STATE OF WISCONSIN

BEFORE THE MEDIATOR/ARBITRATOR

In the Matter of Mediation/Arbitration Between

UNITED PROFESSIONALS FOR QUALITY HEALTH CARE - SAUK COUNTY

and

SAUK COUNTY

CASE XXXI
No. 26563 MED/ARB-810
Decision No. 18241-A

APPEARANCES:

Laurence S. Rodenstein, United Professionals for Quality Health Care, appearing on behalf of the United Professionals for Quality Health Care - Sauk County.

DeWitt, Sundby, Huggett & Schumacher, S.C., by Robert M. Hesslink, Jr., appearing on behalf of Sauk County.

ARBITRATION HEARING BACKGROUND:

On December 1, 1980, the undersigned was notified by the Wisconsin Employment Relations Commission of appointment as mediator/arbitrator, pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act in the matter of impasse between the United Professionals for Quality Health Care - Sauk County, hereinafter referred to as the Union, and Sauk County, referred to herein as the Employer. Pursuant to the statutory requirement, mediation proceedings were conducted between the parties on January 23, 1981. Mediation failed to resolve the impasse. On February 6, 1981 and on February 9, 1981, an arbitration hearing before the Mediator/Arbitrator was held. At that time, the parties were given full opportunity to present relevant evidence and make oral argument. The proceedings were not transcribed, but post hearing briefs were filed with and exchanged through the Mediator/Arbitrator. Letters in response to the briefs were also filed with the Mediator/Arbitrator.

THE ISSUES:

Eight issues remain at impasse between the parties. They are wages, on-call pay, layoffs, health and safety, mileage, sick leave, duration and miscellaneous definitions. The final offers of the parties are attached as Appendix "A" and "B". During the mediation session with the Mediator/Arbitrator it was brought to the attention of the Mediator/Arbitrator that the Employer's final offer received by her from the Wisconsin Employment Relations Commission was not the last amended final offer of the Employer. During the arbitration hearing, the parties stipulated that the final offer attached hereto as Appendix "B" is the true final offer of the Employer.

AGREEMENTS:

During negotiations the parties entered into two agreements which affect the final offers. They are attached as Appendix "C" and Appendix "D".

STATUTORY CRITERIA:

Since no voluntary impasse procedure was agreed to between the parties regarding the above impasse, the undersigned, under the Municipal Employment Relations Act, is required to choose the entire final offer of one of the parties on all unresolved issues.

Section 111.70(4)(cm)7 requires the mediator/arbitrator to consider the following criteria in the decision process:

A. The lawful authority of the municipal employer.

B. Stipulations of the parties.

C. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

D. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and comparable communities.

E. The average consumer prices for goods and services, commonly known as the cost-of-living.

F. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

G. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

H. 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.

POSITIONS OF THE PARTIES:

The Union: The Union contends that while there are a number of issues at impasse between the parties, the critical issues are those of wages and the clause submitted by the Employer entitled "Miscellaneous Definitions". According to the Union, the "Miscellaneous Definitions" clause offered by the Employer is flawed to such a degree that it alone should be reason to reject the Employer's proposal. The Union asserts this clause places the Employer's offer beyond the jurisdiction of the arbitrator, is substantively unreasonable and defective, and inserts an unreasonable barrier to effective contract administration by requiring a "good cause" standard in proving timeliness of filing of grievances.

Citing Arbitrator Jos. B. Kerkman in Greendale Professional Policemen's Association, Decision No. 15481-A, 12/77, the Union declares the Employer has exceeded the arbitrator's jurisdiction by proposing new contractual sections during the final stages of mediation/arbitration. The Union notes that Arbitrator Kerkman

ruled against the introduction of new clauses once negotiations had proceeded to the arbitration stage. Thus, the Union asserts the principle of the Greendale case prevails in this instance. Further, the Union contends the clause offered by the Employer negates earlier stipulated agreements reached through negotiations and mediations, agreements which should carry the full force of a contract.

In addition to the jurisdictional question, the Union declares the Employer's offer is an attempt to inject significant procedural constraints upon the grievance procedure which would limit the traditional scope of a grievance procedure. It maintains that a grievance procedure should provide a reasonable opportunity to grieve and should allow for the filing of a grievance either when the event occurs or when knowledge of the event occurs. The Union argues the Employer's offer limits the arbitrator's discretion to examining whether or not an employee has adequately rebutted the untimely filing of a grievance and attempts to limit the scope of the contract by placing review of questions of past practice in the hands of the County's personnel committee. The Union asserts the "good cause" standard inserted in the definitions clause creates an unreasonable barrier to effective contract administration by placing the same strict standards used for firing or disciplining an employee upon an employee when the employee wishes to file a grievance. Citing Arbitrator Howlett in Miami Industries, 50 LA 978, 984 (1968), the Union declares the situation is similar and the result is the same, the Employer is seeking reversal of arbitral law which establishes the burden of proof on the party raising the issue of timeliness. Thus, concludes the Union, the Employer's offer promotes prohibited practices litigation rather than resolution of disputes through the grievance procedure.

The Union rejects the Employer's contention that Sauk County and Columbia County are the compelling comparisons in determining which of the final offers is more reasonable. Concurring with the Employer that the two counties have similar per capita incomes, the Union argues that although they are clearly comparable, analysis limited to the two counties becomes an overly restrictive and determinative analysis. Thus, concludes the Union, comparison limited to these two counties provides opportunity to artificially control and deflate public employee wage rates through a coordination of efforts between the two counties.

The Union continues, comparisons between counties should be made on the basis of the relative economic affluence among the contiguous counties, among counties under 100,000 population within 50 miles of Sauk County, and among counties under 100,000 population within Wisconsin. In addition, the Union asserts that public health nurse comparisons should be made with other registered nurses doing similar work within Sauk County.

The Union contends that when a comparison of wage rates are made among the comparable counties it proposes it is found that Sauk County professionals are paid lower wage rates or wage rates equal to less affluent counties. It notes that its registered nurses are among the lowest paid individuals doing like work within the County and have wage rates among the lowest in contiguous and/or comparable counties. It continues that social workers are paid among the lowest rates as well. The Union notes this consistent and unrebutted pattern requires substantial "catch up", particularly when the wage rates are correlated with the per capita income of the County and with comparable counties.

