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BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a  
Dispute Between the

**ORCHARD MANOR EMPLOYEES UNION  
LOCAL 3377, AFSCME, AFL-CIO**

WERC Case 67  
No. 54706  
INT/ARB 8069  
Dec. No. 29279-A

and  
**GRANT COUNTY**

Appearances:

Mr. David B. White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Dr. Suite B, Madison, WI., for the Union. Mr. Jon Anderson and Ms. Kim Gasser of Godfrey & Kahn, S.C., 131 West Wilson St., Madison, WI., for the Employer.

Sworn Testimony was received from:

Mr. Frank Matel, Personnel Director, Grant County  
Mr. Steve Sterzinger, Director of Orchard Manor Nursing Home, Grant County  
Ms. Donna Haines, Finance Director, Orchard Manor Nursing Home, Grant County

**Background:**

On September 25, 1996, representatives of Grant County (hereinafter referred to as the "County" or the "Employer") and representatives of Orchard Manor Employees Union Local 3377, AFSCME, AFL-CIO (hereinafter referred to as the "Union", or the "Employees") exchanged proposals on issues to be included in a new agreement to succeed the 1995-96 Collective Bargaining Agreement between the parties. The Union represents full-time and regular part-time nursing assistants, dietary, housekeeping, laundry, maintenance, activity, and unit coordinators employed by the County's Orchard Manor Nursing Home, excluding supervisory, managerial, confidential, nursing, professional, administrative, and several other employees. The Parties met on two other occasions and failed to reach an agreement. On December 9, 1996, the County filed a petition with the Wisconsin Employment Relations Commission for final and binding interest arbitration pursuant to Section 111.70(4)(cm)6 Wis. Stats. Investigator Dennis P. McGilligan, a member of the WERC staff, conducted an investigation on March 18, 1997 and then advised the Commission that the parties were deadlocked in their negotiations. The parties submitted final offers to the Commission by December 11, 1997. On January 7, 1998 the Commission certified the parties' final offers and directed them to select an impartial arbitrator. The Undersigned, Richard Tyson, was selected and appointed on February 19, 1998. The Arbitrator conducted a hearing on the matter on June 24, 1998 in the City of Lancaster in Grant County, Wisconsin. The parties had a full opportunity to present exhibits and testimony and to

outline their arguments in this dispute. They agreed to a schedule for submitting briefs and reply briefs, the last of which was received by the Arbitrator on October 17, 1998

### **The Issue(s)**

The parties are agreed on all but two items for inclusion in a successor agreement for 1997-98; the first item is the wages to be paid for 1997 and 1998. The County proposes to increase wages 3% across the board on Jan. 5, 1997 and on Dec. 28, 1997. The Union proposes split 2%/2% increases on January 1 and July 1 of each year. The second item involves the family plan health insurance premium for married couples when both are employed by the county. The County notified the Union that effective Jan. 1, 1997 it would abandon a practice of paying 100% of the family premium in such cases; subsequently employees would either receive 100% single coverage or have to pay 15% for family coverage as stated in the Labor Agreement. The predecessor agreement makes no provision for the County to pay 100% of family coverage when spouses are both employed by the County but has had a long standing practice of doing so. The Union proposes language to institute the former practice.

### **The Statutory Criteria**

The parties have directed their evidence and arguments to the statutory criteria of Sec. 111.70 (7) Wis. Stats which directs the Arbitrator to consider and give weight to certain factors when making his decision. Those factors are.

7. 'Factor given greatest weight' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body, or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.
7. g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors under subd. 7r.
7. r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give weight to the following factors:
  - a. The lawful authority of the 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 settlement.**
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services.**
- e. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.**
- f. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees generally 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 employees, 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.**

## Arguments of the Parties

### The Union

The Union urges the Arbitrator to “reject out-of-hand” any suggestion by the County that there is a legal limitation on its ability to meet the Union’s offer.<sup>1</sup> The County has not demonstrated that the state legislature’s tax freeze impinges on its ability to finance the modest difference (which has been erroneously calculated by the Employer as assuming 4% increases on Jan. 1 under the Union’s offer and by misstating the number of employees) between the parties’ offers. Moreover, the County has the ability to enact a .5% sales tax which the Union estimates could generate nearly \$3 million which is many times the cost-differential. Similarly the “greater-weight factor”, local economic conditions, does not favor the Employer’s offer. Following the line of reasoning espoused by Arbitrator Dichter, the Union argues that the only relevant application would be if Grant County were unique vis a vis the comparables in that its economic situation demonstrably rendered it less capable of providing similar offers.<sup>2</sup>

This raises the issue of which employers constitute a set of comparable employers. A set has already been established by Arbitrators Vernon and Krinsky.<sup>3</sup> Those comparables include Columbia County, Crawford County, the Unified Board of Grant and Iowa Counties, Green County, Iowa County, LaCrosse County, the City of Lancaster, Richland County, Sauk County, and Vernon County. Arbitrator Vernon considered the standard size, geographic, and economic factors in his determination. Arbitrator Krinsky employed the same comparables, seeing merit to continue use of an established comparison group, absent a compelling reason for change. The Union calls the attention of the Undersigned to arbitral opinion on the preference for adopting the same group on grounds of “predictability”, “rationality”, “stability”, and “consistency.”<sup>4</sup> For purposes of this unit, however, not all of the comparables are included in the Union’s comparisons of wages. The City of Lancaster and the Unified Board do not have similar positions. Crawford County does not have a county nursing home, while Iowa County’s Bloomfield Manor employees are unrepresented.

The County proposes to compare Grant County with counties which are significantly smaller and

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<sup>1</sup> Union Brief, p. 4.

<sup>2</sup> Vernon County ( Highway Department), No. 49864, Feb. 11, 1997

<sup>3</sup> Grant County Professional Employees Union, Dec. No. 22428-A, and 24312-A respectively.

