

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
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 BROWN COUNTY SOCIAL SERVICES : Case 421
 PROFESSIONAL EMPLOYEES : No. 44140
 : MA-6173
 and :
 :
 BROWN COUNTY :
 :

Appearances:

Mr. Frederick J. Mohr, Attorney at Law, appearing on behalf of the Union.
Mr. John C. Jacques, Attorney at Law, Assistant Corporation Counsel, Brown County, appearing on behalf of the County.

ARBITRATION AWARD

The Union and the County named above are parties to a 1989-90 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The Union made a request, with the concurrence of the County, that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve a grievance concerning the position of At-Risk Coordinator. The undersigned was appointed and held a hearing on August 17, 1990, in Green Bay, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. Following distribution of a transcript, the parties completed their briefing schedule on December 5, 1990.

ISSUE:

The parties agree that the Arbitrator may frame the issue, and I frame the issue as the following:

Did the County violate Article 28 of the collective bargaining agreement when it contracted with a private agency to provide the services of an At-Risk Coordinator?

If so, what is the appropriate remedy?

CONTRACT PROVISION:

ARTICLE 3. MANAGEMENT RIGHTS

Through its management, the Employer retains the sole and exclusive right to manage its business, including but not limited to the right to direct its work force, to hire, assign, suspend, promote, discharge or discipline for just cause, to maintain discipline and efficiency of its employees, to determine the extent to which the Employer's operations shall be conducted, the size and composition of the work force, the number of offices and locations of such offices, equipment requirements and locations of such equipment and the right to change methods, equipment, systems, or processes, or to use new equipment products, methods, or facilities and to reduce the work force if, in the Employer's sole judgement, the new equipment, methods, systems or facilities require fewer personnel. In no event shall the exercise of the above rights and responsibilities of the Employer violate the terms and conditions of this Agreement or restrict any rights of the employee under Wisconsin Statute 111.70. Management shall be notified through the employee's supervisor before that employee conducts any association activity during working hours, and the occupation of such offices.

ARTICLE 25. JOB POSTING

Whenever any vacancy occurs due to a retirement, termination, new position, or whatever reason, and in the judgment of the Employer the need to fill such vacancy continues to exist the job vacancy shall be posted. In the event the Employer determines not to fill any job vacancy, the Employer agrees to post a notice of discontinuance for a period of five working days. The job requirements and qualifications shall be a part of the posting and sufficient space provided for interested parties to sign said posting. Probationary employees shall not be eligible to sign job postings.

Employees desiring such posted jobs shall sign posted notice. Employees older in seniority shall have preference on all jobs, provided that the employee meets the qualifications required for the job. Employees who receive a posted job shall demonstrate their ability to perform the job during a twenty (20) work day trial period.

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ARTICLE 28. PURCHASE OF SERVICES

For the purpose of preserving work and job opportunities for the employees covered by this Agreement, the Employer agrees that services ordinarily and customarily performed by regular employees will not be conveyed in whole or in part to any other service with the intent of eliminating jobs, except in cases where Federal or State contribution is reduced or eliminated, or where another agency can provide these services at less than Brown County's cost. In either situation, the County agrees to review with the Association committee any purchase of services to determine the effects upon the employees covered by this Agreement.

SCHEDULE A

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D E G R E E

MSW OR RELATED			1989	1990
MASTERS DEGREE	BACHELORS DEGREE	TIME	RATE	RATE

	Advance by Seniority from	Start	10.51	10.85
		(Step 1)		
	Step 2 through Step 4.	6 Mo.	11.02	11.38
		(Step 2)		
		18 Mo.	11.85	12.24
		(Step 3)		
		30 Mo.	12.72	13.13
		(Step 4)		

Entry Level	3 grad. credits +	42 Mo.	14.06	14.52
	4.8 CEU's	(Step 5)		
1.2 CEU's	6 grad. credits +	54 Mo.	14.57	15.04
	6.0 CEU's	(Step 6)		
2.4 CEU's	9 grad. credits +	66 Mo.	15.09	15.58
	7.2 CEU's	(Step 7)		
3.6 CEU's	12 grad. credits +	78 Mo.	15.73	16.24
	8.4 CEU's	(Step 8)		

CEU: Continuing Education Credit; .1 CEU equals 1 hour of continuing education

2. All new hired employees shall serve a six (6) month probationary period.

3. Upon successful completion of the probationary period, an employee beginning at Step 1 will progress automatically to Step 2 of the pay scale up to and including Step 4 according to the time intervals indicated in the plan. Employees beginning at Step 2 or higher will be credited with the amount of time and training indicated for that Step in the pay plan and will progress automatically to the next step of the pay scale up to and including Step 4.

