STATE OF WISCONSIN

BEFORE THE ARBITRATION

In the Matter of the Petition of MILWAUKEE DISTRICT COUNCIL 48 AFSCME, AFL-CIO To Initiate Mediation-Arbitration between said Petitioner and MILWAUKEE COUNTY	Case CLIV No. 27463 MED/ARB-1026 Decision No. 18630-A

Appearances:

Donald Wasserman, Director Collective Bargaining Services, AFSCME International; and Janet Kail, Employee Benefit Analyst, AFSCME International; and Joe Robison, Executive Director, District Council 48, AFSCME; appearing on behalf of the Union.

Robert G. Polasek, Corporation Counsel, by Patrick J. Foster, Principal Assistant Corporation Counsel, appearing on behalf of the Employer.

ARBITRATION AWARD:

On May 6, 1981, the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator pursuant to 111.70 (4)(cm) 6.b. of the Municipal Employment Relations Act, in the matter of a dispute existing between Milwaukee District Council 48, AFSCME, AFL-CIO, referred to herein as the Union, and Milwaukee County, referred to herein as the Employer. Pursuant to statutory responsibilities the undersigned conducted mediation proceedings between the Union and the Employer on May 27, 1981, which resolved several of the issues that had been previously in dispute between the parties, however, said mediation failed to resolve all disputed matters. At the conclusion of the mediation proceedings the parties amended their final offers with the consent of the opposing party, and said amended final offers reduced the issues to be heard in arbitration to those set forth below. The other issues which had previously been included in the final offers filed with the Wisconsin Employment Relations Committee were added to the stipulations pursuant to the terms agreed to by the parties during the mediation phase of these proceedings.

On July 1 and July 2, 1981, the undersigned conducted arbitration proceedings over the surviving two issues in dispute between the parties, after the parties had executed a waiver of the statutory provisions of 111.70 (4)(cm) 6.c. which require the Arbitrator to provide a written notice of intent to arbitrate, and that the Arbitrator provide the opportunity for each party to withdraw his final offer. During the arbitration proceedings of July 1 and July 2, 1981, the parties were present and were given full opportunity to present oral and written evidence and to make relevant argument. No transcript of the proceedings was made, nor were briefs filed in the matter. The record was closed after the parties made oral argument on July 2, 1981.

THE ISSUES:

The two issues which survive after mediation deal with overtime and pensions. The parties' final offers with respect to these two issues remain unchanged from the offers which the parties had submitted to the Commission on April 27, 1981, and the final offers of each party are as follows:

OVERTIME:

UNION FINAL OFFER:

Section 2.04 (1) Amend the provisions of the predecessor agreement to read: "No overtime shall be paid nor compensatory time allowed except on a straight-time basis to any employee whose position is in a pay range above pay range 24. Strike the remaining language of this subsection."

EMPLOYER FINAL OFFER:

Modify Section 2.04 "overtime" by changing the reference from pay range 22 to pay range 23.

PENSIONS:

UNION FINAL OFFER:

Modify the employee retirement system as it relates to bargaining unit employees who first become members of the system on and after January 1, 1982, as follows:

1. Increase the vesting period from six (6) years to ten (10) years.

EMPLOYER FINAL OFFER:

Modify the employee retirement system as it relates to unit employees who first become members of the system on and after January 1, 1982, as follows:

a. Reduce retirement benefit accrual from 2% per year of creditable service to 1-1/2% per year.

b. Modify the base for "final average salary" determination by increasing the "highest consecutive years" factor from three (3) to five (5) years.

c. Increase the vesting period from six (6) to ten (10) years.

DISCUSSION:

While two issues are in dispute for final and binding determination by the undersigned, it is clear to all parties to this dispute, as well as to the Mediator-Arbitrator, that the significant issue in these proceedings is the pension issue. The difference in the positions of the parties with respect to the overtime issue results in a net budgetary cost differential of $16,500.00 or .01% of payroll. The parties in their arguments, as well as the Mediator-Arbitrator in his statements at hearing, all reflected recognition that the disputed overtime issue would be determined by the outcome of the pension dispute. Therefore, the undersigned concludes that no discussion on the overtime issue is necessary in this matter because the decision in this matter will turn on pensions and not on overtime.

The undersigned, in determining which final offer to adopt, is directed by the statute to consider the criteria contained in the statute at 111.70 (4)(cm) 7, paragraphs a through h. At hearing the parties directed evidence to certain of the criteria, and the Arbitrator will consider the evidence and argument of the parties as they apply to the criteria to which the parties addressed themselves.

