which they worked one weekend of every two weeks. This was supplemented in a number of ways. In the late 1980's a nationwide shortage of nurses developed. The factors behind this were not litigated, but wages may have only been a part of the reason for the shortage. Nonetheless, competition for available nurses became keen. It is undisputed that this unit has always had difficulty in attracting and retaining nurses because both psychiatric and long term care are considered less desirable work in the nursing profession. As the shortage developed, this unit, like many others, began to experience a substantial increase in turnover among nurses and difficulty in hiring new nurses at the same time. The Employer's first effort to deal with this shortage involved asking, but not requiring, nurses to work additional shifts. Article 11 of the parties' 1987-8 agreement provided that employees would be paid time and half for all hours outside their normally scheduled shift. However, as the shortage of staff here increased, this proved inadequate to provide minimum coverage. One of the parties' earlier methods of dealing with its inability to provide full coverage was to pay full-time nurses double time and part-time nurses time and one-half for unscheduled weekend hours they volunteer to work. This provision appears to have been first adopted in a memorandum of understanding dated November 23, 1987, which was expressly an agreement exclusive of the comprehensive collective bargaining agreement and which terminated by its terms on December 31, 1987. This agreement was terminated when the 24/40 schedule was implemented.

In early 1988, the facility had eight of its 33 positions vacant. Employees were unable/unwilling to accept all of the overtime necessary to fill those vacancies. The demands for overtime itself exacerbated the pressure on unit employees to seek

work elsewhere. The Employer was in a position to meet minimum staffing requirements as required by regulators. The parties worked together to mutually develop strategies to address these problems for this facility. The parties adapted the 24/40 concept which had been applied in other facilities in the state. However, this concept never really had wide acceptance among those counties which are closely comparable to Brown County. Under this system nurses would be employed to work two twelve hour shifts, one each weekend day. They would then be paid as if they worked a full work week. The benefit of a shortened work week was intended as an incentive for people to accept these jobs. The assignment to weekend work was intended to improve conditions for all other unit employees who theretofore did not like the fact that they had to work weekends. The parties also instituted hiring and retention bonuses as economic incentives to deal with this problem. The parties incorporated this into a memorandum of understanding dated November 2, 1988, which by its terms "will remain in effect as long as the County Personnel Director and Executive Director for the Mental Health Center deem it necessary. In the event the County or the Union wishes to discontinue this agreement, the moving party will provide notice to the other party at least 60 days prior to discontinuance." At that time the parties entered into a supplemental agreement which, in part, clarified benefits for these positions. That memorandum is in appendix A. The parties modified the language of the memorandums to essentially their present form and attached them to their 1989-1990 agreement and each successor agreement.

POSITIONS OF THE PARTIES

The Employer takes the position that the 24/40 schedule was a temporary solution to a temporary problem externally caused by the nursing shortage of the late 1980's. The purpose of the 24/40 system was to attract nurses to fill positions which the Employer was then unable to fill. The Employer takes the position that the nursing shortage has ended and it no longer needs to continue the 24/40 schedule. The Employer argues that the comparison criterion supports its position. It uses the same comparison group as Arbitrator Johnson used in a 1992 award between the parties. Only one of these counties, Outagamie, has retained it and that is being phased out by attrition. It has not disputed that Bellin Psychiatric Hospital has one 24/40 position which it will phase out when the current employee leaves that position. Both nationally and state-wide, other institutions which had 24/40 programs during the nursing shortage have now mostly eliminated them. The Employer notes that nursing school enrollments have risen sharply. Further, it no longer has difficulty filling positions and the number of applicants for each position has grown substantially. Unit employees are second highest paid among the comparables and, therefore, there is no need to continue this benefit to supplement wages. The Employer notes that it will save $172,037 with the elimination of this benefit. Currently, the state and federal

government are mandating more services, but freezing or reducing funding for the county. Under these circumstances, the Employer has told the Union that it will have to cut back services and reduce staff to meet those demands. Accordingly, it argues that the Arbitrator must favor the county's position in order to allow the County to address its current financial and patient care issues. The Employer also argues that the elimination of the 24/40 schedule results in better coverage during vacations and sick leave. Currently, the facility is short 3,210 hours to cover sick leave and vacation. Elimination of the 20/40 would provide 6,656 additional available work hours. The former Union representative, also named James Miller, testified that weekend sick leave abuse was a major problem which the 24/40 schedule was supposed to correct. In fact, 24/40 nurses tend to use sick leave more than regular schedule nurses. Finally, there would be a better continuity of work in a traditional schedule system. Finally, the Employer argues that the memorandum of understanding is not part of the collective bargaining agreement and, therefore, the Employer is not required to show that circumstances have changed or offer a quid pro quo for the proposed change. The WERC has taken the position that a memorandum of understanding which does not have an expiration date, is required to continue its terms and conditions in effect during the hiatus between collective bargaining agreements. In this case, the memorandum has an expiration date and has expired.