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BACKGROUND:

This grievance arose over the County's contract with Our Lady of Charity, a non-profit organization, that provided services for an At-Risk Coordinator. The position of At-Risk Coordinator is essentially a social worker who deals with young people most at risk to become involved in the court system. The At-Risk program's emphasis is on truancy in the school system. The Department of Social Services receives referrals from the school system, and then provides intervention and prevention services to children and works with families in the school system. The program's goal is to reduce the number of people in correctional institutions or other restrictive facilities, and to keep children in their own homes and communities.

The major sources of funds to operate the Department of Social Services are federal, state, county funds, and collections. The County's share for 1990 amounts to about \$4.5 million of a \$14.5 million budget. The State of Wisconsin has allocated \$1.9 million for youth aids programs, which includes the At-Risk program and other programs. A youth aids committee is set up as a mandatory committee when the state allocates funds to counties, and it reviews the budget and decides where the money will go.

The At-Risk program started in Brown County in October of 1989. Karen Anthony, a social worker and bargaining unit member, started working with the program from its beginning. The County's contract with Our Lady of Charity was effective on April 23, 1990. George Skenandore, an employee of Our Lady of Charity, became an At-Risk Coordinator. No existing social worker positions were eliminated due to this contract. Anthony currently spends about 20 percent of her time working with the At-Risk program. There was no change in her duties as a result of the contract with Our Lady of Charity. Two other bargaining unit members -- Gary Herman and Cindy Fonseca -- each spend about five percent of their time with the program. The duties performed by bargaining unit members are similar to those performed by Skenandore.

Earlene Ronk is an alternate care supervisor and in charge of the At-Risk program. She spends about five percent of her time with the in-house staff on this program, and about two percent of her time with Skenandore. Skenandore is also supervised by Richard Funk from Our Lady of Charity, and he maintains an office at Our Lady of Charity. Ronk estimated that if the At-Risk program was brought in-house, her supervision over it would increase by about three percent.

The County paid Our Lady of Charity \$31,345 per contract from April 23, 1990 to December 31, 1990, for providing a social worker and to reimburse it for supervision, management, support and operation, with a monthly payment of \$3,794.23.

Jean Lepak, the accountant for the Social Services Department prepared an analysis of the cost of providing the service of the At-Risk Coordinator using in-house staff with the cost of contracting with Our Lady of Charity. The first analysis prepared on March 7, 1990, used wage rates from 1988 because a new collective bargaining agreement had not been in place at that time. Lepak updated the analysis on August 14, 1990, using current salary rates. The following chart shows the comparisons on the left for both a social worker at Step 8 of the contract (the highest step) and Step 5 (with Step 1 being the lowest) on the left-hand side of the chart, and on the right-hand side, the costs for a social worker contracted from Our Lady of Charity (OLC).

BROWN COUNTY DEPARTMENT OF SOCIAL SERVICES
 AT RISK ASSESSMENT COUNCELOR
 PREPARED MARCH 7, 1990
 UPDATED AUGUST 14, 1990 WITH CURRENT SALARY RATES

<u>Description</u>	<u>Step 8 Social Services</u>	<u>Step 5 Social Services</u>	<u>Description</u>	<u>OLC</u>
STEP 8 SOCIAL WORKER (16.24 * 2080 HRS)	33,779		SOCIAL WORKER (12.69 * 2080 HRS)	26,387
STEP 5 SOCIAL WORKER (14.52 * 2080 HRS)		30,202		
SUPERVISOR (17.57 * 2080 * 11.765%)	4,300	4,300	SUPERVISOR	3,245
11.765% CALCULATED -				
SOCIAL WORKERS	5.0			
CLERICAL	1.5			
CRT MEDIATOR	1.0			
S.W. AT RISK	1.0			

