STATE OF WISCONSIN

BEFORE THE MEDIATOR/ARBITRATOR

In the Matter of the Mediation-Arbitration of a Dispute Between	:	
WAUKESHA COUNTY PUBLIC HEALTH NURSES, Local 2494, WCCME, AFSCME, AFL-CIO,	:	Case LXXIV No. 29487 MED/ARB-1600 Decision No. 19515-A
and	:	
WAUKESHA COUNTY (DEPARTMENT OF PUBLIC HEALTH)	:	

APPEARANCES:

Richard W. Abelson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Marshall R. Berkoff and Thomas P. Godar, Attorneys, Michael, Best & Friedrich, appearing on behalf of the County.

NATURE OF THE PROCEEDINGS:

On September 10, 1981, Waukesha County Public Health Nurses, Local 2494, WCCME, AFSCME, AFL-CIO, hereinafter referred to as the "Union," and Waukesha County (Department of Public Health), hereinafter referred to as the "County," exchanged initial proposals on matters to be included in a new Collective Bargaining Agreement to succeed the agreement which was to expire on December 31, 1981. Thereafter the parties met on four separate occasions in an effort to reach accord on the new Collective Bargaining Agreement. On March 19, 1982, the Union filed a petition requesting that the Wisconsin Employment Relations Commission initiate mediation-arbitration pursuant to section 111.70(4)(cm)6 of the Municipal Employment Relations Act. A member of the Commission's staff conducted an investigation which reflected that the parties were deadlocked in their negotiations. On April 1, 1982, the parties submitted their final offers as well as a stipulation on matters agreed upon. Since the parties had not previously established alternative procedures for the final resolution of disputes arising in the course of collective bargaining, the WERC certified that an impasse, in fact, did exist, and further ordered to parties to proceed in the selection of a neutral mediator-arbitrator.

The parties selected the undersigned to serve as mediator-arbitrator for purposes of resolving the impasse between the parties. On May 6, 1982, the WERC issued an order designating the undersigned to act as a Mediator-Arbitrator for purposes of mediating those issues which remained in dispute; and, in addition, requiring that said Mediator-Arbitrator issue a final and binding Arbitration Award pursuant to section 111.70(4)(cm)6 if said mediation effort failed to resolve those issues.

On July 13, 1982, a mediation session was conducted between the parties, at which time rigorous efforts were undertaken to resolve those remaining issues on which the parties had not previously reached agreement. Unfortunately, a voluntary resolution through mediation was not successful. Having thus failed to resolve the dispute through voluntary settlement, the parties were afforded an opportunity to modify their final

offers or withdraw their final offers pursuant to section 111.70(4)(cm), Wis. Stats.; neither party indicated a desire to either modify or withdraw their final offers. The matter thus proceeded to arbitration.

The arbitration hearings consisted of approximately 43 hours of testimony and arguments spread over seven different days: November 18, December 7, December 23, 1982; and January 20, August 27, October 6 and October 13, 1983. Documentary evidence was received from both the Union and the County. A verbatim transcript of the proceedings was prepared which exceeded 800 pages in length. During the course of the hearings, tne parties filed interim motions and supporting briefs for their motions. On February 10, 1983, the Union filed a "Motion for Order Allowing On-site Job Survey." That motion was denied by the undersigned Arbitrator in a written memorandum dated February 28, 1983, and attached hereto as Appendix 1. During the hearing on January 20, 1983, the County orally made a "Motion to Dismiss Union Exhibit No. 8 and to Strike All Testimony Related Thereto." Thereafter the parties briefed the County's motion; the Mediator-Arbitrator issued a written decision denying the County's motion on June 20, 1983. A copy of that decision is attached hereto as Appendix B.

At the close of the formal hearings, the parties agreed to submit post-hearing briefs, which were exchanged through the Arbitrator on December 27, 1983. The Mediator-Arbitrator issues the instant Award on the basis of the evidence received into the record at the hearings and upon consideration of the arguments submitted by the parties at hearing and in their post-hearing briefs.

STATUTORY CRITERIA:

Section 111.70(4)(cm)7 requires that the Mediator-Arbitrator consider the following criteria in evaluating the parties' final offers:

"A. The lawful authority of the municipal employer.