The Union argues that the 24/40 schedule was adopted not only to deal with the nursing shortage of the late 80's, but with other factors in mind. It was also designed to discourage unit turnover by creating jobs with less work and by eliminating weekend work. The Union and the Employer have historically treated the memorandums of understanding as parts of the contract that were subject to negotiation the same as any other provision. The history of the memorandum of understanding demonstrates this conclusion. The original memorandum of understanding provided for a sixty (60) day notice to terminate the memorandum. The parties eliminated this provision and adopted the current structure to provide stability for employees who accepted these jobs. Since then the Union believes that the memorandum has effectively become a part of the agreement. The Employer's conduct with respect to a grievance concerning terminating retention bonuses indicates that it is its position that the 24/40 schedule is a continuing part of the agreement. It is, therefore, the Union's position that these schedules are an existing part of the agreement and the Employer must offer an adequate quid pro quo in order to change the existing conditions of employment. Further, the Union argues that the Employer's comparison data is based upon a survey of non-comparable hospitals, most of which are non-union. Of the comparable county contracts only Outagamie has a scheduling system similar to the 24/40 schedule, none indicated that they either had or ever had had a 24/40. Of the comparable counties, only Outagamie has the 24/40 system. This is a non-union facility and it should be ignored.

Most of these counties provide premium pay to registered nurses who are scheduled to work on weekends. The Employer's offer does not do this and, therefore, would leave this unit as one of only two bargaining units which does not have a weekend shift premium. It also argues that the Employer's offer does not include any quid quo pro. Prior to the implementation of this schedule, the parties' agreement provided that full-time employee would receive double time and part-time employees would receive time-and-one-half for working unscheduled weekend hours. This was discontinued when the 24/40 schedule was adopted. Therefore, since the Employer provided such a weekend premium in the past, it would seem logical that there should be some form of quid quo pro for the elimination of the schedule now. Finally, the Union argues that the Employer's final offer is ambiguous as to the meaning of the language continuing the current memorandum for the 8 employees on that schedule and penalizing those who do not bid for open positions. Therefore, it should not be adopted.

The Employer replied to the Union position reiterating its position that it does not need to show a quid pro quo because 1. arbitral precedent does not support that requirement where there is a need for a change; and, 2. both parties are proposing a change in the status quo. The Employer reasserts that its survey is important even though it does not include hospitals limited to the comparable group because the intent of the survey was to allow the arbitrator to determine what competing facilities are offering their employees in term of work schedules. In any event comparison to the comparability group show that the 24/40 is not used except in one facility which is phasing it out. The Employer disputes the Union's claim that the Employer should be required to offer a quid pro quo for this change because in the past, full-time employees were paid double time and part-time employees were paid time and half for unscheduled hours they work on a weekend. First, the addition of that benefit would make these employees the most highly compensated among the comparable group. Second, the issue is moot for this agreement which is already expired. The Employer denies the Union's allegation that its offer is ambiguous or unfair. It notes the Union never raised these issues in negotiations. Some of the Union's alleged constructions are so obviously inconsistent with the purpose of the agreement that they are clearly unreasonable.

The Union replies that the Employer's legal citations supporting its argument that the memorandum of understanding is not part of the agreement, are not actually supportive of its position. It also reiterates its position that the Employer's offer is unfair in that it does not restore the quid pro quo given by the Union to establish it, double time or time and one-half for working weekends. It argues that the ambiguities in the Employer's proposal as to seniority are so serious that the Employer's proposal cannot be safely adopted. It notes that if the Employer admits it has the ability to continue to fund the existing system,

it cannot reasonably use the potential of what would happen in the next budget cycle as a scare tactic. The Employer is simply increasing the work week of the 24/40 nurses. It also argues that the Union's acceptance of the Employer's wage offer is an adequate quid pro quo from the Union to preserve the existing schedule because it is the lowest wage settlement of all of the comparable units.

DISCUSSION

This matter involves a choice between final offers on a single issue in the impasse. Pursuant to Sec. 111.70(4)(cm), as amended it is the responsibility of the arbitrator to select the final offer of the party which is closest to appropriate by applying the decisional criteria specified in Section 111.77(4)(cm), Stats. The purpose of requiring an arbitrator to select the final offer of one party or the other without modification is to encourage the parties to resolve their dispute by forcing them to compete to make their final offer the most reasonable. While this is generally beneficial, this system of arbitration has been criticized because it may tend to frustrate the process of mutual local problem solving.[1] The total package, final offer process often limits the direct dispute resolution process because economic issue frequently are more important than most specific non-economic items. However, arbitrators may from time to time be called upon to address specific issues arising from the local problem solving. When this occurs arbitrators must be mindful not only of the resolution of a specific issue but of encouraging the local problem solving process which itself is at the heart of the benefits of collective bargaining for the parties and the public.

The issue presented in this case is the product of the local problem solving process arising during the nursing shortage of the late 1980's. The main issue between the parties is the standard by which the arbitrator determines whether this proposed change to the collective bargaining agreement is appropriate. A party which is proposing a change in a contract provision must show that there has been a change in circumstances since its adoption such that there is now a substantial problem which warrants correction. It must then show that its proposal is a reasonable means of correcting that problem. The Union is correct that some arbitrators have considered whether or not the proposing party has

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[1]See for example, Council on Municipal Collective Bargaining, "Recommendations for Successor Law to Sect. 111.70(4)(cm) and (7m)," pre-final report, p. 22; Charles C. Mulcahy, 1995 Marquette Law Review, Innovation as the Key to a Redesigned and Cost Effective Government.

offered a quid pro quo[2] in exchange for its proposal. I don't agree that it is appropriate to require a party to do so in every case because that approach would virtually frustrate voluntary bargaining. Further, I do not agree that it is appropriate to do so in this case. First, this situation rather, than involving a fundamental benefit customarily afforded employee, involves a provision outside the customary scope of bargained provisions under which unit employees receive a day's pay for less than a day's work.