The pension issue deals with modification of pension formulation for retiring employees who are hired after January 1, 1982. While the Employer offer contains three proposed modifications to the formulations, one of those three changes is undisputed, because the Union offer with respect to vesting requirements is identical to the Employer offer. Consequently, the undersigned need only address the proposals of the Employer, which for new employees hired

after January 1, 1982, will result in a reduction in pension formulations of .5% per credited year of service, and an increase in the base period on which earnings are calculated for pension proposals from the three highest consecutive years to the five highest consecutive years. The Union proposal on these same issues would maintain the prior pension provisions.

Prior to discussing the positions of the parties with respect to these issues, the undersigned makes the following Findings of Fact:

1. The pension plan was originally established on or about January, 1938, and at that time the plan provided for two distinct benefits, an annuity pension based on the employee's contributions plus interest, and a pension benefit based on a defined pension formula funded by the Employer. The employee contribution to the annuity varied from 5% to 9.5% of pay based on age at time of hire and sex of the employee.

2. The plan was revised in January, 1956, when employees first were covered by social security. The plan was then revised to integrate social security benefits into the pension formulation, and the employee's contribution percentage was reduced by 2%. The annuity and pension concepts of the plan as they were originally established were continued.

3. On or about January, 1967, the plan was further revised, and the revisions to the plan were included in the parties' Collective Bargaining Agreement for 1967-68. The amendments to the plan set forth in the Collective Bargaining Agreement read as follows:

> (3) The social security offset against pension shall be removed for all employes retiring on or after January 1, 1967, provided, however, that pension benefits shall not be modified to reflect such change until after this Memorandum of Agreement becomes effective, pursuant to Part II.
>
> (4) Upon retirement employee shall have the following option:
>
> (a) A retirement leave may be taken under the existing County plan, or
> (b) The employe may elect to receive payment in a lump sum of retirement leave benefits to which he is entitled on his last day of work, not exceeding thirty (30) days of sick leave retirement allowance and twenty-two (22) days of vacation leave.
>
> Under this option the payment to such employe of his County pension and annuity benefits shall be postponed until the total number of retirement leave days for which he has been paid have expired; provided, however, that no employe shall accrue additional benefits during such period.
>
> Such retirement payments shall be calculated at the rate of pay in effect for such employe on his last day of work.
>
> (7) Effective with the first pay period for the year 1968, the County shall pay the first 4% of the annuity contribution for employes covered by this Memorandum of Agreement. For employes covered by this Memorandum of Agreement whose contribution adjusted for social security is less than 4%, the difference between 4% and his contribution adjusted for social security shall be credited to his annuity fund as additional contributions subject to the provisions of the pension system as they relate to the limitation of additional contributions.
>
> It is understood and agreed that this payment shall be in lieu of any other general wage or general salary increases for the year 1968. 1

1/ Union Exhibit #1

The foregoing provisions were included in the Collective Bargaining Agreement, however, the decision to amend the plan was unilaterally made by the Employer without bargaining over the changes with the Union.[2]

4. Effective January 5, 1969, further revisions to the pension plan were made and included in the parties' 1969-70 Collective Bargaining Agreement as follows:

(24) Upon retirement employe shall have the following option:

(a) A retirement leave may be taken under the existing County plan, or
(b) The employe may elect to receive payment in a lump sum of retirement leave benefits to which he is entitled on his last day of work, not exceeding thirty (30) days of sick leave retirement allowance and twenty-five (25) days of vacation leave.

Under this option the payment to such employe of his County pension and annuity benefits shall be postponed until the total number of retirement leave days for which he has been paid have expired; provided, however, that no employe shall accrue additional benefits during such period.

Such retirement payments shall be calculated at the rate of pay in effect for such employe on his last day of work.

(27) Effective January 5, 1969, employes shall make no contribution to the mandatory savings account, and the County shall contribute a sum equal to 6% of each employe's earnings computed for pension purposes into such account on behalf of each such employe. All such sums contributed, in addition to the contributions previously made by the employe, shall be credited to the employe's individual account and be subject to the provisions of the pension system as it relates to the payment of such sums to such employes upon separation from service. The provisions of this paragraph shall not apply to employes in the bargaining unit in the following classes who were not members of the Employes' Retirement System on or before the 12th day of December, 1967, or whose date of hire is later than December 23, 1967:

(a) Emergency appointment, full time.
(b) Emergency appointment, part time.
(c) Regular appointment, seasonal.
(d) Temporary appointment, seasonal.
(e) Emergency appointment, seasonal.[3]

The foregoing modifications which were included in the Collective Bargaining Agreement were made by the unilateral action of the Employer without bargaining over the changes with the Union.[4]