	8.5			
	=====			
1 DIVIDED BY 8.5 EQUA				11.765%

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MANAGEMENT SUPPORT 4,508	4,508	MANAGEMENT SUPPORT 3,717	
	42,587	33,349	-----
FRINGES @ 33%	14,054	8,004	-----
TOTAL SALARY & FRINGES	56,640	TOTAL SALARY & FRINGES	41,353
OPERATING EXPENSE:		OPERATING EXPENSE:	
PURCHASED SERVICES	0	PURCHASED SERVICES	50
AUDIT	0	AUDIT	100
TRAVEL	1,000	TRAVEL	1,250
TELEPHONE	450	TELEPHONE	500
POSTAGE	25	POSTAGE	25
INSURANCE	575	INSURANCE	467
RENT/SPACE	800	RENT/SPACE	876
SUPPLIES	85	SUPPLIES	116
EQUIPMENT RENTAL	0	EQUIPMENT RENTAL	83
STAFF DEVELOPMENT	300	STAFF DEVELOPMENT	300
MAINTENANCE & REPAIR	0	MAINTENANCE & REPAIR	50
OTHER MISC	50	OTHER MISC	50
TOTAL OPERATION	3,285	TOTAL OPERATION	3,867
TOTAL ONGOING EXPENSE	59,925	TOTAL ONGOING EXPENSE	45,220
ONE-TIME EXPENSE	1,594		
DESK	379		
CHAIR	282		
2-GUEST CHAIRS	80		
FILE	207		
BOOK CASE	126		
DICTATOR	370		
TELEPHONE	150		
TOTAL EXPENSE	61,519	TOTAL EXPENSE	45,220
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ADJUSTMENT FOR 37.5		NOTE: 2% OF INHOUSE	
WORK WEEK	(2,808)	SUPERVISOR	972
	(2,511)		
=====			

Lepak acknowledged that it is possible that it would be cheaper to provide the service with a bargaining unit member if a social worker were hired at the start rate, or Step 1. In preparing the cost analysis data, Lepak used a figure of 33 percent for fringe benefits, which is the average of fringe benefits of all Social Services employees in the Department, including management. The figure of \$8,000 for fringe benefits for the social worker from Our Lady of Charity was a figure given to Lepak by that agency. Ronk negotiated with Our Lady of Charity before entering into the contract in order to reduce the costs.

Lepak did not prepare the same kind of analysis as above showing a social worker at Step 1, which would be working with an hourly rate of \$10.85 in 1990. A social worker at Step 2 earns \$11.38/hour, and at Step 3, \$12.24/hour. After a Step 3 position, the hourly rate is higher than the \$12.69 hourly rate for the social worker from Our Lady of Charity.

New employees may be hired at the different steps of the contract. Julie Weinberger was hired in 1989 at a Step 5. Weinberger had seven years of prior experience and a master's degree in social work. Since January of 1989, three people were hired at Step 1, one person at Step 2, one at Step 3, and five at Step 4. When a new position is created, a position description is posted, and bargaining unit members may post for that position, no matter what step they have attained. The most senior qualified person is allowed to have a newly posted position.

According to the Director of the Social Services Department, William Miller, the agency has a number of contracts for other services, such as contracts for group home services for children, community based residential services for adults, counseling services, day-care services, etc. Williams testified that if the money that was spent on the At-Risk program was not spent there, it would have been allocated for some crews within the Department's program.

THE PARTIES' POSITIONS:

The Union:

The Union contends that the contracting for the At-Risk Counselor violates Article 28. The Union argues that the effect of contracting out eliminates jobs. Funds for the program come from a state grant in the Youth Aids Program of \$1.9 million dollars. If the funds had not been used in the At-Risk Coordinator position, they would have been reallocated among programs handled by bargaining unit members. Thus, the contracting out had the effect of reducing money available to other programs within the Department.

The Union submits that by contracting out the At-Risk Coordinator position, the County eliminated the need to post the position and eliminated what would have been an in-house job, which has the effect of eliminating the number of bargaining unit members and goes contrary to the intent of Article 28. The Union argues Article 28 does not request that an employee be laid off, and eliminating jobs is a broader concept.

The Union asserts that there is no additional cost if the program is kept in-house. The County spends no money of its own for the At-Risk Coordinator, as all the funds are provided by the state.

The Union believes that the service can be provided at less cost in-house. County Exhibit #4, an analysis of the cost of in-house versus contracted services, is fraught with errors and is misleading, the Union claims. The County figured the cost of the in-house position at Step 8 of the Social Worker pay scale, and an employee at Step 8 is required to have six and one-half years of employment with the County. The At-Risk Coordinator position would be a new position and would start at Step 1, with the pay being significantly less than Step 8. The cost for a social worker at Step 1 is \$22,568 per year, rather than the \$33,779 alleged by the County.