Second, the context and history of the specific agreement of the parties establishing the 24/40 schedule strongly supports the conclusion that it was a temporary solution which the Employer might terminate, subject to its collective bargaining obligations. If cooperative efforts are to succeed, parties should look to structuring their problem solving agreements to provide appropriate dispute resolution mechanisms should they need change those agreements in the future, including as necessary their own private dispute impasse resolution procedures or other mutual directions as to the standards by which they which proposed changes to be considered. One of the criteria specified in Sec. 111.70(4)(cm), Stats. is "b. Stipulations of the parties." Another is "other factors." Both of these factors require arbitrators to consider any specific agreements the parties have incorporated into their collective bargaining agreement as to how impasses over those provisions are to be resolved. Arbitrators have to give these specific agreements appropriate force if the problem solving process is to flourish. The Employer has correctly pointed to the fact that the agreement for the 24/40 is contained in memorandum of understanding attached to the agreement, but containing a separate termination date, as evidence that the parties have agreed that the Employer might terminate the memorandum when it concluded that the shortage crisis had passed. I don't believe that this structure waives the Employer's obligation to bargain at all, but it does make it inappropriate to require the Employer to offer a quid pro quo for its elimination. The history of the date provision itself suggests both that it was temporary and that the Employer should have some level of freedom to terminate it when circumstances changed. The original memorandum of understanding permitted termination at times other than the termination of the agreement in the discretion of either party. The parties have had other memorandums of agreement which were expressly separate agreements

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[2] It is important to note that the parties have used the term quid pro quo without definition and with various meanings at different points in their briefs. As used herein the term "quid pro quo" means, without differentiation, an exchange of an item of equal or greater value. It is important to make this distinction because although a party may not be required to provide a "quid pro quo" it might be reasonably required to make an offer of benefits less than equivalent.

from their comprehensive collective bargaining agreement. See, the November, 1987, memorandum concerning premium payments for nurses volunteering to work weekends. The parties still continued the 24/40 agreement basically in that form (subject to separate termination) when they changed the termination provisions, rather than incorporating the provisions into the agreement. It is important to note that the 24/40 memorandum itself is a separate agreement with provisions in conflict with the scheme of regulation of the comprehensive collective bargaining agreement rather than one explaining a term of the comprehensive collective bargaining agreement. Thus, its separate termination would not undermine the operation of any other provision of the agreement. The history of the bargaining surrounding this agreement indicates that the Employer considered the obvious alternative, a permanent substantial pay increase for RN's, but chose to use a temporary solution instead. Requiring a quid pro quo would conflict with the intention of this memorandum as demonstrated by that history. Under these circumstances, the fact that the parties chose to make this a separate agreement with a separate termination date is evidence that the Employer should be permitted to change this agreement when the circumstances have changed. It is important to note that the fact that parties changed the right of the Employer to terminate the agreement from one with six months notice to one expiring with the agreement is strong evidence that the parties intended that effects of any termination upon the interests of those who accepted those jobs be reasonably accommodated when that agreement terminated.

The final reason that it is inappropriate to require the Employer to offer an equivalent or greater quid quo pro in this circumstance is because the reason these provisions were adopted was to deal with the consequences of the national nursing shortage of the late 1980's. That shortage was caused by a number of factors beyond the control of the parties. To the extent wages were a factor in that shortage, the fact that the Employer has paid comparable or better wages and the fact that it is proposing to maintain that status is, in itself, an adequate quid quo pro for changing this provision after the shortage ended.

The parties have an established group of other counties' institutions for comparative purposes. That group is Calumet, Fond du Lac, Manitowoc, Outagamie, Sheboygan, and Winnebago Counties. Among that group, the agreed upon wage increase in both years of this agreement is among the lowest, yet overall wage rates for this unit will still be the highest or among the highest.

In its reply brief, the Union alleged that its acceptance of a wage increase of a 1994 wage increase of 2.70% and 1995 of 2.65% is itself a quid pro quo for the maintenance of the 24/40 benefit when comparable general wage increases among comparable county hospital units ranged in the area of 3.5% each year. There was no evidence of what other settlements were in other units of the Brown

County. In any event, this agreement is not nearly an equivalent or better quid pro quo. This is a less than controlling factor in the Union's favor.

One situation in which arbitrators have rightly considered a quid pro quo in whole, or in part, as a prerequisite to a proposal to change an existing provision is when the parties established the existing provision by that method of bargaining or when a the opposing party gave up something in exchange for that provision. In this case, the parties had a provision providing double time for full-time employees and time and half for part-time employees who voluntarily accepted additional weekend shift. However, the available evidence indicates that the weekend overtime provision was itself an earlier unsuccessful attempt to achieve the same result as the 24/40 and was not exchanged as a quid pro quo for this provision. It was adopted November 23, 1987, and had the same object as the 24/40.