5. On July 14, 1969, a Pension Study Committee chaired by Gerald H. Kops, Chairman, which had been authorized to study and recommend pension changes to the County Board, made a report to the County Board of Supervisors, proposing certain changes to the pension plan.[5] The proposed recommendations of the Pension Study Committee were considered by the County Board of Supervisors of the Employer in its proceedings of May 19, 1970. The recommended changes considered by the County Board were:

2/ Sworn testimony of Robert Polasek
3/ Union Exhibit #2
4/ Sworn testimony of Robert Polasek
5/ Union Exhibit #3

RECOMMENDED CHANGES

1. Permit employes who have selected survivorship options to change such options prior to retirement.

2. Permit a surviving dependent spouse of an employe who died before reaching age 60 to waive the right to receive a pension payable at age 60, and in lieu thereof to receive payment of the death benefit and the balance in the employes' mandatory savings account.

3. Commencing with the month of July 1970, grant to employes who retired prior to December 24, 1967, the same post retirement adjustment given to employes retiring after December 24, 1967.

4. Authorize a lump sum payment to employes who retired prior to December 24, 1967, equal to the post retirement adjustment which they would have received if such adjustment had been in effect for such employes during the period from December 24, 1967 to July, 1970.

5. Increase the post retirement adjustment from 1-1/2% per year to 2% per year commencing January 1, 1971.

6. Effective January 1, 1971, increase the pension payable to employes for service prior to age 45 from 1-1/2% to 2%.

7. Discontinue voluntary savings accounts after January 1, 1971, except for employes who have authorized payroll deductions prior to such date.

8. Discontinue partial withdrawals from voluntary savings accounts after January 1, 1971.

9. Authorize credit for service as an employe of the City of Milwaukee prior to December 31, 1938.

10. Remove the .50% limitation upon investment of pension funds in common stocks.[6]

The foregoing recommendations of the Pension Study Committee were adopted by ordinance by a majority board of the County Board, except for item 10 of the recommended changes in its May 19, 1970 proceeding as follows:

10. Remove the .50% limitation upon investment of pension funds in common stocks.[7]

The foregoing changes were made by the unilateral action of the Employer and were not the result of the collective bargaining process.

6. Following the unilateral adoption of the pension changes as set forth in paragraph 5 above, the Union started action in Circuit Court alleging that the Employer had violated the law by making the unilateral changes to the pension plan. When the Circuit Court found for the Union, the benefit levels were reduced to their former status, and the parties then met and agreed through negotiations to reimplement the unilateral changes the Employer had previously made. The rebargaining of the unilateral action pursuant to the order of the Circuit Court represents the only bargaining over pensions which the parties had engaged in. All other pension changes prior to this round of bargaining have been made by unilateral action of the Employer.[8]

6/ Union Exhibit #6
7/ Union Exhibit #6
8/ Sworn testimony of Robert Polasek

7. On or about February 28, 1978, the Board of Supervisors of the Employer authorized the Finance Committee to appoint an eight person Citizen Advisory Committee on Milwaukee County pension policies. Pursuant to the authorization, the Finance Committee established the eight person Citizen Advisory Board, which included three members from industry, one member from League of Women Voters, one member from Citizen Research Bureau and two members from the labor community. The Advisory Committee met on ten separate occasions for a total of 17 hours of meeting, and on September 11, 1978, submitted their conclusions and recommendations to the County Board of Supervisors, with all eight members of the committee joining in the conclusions and recommendations by their signatures. Included in the conclusions and recommendations were the recommendations of the Advisory Committee as follows:

Section 1. CONCLUSIONS

1. Measured in terms of the relationship between disposable income after retirement and disposable income before retirement, the County Plan results in career employees having more take-home pay after retirement than they had while working. It is difficult to justify this high level of benefits to the taxpayers. (Section 3).

2. Milwaukee County employees have benefits higher than other public plans in this area, and among the highest in the country, as compared with the plans of eight different cities. Also, County retirement benefits are substantially higher than those of private plans in our area. (Section 4).

3. The great majority of public plans require employee contributions. The non-contributory County Plan is an exception to the general rule. Despite requiring no contributions by the employees, the benefits are among the highest. (Section 4).

4. Very much a part of producing very high benefits is the fact that the County Plan in no way recognizes the high and increasing Social Security benefits. Other plans that add on Social Security benefits have a much lower rate of credit per year of service than the County's 2%. (Section 4).

5. The building up of benefits through excessive overtime among employees nearing retirement has not been a problem up to this time. The inclusion of overtime could pose the possibility of abuse in the future. (Section 5).