<sup>4</sup> Arbitrator Rothstein in School District of Marathon, Dec. No. 19898-A, Dec. 1983, Arbitrator Grenig in Janesville School District, Dec. No. 22828-A, April, 1986, Arbitrator Mueller in Cuba City Board of Education, Dec. No. 22267-A, July, 1985, Arbitrator Imes in Tomah School District, Dec. No. 22247-A, July, 1985, and others.

poorer, though proximate, while the Union's set has an average population "only 12,405" smaller than Grant County and is otherwise similar.<sup>5</sup> The County contends that its comparables are similar in income, but uses Wisconsin Adjusted Gross Income data. The WAGI data has numerous difficulties such that even the Wisconsin Department of Revenue cautions about using the data for measuring a "municipality's well-being."<sup>6</sup> Per capita personal income data is better, and shows that Grant County is a leader in the Employer's pool, and is in the middle of the Union's. The Employer's division of the pools for comparing Equalized Valuation similarly tries to distort the facts, but when the Union's pool is averaged, Grant County's equalized valuation is quite similar. The Employer is seemingly fixed on proximity as the determining factor in comparability. Arbitrators consistently weigh other considerations as well, and do not always consider contiguity as meaning proximity. Counties are comparable if they are contiguous and similar, but not if they do not bear any resemblance to each other

The County contends that the Union's pool is advanced because it was used as a pool for a dispute involving professionals. This is not the case; rather, the pool is used because the employers are reasonably proximate and are similar in terms of income and population. The pool is usefully consistent for all bargaining groups, and has always been used by the parties. It was used by Arbitrator Vernon without any reference to a labor market concept. Often the same set of comparables is used for professionals and non-professionals and when it is not, this generally involves school districts where the athletic conference grouping is used for teachers.

Grant County is not unique among these comparables in terms of economic conditions. Its per capita income has grown about average from 1994 to 1996; during the 1989-95 period, it has grown almost \$4000, slightly less than the other nine comparables. Were economic conditions to be so different, the City of Lancaster would not have given its employees 3-1/2%/ 3-1/2% wage increases in 1997-98. Clearly the "greater weight" factor does not favor the Employer's offer of an unfairly low settlement, nor does the "interest and welfare" factor. The County has used old, selective, and statewide data to make its case; however, the per capita Personal Income, average annual wage, equalized valuation, and unemployment rate data in context do not show Grant County to be significantly worse off than the comparables.<sup>7</sup> Consideration of the CPI and private sector wages are already reflected in the settlement pattern as many arbitrators

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<sup>5</sup>Union Brief, p. 14.

<sup>6</sup>Employer Exhibit 25, as noted in Union Reply Brief, p. 20.

<sup>7</sup>Union Brief, p. 18.

have reasoned, and this pattern favors the Union's offer.

Grant County is also not alone in having a nursing home which requires a county subsidy. Virtually every county home does as well. So does every county government department. The County is not unable to pay Orchard Manor employees fairly; it simply wants to pay less.<sup>8</sup>

The Union's offer more closely follows the pattern of wage increases of the comparables. Those increases range from 2.85% to 8.5% in 1997, and those settled for 1998 range from 3% to 4%, averaging 4% and 3.4% respectively. The average lift is 8.4% over the two years, or somewhat higher than the 8.2% offer of the Union, and substantially greater than the 6.1% included in the Employer's offer. The Employer would increase wages of the Nursing Assistant (the predominant employment class) \$.24 each year while the average comparables' Nursing Assistant wages would increase \$.35 in 1997 and \$.30 in 1998. The Union's offer would raise wages \$.32 in 1997 and \$.33 in 1998. The Employer cites the recent Kessler award as indicating the reasonableness of its offer. But on the matter of wage settlements, he found the Union's offer preferred over the County's (2%/2% vs 3% each year).<sup>9</sup> The Employer's construction of the average increase is flawed. It uses a 2.25% increases for Green County when the actual increase was 8.5% in 1997. It includes Iowa County whose employees are not represented. It assumes that the 2% wage increase for Vernon County for half the year will be followed by a wage-freeze. The pattern is clear; only wage leading counties had 3% increases while those at the bottom received more.<sup>10</sup>

Benchmark analysis shows that Orchard Manor employees are paid considerably less than their counterparts employed by comparable employers. In 1996 Nursing Assistants began at \$6.87/hr. reaching a maximum wage of \$7.92. The average starting wage of the comparables was \$7.32 while the maximum was \$8.36. The Dietary Aide's wage at Orchard Manor also ranked 8<sup>th</sup> of nine at the start rate and was last at the maximum rate. The Activity Aide's wage at Orchard Manor ranked 6<sup>th</sup> of nine at the start rate and was next to last at the maximum rate. The Housekeeping Aide's wage at Orchard Manor ranked 7<sup>th</sup> of nine at the start rate and was next to last at the maximum rate. The Laundry Aide's wage at Orchard Manor ranked 8<sup>th</sup> of nine at the start rate and had the lowest maximum rate. Orchard Manor's employees were paid from \$.42-

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<sup>8</sup>Union Reply Brief, p. 19.

<sup>9</sup>Union Reply Brief, p. 3.

<sup>10</sup>Union Reply Brief, p. 29.

.52 less than average at the start, and from \$.41-.73 less at the maximum rate. The Employer's offer would widen the wage gap even further in 1997 and 1998. Under both parties' offers most of the Orchard Manor's employees' classifications would continue to rank near the bottom in 1997, and would fall for the Housekeeping Aide. Only three (3) of the comparables are settled for 1998; however, Richland County is among those settled. Its Nursing Assistants were paid even less than Grant County in 1996, yet they would surpass Grant County under the Employer's offer!