The chief reason for the Employer's position is that while the 24/40 system attracted and retained employees, it continues to be less productive. The Employer is correct that its primary reason for the adopting the 24/40 plan was the nursing shortage. The purpose was to attract new employees. The secondary purpose was to also assist in retaining employees in non-24/40 positions by removing the less desirable weekend work and encouraged the retention of other employees who accepted the 24/40 benefits. The cost of the program was that it was not very productive in terms of total hours of coverage.

There really isn't any dispute that the nursing shortage has long since ended. Instead, the Employer is now caught in, and will continue to be caught in, an economic squeeze in which it receives little or no additional funds, but is mandated to continue services. While the effects of the 24/40 remain the same, the economic circumstances under which it was adopted have changed. The 24/40 system now represents an unreasonably low level of productivity.

Currently, there are 23.9 full-time equivalent employees budgeted for this facility. A large proportion of these, eight, are 24/40 employees. Under the current system, the Employer is short 3,210 person-hours. It must make this up with additional hiring and/or overtime. The full elimination of the 24/40 would create 6656 additional hours of available work time (minus applicable leave usage). This is about 15% of the gross total currently available work hours from the unit work force.

While the Union has legitimate concerns about the impact the elimination of the 24/40 schedule might have on non 24/40 employees who might now be required to work every other weekend, unit employees regularly worked every other weekend before the adoption of the 24/40. If weekend work continues to be a problem, there are

other solutions to that situation. For example, the parties could agree to increase the use of part-time employees. Because there are other reasonable approaches, the Employer's concern over productivity far outweighs the interest of non 24/40 employees.

The Employer heavily relied upon the comparability criterion. In this case, the direct application of the comparability criterion is entitled to less weight. Of the comparable counties, only Outagamie every adopted this approach. Outagamie is now phasing it out. These parties adopted the 24/40 as a mutual approach to their problems. To give controlling weight to the comparability criterion would simply undermine that local problem solving process. However, that criterion is entitled to some weight in this proceeding and it clearly supports the position of the Employer.

Even though there are other serious problems with the Employer's proposal it is closer to appropriate than the current status quo. The Union correctly notes that termination of the 24/40 provision will directly impact the eight employees now on that schedule. The comparison criterion is useful to look at how other employers have approached terminating their 24/40 systems when they have decided to do so. The available evidence is anecdotal. It suggests that other employers have simply not filled 24/40 positions as they became vacant. This approach certainly protects the interests of those employees who have accepted the 24/40 positions and patterned their lives in reliance upon those schedules. Although an employer may not be required to show an equivalent or greater quid pro quo, it certainly has a responsibility to deal fairly with employees who have changed their circumstances in reasonable reliance upon the existing conditions. The Employer's proposal is less protective. It permits employees to stay in these positions, until there are vacancies which occur through normal attrition in the unit. This approach is an acceptable compromise.

However, after that point, the Union correctly points out that the Employer's proposal is very ambiguous and potentially has some deleterious effects. The Employer's proposal indicates that it is limited to replacing these positions as other positions open up in the unit by "attrition." A difficulty arises in that it states:

> "Employees on 24/40 who had full-time work immediately prior to the 24/40 schedule will lose right to full-time work if they have the seniority to successfully post for any full-time vacancy and do not exercise that option. Employees on 24/40 who had part-time work immediately prior to the 24/40 schedule will lose rights to the same amount of part-time work if they have the seniority to successfully post for an equivalent part-time vacancy and do not exercise that option."

The Union argues that this proposal could be read to require senior

24/40 employees to apply for every opening and, thus, require that they leave 24/40 positions before the junior 24/40 employees. It could also run the risk that they would be forced into undesirable positions. This provision would work in conjunction with Article 23, Seniority. The operative language of that provision is that "It shall be the policy of the Employer to recognize seniority ...." It also essentially requires that an employee be qualified for any position that they post for. The purpose of the structure of the Employer's offer is to insure that the lack of seniority of non-24/40 employees does not block the movement of employees from 24/40 positions, not to require senior employees to accept positions which they would not otherwise want. If the most junior employee were required to bid for a position, a more senior 24/40 employee might be awarded the position. The above-quoted provision is not self-operative, but requires administration under specific choices by employees. While the precise method of administration is not clear, other constructions are possible. Thus, one reasonable construction is that every 24/40 employee qualified for a posted position must sign the posting for it. However, a senior 24/40 employee could then exercise his or her right to accept the position. However, if the senior 24/40 does not want the position, it is within the scope of that provision that the senior 24/40 employee could decline the position if there is a junior 24/40 employee who has the qualifications and sufficient seniority to accept it. That construction appears to be one consistent with the seniority dovetailing purpose.

A second issue which arises under this provision is the treatment of the Judith Nelson. Judith Nelson is the most senior 24/40 employee. She also has a long history of service to the Union. The Employer's proposal effectively relegates her, and her alone of the 24/40 employees who were employed prior to the start of the 24/40 system, back to part-time. The parties defined 24/40 work as full-time. Under these circumstances, the Union is correct that the Employer's proposal is particularly unfair to her in that she should have been accorded the use of her seniority to return to full-time work in an appropriate manner. The Employer hasn't offered a substantial explanation for this approach. Had the Union made such a counter-proposal and had it been the only difference between the parties, I would have adopted the Union's position on that issue.