6. The costs of the plan to the taxpayers of the County are very high, especially when account is taken of Social Security taxes. (Section 6).

7. The strengthening of asturial assumptions because of inflation, necessitating increased annual contributions, is in order. If anything, this increase may be said to be overdue. (Section 6 and Appendix I).

8. The patterns of determining costs should be continued. (Appendix II).

9. Changes are in order to reduce costs. (Section 2).

10. The 7% interest assumption carries with it a necessity for the County Annuity and Pension Board and its investment counselors to stay on top of all investment opportunities. (Appendix I).

Section 2. RECOMMENDATIONS

1. Future costs must be lowered. (Section 6, pages 31-35). Lower benefits can be justified from the view of not providing benefits that enable the career employee to have more take-home pay after retirement than before. (Section 3, pages 6-11). Lower benefits would reduce costs.

Accrued benefits for service to the date of change must, of course, be carried out. Reductions for remaining service to retirement *should be negotiated. If that cannot be achieved, the minimum* change should be to close the present plan for present employees and adopt a new one with lower benefits for new employees. (Section 7, *pages* 36-46).

2. Specifically, the following cost-saving changes in the present plan might be considered: (Section 7, pages 36-46).

   a. Resume employee contributions at a 4% level.
   b. Integrate the plan with Social Security.
   c. Institute actuarial reductions in accrued benefits for all retirements prior to normal retirement.
   d. Require 10 year minimum service period for retirement benefits.
   e. Rates of credit for protective and elected employees be reduced to the level of general employees.
   f. Disability benefits terminate at age 60; regular retirement benefits begin at age 60 with service period to include period of disability. (Section 4, Exhibit A, pages 19-21).

3. In terms of a new plan for new employees, the retirement benefit formula of a 1-3/4% rate of credit per year of service with an offset of one-half of the Primary Insurance Amount (PIA) of Social Security with an overall limit of the present 80% of final average salary be adopted. (Section 7).

4. The 2% automatic post retirement benefit is a very worthwhile feature though an expensive one. Its continuance is recommended combined with a lower starting benefit. (Section 4, pages 12 to 25).

5. In lieu of its own plan, consideration might be given to joining the Wisconsin Retirement Fund for new employees. This would mean that the contributions of the employee participants and the County would be invested by the State. (Section 4, pages 12-25; Section 7, pages 36-46).

6. The higher contributions required of the County for 1978 service as recommended by the actuary for the County and approved by the Annuity and Pension Board should be incorporated into the 1979 budget. (Section 6, pages 31-35; Appendix I, pages 47-59).

7. The County should provide retirement counseling service to its employees. (Appendix III, pages 66-67).

8. Under no circumstances should any change be made in the Plan benefits without obtaining cost appraisals from the County's actuary.

9. The County Annuity and Pension Board should contain a majority of members without a financial interest in the System. This should be done to avoid any potential conflict of interest.

10. Avenues should be pursued to achieve greater cooperation between the Annuity and Pension Boards of the City and County to minimize *conflicts between the operations of their respective systems.* One example would be that at least one citizen member serve on both boards.

11. The County should give consideration to a detailed examination of the life insurance and disability income features of the County plan relative to similar features in other plans in Milwaukee County. Additionally, the normal retirement age should be examined relative to other pension plans in Milwaukee County.[9]

9/ County Exhibit #1 and sworn testimony of Richard E. Henningsen, Chairman *Citizen Advisory Committee on Milwaukee County Pension Policies*

8. Pursuant to the Committee's recommendations in paragraph 1, the Employer in this round of bargaining proposed modifications of the pension plan to each bargaining unit with which it bargains. The Employer successfully concluded bargaining with all other bargaining units, and included in the settlements with the other units were modifications of the pensions similar to those contained in the Employer final offer in the instant matter. All other units who bargain collectively with the Employer voluntarily agreed to a .5% reduction in the pension formula for new employees hired after January 1, 1982. Additionally, the Employer took unilateral action for all nonrepresented employees, which provided for a .5% reduction for new employees hired after January 1, 1982. As a result of the collective bargaining with all other bargaining units and the unilateral action of the Employer for nonrepresented employees, the pension formulation for all employees except deputy sheriffs and elected officials who are hired after January 1, 1982, is reduced from 2% to 1.5%. Deputy sheriffs and elected officials are reduced from 2.5% to 2% for new employees hired after January 1, 1982. Additionally, all other units agreed to the vesting modification which increases the time period for vesting from six to ten years for employees hired after January 1, 1982, and the foregoing was unilaterally adopted for nonrepresented employees. Finally, all other units except for the Deputy Sheriff Association agreed to the modification, averaging the highest five consecutive years rather than the highest three consecutive years for the purposes of pension formulation, and the averaging modifications were also unilaterally applied to the nonrepresented employees. The Deputy Sheriff Association settlement maintained the provisions of averaging the highest three consecutive years. There are 5,600 employees represented in this unit who are covered by the pension plan, and there are approximately 3,260 nonrepresented and represented employees covered by the pension plan where the pension modifications have been bargained or adopted. [10]