The Union asserts the Employer tacitly recognizes the need of registered nurses to "catch up" since it offers two of the classifications a 12% to 15% salary increase in 1980. It continues, however, that

while the Employer makes an effort to compensate the registered nurses more appropriately no effort is made to address any other disparities in the wage rates. The Union states that "catch up" is further supported by the fact that this is the first negotiated contract between the parties. It notes this is the professional's first opportunity to bargain collectively for wages, hours and terms of employment and their first opportunity to attempt to create wage equity with comparable units and to address past problems within the work place.

The Union rejects the Employer's challenge as to the accuracy of the data used by the Union for comparison purposes. It notes its source, the Department of Local Affairs and Development Wage and Benefit Survey for 1980, is a government document which purports to be neutral and objective. Therefore, concludes the Union, if there are errors within the survey, they will be equally distributed between the parties' positions. Further, the Union contends the Employer's data also contains calculation errors. Thus, the Union concludes its source is as accurate a source as that proposed by the Employer.

Although the Union asserts the miscellaneous definitions clause and the wages issue are the critical issues, it also argues that its position should be adopted in relationship to the other issues in dispute. It notes the step increases which it seeks, in addition to the wage increase, represents no conflict with the article which sets forth how step increases may be obtained within a classification. It asserts that its offer simply provides the credit due its employees for prior service.

In regard to the layoff clause, the Union contends the critical difference between the proposals is the Employer's inclusion of "individual employee qualifications" as part of the layoff criteria. By including this clause the Union contends the Employer is permitted discretion based on a subjective and non-quantifiable criterion. Further, the Union contends the Employer's language is ambiguous and likely to become the subject of future arbitration and therefore should be rejected. Finally, the Union states there is no evidence to support including this criterion as part of the layoff clause. It notes that all the comparable units, including those units within Sauk County itself, use only seniority as the criterion for layoffs. Therefore, it concludes the Union's proposal, which sets forth objective criteria, is more reasonable.

The Union asserts the only difference between the parties on the health and safety issue is whether the employees have the right to grieve unsafe and unhealthy conditions for patients. The Union contends nurses can and should be advocates for quality patient care and have been given those responsibilities by the Code for Registered Nurses and by the Wisconsin Nursing Practices Act. Since these are responsibilities of nurses, the Union contends the clause should be included in the contract in order for nurses to provide health care as directed by other state statutes.

Finally, the Union asserts its on-call provision should be incorporated into the contract. In support of its position, the Union states that Sauk County is one of three counties in the area which discharges its Chapter 48 responsibility by requiring an on-call "beeper". The Union notes that when an employee is required to use a "beeper", the requirement deprives the employee of normal non-work leisure. It requires that the employee not travel far from home since the hearing distance range of the "beeper" is short and it places an additional burden on the employee's off-hours social life. Asserting that collective bargaining agreements normally compensate employees for on-call status at one dollar per hour whether the employees are on primary, secondary, or tertiary

call, the Union avows that its proposal is more reasonable. The Union agrees that the initial cost to the County of implementing such a system is not insignificant. It adds, however, the cost should have been borne by the County prior to negotiating a contract and now should be included because unionism frequently forces employers to compensate for services which they have formerly discharged without compensation.

The Employer: The Employer contends the critical issues in dispute between the parties are those of wages and the on-call provision. Before addressing these issues, however, the Employer challenges the Union's contention that its offer must be denied because it goes beyond the jurisdiction of the arbitrator. The Employer declares that the Union's argument is unfounded. It states the facts of the Greendale case are clearly distinguishable from those in the instant case, the legal principles applicable to Greendale do not apply to the mediation/arbitration process, and the decision made regarding the Greendale case was a highly controversial decision which has never been incorporated by the Court or by the Wisconsin Employment Relations Commission.

Challenging the Union's assertion that the Employer did not bargain on this subject prior to submitting its final offer, the Employer states the concepts were orally discussed and there was an attempt to submit the proposal prior to submitting the final offer. Further, the Employer contends the Union waived its right to object to the introduction of this clause when it executed a stipulation whereby both parties reserved the right to arbitrate all or any portion of a tenatively agreed proposal. The Employer continues the Union again waived its right to object when it signed the second stipulation allowing the parties to submit amended final offers which dealt with issues previously submitted and agreed to not challenge the final offer of the other party.

The Employer posits there is a difference in the language of the statutes regarding police and fire employees and other public sector employees. It notes the approach to resolving impasses which has been created under the mediation/arbitration process does not warrant an extension of Greendale wherein once final offers are submitted there is no opportunity for further mediation. In mediation/arbitration, the Employer maintains issues raised in the mediation-investigation phase or in the exchange of pending final offers are legitimately a part of the issues which may be included in the final offer certified to the arbitrator. Finally, the Employer concludes that in the Greendale case the Court removed the "offending" provision which does not support the Union's position that its offer should be accepted solely on the basis of a minor proposal which may or may not be procedurally correct.

The Employer provides comparability data for contiguous counties but contends that Columbia County is the critical comparison. It notes these two counties are contiguous, are approximately the same size, are both in the "Dells" area which means they both have seasonal economic bases and have approximately the same population and per capita income. Further, the Employer states prior arbitrators have uniformly held the "most comparable" Wisconsin County to Sauk County is Columbia County. It continues the Union's attempt at broadening the comparable area is merely an effort to transform simple comparability into a complex analysis of "irrelevant or only marginally relevant" data.

The Employer maintains its wage offer is the one which should be adopted since it is supported by the comparisons. It notes a comparison of public health nurse and health care nurse wage rates with those paid in Columbia County shows the Employer has offered a

rate both at the minimum and maximum range levels both in 1980 and 1981 which exceeds the rate in effect in Columbia County. Further, the Employer contends that if its nurses were placed on the Columbia County schedule they would not fare as well. The Employer states a comparison of starting salary rates in contiguous counties shows that both its offer and the Union's offer surpasses more than a majority of those rates presently paid.