The Union correctly asserts that arbitrators have been reluctant to adopt collective bargaining proposals which are so ambiguous or poorly drafted that they are likely to foster unnecessary litigation. However, even though there are serious problems with the Employer's proposal, the circumstances of this case make the fact that the Employer's proposal is ambiguous less important. First, if no action is taken, it is likely that arbitrators will construe the ambiguous language against its drafter, the Employer. Second, this agreement has already expired. It is likely that the parties could address these issues in

bargaining before the first vacancy occurs. Third, the primary reason for the ambiguity is the conflict between having junior 24/40 employees bidding against senior employees. A reasonable counter proposal requires a decision by the Union to balance those rights differently. Accordingly, it is appropriate to leave that matter to further bargaining.

The Union correctly argues that adoption of the Employer's proposal would leave this county as one of two counties without some type of weekend differential. Calumet does not have a shift differential. Every other comparable county pays at least $1.00 per hour for weekend work. Other than the double time/time and one-half provision which was the precursor to the current 24/40, there is no evidence that Brown County every had a shift differential prior to the adoption of the 24/40. The Employer's 1995 personnel policy provides for a $1.00 per hour weekend premium. Certainly, one would expect that if one had existed and was eliminated in exchange for the adoption of the 24/40 that it would be restored. Similarly, if it was the Employer's policy to pay weekend differentials at any time, it certainly would have been appropriate to include it in this proposal. Nonetheless, this is also an issue which would have been an appropriate counter-proposal by the Union. While the absence of a weekend differential is a factor which weighs against the Employer's proposal, it is also a matter which can be easily addressed in the negotiations for the successor to this already expired agreement.

Based upon the foregoing, the Employer met its required showing that there has been a change in circumstances which creates a problem. The Employer's proposal is not without its problems, but it is a more reasonable approach to this situation than the Union's. Accordingly, under the standards of Section 111.70(4)(cm), Stats., the Employer's proposal is adopted.

AWARD

That the parties 1994-1995 collective bargaining agreement contain the final offer of the Employer.

Dated at Milwaukee, Wisconsin, this 2nd day of January 1996.

Stanley H. Michelstetter II
Arbitrator

Appendix A

EXHIBIT 101

MEMORANDUM OF UNDERSTANDING

The following Memorandum of Understanding is established between Brown County and Local 1901-E, AFSCME, AFL-CIO, representing the Brown County Professional Employees Union Registered Nurses.

The compensation of employees in the bargaining unit is revised to include the following items:

I. A staffing pattern for the Center with 24/40 scheduling components:

24/40 Weekend Staff RN Guidelines

Definitions:

1. Base Rate: Hourly wage without shift or unit differential.

2. Worked vs. Paid Hours: Regular posted 24/40 RN's work 12 hours each weekend day but are paid for 20 hours. In certain circumstances, benefits are determined by either paid or worked hours, thus distinction is made in the following policies.

Guidelines:

1. RN works every weekend.

   Unit 7 - Hours run from
   a) Friday 2300 hours to Saturday 1120 hours;
   b) Saturday 1100 hours to Saturday 2320 hours;
   c) Saturday 2300 hours to Sunday 1120 hours;
   d) Sunday 1100 hours to Sunday 2320 hours.

   Unit 1 - Hours run from 1000 to 2220 Saturday and Sunday.

2. Salary is based on RN's current rate of pay.

3. Shift differential for PM's and nights will be in effect for hours actually worked on those shifts. (Example: RN that works 1100 hours to 2320 hours will be paid 8-hour PM shift differential.)

4. Upon completion of working a 24/40 weekend, the following procedure will be in effect:

   a) If an additional 16 hours per pay period is worked, it would be paid at straight time.

EXHIBIT 102

b) Additional hours beyond the 16 hours per pay period would be considered overtime. Scheduling and awarding of hours would be according to seniority.

5. Except for 4(b) above, there shall be no pyramiding of overtime hours under this agreement.

6. Seventy minutes of break time is granted for each 12 hour work day of which fifty minutes are paid breaks and 20 minutes are unpaid.

7. Inservices, meetings, etc. will be paid at RN's base hourly rate (unless over 8 hours per day or 80 hours per pay period, or unless 24/40 RN has worked an additional 16 hours in the pay period).

8. Replacement for 24/40 RN's:

a) RN would earn 8 hours base hourly rate and 4 hours overtime (RN would not be eligible for 20 hours pay.) Differential pay remains the same as in contract.

9. Trading:

a) 24/40 RN's may trade shifts with each other and after approval. (Trade slip made out and submitted).

b) 24/40 RN's may trade with other staff RN's working eight hour shifts with approval. (Trade slip made out and submitted).

c) Trades between 24/40 RN's and 8-hour shift RN's could result in a loss of 4 to 12 hours of pay, dependent on the trade involved. (Example: 8-hour shift RN would work 12 hours weekend shift, 24/40 RN could work one or two 8-hour shifts for the trade, dependent on personal preference.)

d) No loss of benefits for trades.

e) If trade involves the full week, the RN covering for the 24/40 RN would be paid on the basis of 24/40.