The Union asserts that the supervisory time listed in County Exhibit #4 would be reduced to \$3,654 for in-house supervision (taking 10 percent of the supervisor's time), and therefore, the cost for the social worker and supervisor would be \$26,222. With fringe benefits at 33 percent, add another \$8,653, for a total of \$34,875, which is under the contracted services.

The Union objects to other expenses called operating expenses, such as \$800 for rent/space, as the space allocated is owned by the County and would be used anyway. The Union notes that the County does not have to rent additional space. Likewise, it claims the allocation of \$300 for staff development is misleading, because the County uses outside sources of funding to provide staff development. The Union calls the allocation of \$575 for liability insurance highly inflated and says that the whole amount should be disregarded. The Union submits that the operating expense listed by the County is overstated by perhaps as much as \$1,600. Taking the County's figure of \$3,285 and reducing it by two items which are not out-of-pocket expenses to the County (insurance and rent/ space) of \$1,375 reduces the operating expense to \$1,910. The Union further notes that the County lists a one time expense for purchase of equipment, which if amortized over 10 years would only be \$159.

Thus, the Union finds the actual "cost" to the County of providing the position in-house to be \$36,944, an amount significantly under the amount paid for the contracted services.

The County:

The County asserts that the Union ignores the clear and unambiguous language in Article 28 and has distorted the intent of the parties by attempting to equate an "additional job" with "eliminating" an existing job. In this case, no jobs were eliminated by the purchase of services contract. The County contends that the management rights clause in the labor contract and the principles of reserved rights give it the authority to create additional jobs, and any limitation on that authority must be set forth in the labor agreement.

The language of Article 28 uses the phrase "preserving work," which cannot be changed to mean "create," the County submits. The phrase "eliminating jobs" also cannot be changed to mean "not creating" new jobs. The term "preserve" refers to that which was already in existence, just as "eliminate" refers to that which existed in the past. The County maintains that Article 28 was not violated where no job was eliminated and no one was laid off. Article 28 was not intended to require any increase in the level of services to be performed by unit members.

The County has established that creating new unit positions would be more costly than purchasing from another agency. The sources of funding to the County to pay for the services are irrelevant. State grants are used by the County to purchase services, but the actual cost of the services is the contracted rate, and the County is obligated to pay the contract price for services, regardless of the source of funds.

The County argues that the Union failed to meet its burden to prove that in-house employee cost would have been less than the contracted cost. Given the difference of about \$10,000 in costs based on a Step 5 employee filling the position, even a new hire beginning at Step 1 would be more than the contracted rate, since the difference between a new hire at Steps 1 and 2 and Step 5 is only \$6,655.70 for 1990. Furthermore, the Union only attacked the County's data without producing its own data, and the County asserts that its data is the best available evidence.

Various services have been purchased by the County in the past, and the language of Article 28 itself assumes the necessity of purchasing services, the County notes. The County's purchase of services was done reasonably and in good faith as an attempt to maximize services available to at-risk children. There is no evidence of any adverse impact on the bargaining unit.

In its reply brief, the County restates its argument that no jobs were eliminated. The Union cannot require the County to create a new position of job. The posting procedures apply only after a new position is created and a vacancy exists.

The County further contends that the Union's argument that there would be less cost by creating a new in-house position is irrelevant and unsupported by the evidence. Even if, for the sake of argument, a job was eliminated, there would have been no contractual violation because there was no intent to eliminate jobs in entering into the purchase of services contract. The testimony of Miller, Lepak and Ronk establish that they intended to provide services on a cost-effective basis by the contract with Our Lady of Charity.

While the Union claims that a new position would start at Step 1, anyone hired for a newly created position would receive a scheduled rate based on education and experience. Any member of the Department could post for that position, and an existing employee posting into that position would not be at the Step 1 rate. The County submits that the salary cost of an in-house social worker was correctly stated in its cost analysis, which reflected the past history of employees posting into new positions, and new hires, such as Julie Weinberger, being paid according to qualifications.

DISCUSSION:

The County's contracting out of the At-Risk Coordinator position with Our Lady of Charity does not violate Article 28 of the collective bargaining agreement because of the exception clearly stated within Article 28 which allows the County to purchase the service in this case. The labor contract clearly allows for two exceptions -- one, "where Federal or State contribution is reduced or eliminated," and two, "where another agency can provide these services at less than Brown County's cost." It is the second exception that applies to this case, and this Award will be confined to dealing with that language. There is other language in Article 28 which may be susceptible to differing interpretations, as the parties argue ardently about the phrase "intent of eliminating jobs" and "preserving work." A couple of comments are in order if only to point out some problems with the language.