The Employer asserts the situation is virtually the same for social workers. It notes a comparison of Sauk County social worker rates with Columbia County rates results in the Employer's offer slightly surpassing that of the rate being paid in Columbia County. The Employer states that if the Union's proposal were to be adopted, the end rate in 1980 would result in a considerably higher rate than that paid in Columbia County. The Employer avers its offer in 1981 compares relatively well with the wage rate paid in Columbia County but the Union's offer results in the employees receiving substantially higher rates due to the addition of a 42 month pay step and the "spill over" of the 1980 mid-year increases. The Employer continues comparison of wage rates in other counties shows the Employer's offer surpasses those rates paid in Adams and Vernon Counties, the only two contiguous counties settled in 1981.

The Employer rejects the health care comparisons made by the Union contending that the Union relies primarily on Dane County comparisons and comparisons with those employed within the City of Madison. The Employer states this type of comparison is totally unsupported by arbitral decisions and by facts. Additionally, the Employer challenges the data used by the Union to make its comparisons. It states the Wage and Benefit Survey compiled by the State of Wisconsin has suspect data. It notes there are several errors within the study.

The Employer concludes there is additional support for its wage offer since its proposed increases are well in line with the increases the County has given its other bargaining units and clearly outside the trend of settlement within the area. Further, the Employer states the Union's wage proposal far exceeds the inflationary rate for 1980 and for 1981 while the Employer's offer remains close to those figures.

The Employer contends the on-call provision is the second most important issue at dispute between the parties. In regard to this issue, the Employer states that its offer, though different than the Columbia County offer in regard to on-call pay, is more in keeping with Columbia County's proposal than is the Union's proposal. The Employer notes Columbia County's provision does not compensate individuals who are on secondary call and that while there is compensation for primary on call , it does not provide call-in pay for those who are on duty. The Employer concludes that its offer then is more comparable since the Union's proposal not only provides compensation for primary on-call and secondary on-call but compensates employees on duty with call-in pay as well.

In regard to the miscellaneous definition clause, the Employer posits there is nothing new or different in its proposal. It indicates that at least two sections within this series of definitions were in the Union's initial proposal and that the other sections are aimed at clarifying questions which may occur relevant to other clauses within the contract. It notes its "good cause" standard is merely an attempt to establish a method of determining when the grievant had knowledge of an event occuring and that its language pertinent to a definition of past practices is language which is similar to its other bargaining unit contract languages and is an attempt to insure that the elected officials'

responsibilities are not thwarted by agreements or practices of first line supervisors. Thus, the Employer concludes, its offer in this area is not uncommon nor unreasonable.

The Employer contends there are only minor differences in the other issues. It maintains that while the Union seeks opportunities to use sick leave for family dental and doctor appointments in unusual circumstances, its proposal allows that opportunity under its emergency medical care provision. Further, the Employer contends its language is consistent with the language it offers in its other Sauk County contracts. The Employer notes that collective bargaining agreements provide layoff clauses which use criteria of seniority and layoff clauses which use a criteria of "qualifications" and seniority, therefore, it is not unique to seek its proposal regarding layoff. The Employer contends the Union's proposal regarding the health and safety issue is a departure from traditional labor management concerns and that no municipal unit contains such a provision. Therefore, the Employer believes the clause should not be included within the collective bargaining agreement. As to the duration of the contract the parties do not differ on the length but differ as to the date commencing negotiations. The Employer maintains the two month proposal of the Union is not sufficient time to reach agreement on a collective bargaining agreement and that the past bargaining history supports this contention. Therefore, its proposal is more reasonable.

DISCUSSION:

The Issues: While there are a number of issues in dispute between the parties, the undersigned concurs with both that the primary issues are those of wages, on-call pay, and miscellaneous definitions. While there are minor differences in the sick leave clause, the layoff clause, the mileage provision, the health and safety clause and the duration provision, the undersigned does not find that any of the differences are of such importance as to determine which of the final offers should be selected. Thus, discussion will be limited to the three most important issues.

The Comparables: While the undersigned concurs with the Employer that among the contiguous counties Columbia County is the most comparable county, the undersigned also notes that an analysis of population and per capita income shows there are other counties within Southwestern Wisconsin which are comparable to Sauk County. Among the counties, based on population and per capita income, which could be considered comparable are Monroe and Grant County. Additionally, the undersigned believes the metropolitan influence of Dane County should be considered since Sauk County is contiguous to Dane County. If this criteria is considered, Green County and Iowa County also become comparable counties although their population and per capita income differ slightly. Further, the undersigned believes that contiguous counties should also be considered although not necessarily as primary considerations. In the instant matter, wages are the primary area of consideration utilizing comparables and the undersigned has found that although primary consideration could be given to the counties of Monroe, Grant, Green and Iowa, there is not sufficient data to do so. The Department of Local Affairs and Development study which the Union presents as a primary source of information does appear to contain substantial error. Although it is a government study which purports to be correct, the undersigned notes that not only were there errors in the figures reported by Sauk County but there is a clear conflict between the salary data provided for Columbia County and the salary data which exists within the Columbia County contract regarding social workers' salaries. Further, when the data was considered pertinent to

compensation for registered nurses, the undersigned found the data presented did not clearly coincide with the classifications which exist within the County. Finally, the undersigned finds that while the annual compensation is reflected in the study there is no indication as to the number of hours worked per week for which this compensation is paid. Thus, the undersigned finds the data used in this study neither correct nor informative enough to be utilized for comparison purposes.

Additionally, while the statute requires and the Union proposes that the public health nurses rates should be compared to the registered nurses rates in the private sectors, the undersigned views these comparisons with caution. The undersigned finds that while the nurses who work for the County unit are registered nurses and while nurses who work within a hospital or other intensive care units are also registered nurses, the working conditions required of the majority of nurses within the private sector are such that the need to hire nurses willing to work night shifts and weekend schedules commands higher salaries. Thus, while the duties may be similar, the working conditions are such that one for one comparisons cannot be made.

The undersigned also finds the Employer's data flawed. The Employer's exhibits comparing its rates with Columbia County's wage rates do not agree with the data presented in the Columbia County contract. Further, the data available for comparing 1981 wage rates of contiguous counties is not complete.