10. Insurance, etc. will be calculated on 80 hours per pay period.

EXHIBIT 103

11. Vacation:

a) Each 12-hour shift would count as 20-hour vacation (ie. full weekend vacation would be 40-hours vacation time -- would have two weeks off).

b) All requests would be handled as per scheduling guidelines and per 1901-E contract in effect at present.

12. Holiday Pay: All holiday hours worked will be at time and one half.

13. Personal Holidays:

a) Three (3) personal holidays per year would be added to the vacation schedule.

b) One paid Registered Nurses Day to be taken on a date which is mutually agreed upon between the employee and the supervisor. Part-time employees shall receive the Registered Nurses Day on a pro-rata basis. These hours would be added to the vacation schedule.

14. Sick Time:

a) Each 12-hour shift would count as 20 hours sick time.

b) If a 24/40 employee becomes ill or leaves early on a weekend, he/she will be paid 1.66 hours of pay for each hour worked.

15. Postings:

a) Any vacancy including 24/40 would be filled according to contract.

b) Guidelines for 24/40 RN's would be posted along with job description and notice of testing.

16. Leaves of Absence would be handled according to contract.

17. Bereavement Leaves would be handled according to contract.

In the case of the death of a member of the immediate family of a full-time employee on a 24/40 posting, the employee will be granted an excused leave to attend the funeral of up to two (2) calendar days starting on the day of death or the day following death through the next day after internment. If, during this leave, the employee has scheduled 24/40 posted work days, the employee will be paid for those work days at a rate of twenty hours per day to a maximum of 40 hours pay.

EXHIBIT 104

The employee will not be paid for any of the two days which are not posted scheduled 24/40 days. The immediate family is defined as: husband, wife, children, grandchildren, parents, brother, sister, mother-in-law, father-in-law, step parent.

In the case of a death of a grandparent, brother-in-law, sister-in-law, son-in-law, daughter-in-law, aunt or uncle of the employee or of the employee's spouse, the full-time 24/40 employee shall be granted one (1) day at a rate of 20 hours pay to attend the funeral provided such day is a scheduled posted work day. If the funeral day is not a posted scheduled 24/40 work day, the employee will not be paid for this day.

In the event an employee is called upon to be a pallbearer, or to serve in a military funeral, one (1) day leave will be allowed: Sick leave at a rate of 20 hours pay, vacation at a rate of 20 hours pay, or loss of pay, at the discretion of the employee.

II. Institution of pro-rated benefits for all part-time Registered Nurses.

III. A retention bonus for Registered Nurses shall be awarded at a rate of $1,000 per year with ANA certification or $800 per year without ANA certification. Said amounts are prorated according to posted position. Payments shall be made January 1 and July 1 of each year.

The contents of this Memorandum of Understanding supersedes the labor agreement; however, the labor agreement controls in all areas not specified in this Memorandum of Understanding.

This Memorandum of Understanding will remain in effect through December 31, 1993.

FOR THE COUNTY:		FOR THE UNION	
11-1-93		10/22/93	
WAYNE E. PANKRATZ	DATE	PRESIDENT	DATE

EXHIBIT 105

MEMORANDUM OF UNDERSTANDING

The following Memorandum of Understanding is established between Brown County and Local 1901-E, AFSCME, AFL-CIO representing the Brown County Professional Employees Union Registered Nurses.

The hours of employees in the bargaining unit are revised to include the following items:

Staffing Pattern for the Nursing Home

Unit 8

Pending the initiation of the 1989 budget,

a. 24/40 scheduling components on every weekend.

b. A change in the current posted hours to Monday through Friday shifts on days, p.m.s, and nights (1 FTE per shift).

Nursing Facility (Units 2, 3, 4, 5,6)

The scheduling components for the Nursing Facility will be

a. 24/40 on weekend (1.0 FTE).

b. 1 M-F shift on days and P.M. RN positions.

The initial posting for this component will be a 0.8 position until 1/1/89 and then convert to a 1.0 position. The P.M. RN position will convert to a 1.0 with the signing of this document and will remain a 1.0 and the 24/40 will be a 1.0 every weekend and remain a 1.0 in 1989-1990.

24/40 Weekend Staff RN Guidelines

Definitions:

1. Base Rate: Hourly wage without shift or unit differential.

2. Worked vs. Paid Hours: Regular posted 24/40 RN's work 12 hours each weekend day but are paid for 20 hours. In certain circumstances, benefits are determined by either paid or worked hours, thus a distinction is made in the following policies.

EXHIBIT 10

Guidelines:

1.(A) RN works every weekend.

Unit 8 - Hours are from
a) Friday 2300 hours to Saturday 1120 hours;
b) Saturday 1100 hours to Saturday 2320 hours;
c) Saturday 2300 hours to Sunday 1120 hours;
d) Sunday 1100 hours to Sunday 2320 hours.

Nursing Facility Units 2, 3, 4, 5, 6 hours are from
a) Saturday 0800 to 2020 hours
b) Sunday 0800 to 2020 hours

(B) Week/Day Shift
Staff RN Guidelines

RN's work Unit 8
a) Days - Monday-Friday 0700 to 1520 hours
b) P.M.'s - Monday-Friday 1500 to 2320 hours
c) Nights - Sunday-Thursday 2300 to 0720 hours

Units 2, 3, 4, 5, 6
a) Days - .8 until 1/1/89
Monday, Tuesday, Wednesday, Friday - 0700 to 1520 hours

After 1/1/89
Monday-Friday, 0700 to 1520 hours
P.M.'s - 1500 to 2320 hours

2. Salary is based on RN's current rate of pay.

3. Shift differential for PM's and nights will be in effect for hours actually worked on those shifts. (Example: RN that works 1100 hours to 2320 hours will be paid 8-hour PM shift differential.)