The County makes several arguments about the first part of Article 28's language -- mainly, that the language does not equate an "additional job" with "eliminating" an existing job; that "preserving work" does not mean "creating" new jobs; that "eliminate" refers only to something that existed in the past; that no job was eliminated where no one was laid off; and that there was no intent to eliminate a job. The Union argues that eliminating jobs is a broader concept than a layoff, and that the effect of contracting out eliminates jobs and potential jobs. While this Award is not intended to resolve those disputes, there is some language that appears to be broader in its scope than the County asserts. The phrase "preserving work and job opportunities" in conjunction with "services ordinarily and customarily performed by regular employees will not be conveyed" could, under certain circumstances, apply to

positions or jobs not already in existence. For example, the work performed by Skenandore is work of a type that is ordinarily and customarily performed by regular employees. Regular employees started the At-Risk work and continue to do some of it now. Thus, one of the triggering events of Article 28 has occurred by virtue of new work which is of a type of that performed by the bargaining unit. It could be argued that this is the type of "job opportunity" envisioned by the parties when negotiating this language. The language of "intent of eliminating jobs" may, under certain circumstances, be broader than a layoff and may be triggered in situations where no layoff has occurred. For example, if a bargaining unit member retires, and the County does not post the position but subsequently contracts out for the same type of work previously performed by the retiree, the language of Article 28 might be invoked. No layoff, but a position eliminated. Assuming arguendo that the At-Risk position at issue here falls within Article 28, the language regarding the exceptions would still control.

Article 28 is plain enough on its face where it says: ". . . except in cases where Federal or State contribution is reduced or eliminated, or where another agency can provide these services at less than Brown County's cost." It is the emphasized language that in this case allows the County to purchase the services without violating the collective bargaining agreement. The Union has agreed to a clause preserving bargaining unit work for employees and restricting the County's ability to purchase services except under certain circumstances. Now the County has met one of those circumstances.

The Union claims that because the State pays for the At-Risk Coordinator services, there is no cost to the County. The source of the funding for the program is irrelevant. The first exception of Article 28 deals with the source of funding; the second exception deals with "cost." Where the language refers to the County's cost, the cost is the amount of money needed to provide for the service. The source of money to pay for the cost of the service is a different matter. The fact that a different governmental unit provides the funds for various programs does not affect the cost.

The County argues that the Union failed to meet its burden to prove that an in-house employee would cost less than the contracted cost. However, it appears from the language of Article 28 that it is incumbent upon the County to prove that "another agency can provide these services at less than Brown County's cost." It is the County that has the best information of what its total costs are for in-house and what the contracted cost would be. Thus, the Union does not carry the burden of proof in this area. However, I find that the County has demonstrated satisfactorily that the contracted service would be less than the in-house cost, except under one possible circumstance -- where a Step 1 employee held the job.

The County prepared a cost analysis using a Step 5 employee and a Step 8 employee, but Lepak admitted that it was possible that a Step 1 employee could cost less than the contract with Our Lady of Charity. However, the County notes that any employee at any step could post into a position, and the most senior qualified person would get the position, and this appears to be correct with respect to a Step 2 through Step 8 employee. Under Article 25, read in conjunction with Schedule A, a Step 1 employee would be barred from posting for a position. Article 25 states that "probationary employees shall not be eligible to sign job postings" and Schedule A shows that Step 1 is a six month starting step and that newly hired employees serve a six month probationary period. Therefore, any employee in Step 1 must be a probationary employee who would be barred from posting into a job opening under the terms of Article 25. The only way that a Step 1 employee could attain the position at issue here is if the County posted the position, no other employee posted for that position, and the County hired someone at the starting step for it. The County notes that it hires people above the starting step, and the record bears this out. The labor contract does not tie specific jobs to specific steps of the salary schedule. Accordingly, it would be unreasonable to find that the County should analyze its cost on the basis of a Step 1 employee.