Thus, while the undersigned would prefer to expand the comparables beyond Columbia County the data provided by the parties is not sufficient to allow such expansion. The only data which can be relied upon as accurate and complete is that available through the Columbia County contract for social workers. Further, since the social worker rate changes are the most significant rate changes proposed by the Union, the undersigned has relied upon that comparison as the primary comparison. The undersigned notes there is no way to determine whether the data offered pertinent to nurses' wage rates is accurate or not and therefore relied primarily upon the comparisons of the social worker rate changes in determining which of the offers is more reasonable.

ON-CALL PAY

Both parties offer a call-in pay guarantee of two hours commencing at the time the individual leaves home. They differ in that the Union demands an additional payment for being on call at the rate of a dollar per hour for those on primary call and 50¢ per hour when on secondary call. The Union supports its argument by citing the $25 for 24-hour weekends and $15 for 16-hour weekdays pay Columbia County and Dane County employees receive for being on call. Additionally, the Union states that Madison General Hospital and State of Wisconsin employees receive one dollar per hour compensation for being on call.

The undersigned finds none of the comparables cited by the Union, some of which the undersigned does not consider as comparables, provides benefits as extensive as those sought by the Union. None of the comparables offers primary and secondary on-call pay as well as call-in compensation. The undersigned notes that the Columbia County contract, while providing on-call pay for primary on-call employees, does not provide the additional call-in pay should that individual need to report to work. Only individuals who are not on duty and are called in are compensated for the call-in pay. Thus, on the basis that Columbia County is by far the most appropriate county for comparison purposes and that it is the only county which compensates with on-call pay,

the undersigned finds that the Employer's offer is more reasonable.

WAGES

Having noted previously that there are significant problems with the data presented by both the Union and the Employer in regard to wages paid the nurses and the social workers, the undersigned has turned to the collective bargaining agreement of Columbia County as the primary comparison for determining which of the wage offers is more reasonable. When this comparison is made, the undersigned finds the Employer's offer is more than reasonable relative to compensation for social workers. Below is a comparison of the salary rates being paid in 1980 and 1981.

SAUK COUNTY

Employer's Offer

		Start	6 mo.	18 mo.	30 mo.	42 mo.
1980	I	1026			1156	
	II	1113			1260	
	III	1200			1380	
1981	I	1130			1260	
	II	1217			1364	
	III	1304			1484	

Union's Offer

		Start	6 mo.	18 mo.	30 mo.	42 mo.
1980*	I	996/1056			1124/1191	
	II	1081/1146			1224/1298	
	III	1177/1247			1341/1421	
1981*	I	1120/1187				1310/1389
	II	1215/1288				1429/1515
	III	1401/1401				1666/1666

COLUMBIA COUNTY

		Start	6 mo.	12 mo.	24 mo.	36 mo.
1980*	I	930/967				1087/1129
	II	1084/1100				1247/1266
1981	I	1055				1232
	II	1199				1380

*Indicates a split rate 1/1/80-6/30/80 and/or 1/1/81-6/30/81.

From the above it is apparent the Employer's offer compensates the social workers at a much higher rate of pay not only to start but at the maximum rate of pay. It is noted that although Columbia County extends its compensation over a five step increase compared to Sauk County's four step increase, the maximum rate available to employees of Sauk County is significantly higher at the 30-month step than the rate available to Columbia County employees at the 36-month step. Further, the undersigned notes there are only two classifications, Social Worker I and II, within Columbia County and Sauk County offers three classifications, Social Worker I, II and III. Thus, it is concluded the social workers within Sauk County are adequately compensated in comparison to Columbia County and have more appropriate advancement. Further,

when these wage rates are compared to those reported within the Department of Local Affairs and Development study, there are not significant differences between the wage rates and the Employer's offer.

In regard to the nurses' wage rates and the comparative analysis, the undersigned again finds differences between the Employer's exhibits and the DLAD study, thus, comparisons cannot be made with the assurance that they are valid. However, since an analysis of the social worker data proved the Employer's figures to be more accurate than the DLAD study, the undersigned used the Employer's data to determine which of the offers is more reasonable. Again, the comparison indicates the Employer is offering a higher wage rate to its employees than Columbia County nurses receive in either 1980 or 1981. Therefore, the undersigned concludes the Employer's offer is more reasonable.

MISCELLANEOUS DEFINITIONS

The Union questions both the jurisdiction of the arbitrator and the merits of the Miscellaneous Definitions clause submitted by the Employer. Thus, both aspects must be discussed.

The Union seeks arbitral rejection of the Employer's offer on the grounds that the Employer exceeded his authority in drawing its final offer which procedurally makes the offer invalid. It cites the Greendale Professional Policemen's Association, Decision No. 15481-A, based upon the Supreme Court decision in Milwaukee Deputy Sheriffs' Asso. v. Milw. County, 64 Wis. 2d 651 as support for its position. The undersigned finds there are significant differences between the Greendale and the Supreme Court cases and the instant situation. In this instance, the offers are submitted under different statutory requirements and the parties have signed voluntary agreements which also affect the status of the offers.

The Union contends the Employer's submission of the Miscellaneous Definitions clause during the exchange of the amended final offers conflicts with the Supreme Court ruling wherein it was indicated that although the statute provides for amending the final offers, the amendments may not include subjects which were not matters of collective bargaining prior to petitioning for impasse procedures. The Union argues that the Employer submitted new subjects when it introduced this clause in the exchange of the final offers.

The undersigned rejects the Union's argument that since this clause so flagrantly violates the decisions reached in Greendale and Milwaukee Deputy Sheriffs' Asso., the Employer's offer must be thrown out. First, the undersigned finds that the situation involved in this matter is substantially different than the circumstances in the two cases cited and secondly, the undersigned finds that other alternatives were available to the Union to question the acceptability of the Employer's final offer.

In the Milwaukee Deputy Sheriffs' Asso. case, upon which the Greendale decision was based, the Supreme Court held that "...arbitrators cannot consider issues raised for the first time after negotiations have closed and the arbitration proceeding has begun," (655) and defined negotiations as ceasing when the petition for impasse was filed. This ruling pertains to Wis. Stats. 111.77, the police and fire statute. There is a significant diference between the impasse procedures in Sec. 111.77 and Sec. 111.70. Section 111.70 6 b. provides "...final offers shall serve as the initial basis for mediation and continued negotiations..." (emphasis added). This provision does not exist in Sec. 111.77.