9. The settlement cost proposed by the Employer in this dispute is 10.2145%. The average settlement costs for all other bargaining units and for the unilateral increases adopted for nonrepresented employees are as follows:

Milwaukee Deputy Sheriffs' Association	10.203
Milwaukee County Fire Fighters Association	10.130
Milwaukee Building & Construction Trades Council	9.446 (3 yr.)
International Union of Operating Engineers, Local #317, AFL-CIO	9.805
Staff Nurses Council of Milwaukee, Local 5001, AFT, AFL-CIO	10.882 (1 yr.)
Technicians, Engineers & Architects of Milwaukee County	9.7305 (1 yr.)
Machinists - International Association of Machinists & Aerospace Workers	10.138 (1 yr.)
Association of Milwaukee County Attorneys	9.7185 (1 yr.)
Non-Represented Employes	9.556 [11]

All of the foregoing settlements are for two years, except those noted as one or three years in parenthesis. Of the foregoing one year settlements the Employer agreed to reopen bargaining if dental insurance was granted to another union in the agreement reached with the Association of Milwaukee County Attorneys. Of the two year settlements, as part of the first year Agreement, the Employer agreed to reopen for bargaining for dental insurance if granted to another union with the following units: Deputy Sheriff Association and Fire Fighters Association. In the agreement reached with Milwaukee Building and Construction Trade Council, AFL-CIO, the Employer agreed to a "me too" provision which will provide that unit with dental insurance in the second year of the Agreement if the County agreed to provide dental insurance as part of the bargaining with this bargaining unit. In the one year agreement reached with the IAMAW the Employer agreed to extend dental insurance to that unit if granted to this unit. No reopener or "me too" provisions with respect to dental insurance were part of the bargains reached with the Staff Nurses Council; Technicians, Engineers and Architects of Milwaukee County; International Union of Operating Engineers. The parties to this dispute have agreed to a

10/ Sworn testimony of Robert Casanova and Robert Polasek and County Exhibits 5 through 13.

11/ County Exhibit #3

provision for dental insurance in the second year of their Agreement at a cost of 8.7¢ per hour per eligible member, which calculates to an increase of 1.0726%.[12]

10. The initial cost savings of the Employer's proposed pension modifications will result in the following pension savings to the County: Fiscal year 1984, $123,920; fiscal year 1985, $272,563; fiscal year 1986, $449,729.[13]

11. The present pension plan of the Employer is solidly funded by reason of the Employer's adoption of actuarial recommendations to follow ERISA funding requirements.[14] The percentage of contribution to the existing pension plan, expressed as a percentage of total payroll will decline from 23.22% in 1978 to 14.748% in the year 2015 if no benefit changes are made.[15]

12. Public employees in the State of Wisconsin, except for employees employed by the City of Milwaukee and employees employed by Milwaukee County, are covered by state retirement plans created by statute. The City of Milwaukee and Milwaukee County have their own individual retirement plans which have been adopted by ordinance. The comparisons of public employee retirement plans in the State of Wisconsin are limited to the state plan, the Milwaukee County plan and the City of Milwaukee plan. Comparisons between three plans with respect to the issues in dispute here show the following service retirement benefit formula:

STATE PLAN	CITY OF MILWAUKEE PLAN	PRESENT COUNTY PLAN
1.3% of 3 year final average salary times years of service, 80% maximum, including Social Security	2% of 3 year final average salary times years of service, 85% maximum including Social Security	2% of 3 year final average salary times years of service, 80% maximum not including Social Security[16]

13. Selected municipalities with populations over 500,000 provide for pension formulae which include 2% or more per year of credited service are: Chicago, Cleveland, Columbus, Dallas, Detroit, Honolulu, Houston, Los Angeles, Memphis, Philadelphia, Phoenix, San Francisco and Washington, D.C.[17] Selected states providing for pension formulae which include 2% or more per year of credited service are: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Louisiana, Maine, Massachusetts, Nevada, New Mexico, Ohio, Oklahoma, Pennsylvania, Rhode Island, Washington, West Virginia and Wyoming.[18]