4. Upon completion of working a 24/40 weekend, the following procedure will be in effect:

a) If an additional 16 hours per pay period is worked, it would be paid at straight time.

b) Additional hours beyond the 16 hours per pay period would be considered overtime. Scheduling and awarding of hours would be according to seniority.

5. Except for 4(b) above, there shall be no pyramiding of overtime hours under this agreement.

6. Seventy minutes of break time is granted for each 12 hour work day of which fifty minutes are paid breaks and 20 minutes are unpaid.

7. Inservices, meetings, etc. will be paid at RN's base hourly rate (unless over 8 hours per day or 80 hours per pay period, or unless 24/40 RN has worked an additional 16 hours in the pay period).

8. Replacement for 24/40 RN's:

a) RN would earn 8 hours base hourly rate and 4 hours overtime (RN would not be eligible for 20 hours pay). Differential pay remains the same as in contract.

9. Trading:

a) 24/40 RN's may trade shifts with each other and after approval. (Trade slip made out and submitted).

b) 24/40 RN's may trade with other staff RN's working eight hour shifts with approval. (Trade slip made out and submitted).

c) Trades between 24/40 RN's and 8-hour shift RN's could result in a loss of 4 to 12 hours of pay, dependent on the trade involved. (Example: 8-hour shift RN would work 12 hours weekend shift, 24/40 RN could work one or two 8-hour shifts for the trade, dependent on personal preference).

d) No loss of benefits for trades.

e) If trade involves the full week, the RN covering for the 24/40 RN would be paid on the basis of 24/40.

10. Insurance, etc. will be calculated on 80 hours per pay period.

EXHIBIT 108

11. Vacation:

a) Each 12-hour shift would count as 20-hour vacation (i.e. full weekend vacation would be 40-hours vacation time -- would have two weeks off).

b) All requests would be handled as per scheduling guidelines and per 1901-E contract in effect at present.

12. Holiday Pay: All holiday hours worked will be at time and one half.

13. Personal Holidays:

a) Three (3) personal holidays per year would be added to the vacation schedule.

b) One paid Registered Nurses Day to be taken on a date which is mutually agreed upon between the employee and the supervisor. Part-time employees shall receive the Registered Nurses Day on a pro-rata basis. These hours would be added to the vacation schedule.

14. Sick Time:

a) Each 12-hour shift would count as 20 hours sick time.

b) If a 24/40 employee becomes ill or leaves early on a weekend, he/she will be paid 1.66 hours of pay for each hour worked.

15. Postings:

a) Any vacancy including 24/40 would be filled according to contract.

b) Guidelines for 24/40 RN's would be posted along with job description and notice of testing.

16. Leaves of Absence would be handled according to contract.

17. Bereavement Leaves would be handled according to contract.

In the case of the death of a member of the immediate family of a full-time employee on a 24/40 posting, the employee will be granted an excused leave to attend the funeral of up to two (2) calendar days starting on the day of death or the day following death through the next day after internment. If, during this leave, the employee has scheduled 24/40 posted work days, the employee will be paid for those work days at a rate of 20 hours per day to a maximum of 40 hours pay.

EXHIBIT 109

The employee will not be paid for any of the two days which are not posted scheduled 24/40 days. The immediate family is defined as: husband, wife, children, grandchildren, parents, brother, sister, mother-in-law, father-in-law, step parent.

In the case of a death of a grandparent, brother-in-law, sister-in-law, son-in-law, daughter-in-law, aunt or uncle of the employee or of the employee's spouse, the full-time 24/40 employee shall be granted one (1) day at a rate of 20 hours pay to attend the funeral provided such day is a scheduled posted work day. If the funeral day is not a posted scheduled 24/40 work day, the employee will not be paid for this day.

In the event an employee is called upon to be a pallbearer, or to serve in a military funeral, one (1) day leave will be allowed: Sick leave at a rate of 20 hours pay, vacation at a rate of 20 hours pay, or loss of pay, at the discretion of the employee.

The contents of this Memorandum of Understanding supersedes the labor agreement; however, the labor agreement controls in all areas not specified in this Memorandum of Understanding.

This Memorandum of Understanding will remain in effect through December 31, 1993.

FOR THE COUNTY:		FOR THE UNION:	
11-1-93		10-21-93	
WAYNE E. PANKRATZ	DATE	PRESIDENT	DATE

XII-B

BROWN COUNTY MENTAL HEALTH CENTER

BENEFIT CLARIFICATION
REGISTERED NURSES

The following is a clarification of the benefits for members of Local 1901-E:

1. Benefits shall be accrued according to actual hours paid. This shall include hours worked of both the posting(s) and extra time.