The implication of the language is that although the parties may have petitioned for impasse procedures in Sec. 111.70, final impasse is not determined until the arbitrator declares intent to resolve the impasse by final and binding arbitration and that negotiations do not cease until then. Thus, contrary to the Court's finding that negotiations cease upon the filing of the petition in Sec. 111.77, they do not end at the same time under Sec. 111.70. Thus, while the Employer may have submitted new items within the final offer, there was still opportunity to engage in collective bargaining over them under the impasse procedure.

Additionally, the undersigned finds that if the Union sincerely believed the Employer had exceeded its authority when it proposed this clause other remedies were available to the Union to have the clause successfully deleted from the final offer. Among the remedies available were an objection to the final offer before the Wisconsin Employment Relations Commission on the basis that the Employer violated the agreement signed by the parties on September 26, 1980[1] and/or a demand to the arbitrator that the issue be remanded to the Commission during the mediation/arbitration process. Thus, the undersigned prefers to decide this issue on the merits rather than being placed in the position of assuming the role of either the Commission or the Courts.

On the merits of the issue, the undersigned is concerned that the clause addresses issues which were the subject of tentative agreements signed and stipulated to the Commission on September 26, 1980 as "...matters which are agreed upon for inclusion in the new ... collective bargaining agreement."[2] Section 111.70(d), Wis. Stats. defines collective bargaining as "...the intention of reaching an agreement ..." and "... does not compel either party to agree to a proposal or require the making of a concession." Therefore, when the parties sign a tentative agreement, the agreement should reflect a meeting of the minds as pertains to a particular issue. Thus, when Sec. 111.70 6 a. requires the investigator to secure"... a stipulation, in writing," of the matters which were agreed upon, the agreements should carry weight as items to be incorporated into the contract which were effectively "put to bed".

Three items contained in the Miscellaneous Definitions clause are attempts by the Employer to modify clauses which were stipulated to the Commission as agreed upon clauses. This amounts to an attempt by the Employer to circumvent contract provisions to which they previously agreed. The Employer contends the Union waived any right to object to this conflict when it signed the memo of July 14 and August 14, 1980 which conditioned the tentative agreements upon settlement of the entire package and reserved the right of the parties to arbitrate any tentative agreements. The undersigned finds that once the parties again agreed to the tentative agreements in September and stipulated them as certifiable to the Commission, they nullified the effect of the agreement which was last signed in August. If there was still disagreement over any aspect of a tentative agreement, the entire provision should have been included as part of the final offer with the distinguishing differences noted rather than addressing the differences through submission of a new clause. To attempt to modify agreed upon items via the insertion of a

[1]The parties agreed to submit "...no new issue...in any such amended final offer."

[2]Wis. Stats. 111.70 6 a.

totally unrelated clause creates a situation which does not encourage harmonious relationships between the parties.

Further, the undersigned finds the definitions submitted by the Employer do impact upon the previously agreed to items. Definition A confines itself to a concept of "running of a time limit" which for this initial contract amounts to setting a standard of proof in the grievance procedure. While the Union asserts the Employer's clause would result in an unjust burden being imposed upon the employee when filing a grievance, the undersigned finds the standard to be no more compelling than the proof arbitrators require for establishing jurisdiction in hearing the merits of a grievance which was not filed in a timely manner. Normally, when grievance procedures require time limits for the filing of grievances, the employee is required to prove why knowledge of the grievance did not occur at the time the event occurred. On the other hand, the Employer presented no evidence supporting need to spell out a standard of proof subsequent to reaching agreement on a grievance procedure which establishes time limits.

Definition B removes jurisdiction from the arbitrator and places it in the hands of the Personnel Committee in determining whether or not an employee has a justifiable grievance pertaining to compensation for professional education and development. Additionally, by defining "prevailing, applicable ordinances, resolutions and/or administrative procedure memoranda, or similar language" as "officially promulgated policy pronouncements", the Employer has successfully removed consideration of past practices as a basis for deciding whether or not an employee has been grieved.

While Definition B eliminates the concept of past practices as a consideration for filing a grievance, Definition C not only accomplishes the same goal, but results in the elimination of an item agreed to by the parties in Article XIX. Article XIX, Section H defines the policy to be followed by the County regarding a leave of absence during inclement weather as consistent with "prevailing practices." Nowhere in the agreed upon items is there any definition of prevailing practices other than in the definition proposed by the Employer which limits the definition to the express terms of the agreement. Thus, if past practices are not to prevail, the agreement, itself, provides no term which would define the right of the employee in this section.

As in Definition A, the Employer presented no persuasive reason for need of the definitions, nor for the need to address the agreed upon items through a miscellaneous clause. The undersigned finds this method of behavior in regard to collective bargaining questionable and believes this aspect of the Employer's offer creates a conflict within the contract that will result in unenforceable provisions which will need to be resolved through other forums than this arbitration. The undersigned concurs with the Union that the stipulated tenative agreements should carry the full force and effect of a contract and that the Employer's Miscellaneous Definitions clause proposal creates conflict with those previously signed agreements and thus finds the Union's position regarding this issue more reasonable.

Thus, having reviewed the evidence and arguments and after applying the statutory criteria, and having concluded that the Employer's offer is more reasonable both in the on-call provision and the wage offer but that its proposal regarding Miscellaneous Definitions will create conflict in the contract, the undersigned finds that the Employer's offer is nonetheless the more reasonable. While the undersigned would prefer to be in a position to award

a "clean" contract, the economics of the situation carry significantly more weight than does the conflict which occurs as the result of the Miscellaneous Definitions clause. Further, the undersigned is not empowered with the authority to determine that this clause, though in conflict with the stipulated agreements, must be deleted. Thus, the undersigned makes the following

AWARD

The final offer of the Employer, along with the stipulations of the parties which reflect prior agreements in bargaining are to be incorporated into the collective bargaining agreement as required by statute.

Dated this 12th day of August, 1981, at La Crosse, Wisconsin.

Sharon K. Imes

Sharon K. Imes
Mediator/Arbitrator

SKI/mls

APPENDIX A

FINAL OFFER OF UNITED PROFESSIONALS - SAUK COUNTY

Re: Sauk County
Case XXX No. 26223 MM-2806

October 10, 1980

The following represents the Final Offer of the Union with respect to the issues that remain in dispute between the parties.