The Arbitrator is urged not to compare wages of Orchard Manor employees with the private sector nursing homes employees. These wages are unilaterally determined and not reflective of the forces involved in the wage-setting process of collective bargaining.<sup>11</sup> Moreover, the facilities are different; Orchard Manor is a Skilled Nursing Facility and includes an Intermediate Care Facility for the Mentally Retarded (ICF/MR). In the SNF unit there are 16 beds in a "secured" (Alzheimer's) unit. Orchard Manor is substantially bigger and cares for a different population of patients. Furthermore, there is no need to again consider these private sector homes since wages and employment conditions have already been "factored in" the public sector comparables' settlements.<sup>12</sup>

The Health insurance proposal of the Union is also to be favored; it is only proposing to continue a long-standing practice. It is the Employer which is proposing a change in the status quo and it is the Employer which has shown neither a compelling need for the change nor has it provided an adequate quid pro quo. Quoting Arbitrator Imes, such a proposal to eliminate an existing benefit, albeit not one which was negotiated, faces the same standard for change.<sup>13</sup> The County conspicuously does not quote Arbitrator Kessler in his recent Grant County decision since he favored the Union's offer on this matter and indicated that the issue should have been bargained; it was a clear past practice. The Union is not seeking a better benefit than other employees (as was the issue in cases cited by the Employer), rather it seeks to keep a benefit it has enjoyed for

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<sup>11</sup>Union Reply Brief, pp. 11-16. The Union quotes opinions from Arbitrator Vernon in Edgerton School District (Dec. No. 25933-A) and Lake Geneva Joint School District No. 1 (Dec. No. 26826-A), Arbitrator Kerkman, in Washburn School District (Dec. No. 24278-A), Arbitrator Kessler, in Webster School District (Dec. No. 23333-A), Arbitrator Rice, in DeSoto School District (Dec. No. 16814-A), and others.

<sup>12</sup>Union Reply Brief, pp. 17-18.

<sup>13</sup>School District of Wausau, Dec. No. 18189-A, April, 1982. The Union adds that Arbitrators Kerkman and Kessler reached similar conclusions in City of Kenosha (Dec. No. 16159-A, Aug, 1978) and Sauk County (Dec. No. 26793-A, Oct. 1991) and Juneau County (Dec. No. 21418-C) Oct. 1984).

many years. Having failed the three-pronged test enunciated by Arbitrator Malamud<sup>14</sup>, the County's offer is to be rejected.

In sum, the "greatest" and "greater weight" factors do not favor either parties' offers. The *intraindustry comparisons* very clearly favor the Union's offer, while the Union's offer for health insurance simply maintains the status quo.

### The Employer

The Union's offer which increases wages by over 8% over two years is clearly excessive, particularly in light of the 6% increase received by Courthouse employees and the very small increases in the cost of living. The County's more modest proposal is more consistent with these and with the external settlement pattern and is more sensitive to the interest and welfare of the public and local economic conditions. Additionally, the Union seeks to reinstate an outmoded practice by inserting contract language which would result in an internal fringe benefit inequity.

Arbitrator Kessler recently awarded for the County in its dispute with the Courthouse Employees, stating that "(t)he County's offer more accurately reflects the increases in the cost of living and the local economic factors".<sup>15</sup> The County's offer was the same as is offered Orchard Manor Employees; the facts and issues were similar. Internal consistency dictates an award in favor of the County in the instant case.

The County's offer reflects "local economic reality" more than does the Union's offer.<sup>16</sup> Grant County's per capita income grew only 60% from 1982 to 1992 while the statewide average was 72%-- continuing a pattern from the prior 15 years. The Union in its Brief appears oblivious to income data presented by the County, and the evidence that Grant County is rated as one of the poorest counties in valuation.<sup>17</sup> It is a fact recognized by Arbitrator Kessler in his recent award. The County's property valuation has lagged most of the rest of the state. In 1995 its increases ranked 68th of the State's 72 counties. The 1996 increases were 71<sup>st</sup>. It is classified as one of

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<sup>14</sup>D.C. Everest Area School District, Dec. No. 24678-A, Feb. 1988.

<sup>15</sup>Grant County (Courthouse Employees), Dec. No. 54705, June, 1988.

<sup>16</sup>Employer Brief, p. 5.

<sup>17</sup>Employer Reply Brief, p. 4.



the "poorest" is per capita land valuation (among the lowest 5 in the state). Valuation increases in the adjacent counties were much greater during the past 3 years. The CPI has been running at a 1.2% rate during the past 5 months of 1998. It has declined from a 3% rate in early 1997 to only 1.5% at the end. The average annual wage of Grant County workers is only 72.9% of the state average, and is next to last among the comparables. The unemployment rate in the County has been higher than elsewhere, though it has moderated recently. Grant County's weaker economy warrants a more moderate economic settlement.

Orchard Manor's wages are reasonable. There are several private nursing homes in the area. Under the Employer's offer, Orchard Manor's Nurses Aides would earn \$.49 more than the average of these at the start, and \$.12 at the maximum rate. As a result, Orchard Manor has very little turnover, and has no difficulty recruiting within the County, even at 1996 wage rates. Fringe benefits are also significantly higher; besides the sizable employer contribution (100% single, 85% family plan), regular employees are eligible if they work 20 or more hours per week. The private homes in most cases have higher eligibility thresholds and lower employer contribution rates

The Employer asserts that the current state of the Orchard Manor's budget calls for fiscal restraint. The Administrator, Mr. Steven Sterzinger testified that the home ran a deficit in 1997, requiring a \$184,000 subsidy. This will increase in 1998. The facility includes 100 geriatric beds and 50 beds for the developmentally disabled (an "ICF/MR" unit) making it more costly than more standard nursing homes. The nearest ICF/MR unit is in LaCrosse. Private pay patients are only 9.3% of residents, compared to 31% statewide. Eighty-seven percent (87%) are Medicaid patients whose reimbursement is substantially below costs. Other low-cost region facilities had only 75% Medicaid patients. Medicaid has designated Orchard Manor a "low-cost region facility" resulting in a ISN maximum of \$61.99/day vs. \$73.43, or 18% more, for designated high-cost regions. Most of the surrounding nursing facilities are in the latter category and therefore can better afford higher wages and fringe benefits as well as other expenditures. Orchard Manor's fringe benefit ratio is 45, or more than twice the median of other low cost facilities.<sup>18</sup> The mean wage for Orchard Manor was \$8.09 vs. a median of \$7.62 for other low-cost facilities. It has a higher cost, but its revenues are more highly dependent on the State's reimbursement to cover those costs. The State's 1996 per person daily allowance for operating expenses was \$95.10 vs \$101.67 in expenses, which means that over 87% of the patients were cared for at a cost which was \$6.57 greater than Medicaid's payments, for an annual "loss" of

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<sup>18</sup>Employer Brief, p. 14.