2. Benefits shall include:

   Insurance - Hospital, Life, and Dental
   Holidays
   Sick Leave
   Vacation Leave
   Seniority
   Retirement Credit
   Longevity

3. A benefit percentage shall be calculated from the paid hours of the prior six months to determine the percentage of benefits for the next six-month period. The percentage shall remain constant during the next six-month period provided that the part-time employee continues to hold a posting(s) of less than 80 hours per payroll period. Should a part-time employee post into a full-time posting, benefits shall be awarded according to the full-time benefit schedule as outlined in the labor contract of 1901-E.

4. All actual hours paid shall be reviewed in January and July of each year. Total hours paid for the period shall be compared to the hours of a full-time position in order to determine the percentage of maximum benefit due. Example:

   A part-time RN is paid for a total of 930 hours for 13 payroll periods between January 1, 1988 and June 30, 1988. A full-time position would have been paid for 1040 hours; therefore, 930 hours divided by 1040 hours equals 89 percent.

   This is the percentage of benefits to be awarded for the next six month.

5. The maximum paid hours shall be equal to 2080 hours/annual and/or 1040 hours/semiannual.

6. An adjustment to accrued vacation, sick leave, holidays, seniority, retirement credit, and longevity benefits shall be made effective as of July 26, 1988 (agreement date). The review period shall be January 1, 1988 through June 30, 1988.

7. An adjustment to insurance premium shall be effective as of July 26, 1988 (agreement date). Eligibility of insurance coverage shall continue provided that the part-time employee works an average of 16 hours per week or 40 percent.

8. The review periods for each year shall be:

   January 1 to June 30 for July 1 to December 31.
   July 1 to December 31 for January 1 to June 30.

9. A percentage of benefits shall not be reduced below the benefits normally afforded to a regular posting upon return from nonpaid time off. An adjustment shall be made when the RN is off 50 percent or more of the review period. Example:

   A RN holds a two-day-per-week posting, plus one extra day per week. At that time, benefits are accrued at a rate of 60 percent.

   During the next six months, he/she is on a nonpaid medical leave. While on a nonpaid leave, no accrual of sick, vacation, holiday, seniority, retirement credit, or longevity would be provided. The employee could select to continue on the insurance program provided he/she pays the total cost of the premium.

   When this RN returns to work, benefits shall be awarded according to posted hours (16 hours/week = 40 percent). This percent shall continue until the RN works a minimum of six months. At that time an adjustment will be made to evaluate the six months since return from nonpaid time. Such percentage of benefit shall remain in place from the six-month date until the next regularly scheduled review date.

   This RN will then will be placed into the next scheduled review date. The hours paid from the prior review and the regular review period shall than be prorated according to the percent of time since the last review.

10. Probationary RN shall receive benefits according to his/her posted schedule (and shall remain in effect) until six months from onset of employment. At that time, a review shall be determined for the total six-month period. This RN will then be placed into the next scheduled review date. (Total hours paid shall be prorated according to the percent of time since the last review.) Example:

    A RN is hired for two days per week as of 5/1/88. Probation shall be completed as of 7/30/88. On 11/01/88, a manual review shall be done to determine the percentage of benefits since the onset of employment. Total hours paid were 620, which is equal to 59 percent of full time.

    The RN is then scheduled to review for all hours paid between 11/01/88 and January 1, 1988 (9 weeks). During this time, the RN worked 300 hours. A full-time position would have worked 360 hours. The benefit percentage would be to 83 percent for the next six-month period.

11. Adjustments to benefit percentage shall always be for future six months except for the adjustment due since the agreement was signed on July 26, 1988.

    Any such adjustment for benefits since July 26, 1988 that results from this clarification shall be made by December 2, 1988.

Signed:

Gerald Lang 11/2/88
Gerald Lang Date
Personnel Director

James Miller 11/2/88
James Miller Date
Business Agent, Local 1901-E

NTM/MAH/BML/mak
10/31/88

Appendix B

EXHIBIT 6

BROWN COUNTY MENTAL HEALTH CENTER

REGISTERED NURSES UNION, AFSCME, LOCAL 1901-E

1. ARTICLE 7, WORK DAY - WORK WEEK - INCLEMENT WEATHER. Add the following:

The Memoranda of Understanding attached to the 1993 Contract as Pages 19 through 27 (with the exception of Section III on Page 22) shall be continued only until the eight (8) persons on the 24/40 arrangement have the opportunity for a normal work schedule equivalent to their work schedule prior to the 24/40 schedule through attrition in the unit.

To assure income continuation for the eight (8) persons currently on 24/40, the County will assure the availability of full-time work hours for each of the eight (8) persons who had full-time work immediately prior to the 24/40 schedule and equivalent part-time work for each of the eight (8) persons who had part-time work immediately prior to the 24/40 schedule.

As vacancies occur within the total unit, the number of the 24/40 positions will be decreased and will be replaced with full-time and part-time positions under a regular schedule as deemed necessary. The normal posting process will be used to fill the regular schedule positions. Employees on 24/40 who had full-time work immediately prior to the 24/40 schedule will lose rights to full-time work if they have the seniority to successfully post for any full-time vacancy and do not exercise that option. Employees on the 24/40 schedule who had part-time work immediately prior to the 24/40 schedule will lose rights to the same amount of part-time hours previously worked if they have seniority to successfully post for an equivalent part-time position and do not exercise the option.