14. Retirement benefits for an employee retiring at age 65 years, with 20 years of service, in the year 1981, whose final salary is $14,200 will retire at 95% of his before tax income under the present Milwaukee County plan; compared to 80% of before tax income under the City of Milwaukee plan, and 76% of before tax income under the State plan. After 30 years service with the other assumptions remaining constant, an employee under the County plan retires at 114% compared to 80% for the City of Milwaukee and 76% for the State. Under the proposed modifications made by the Employer the same employee would retire at 84% of before tax income after 20 years and 98% after 30 years. All of the foregoing comparisons include Social Security benefits. The same comparisons made after taxes for a 20 year retiree provide 138% under the present Milwaukee County plan; 119% under the City of Milwaukee plan, and 112% under the State plan. For a 30 year employee the after tax comparison provides 159% under the present County plan; 119% under the City plan and 112% under the State plan. Under the Employer proposed plan retirees after 20 years service retire at 124% after taxes and at 140% after 30 years service.[19]

15. The Employer hiring pattern for the period from 1975 through 1980 shows that 34% of the new hires are hired after age 35, permitting less than 30 years accumulation of service at normal retirement age of 65; and that

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12/ County Exhibit #3 through 13 and sworn testimony of Robert Casanova.
13/ Union Exhibits 11, 12 and 13, and sworn testimony of Janet Kail and D. Nellins, Jr
14/ Sworn testimony of Janet Kail and D. Nellins, Jr.
15/ Union Exhibit #21 and testimony of Janet Kail.
16/ County Exhibit #1, p. 19 and sworn testimony of Blair Tesstin.
17/ Union Exhibit #15
18/ Union Exhibit #16
19/ County Exhibit #2 and sworn testimony of D. Nellins, Jr.

19% of the new hires are hired after age 45, permitting less than twenty years accumulation of service at normal retirement age of 65.[20]

DISCUSSION: PENSION ISSUES

The Union in its argument at the close of hearing addressed the criteria established in the statute at 111.70 (4)(cm) which the Arbitrator is directed to consider in determining which final offer should be adopted. The Union argues that criteria a, the lawful authority of the Employer; criteria b, the stipulations of the parties; criteria c, the interest of the public and ability to pay; criteria e, the cost of living; criteria f, total compensation; and criteria g, changing circumstances during the pendency of the proceedings; have little or no application in these proceedings. The Union focuses its evidence and argument toward criteria d, the comparables, and criteria h, other factors normally considered in arbitration or bargaining.

The Employer in its argument at the close of hearing addressed primarily the same statutory criteria as did the Union. The Employer made no claim with respect to inability to pay, nor did he address argument toward criteria a, b, e, f and g.

From the foregoing it is clear that the parties rely almost entirely on comparability, criteria d, and criteria h, other factors in support of their respective positions. The undersigned agrees with the parties that criteria d and criteria h of the statute are the primary considerations upon which this decision will turn. The undersigned will consider the evidence as it pertains to criteria d and h serially.

CRITERIA d - THE COMPARABLES

The facts with respect to comparables are set forth in the findings of fact section of this Award under paragraphs 12, 13 and 14. The facts established in paragraphs 12 and 14 of the findings of fact show that the Employer pension plan as it has existed up to the present generates considerably more retirement income than either the state plan or the City of Milwaukee plan. These findings further clearly demonstrate that if the Employer's proposed modifications to the pension formula are adopted, the Employer plan here will continue to generate significantly higher retirement benefits than the state plan or the City of Milwaukee plan. Furthermore, the record establishes that all public employees in this state are covered by one of the three plans described in paragraphs 12 and 14 of the findings. Thus, when considering the comparables for all public employees in this state the modifications to the pension plan proposed by the Employer here are supported by those comparables.

The Union submitted evidence at hearing with respect to a different grouping of comparables, i.e., selected cities in excess of 500,000 population in the United States, and those comparables must also be considered. The facts with respect to those comparables are established in paragraph 13 of the findings, and show that 13 municipalities, excluding the City of Milwaukee, with populations of 500,000 or greater, have pension formulae which include 2% or more per year of credited service. Additionally, the facts establish that there are 19 states whose pension formulae include 2% or more per year of credited service. The undersigned takes notice of data not included in this record which establishes that there are 23 cities in the United States, including the City of Milwaukee, with populations in excess of 500,000.[21] Thus, paragraph 13 of the findings establishes that 13 municipalities out of 22 (excluding Milwaukee) have pension formulae at the 2% level or better; and 19 of the 50 states also have pension formulae at the 2% level or better. The obvious conclusions are that slightly more than one-half of these cities provide at least 2% level of pension calculations, while only 38% of the states provide for pension formulae at the 2% level or better. While the evidence with respect to municipalities with populations in excess of 500,000 establishes benefit