\$314,145 from Medicaid. The Union either does not understand the financial constraints presented by the County or it does not have an ability to refute this evidence.<sup>19</sup>

The County argues that its proposed set of external comparables is more appropriate. It uses the contiguous counties (except Crawford County which does not have a county nursing home) and two counties (Green and Vernon) "in the secondary ring of contiguity".<sup>20</sup> These are geographically proximate and in the local labor market. The Union's list includes those which are too distant and otherwise not similar to Grant County. The Union's list includes employers (Sauk, LaCrosse, and Columbia Counties) with much higher valuation and income levels, making comparisons "tenuous" because of economic dissimilarities.<sup>21</sup> Proximity is more important consideration because it reflects the local labor market and costs of living. The comparable pool constructed by Arbitrator Vernon may apply to professional employees as they may be more likely to travel some distance in seeking employment. He needed to be able to craft "a grouping of external comparable employers who would be best to compare with in terms of wages and working conditions."<sup>22</sup> There were no other area employees similarly or identically employed. On the other hand, Arbitrator Kessler's recent award acknowledges what other arbitrators have said, that non-professionals may have different labor markets and therefore comparables may vary according to the type of employee unit. Professionals have more specialized skills and are not easily transferable, requiring a more distant search. Dietary Aides and Nursing Assistants are unlikely to move to LaCrosse for employment, while Grant County vacancies for such positions may readily be filled locally.

When comparing the parties' offers with wages among the appropriate comparables, the County's offer is more reasonable. Most of the unit employees are nursing assistants. The County's offer maintains the base year wage relation between Grant County the five comparables (Green, Iowa, Lafayette, Richland, and Vernon Counties) and over the two year period.<sup>23</sup>

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<sup>19</sup>Employer Reply Brief, p. 6.

<sup>20</sup>Employer Brief, p. 17.

<sup>21</sup>Employer Reply Brief, p. 3.

<sup>22</sup>Employer Reply Brief, p. 2.

<sup>23</sup>Employer Brief, p. 27. This assertion is puzzling to the Undersigned since the Employer's data clearly shows that at the start rate, the County's offer would increase the differential between Grant County and the average of these 5 comparables by \$.06 in 1997 and by \$.30 in

The pattern of settlements among the Employer's comparables also shows that the Employer's offer is more reasonable. The average actual wage increase was 2.93% for 1997, with a lift of 3.33%. For 1998, wages rose 2.75% while the lift averaged 3% for those settled. The Union's offer is for a 4% lift each year and is "without justification."<sup>24</sup>

Even if the Union's set of comparables were properly utilized, the evidence shows that the County's offer is closer to the pattern.<sup>25</sup> The Union excludes Iowa County in its assessment of mean wage increases because its Bloomfield Manor employees are unrepresented, yet deems it a "comparable" and has used the County recently for the case before Arbitrator Kessler involving courthouse employees. Certainly when making comparisons on language issues it may be reasonable to exclude non-represented employees, but in comparing wage rates, non-union employees are not routinely excluded from comparisons. The Union includes an 8.5% increase for Green County for 1997 when in fact only a 2.25% increase occurred, suggesting that the schedule changes provided the difference. The Employer speculates that the 8.5% figure was derived (inappropriately) by comparing the 10-year maximum (step) rate of \$8.90 for 1996 with the new 25-year maximum rate of \$9.66 in 1997 ( $9.66/8.90 = 1.085$ ). In fact, the 10-year step in 1997 is just 2.25% higher than the 1996 rate.<sup>26</sup> Finally, the Union acknowledges that the City of Lancaster is not really useful for comparisons since it doesn't employ similar employees. When appropriately revised, the Union's comparables show an average lift of 3.3% for 1997 and a 3% lift in 1998. Similarly, the average cents per hour increases were \$.29 and \$.27, or \$.56 over the

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1998. The Union's offer would decrease the differential by \$.01 in 1997 and increase it by \$.15 in 1998. The Employer suggests that at the minimum, the ranking of Grant County employees will improve under the Union's offer, but this assumes that Vernon County's wages will increase less than 1.8% for the second half of 1998. At the maximum, Grant County Nurses Aides were also paid less than average in 1996 (by \$.42); the differential would rise to \$.59 under the County's offer and to \$.51 under the Union's offer in 1997 and the differential would rise to \$.73 under the County's offer in 1998 and to \$.56 under the Union's offer. Assuming that Lafayette employees receive more than 1.4% in 1998, the Employer's offer would reduce Grant County's rank to last place (of 6) at the maximum, though if Lafayette employees receive less than 3.5%, the Union's offer would "catapult" them to 4<sup>th</sup> rank (but this would be a near "dead heat" among 3 counties for last place).

<sup>24</sup>The Employer includes only the 2.25% increase for Green County for 1997 and excludes increases due to a salary structure change. Excluding Green County, the average actual increase would be 3.13% and the lift, 3.63%. For 1998, the Employer includes only the 2% increase for Vernon County during the first half of the year, and assumes no second half increase. Among the "settled" for 1998, the average increases are 3% and the lift, 3.33%.

<sup>25</sup>Employer Reply Brief, pp. 7-12.