Proposed Article IX

I. Standby

On-Call: When the employer requires that an employee must be available for work and be able to report for work in less than one (1) hour, the employee shall be compensated at the rate of $1.00 per hour.

Employees taking secondary call shall be compensated at the rate of $0.50 per hour for all time spent on secondary call assignment. On-call employees who are called to work during their on-call assignment shall be compensated for all hours worked at the rate of one and one-half (1-1/2) times the employee's current rate of pay for all hours worked in excess of thirty-eight and three-quarters (38-3/4) hours per week or in excess of seven and three-quarters (7-3/4) hours in one (1) day for all employees.

Call-Back: An employee called back for duty will be guaranteed an amount equal to two (2) hours pay at one and one-half (1-1/2) times the employee's regular rate of pay for the day. Such pay shall commence at the time the employee leaves his/her home for the worksite.

Proposed Article XVII

II. Sick Leave with Pay

A. Eligible Employees shall be entitled to one (1) working day of sick leave with pay for each month, or major fraction thereof, of actual service up to an accumulated total of 120 days.

B. Each Employee who has unused sick leave shall be eligible for sick leave absence from work due to illness, temporary disability or bodily injury. Employees may also be allowed to use up to three (3) days accumulated sick leave for the care of a spouse, child or other dependent who is ill and in need of such care. It is expected that Employees may be permitted to utilize sick leave for dental or doctor appointments, if absolutely necessary, provided notification has been given forty-eight (48) hours in advance to the Department Head/Immediate Supervisor.

C. Employees shall not be required to use sick leave in the case of an on-the-job injury. A County employee who is entitled to Workmen's Compensation may elect to take as much accumulated sick leave, or accumulated vacation leave after accumulated sick leave becomes exhausted, as when added to Workmen's Compensation will result in a payment of full salary or wage.

D. Any Employee having unused sick leave on date of compulsory retirement shall be allowed to convert one-half (50%) thereof to purchase continuing hospital insurance under the County health insurance plan.

Either: (1) Having reached mandatory retirement age.

(2) Being disabled due to illness (the degree of disability being the same as for Federal Social Security).

III. Lay-off/Re-call

A. The Union recognizes the right of the Employer to lay off employees.

B. In the event it becomes necessary to lay off employees, the lay-off shall be by job classification.

C. When it is necessary to lay-off regular full-time employees, individual employee performance and bargaining unit seniority shall be the sole considerations in determining those employees to be displaced.

D. Those employees who have received two (2) unsatisfactory performance evaluation ratings over the most recent past two (2) evaluation periods shall be the first to be displaced according to a priority established by the Employer.

E. If an insufficient number of employees are laid off in the manner set forth in Paragraph D. above, the employee(s) with the shortest length of continuous service shall be displaced first, provided that the remaining employees are capable of performing the duties of the laid off employee.

F. Regular full-time employees whose positions are being eliminated shall be given whenever reasonably practicable, written notice of the action not less than fifteen (15) calendar days prior to the effective date. In no case shall an employee, prior to the effective date of lay-off, receive less than a ten (10) day notice or an amount equal to the employee's regular rate of pay for such ten (10) day period.

G. The Employer will notify the Union prior to any lay-off affecting bargaining unit employees. At the request of either party, a meeting shall be held between the parties for the purpose of attempting to identify and agree upon alternatives to lay-off.

Re-call

A. Notice of the opportunity to return to work shall be given to laid-off employees in the reverse order of lay-off. Such employees shall be notified by certified mail addressed to the last address appearing on the Employer's records.

Employees so recalled shall report for work within ten (10) working days from the date of mail certification. Employees who fail to keep the Employer informed as to changes in their current address on the first of each month shall forfeit their rights to employment.

B. If contact is not made between the laid-off employee and the County by certified mail within ten (10) working days from the date the notice is sent, the County may notify the next senior laid-off employee to fill the available position. If there is only one (1) employee on lay-off status and contact is not made between the laid-off employee and the County by certified mail within fifteen (15) working days from the date the notice is sent, the County may fill the vacancy.

C. An employee(s) who fails to report for work as required in Paragraph A. above, shall forfeit his/her right to re-employment.

D. Employees on the re-employment list shall maintain re-employment rights for one (1) year from the date they were laid-off.

Proposed Article XXIV

IV. Car Mileage

Mileage Reimbursement: The Employer shall reimburse employees authorized to use their personal automobiles for official business at the rate of $0.18 per mile for the period January 1, 1980 - December 31, 1980, and at the rate of $0.20 per mile for the period January 1, 1981 - December 31, 1981.

Proposed Article XXVI

V. Health & Safety

Section A.

The Employer shall observe all applicable health and safety laws and regulations and will take all reasonable steps necessary to assure employee health and safety. Should any employee become aware of conditions he/she believes to be unhealthy or dangerous to the health and safety of employees or patients/clients, the employee shall report the condition immediately to their supervisor. All unsafe and unhealthy conditions shall be remedied as soon as is practicable.

Section B.

The Employer shall reimburse any employee for damages to his/her personal property in the amount not to exceed $150 for each incident occuring in the regular discharge of job responsibilities.

Section C.

The Employer agrees to provide paid leave for all illness-absences associated with the contraction of communicable diseases including parasites, during the discharge of work assignments and to provide for all other related medical expenses.

Proposed Article XXIX

Salary Schedule

A. All employees shall be paid in accordance with the following schedule and shall receive the increments shown based on length of service with the County for all other classifications within the bargaining unit and/or credit for prior service in accordance with Section B. The following salaries are expressed as monthly salaries.

B. New employees may receive credit for prior experience up to level six (6) months. Employees who were in the employ of the County on December 31, 1979 shall be placed on the salary schedule with due credit for prior service to the County and credit for prior relevant experience.