20/ Union Exhibit #4, and sworn testimony of Janet Kail.
21/ Statistical Abstract of the United States, published by Department of Commerce, 1980, for the year 1978.

levels at least equal to the existing plan for slightly more than one-half of those municipalities, no evidence was adduced with respect to social security coverage or treatment in those municipalities. The record, therefore, fails to establish with respect to that evidence whether employees in those 13 municipalities have any social security coverage, or if they do, whether social security is included in the combined benefits to establish a maximum. Absent this evidence with respect to social security's impact on retirement benefits, the undersigned concludes that the 2% benefit levels in the 13 municipalities is unpersuasive. With respect to the 19 states, the testimony of Blair Tesstin, Director of Retirement Research for the state, establishes that 7 of the 19 states (Alaska, Colorado, Louisiana, Maine, Massachusetts, Nevada and Ohio) provide no social security benefits for their employees. The pension generated in those 7 states, therefore, is exclusively from the pension plan and, therefore, the undersigned concludes that the 2% or better formulae in those states cannot be construed as comparable to the Employer plan here where the employees are eligible to social security benefits in addition to the pension. Therefore, after excluding the 7 states which do not provide social security to their employees there remains only 12 states with pension formulae at the 2% level or better, which calculates to 24% of the 50 states. From the foregoing, the Union evidence with respect to the comparables as set forth in paragraph 13 is unpersuasive.

Furthermore, the undersigned is of the opinion that the comparables internal to the state should be given greater weight than the comparables external to the state. Significantly, the state plan covers all of the Milwaukee suburban municipal employees, as well as the teachers in the public school district of the City of Milwaukee. The undersigned concludes that it is preferable to compare pension levels for employees in the immediate geographic area of the City of Milwaukee and, therefore, the state and City of Milwaukee pension plans as far as comparables are concerned carry greater weight than that given to municipalities in excess of 500,000 outside of the state.

From all of the foregoing the undersigned concludes that when considering criteria d, the comparables, the Employer's offer should be adopted.

CRITERIA h - OTHER FACTORS

The Union in its argument when addressing this criteria characterized the Employer proposal as a "take away", and contends that the Employer has failed to make a case for the "take away" because:

1. Pension improvements, whether or not they were bargained or made by unilateral Employer action, required other concessions from the Union when the improvements were made, and the Employer proposes no quid pro quo for the reduction of the pension formula which he proposes in this round of bargaining.

2. The Employer has failed to establish an immediate cost advantage resulting from his proposal here and has made no showing of a comparable financial need to make the proposed change. Further, the Union contends that the County has established only that the plan is "too good", and that they wish to spend less on the plan. The Union also contends that the Employer proposed modifications to the pension plan are premature at this time.

3. The Union further argues that the proposed changes germinated from a citizens study of the Employer's pension system, and that the Union had no representation on that study committee. The Union also argues that the fact that other units have agreed to these proposed changes fails to establish a pattern which should be imposed on this unit because the other units and non-represented employees comprise approximately 40% of the employees covered under the plan, while the Union in this unit represents approximately 60% of the employees covered under the plan. The Union then argues that imposing a pattern established by less than the majority of the employees would be improper.

4. Finally, the Union argues that the proposed modifications result in a 25% pension benefit reduction to new employees hired after January 1, 1982, and the magnitude of the reduction is too severe.

The Employer makes the following argument:

1. The Union mischaracterizes the Employer proposal on pensions when it terms it a "take away", because no present employee represented by the Union will be affected by the proposed Employer modifications to the plan. The Employer further contends that because none of the prior pension improvements had been bargained the Union gave up nothing for the pension improvements, and consequently, the present proposed modification should not require a quid pro quo now.

2. The proposed modifications to the pension plan resulted from a pension study by a blue label committee, which by design excluded representation of the Union and the management involved in the instant dispute, but the committee had balance by reason of the inclusion of two prominent labor representatives not identified with this Union.

3. The Employer contends that its proposal is not premature, arguing in substance that to await a time when the plan might be bankrupt would be irresponsible.

4. The Employer further argues that in comparing the settlements in this round of bargaining the Union here is not disadvantaged in those comparisons, in that the first year cost of settlement here, inclusive of the proposed pension modifications, are the second highest of all settlements reached with other unions. The Employer further points to the voluntary settlements with other unions which included the pension modifications the Employer proposes here in support of his position, and also points to the unilateral action taken by the Employer as it affects nonrepresented employees which also implements the same reductions as proposed here.