<sup>26</sup>Employer Reply Brief, p. 9.

period as compared to the \$.48 and \$.65 offered by the Employer and Union respectively.

Additionally, the Union conveniently neglects to include longevity pay in comparisons of wages Orchard Manor employees earn up to \$.30/hr. (at 25 years) while only one other county (Vernon) provides longevity pay. The Employer estimated the average eligible employee receives a \$.10/hr. payout “catapult(ing) Grant County wages further above the comparable average”.<sup>27</sup>

Finally, the Union’s offer includes language on health care payments for married couples both of whom are employed by the County. This represents a substantial deviation from the status quo. The Employer calls the arbitrator’s attention to the accepted requirements for such a change, and indicates that the Union has neither demonstrated a need for the changes it proposed nor has the Union, in its excessive wage proposals, offered an adequate quid pro quo. As a substitute for a negotiated settlement, arbitrators require that the proponent of change shoulder the burden of showing a need-- and recognize that nothing is free. The prior practice of the County paying 100% of the family health premium occurred by unilateral action at a time when a family plan was less expensive than two single premiums, and likely without County Board approval. Subsequently, premium rates have changed. Only one unit employee is affected. The Employer’s action is based on equity considerations; now all employees will be treated alike. Their premiums for single health coverage will be fully paid, or the County will pay 85% of the family plan. Other employee units receive the same coverage; the Sheriff’s (Teamsters) unit did not object to the Employer changing this provision. The Courthouse unit will also be treated the same way. Arbitrators tend to recognize internal fringe benefit consistency. Equity requires that the County’s employees be treated similarly.

The County distinguishes a unilateral practice which is an act of managerial discretion from a practice based on mutual agreement, as did Arbitrator Shulman in Ford Motor Co 19 LA 237.<sup>28</sup> The former practice may be changed by the Employer at his discretion with notice to the Union, though the latter is subject to mutual agreement. The pricing of health insurance in the past may have warranted that the Employer pay for one family rather than two individuals. However, the language of the contract is and has always been that the Employer would pay 100% of the single- or 85% of a family plan. The Union’s reference to the Wausau decision does not apply since the contract was silent on the matter in dispute, while both parties proposed changes. The City of

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<sup>27</sup>Employer Brief, p. 29.

<sup>28</sup>Employer Reply Brief, p. 13.

Kenosha decision by Arbitrator Kerkman involved clarification of an existing practice to which the Union did not object, while his Sauk County decision involved codification of verbal understandings.<sup>29</sup> Arbitrator Kessler's Juneau County decision involved new language for current practice for which the Employer had no counterproposal.<sup>30</sup> A relevant case would be City of Appleton (Firefighters) wherein Arbitrator Hill was confronted with nearly the same situation as the instant case: the Union proposed language defining normal duty hours conforming to past practice while the Employer notified the Union that it terminated the practice in favor of having the option of making assignments.<sup>31</sup> The Union's proposal was taken by the Arbitrator to indicate that the practice was terminated.

In sum, the interests and welfare of the public favors an award in favor of the County, given its economic situation as well as the fiscal condition of Orchard Manor. The Kessler award indicates not only that it is reasonable, but also what constitutes the internal pattern of settlements. The County's comparables are more appropriate and show that its offer is to be preferred as does the Union's comparables when properly examined. Finally, the Union has failed to meet its burden for a change in the status quo regarding the health insurance issue.

## **Discussion and Opinion**

The Statute requires the Arbitrator to consider the aforementioned criteria in making an award. The criteria cited by the Parties as pertinent to this decision are the "greater weight" factor (g), external (d.), internal (e.), and private sector (f.) comparisons as well as interests and welfare of the public and the ability to afford the costs (c.), inflation (g.), overall compensation (h.) and other factors (j.) such as the status quo issue. Each of these is considered below as the outstanding issues of this dispute have been analyzed by the Arbitrator. First, the Arbitrator is confronted with the question of external comparability (d.), as outlined above, and all that this entails. The Arbitrator's analysis of wage levels and increases will then be discussed, followed by a discussion of internal comparability and other statutory criteria, including the "greater weight" factor, and the arguments of the parties.

### **Public sector comparables**

In applying the statutory criteria, Arbitrators (including the Undersigned) have been guided by

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<sup>29</sup>Dec. No. 16159-C and 26793-A, respectively.

<sup>30</sup>Dec. No. 21418-C

<sup>31</sup>Dec. No. 27489-A

considerations of geographic proximity, similarity of size and other characteristics of the employer, and similarity of jobs. Similarity of jobs is further based on level of responsibility, the nature of the services provided, and the extensiveness of training and/or education required. The parties have not been in arbitration before so comparables have not been established. However, other Grant County units (the Courthouse Employees, the Professional unit, and the Sheriff's Department) have had fairly recent arbitrated awards wherein sets of comparables were found. The parties have not provided evidence of the use of established comparables in their bargaining history. Neither of the parties have made arguments that there are dissimilarities of jobs of similarly titled employees in the public sector comparisons which they have made. There is some contention as to the applicability of comparisons between private and nursing home positions, though the basic nature of the work is similar.

The Union's list of comparables have been used for the Professional unit in at least three arbitration cases. It includes counties (particularly LaCrosse and Columbia) which are some distance from Grant County as well as being economically better off in terms of per capita property wealth and income (30% and 19% higher income, respectively). The Union's pool has an advantage of "averaging" closer to Grant County in population and income, though such a mix could also be achieved by selecting from among the state's entire 72 counties. The County's list includes counties which are adjacent or nearly so, but which are dissimilar in size.