January 1, 1980-June 30, 1980

	Start	6 mos.	18 mos.	30 mos.	42 mos.
RN	$ 964	$ 1001	$ 1037	$1074	----
Home Care RN	964	1001	1037	1074	----
Public Health RN I	964	1001	1037	1074	----
Public Health RN II	1058	1095	1132	1169	----
Social Worker I	996	1039	1081	1124	----
Social Worker II	1081	1129	1177	1224	----
Social Worker III	1177	1224	1283	1341	----

Salary Schedules Continued Page 8

July 1, 1980 - December 31, 1980

	Start	6 mos.	18 mos.	30 mos.	42 mo
RN	$ 1042	$ 1082	$ 1119	$ 1159	----
Home Care RN	1042	1082	1119	1159	----
Public Health RN I	1042	1082	1119	1159	----
Public Health RN II	1142	1183	1223	1263	----
Social Worker I	1056	1101	1146	1191	----
Social Worker II	1146	1197	1247	1298	----
Social Worker III	1247	1298	1360	1421	----

January 1, 1981 - June 30, 1981

	Start	6 mos.	18 mos.	30 mos.	42 mos
RN	$ 1126	$ 1169	$ 1208	$ 1252	----
Home Care RN	1126	1169	1208	1252	----
Public Health RN I	1126	1169	1208	1252	----
Public Health RN II	1233	1277	1320	1364	----
Social Worker I	1120	1167	1215	1262	1310
Social Worker II	1215	1268	1322	1376	1429
Social Worker III	1401	1458	1528	1597	1666

July 1, 1981 - December 31, 1981

	Start	6 mos.	18 mos.	30 mos.	42 mo
RN	$ 1205	$ 1252	$ 1292	$ 1339	----
Home Care RN	1205	1252	1292	1339	----
Public Health RN I	1205	1252	1292	1339	----
Public Health RN II	1319	1366	1413	1460	----
Social Worker I	1187	1237	1288	1338	1389
Social Worker II	1288	1345	1401	1458	1515
Social Worker III	1401	1458	1528	1597	1666

Proposed Article XXXIII

Duration

This Agreement shall be effective as of the 1st day of January, 1980, and shall remain in full force and effect through the 31st day of December, 1981. This agreement shall be automatically renewed from year to year thereafter unless either party shall notify the the other in writing on or before November 1, 1981 that it desires to modify this Agreement.

July 1, 1980 - December 31, 1980

	Start	6 mos.	18 mos.	30 mos.	42 mos
RN	$ 1042	$ 1082	$ 1119	$ 1159	----
Home Care RN	1042	1082	1119	1159	----
Public Health RN I	1042	1082	1119	1159	----
Public Health RN II	1142	1183	1223	1263	----
Social Worker I	1056	1101	1146	1191	----
Social Worker II	1146	1197	1247	1298	----
Social Worker III	1247	1298	1360	1421	----

January 1, 1981 - June 30, 1981

	Start	6 mos.	18 mos.	30 mos.	42 mos.
RN	$ 1126	$ 1169	$ 1208	$ 1252	----
Home Care RN	1126	1169	1208	1252	----
Public Health RN I	1126	1169	1208	1252	----
Public Health RN II	1233	1277	1320	1364	----
Social Worker I	1120	1167	1215	1262	1310
Social Worker II	1215	1268	1322	1376	1429
Social Worker III	1322	1376	1442	1506	1572

July 1, 1981 - December 31, 1981

	Start	6 mos.	18 mos.	30 mos.	42 mos
RN	$ 1205	$ 1252	$ 1292	$ 1339	----
Home Care RN	1205	1252	1292	1339	----
Public Health RN I	1205	1252	1292	1339	----
Public Health RN II	1319	1366	1413	1460	----
Social Worker I	1187	1237	1288	1338	1389
Social Worker II	1288	1345	1401	1458	1515
Social Worker III	1401	1458	1528	1597	1666

APPENDIX B

FINAL OFFER OF

SAUK COUNTY

to

UNITED PROFESSIONALS FOR QUALITY HEALTH CARE

Dated: October 30, 1980

Submitted by:

EUGENE R. DUMAS
Sauk County Corporation Counsel

FINAL OFFER OF

SAUK COUNTY

to

UNITED PROFESSIONALS FOR QUALITY HEALTH CARE

In addition to those issues which the parties, on September 26, 1980, have in writing stipulated to include in a new collective bargaining agreement, Sauk County offers to include the additional following items.

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ARTICLE VIII

OVERTIME

* * * * * *

E. An employee called back for duty or called in on said employee's day off will be guaranteed an amount equal to two (2) hours' pay at one and one-half (1½) times the employee's regular rate of pay for the day.

ARTICLE XVII

SICK LEAVE WITH PAY

A. Eligible Employees shall be entitled to one working day of sick leave with pay for each month, or major fraction thereof, of actual service up to an accumulated total of 120 days.

B. Each Employee who has unused sick leave shall be eligible for sick leave absence from work due to illness, temporary disability or bodily injury. Employees may also be allowed to use accumulated sick leave for the care of a spouse, child or other dependent who is ill and in need of such care, up to three days for each occurrence or episode. It is expected that Employees may be permitted to utilize sick leave for the Employee's own dental or doctor appointments, if absolutely necessary, provided notification has been given 48 hours in advance to the Department Head/Immediate Supervisor.

C. Employees shall not be required to use sick leave in the case of an on-the-job injury. A County employee who is entitled to Workmen's Compensation may elect to take as much accumulated sick leave, or accumulated vacation leave after accumulated sick leave becomes exhausted, as when added to Workmen's Compensation will result in a payment of full salary or wage.

D. Conversion at Retirement. An eligible employee who retires after reaching age 65, mandatory retirement age, or as a result of disability shall be allowed to utilize unused sick leave to purchase continued health insurance benefits according to the following formula:

> Number of days unused, earned sick leave X 50% X base hourly rate of employee at retirement X number of hours normally worked/day = dollars to be applied to health insurance.

If a retired employee becomes re-employed and is eligible for health insurance with a conversion privilege from said employer, no further health insurance payments will be made by the Employer until such time as that employee terminates his employment with the other employer. At that time, the retired employee may be reinstated to the Employer's group plan, if available, or if not available, the Employer shall pay up to the amount of the payments it would have made had the employee remained in the group plan to the retired employee's insurance plan under which he has a conversion privilege, but not to exceed the full amount of the premium for such plan.