5. Finally, the Employer argues that his proposed changes are equitable because even after the changes, employees in this unit will still generate higher benefits than employees covered by the state plan or the City of Milwaukee plan; and that after the proposed changes, thirty year employees will retire at a higher before tax benefit level than they earned while actively employed, and that twenty year employees will retire at a higher after tax benefit level than they earned while they were employed.

The record here as set forth in the findings of fact, paragraphs 1 through 6, indicates that pension matters have not previously been bargained between the Employer and the Union, except for the bargaining that ensued subsequent to the Circuit Court decision described in paragraph 6 of the findings. The record is clear that even with respect to the bargaining after the Circuit Court decision, the parties merely agreed to reinstitute what had previously been the unilateral action of the Employer. Paragraphs 1 through 6 of the findings further establish that there were no quid pro quos given up by the Union as a result of unilateral pension changes made by the Employer when the Employer made previous improvements in the pension formulation. There was a quid pro quo extracted from unit employees in the one pension modification described in paragraph 3 of the findings, however, those modifications of the plan did not go to pension formulation. The modifications set forth in paragraph 3 dealt exclusively with the elimination of the requirement of employee contributions, and that modification, which was described in the Collective Bargaining Agreement, eliminated employee contributions to pensions in lieu of a wage increase. The undersigned concludes from all of the foregoing that no prior pension formulation improvements required any concessions on the part of the Union in bargaining to achieve the formula gains. Therefore, the Union argument that the Employer now proposes downward modifications to the formulation without a quid pro quo on the part of the Employer to the Union carries significantly less weight.

With respect to the Union argument that the Union had no representation on the study committee described in paragraph 5 of the findings, the undersigned concludes that the Union's reliance on that fact is misplaced. The record establishes that neither management nor union were included in the study committee, and further establishes that there was labor representation on the committee by reason of the inclusion of Messrs. Jewell and Schaefer, both labor representatives in the community. The undersigned views it significant that the committee unanimously proposed to the Board of Supervisors of the Employer pension modifications more severe in nature than the proposal of the Employer in this dispute, and the labor representatives on the committee joined in the unanimous proposal. Therefore, the composition of the pension study committee militates in favor of the Employer position in this dispute rather than that of the Union.

The undersigned has considered all of the evidence and all of the arguments of the parties and is persuaded that the Employer offer should be adopted when considering criteria h, "other factors", principally because the evidence establishes that prior pension formula improvements were instituted unilaterally without a quid pro quo from the Union when they were established; and because the modifications have been applied to all other employees of the County as described in paragraph 8 of the findings; and because the first year settlement cost percentage for employees in this unit is the second highest first year settlement cost percentage compared with settlement costs of all other units as set forth in paragraph 9 of the findings; and because even with the proposed modifications the Employer pension plan here will still generate higher retirement benefits to retirees under this plan than employees retiring under the State or City of Milwaukee plans will receive; and because the proposed modifications will still generate, for a significant number of employees, retirement income after taxes higher than employees' earnings while they were working.

The Union has argued that patterns of settlement with other Unions should not be imposed on this Union because this Union represents the majority of the employees affected by the proposed pension changes. The Union argument has merit. The undersigned, however, looks to the other settlements not as establishing a pattern which should be imposed on this Union. The Arbitrator, rather, considers the other settlements to be a test of the reasonableness of the Employer's offer here. It is quite persuasive to the undersigned that eight other separate bargaining committees agreed to proposals essentially the same as the proposal made by the Employer here, except for the Milwaukee Deputies, who agreed to a reduction of .5% pension formulation but retained the final three year average provision. The undersigned views those eight agreements to be a test of the reasonableness of the Employer's offer, particularly where the evidence shows that the percentages of settlement are as high or higher for this Union in the first year of the Agreement as they are for any other Union with which the Employer bargains. Therefore, the undersigned, in accepting the Employer's offer in this dispute, is not imposing a pattern of settlement upon this Union but rather is adopting the Employer offer by reason of the test of reasonableness described above.

Based on all of the evidence and the discussion set forth above, after considering the statutory criteria and the arguments of the parties, the Arbitrator makes the following:

AWARD

The amended final offer of the Employer, along with the stipulations of the parties, as well as the terms of the predecessor Collective Bargaining Agreement which remain unchanged through the bargaining process, are to be incorporated into the written Collective Bargaining Agreement between the parties for the years 1981-1982.

Dated at Fond du Lac, Wisconsin, this 12th day of August, 1981.

Jos. B. Kerkman, Mediator-Arbitrator

JBK:rr