Unfortunately (for these purposes!) Grant County is located in the southwestern corner of the state and is in a sense "missing" adjacent counties on two borders which might, as is more typical, include a county or two which would be more similar to Grant County. It is surrounded by small, agricultural counties. The County's pool would seem to have the advantage of including the likely relevant labor market area. This consideration was noted by Arbitrator Kessler when he concluded that he would use the contiguous counties of Crawford, Iowa, Lafayette, and Richland as comparables for his decision involving Courthouse employees. Arbitrator Kessler also concluded that Sauk County was similar in character to Grant County in that it had no single large population center, as is often the case, but rather had four communities in the 2-10,000 population range and includes some suburban commuters (to Madison in the case of Sauk County, and to Dubuque, in the case of Grant County). Moreover, the populations are numerically similar.

The Arbitrator is inclined to accept the use of the adjacent counties (Iowa, Lafayette, and Richland--Crawford County has no county nursing home) for purposes of this decision and would add Sauk, Green, and Vernon Counties for several reasons. First, the parties are agreed in the main about the contiguous counties. They both include Green and Vernon counties in their

comparisons, a practice which would be respected by the Undersigned. Second, Arbitrator Kessler's inclusion of Sauk County is reasonable as indicated above, and would add a county which is more "proximate" than most any other non-contiguous counties. Third, the pool is reasonable. Examination of population and income levels shows that the per capita income level

<u>County</u>	1996 <u>population</u>	1996 per capita <u>personal income</u>	1996 per capita <u>valuation</u>
Green	31,349	\$ 20,596	\$40,337
Iowa	21,323	17,374	42,141
Lafayette	16,062	15,730	35,544
Richland	17,574	16,445	27,599
Sauk	50,897	20,957	46,873
Vernon	<u>26,130</u>	<u>14,978</u>	<u>26,926</u>
ave	27,223	17,680	36,570
Grant	49,442	17,391	26,374

of these six is just slightly above Grant County. The inclusion of Green and Sauk counties increase the average population of the pool, though they exacerbate the per capita property valuation difference between the pool and Grant County. Unfortunately it is impossible to construct a good pool of similar employers without going to other areas of the state. But the Arbitrator is persuaded that in this case, the more proximate counties provide a good basis for determining which of the parties' offers is to be preferred. Employees in the bargaining unit are more likely to come from a variety of jobs, if not directly from schooling. Recruitment, according to the Director, has been largely through the local Shopper. The Arbitrator notes that Arbitrator Vernon had to search farther in order to find enough similarly employed professionals. In this case, the job categories are not so specialized as to have difficulty finding similarly employed workers. While it is true that none of the other above listed counties include ICF/MR units, it has not been demonstrated that Nursing-, Dietary-, or Laundry Aide functions would be different.

It is well understood in the economics literature that the variability of occupational wages tends to increase with the mean value of the wages, and that the whole point of job search and its extension is to "flush out" an offer at the better end of the wage (and "benefit") distribution. Of course there is a cost to prolonged search, which is the value of the job not accepted. Optimal search length and breadth therefore is a balancing of the additional loss of jobs "not taken" with the expectations of the possible increased value of the "jobs not found." Other things being equal, including the wage variability, one would be expected to search further and wider for a

10% better (than the mean) job when the expected value is \$18/hr. than if it were \$9/hr. The Arbitrator believes, moreover, that the data and literature shows that the coefficient of variation of wages about the mean ( $\sigma / \bar{x}$ ) typically tends to rise with the mean wage, implying that the width and length of search would rise more than proportionately with the wage, were it not for efficiencies in search costs. This would suggest that it may be reasonable to choose a more proximate set of employers in the case of non-professionals.

The Union indicates that Iowa County should be excluded for purposes of this dispute because its nursing home employees are unrepresented. The Union includes the county for comparisons in disputes involving other Grant County employees. As noted by the Employer, the Undersigned has included unrepresented employees in a pool under some circumstances, such as including Grant County in the Iowa County (Highway Department) dispute.<sup>32</sup> Here, as in Iowa County, the pool is enhanced demographically, the counties are contiguous, "other factors" are relevant, other employers are represented, and other employee units in the employ of the County are represented. As a consequence wages are "in line," suggesting that a "threat" or "roll-out" effect is present so that the employer's wage determination, while "unilateral", is not without significant union influence. Those employees' "free ride" is another issue.

Both parties direct the Arbitrator's attention to wage rate settlements of the external comparables and the percent increases of wages for both internal and external comparables as well as the ranking of wages. The Union also considers wage levels of external comparables while the County emphasizes wage levels of private nursing homes.

In general each are considered relevant and used by the Undersigned in analyzing wage disputes. He understands that there are recognized differences in general salary levels between employers which are deemed "comparable" based on bargaining history, costs-of-living, and other factors and understands that these are not to be significantly disturbed if the bargaining relationship between the parties is to be maintained. Hence, percent increase and ranking comparisons are also important considerations along with salary level comparisons.

The Arbitrator has constructed Table 1 below to show the wages for the Nursing Assistant, which both parties emphasize in their comparisons because nearly two-thirds (2/3) of the unit's employees are in the category. Presumably other positions are structured and paid appropriately from this benchmark

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<sup>32</sup>Dec No. 2760-8-A ( Jan. 1994).



**Table 1: Nursing Assistant wage**

	1996	1996	1997	1997	1998	1998
County	minimum	maximum	minimum	maximum	minimum	maximum
Green	\$7.58	\$8.90	\$7.75	\$9.66	\$7.98	\$9.95
Iowa	8.78	8.78	9.14	9.14	9.41	9.41
Lafayette	6.48	7.98	6.73	8.28	ns	ns
Richland	7.01	7.80	7.29	8.12	7.59	8.45
Sauk	7.95	8.52	8.25	8.84	ns	ns
Vernon	6.89	8.22	7.17	8.55	7.31*	8.72*
average	7.45	8.37	7.72	8.77	8.07*	9.13*
Grant	6.87	7.92				
(rank)	(6/7)	(6/7)				
(difference)	(.58)	(.45)				
County			7.08 (6/7)	8.16 (6/7)	7.29 (6/6)	8.40 (7/7*)
Offer			(.64)	(.61)	(.78*)	(.73*)
Union			7.15(6/7)	8.24 (6/7)	7.44(5/6*	8.57 (5/7*)
Offer			(.57)	(.53)	(.63)	(.56)

\* Vernon County shows a 2% increase for the first half of the year, the remainder is not settled.