If one then takes the County's cost analysis and plugs in the Step 2 employee, the next level of pay, the County's cost for a Step 2 employee runs over the contract with Our Lady of Charity. Using the same method, the chart would look like the following:

<u>Description</u>	Step 2 Social <u>Services</u>	<u>Description</u>	<u>OLC</u>
STEP 2 SOCIAL WORKER	23,670	SOCIAL WORKER	26,387

(11.38 * 2080 HRS)		(12.69 * 2080 HRS)	
SUPERVISOR		SUPERVISOR	3,245
(17.57 * 2080 * 11.765%)	4,300		
11.765% CALCULATED -			
SOCIAL WORKERS	5.0		
CLERICAL	1.5		
CRT MEDIATOR	1.0		
S.W. AT RISK	1.0		

	8.5		
	=====		
1 DIVIDED BY 8.5 EQUA	11.765%		
	=====		
MANAGEMENT SUPPORT	4,508	MANAGEMENT SUPPORT	3,717
	-----		-----
	32,478		33,349
FRINGES @ 33%	10,718	FRINGES	8,004
	-----		-----
TOTAL SALARY & FRINGES	43,196	TOTAL SALARY & FRINGES	41,353
OPERATING EXPENSE:		OPERATING EXPENSE:	
PURCHASED SERVICES	0	PURCHASED SERVICES	50
AUDIT	0	AUDIT	100
TRAVEL	1,000	TRAVEL	1,250
TELEPHONE	450	TELEPHONE	500
POSTAGE	25	POSTAGE	25
INSURANCE	575	INSURANCE	467
RENT/SPACE	800	RENT/SPACE	876
SUPPLIES	85	SUPPLIES	116
EQUIPMENT RENTAL	0	EQUIPMENT RENTAL	83
STAFF DEVELOPMENT	300	STAFF DEVELOPMENT	300
MAINTENANCE & REPAIR	0	MAINTENANCE & REPAIR	50
OTHER MISC	50	OTHER MISC	50
	-----		-----
TOTAL OPERATION	3,285	TOTAL OPERATION	3,867
	-----		-----
TOTAL ONGOING EXPENSE	46,481	TOTAL ONGOING EXPENSE	45,220

The above chart shows that the cost of a Step 2 employee is \$1,843 more than the contracted service if one looks no further than the total salary and fringes figures. The Union then takes issue with some of the operating expenses listed by the County, such as insurance, rent and staff development. Those three items together add up to \$1,675 (\$575 for insurance, \$800 for rent, and \$300 for staff development) and even if they were disregarded entirely, the Step 2 employee would be \$168 higher than the contracted service. It would be unreasonable to disregard those three items entirely, even if the figures were inflated in some fashion, but it would also be impossible from this record to determine what the figures would be even giving the Union some benefit of the doubt here. I do agree with the Union that the one-time expenses should either be disregarded or amortized over a reasonable period of time, however. It is not the one-time expenses or the operating expenses that drive up the cost of in-house employees. If one really analyzes the figures, it becomes apparent that the fringes appear to be more of the culprit, with the in-house fringes costing about 33 percent, and the contracted service fringes running at 24 percent. Granted, the 33 percent is not an entirely accurate figure on the Step 2 employee alone, because the 33 percent is an average for the unit as a whole (the lower the salary, the higher the fringe benefit cost, and the supervisory and higher paid people reducing the percentage of the fringe package).

One further note about the figures -- the Union argues that in-house supervision would be \$3,654 or 10 percent of the supervisor's time. While Ronk testified that her supervisory time would increase by another three percent if the program were brought in-house, and that she currently spends about seven percent on the program between in-house and the private contract, I find no major discrepancy between such testimony and Lepak's figures. Ronk was making a general estimate of her time if the program were brought in-house, and Lepak made a precise analysis of the time. The figure used by the County of 11.765 percent is roughly the same as the 10 percent estimate, but more precise. Finally, the Union made a calculated cost of \$34,875 using just the Step 1 salary, the supervisory salary, and the fringes, without adding in the management support figure used by the County. Even so, the figures are for a Step 1 employee.

To sum up, the possibility that a Step 1 employee could fill the position is so limited that any cost analysis of a Step 1 with the contracted service is unnecessary. I have earlier outlined the scenario under which a Step 1

employee could actually get the position, and conclude that it would be unreasonable and contrary to the labor contract's other provisions to limit the analysis to a Step 1 employee. The Step 2 employee actually costs more than the contracted service. The labor contract does not limit the positions to any particular step of the salary schedule.

Therefore, I conclude that the County has met one of the major exceptions stated explicitly in Article 28 which allows to contract out in this case, and that the County has not violated the collective bargaining agreement by doing so.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 1st day of February, 1991.

By _____
Karen J. Mawhinney, Arbitrator