ARTICLE XXIII

LAY-OFF/RECALL

A. The Union recognizes the right of the Employer to lay off employees.

B. In the event it becomes necessary to lay off employees, the lay-off shall be by job classification.

C. When it is necessary to lay off regular full-time employees, individual employee qualifications, performance and seniority shall be the sole considerations in determining those employees to be displaced.

D. Those employees who have received two unsatisfactory performance evaluation ratings over the most recent past two (2) evaluation periods shall be the first to be displaced according to a priority established by the Employer.

E. If an insufficient number of employees are laid off in the manner set forth in Paragraph D. above, the employee(s) with the shortest length of continuous service as defined in Article XXIV, Seniority-Continuous Service, shall be displaced first.

F. Regular full-time employees whose positions are being eliminated shall be given whenever reasonably practicable, written notice of the action not less than fifteen (15) calendar days prior to the effective date. In no case shall an employee, prior to the effective date of lay-off, receive less than a ten (10) day notice or an amount equal to the employee's regular rate of pay for such ten (10) day period.

G. The Employer will notify the Union prior to any lay-off affecting bargaining unit employees. At the request of either party, a meeting shall be held between the parties for the purpose of attempting to identify alternatives to lay-off.

Recall:

A. Notice of the opportunity to return to work shall be given to laid-off employees in the reverse order of lay-off. Such employees shall be notified by certified mail addressed to the last address appearing on the Employer's records. Employees so recalled shall report for work within ten (10) working days from the date of mail certification. Employees who fail to keep the Employer informed as to changes in their current address on the first of each month shall forfeit their rights to reemployment.

B. If contact is not made between the laid-off employee and the County by certified mail within ten (10) working days from the date the notice is sent, the County may notify the next senior laid-off employee to fill the available position.

C. An employee(s) who fails to report for work as required in Paragraph A. above shall forfeit his/her right to employment.

D. Employees on the reemployment list shall maintain reemployment rights for one year from the date they were laid off.

ARTICLE XXIV

MILEAGE

A. The Employer shall reimburse employees authorized to use their personal automobiles for official business at the rate of eighteen cents (18¢) per mile for the period January 1, 1980 - December 31, 1980, and at the rate of twenty cents (20¢) per mile for the period January 1, 1981 - December 31, 1981.

B. Employees starting a work day at outside work location may claim mileage only for the lesser of

(a) The distance from the origination of travel to the outside work location, or

(b) The distance from the normal work location to the outside work location.

ARTICLE XXVII

HEALTH AND SAFETY

Section A. The Employer shall observe all applicable health and safety laws and regulations and will take all reasonable steps necessary to assure employee health and safety. Should any employee become aware of conditions he/she believes to be unhealthy or dangerous to the health and safety of employees, the employee shall report the condition immediately to the supervisors. All unsafe or unhealthy conditions shall be remedied as soon as is practicable.

Section B. The Employer shall reimburse any employee for damages to his/her personal property in the amount not to exceed $150 for each incident occuring in the regular discharge of job responsibilities.

Section C. The Employer agrees to provide paid leave for all illness-absences associated with the contraction of communicable diseases including parasites, during the discharge of work assignments.

ARTICLE XXIX

COMPENSATION

A. Effective January 1, 1980, the Employer shall pay employees covered by this Agreement compensation as set forth in Appendix A, attached hereto.

B. Effective January 1, 1981, the Employer shall pay employees covered by this Agreement compensation as set forth in Appendix B, attached hereto.

ARTICLE XXXII

MISCELLANEOUS DEFINITIONS

A. Where the running of a time limit is deemed to begin with the time of knowledge by an employee or the Union of an event, such knowledge shall be presumed to arise as of the time of the initial occurrence of the event, but such presumption may be rebutted by competent evidence setting forth good cause and particular reason why such knowledge did not arise at the same time as the occurrence of the event.

B. "Prevailing, applicable ordinances, resolutions and/or administrative procedure memoranda," or similar language, is used herein to mean authorized, officially promulgated policy pronouncements which have not been subsequently amended by the same or a higher level of authority within the government of Sauk County. The Personnel Committee of the Sauk County Board of Supervisors shall be the sole and final arbitrator of the correct application of this language.

C. Wherever reference is made to existing or past practice, the same shall be limited by any express terms of this Agreement not consistent therewith.

D. "Outside work location" means a work location other than the employee's normal work location, i.e., the office of the Employer from which the employee normally works.

E. "The distance from the origination of travel to the outside work location" means the distance traveled at the beginning of a scheduled work day from the employee's place of residence to an outside work location to which an employee is assigned to begin the scheduled work day.

1980 RATE

	HIRING	6 MONTH RATE	18 MONTH RATE	30 MONTH RATE
Public Health Nurse I	1026	1062	1098	1134
Public Health Nurse II	1057	1095	1134	1172
Health Care Nurse	1026	1062	1098	1134
Social Worker I	1026	1069	1113	1156
Social Worker II	1113	1162	1211	1260
Social Worker III	1200	1260	1320	1380

	HIRING	6 MONTH RATE	18 MONTH RATE	30 MONTH RATE
Public Health Nurse I	1130	1166	1202	1238
Public Health Nurse II	1161	1199	1238	1276
Health Care Nurse	1130	1166	1202	1238
Social Worker I	1130	1173	1217	1260
Social Worker II	1217	1266	1315	1364
Social Worker III	1304	1364	1424	1484

APPENDIX "C" Exhibit 46

MEMORANDUM CONCERNING
TENTATIVE AGREEMENTS

The following constitutes the understanding between the representatives of Sauk County and the United Professionals for Quality Health Care concerning tentative agreements which may be reached during the process of negotiations:

All tentative agreements are conditional upon settlement of the entire package. Each party reserves the right to arbitrate the tentative agreements in the event the parties are forced into mediation/ arbitration.

Lyle Dunn
Sauk County Representative

Dated: August 14, 1980

Laurence Podenstein
Union Representative

as of June 13 Dated: July 14

APPENDIX "D"

The Parties agree to submission of amended final offers to the mediator/investigator before October 3, 1980 (post-mark date) on the understanding that both parties have agreed they will not file petitions for declaratory rulings regarding this matter and that no new issues will be included in any such amended final offer.

Eugene R. Dumas

Laurence S. Rodenstein

Empl Ex 14