Green County employees received a 2.25% ATB increase and experienced a schedule change which could have increased actual wages of 25-year employees up to 8.5%.

**Table 2: percent increase in wages for Grant and 6 comparable counties**

County	1996--97		1997-- 1998	
	increase	lift	increase	lift
Green	2.25%+*	2.25%*	3%	3%
Iowa	3%	3%	3%	3%
Lafayette	3.75	3.75	ns	ns
Richland	3% (2/2)	4	3 (2/2)	4
Sauk	3.75	3.75	ns	ns
Vernon	3% (2/2)	4	2? (2/?)	2? (2/?)
average (settled)	3.125+	3.46+	3%	3.33
County Offer	3%	3%	3%	3%
Union Offer	3%	4%	3%	4%

\* Vernon County shows a 2% increase for the first half of the year, the remainder is not settled. Green County employees received a 2.25% ATB increase and experienced a schedule change which could have increased actual wages of 25-year employees up to 8.5%. The Arbitrator recognizes that a "low" ATB increase probably "paid for" the 3% 17-year and 3% 25-year additional steps.

The settlement data indicate that under the Employer's offer the Nursing Assistant beginning wage will decline at least \$.20/hr compared to the average while under the Union's offer, it will decline a few cents. The rank will probably stay the same under the Employer's offer, and might rise to 6/7 under the Union's offer. The Nursing Assistant maximum wage will decline at least \$.28/hr compared to the average while under the Union's offer, it will decline by at least 11 cents. This conclusion is sensitive to how one would look at the 25-year maximum step for Green County. Grant County's maximum step is at more typical 3 years. Since the 25 year step is 6% more than the prior 10-year step, the comparables' average is about \$.10 higher as a result. The rank will probably stay the same under the Employer's offer, and might rise to 5/7 from 6/7 under the Union's offer.

Generally speaking, consideration of relative wage levels and the impact of the parties' offers on these would tend to favor the Union's offer.

The Arbitrator has constructed the above **Table 2** above in order to examine the pattern of wage settlements among the comparables. While nominally it would appear that the Employer's offer for 1997 is to be preferred because the lift is marginally closer to its offer, the additional two steps added to the Green County schedule may add enough to tip the average to more than 3.5%-- certainly the majority of settlements exceeded a 3.5% lift. For 1998, the Employer's offer appears to be closer to the average lift of those settled, though if the unsettled counties secure agreements for 1998 which are the same as 1997, the average would marginally favor the Union. It would appear that the pattern of actual wage settlements is very close to being between the parties' offers, perhaps slightly favoring the Employer's offer.

Comparisons of wage rate differences and wage settlements give somewhat mixed results. While the percentage increases in wages and lift of the comparables lie between the parties' offers, depending in part on interpretation of the comparable's data, the general wage level comparisons and the impact of the parties' offers on these would seem to favor the Union's offer.

The parties have addressed the issue of local economic conditions. Grant County's population is slowly growing, as is its income. Grant County average wages were 72.9% of the state average and 1% lower than the counties in the Employer's pool. Adding Sauk County would further support the case. Its per capita income is slightly lower than the average of the comparables. In 1990 and 1995 Grant County's per capita personal income was also about \$300 below average. The lowest income counties (Vernon, Lafayette, Richland) pays lower nursing wages, and the highest per capita income counties (Sauk, Green) pays above-average wages. County revenues do not come from income, however, (except through the aid formula), but from property taxes and other sources. Here, Grant County is at the bottom of pool in terms of per capita valuation. The Arbitrator has noted that while Grant County's per capita value has recently grown more rapidly than the state average, it is the fourth "poorest" in the state.<sup>33</sup> Its equalized value has grown about 21.5% between 1993 and 1997 while the state average growth was 31.7%. The average growth of the comparables was 29%, led by Sauk (43.8%), Green (31.2%), and Iowa (31.3%) counties which are adjacent to Dane County. Vernon and Lafayette, being more distant, grew significantly less (23.9% and 18.6%).<sup>34</sup>

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<sup>33</sup>Employer Exhibit 54.

<sup>34</sup>derived from Employer Exhibits 51-4

The Employer contends not only that the County's economic condition calls for a moderate increase in wages, but also that the economic condition of the nursing home requires it. The Undersigned notes that Orchard Manor is in the highest percentiles--including low labor cost regions--in its dependence on Medicaid for revenues. It, along with Vernon County, are designated as "low cost" regions while Green, Iowa, Lafayette, and Sauk County are designated as "high."<sup>35</sup> This results in lower reimbursement for care; for instance, the Department of Health and Family Services FY98 allowance for the direct care component of skilled nursing is \$56.49 pppd. in the high cost region, or almost 14% more than the \$49.69 rate for Grant County.<sup>36</sup> The WAHSA analysis also shows that Orchard Manor is in the higher percentiles for direct care and other costs. It is therefore in a certain bind, having higher costs and lower reimbursements. Other than closing the facility, the choice of options is difficult. Rates for private pay patients may be further increased or the County's subsidy will continue to grow if Medicaid payments do not rise sufficiently. The Arbitrator notes that the 1996 rate for Orchard Manor private pay patients had increased to more than Medicaid rates, and, while not "out of line" for county homes, it was considerably more than low labor region rates. At the same time, the private pay patient population declined to 9% from 13%.<sup>37</sup> This suggests that reliance on private pay patients to subsidize the Medicaid shortfall may have limits. Some limits may also exist as to the willingness and ability of the county to subsidize the nursing home, since running a county home is not a required function, and the county is considered "property poor".<sup>38</sup> Though the County has the ability to impose a .5% sales tax and can also raise tax rates so as to meet the costs of the Union's proposal, the aforementioned economic conditions would tend to weigh somewhat in favor of the County's offer.

Other factors to be considered would somewhat favor the Employer's offer. Other public employees of the County will generally be receiving 3% increases in 1997 and 1998. The Union calls the Arbitrator's attention to the City of Lancaster employees who will receive 3 5% increases, which of course is between the parties' offers. Factor (f.) is somewhat addressed. The Employer has provided wage data which show that Orchard Manor employees earn wages more than is earned by private sector nursing home employees in the area, and have less generous health care coverage. The Arbitrator notes that at the hearing the Union adduced testimony that these are not generally designated SNF and ICF/MR, and are not unionized. According to the Union factor (g.), cost-of-

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<sup>35</sup>Employer Exhibit 57A.

<sup>36</sup>Employer Exhibit 57.

<sup>37</sup>Employer Exhibit 57C.

<sup>38</sup>Union Exhibit 11

living is largely incorporated into the pattern of wage settlements. Generally the Arbitrator has agreed with that argument. On its face, however, the cost-of-living consideration would favor the Employer's offer since the CPI has been under 2%. Additionally, the Arbitrator would pose a question, "did the parties to those settlements factor in 1-2% inflation (or at least CPI changes) when the bargains were made?" Even the Chairman of the Federal Reserve is perplexed as to how, in the 7<sup>th</sup> or 8<sup>th</sup> year of an expansion with unemployment rates falling, inflation has been declining! The parties have not attempted to compare all aspects of compensation and working conditions such that a conclusion under factor (h) can be made. Pendency (l) is in part addressed in internal comparisons, which indicate that under recent arbitration, other employees in the employ of the County will receive 3% each year.

The last item for consideration involves the union's proposal to insert language on health insurance to assure the County's 100% coverage of the family plan for spouses employed by the County. The simple course for the Undersigned to take is to note that the other County employees will now face the same provision — the language of the prior agreement which is that the County will pay the single and 85% of family coverage. Internal consistency in the case of fringe benefits, particularly aspects of health insurance, has been stressed by numerous arbitrators. The Union's pursuit of a literal status quo change is made without a quid pro quo and would ordinarily be rejected. Of course the Union's argument that Employer is changing past practice is well taken. From the point of view of an affected employee, the change certainly "smells" since one of the employed spouses is receiving no health benefits from the Employer, in a sense, for labor provided. The Undersigned also question the Employer's "equity" argument; while no costing of the impact of the health care provision was given, it would seem unlikely that the County's payment for 15% of a family plan would be greater than the costs of a single plan. It would seem that other employees may not feel so inequitably treated were one of their co-workers to have 100% of a family plan paid by the County.

Besides the literal treatment of the status quo insurance coverage issue, however, the Arbitrator is also persuaded by the County's argument distinguishing between a mutually agreed on past practice and a unilateral practice in the exercise of managerial discretion. The County contends that it lawfully terminated the latter. The Union disagrees, and notes that Arbitrator Kessler states that "the County should have negotiated with the Union." Were this literally true, a grievance or claim of unfair labor practices would have been appropriate. The Arbitrator presumes that by its inclusion in the Union's offer, the proposal changes the status quo, requiring the usual support.

In sum, the factors of economic conditions and the interests and welfare weigh somewhat in favor of the County's offer, as would the internal comparisons and price level changes. "Other factors" (ie.

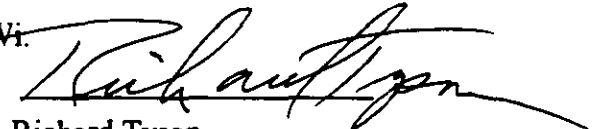
the status quo issue) would favor the County's offer under the framework common to interest arbitration in Wisconsin. Comparison of wages of external comparables would call for an award in favor of the Union. Were it possible to render an award in good conscience based on the number of factors favoring one party versus the other, that act would be easy. Arbitrators, including the Undersigned, tend to place much emphasis on the "wisdom of the many" as is manifest in an examination of external comparables' collective bargains. Orchard Manor employees certainly deserve equitable compensation for the work they perform which is a challenge under the current circumstances and other factors which must be considered.

### **Award**

Having carefully considered all of the evidence and argument of the Parties set forth above as well as the arbitral criteria provided under Section 111.70(4)cm(7) Wisc. Stats., it is the decision of the Undersigned that:

The final offer of the County is to be incorporated into the 1997-98 Collective Bargaining Agreement between Grant County and Orchard Manor Employees Union, Local 3377.

Dated this 24 th day of December, 1998, in Menomonie, Wi.

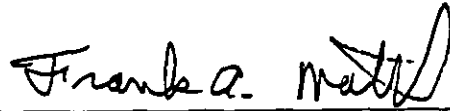


Richard Tyson,  
Arbitrator

**GRANT COUNTY  
FINAL OFFER  
July 8, 1997**

Grant County proposes that all terms and conditions of the 1995- 1996 collective bargaining agreement between Grant County and the Orchard Manor Employees Union, Local 3377, WCCME, AFSCME, AFL-CIO, be continued as the terms of the 1997-98 agreement between said parties except as modified by the signed stipulations of the parties, if any, and the attached proposals.

Dated at Lancaster, Wisconsin this 8th day of July, 1997.



Frank A. Matel  
Personnel Director, Grant County

This offer consists of 2 pages including this page and is subject to revision, modification or withdrawal upon notice during the investigation process

**1. Article 27 - Duration:** Amend section 27.01 to provide for a two year agreement, commencing January 1, 1997 through December 31, 1998.

**2. Appendix A - Hourly Wage Rates:** Revise Appendix A, Hourly Rates to reflect the following:

- a. Effective January 5, 1997 increase all rates by 3%
- b. Effective December 28, 1997 increase all rates by 3%

**Grant County reserves the right to add to, delete from, modify, or amend any of the proposals during the course of negotiations.**