B. Stipulation 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 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."

FINAL OFFERS OF THE PARTIES:

Final Offer of the Union:

1. Article XIV, Section 14.01, Overtime, amend as follows:

"Regular full-time employees shall be compensated at the rate of one and one-half times their regular rate of pay for all hours worked in excess of forty hours per week, eight hours in a day or on a Saturday (provided that Saturday is not a regularly scheduled workday). Regular full-time employees shall be compensated at one and one-half times their regular rate of pay for all hours worked on a Sunday (provided that Sunday is not a regularly scheduled workday).

The current practice of scheduling clinics shall continue. An employee's regular clinic hours, assigned a minimum of thirty (30) days prior to the clinic, shall be excluded from the eight (8) hour per day overtime requirement as defined above. In order to accomodate such clinics, employees shall be required to alter their regular scheduled hours to maintain a forty (40) hour work week at times mutually agreed upon between the employee and his/her immediate supervisor.

2. Section 17.03

a. Line 2 - change $35.62 to $49.70 (for the single plan) and in Line 3 change $99.34 to $138.90 (for the family plan). In the 4th line - change 1981 to 1983.

c. Line 2 - change $35.62 to $49.70.
Line 3 - change $99.34 to $138.90.
Line 5 - change 1981 to 1983.

2. Wage Proposal - Bi-Weekly

Registered Professional Nurse:

	1	2	3	4	5	6
1/2/82	607.21	626.54	645.88	665.20	684.51	
7/1/82	607.21	626.54	645.88	665.20	684.51	709.36
1/1/83	648.71	670.40	691.09	711.76	732.43	759.02

Public Health Nurse I:

	1	2	3	4	5	6
1/2/82	636.18	659.91	684.51	708.28	732.85	
7/1/82	636.18	659.91	684.51	708.28	732.85	762.75
1/1/83	701.14	727.29	754.40	780.60	807.68	816.19

Public Health Nurse II:

	1	2	3	4	5
1/2/82	684.51	708.28	732.85	756.58	780.30
7/1/82	705.05	729.53	754.84	779.28	803.71
1/1/83	754.40	780.60	807.68	833.83	859.97
7/1/83	763.11	797.21	832.34	858.84	885.77"

Final Offer of the County:

1. Section 17.03

   a. Line 2 - change $35.62 to $49.70 (for the single plan) and in Line 3 change $99.34 to $138.90 (for the family plan). In the 4th line - change 1981 to 1983.

   c. Line 2 - change $35.62 to $49.70.
   Line 3 - change $99.34 to $138.90.
   Line 5 - change 1981 to 1983.

2. Section 18.06
   Add: "providing such employees who resign give at least two weeks notice before their last day of work."

3. January 2, 1983 - 7%
   January 1, 1983 - 7%

Stipulation:

The terms of the 1980 - 1981 labor agreement should be included in a successor labor agreement for the years January 1, 1982 - December 31, 1983, except as modified by the following stipulation of agreed-upon changes, and the final offer as selected by the arbitrator:

STIPULATED ITEMS OF AGREEMENT

1. Section 4.05, 4.06 and 4.06 -- substitute "Personnel Administrator" for "County."

2. Section 4.08 -- Title paragraph "Modified Fair Share."

3. Article 7, Section 7.01 --
   Step (4), change "10" working days to "20" working days.

4. Contract of a two-year duration.

It should be noted that the final offers of both the Union and the County provide for changes in section 17.03 relating to the County's contribution toward employee health insurance. The amounts included in each of the final offers is the same, and, therefore, there is no dispute concerning the issue of the County's contribution toward health insurance for its employees. Item No. 2 in the Union's final offer is identical to Item No. 1 in the County's final offer.

POSITIONS OF THE PARTIES:

The Union's Position:

A basic premise of the position taken by the Union is that a vital comparison exists between public health nurses and public health sanitarians in Waukesha County. Both the nurses and the sanitarians are professional positions within the Public Health Department of the County. The Union argues that the goals of the two divisions are interrelated: both public health nurses and sanitarians work to protect society against diseases and to prevent the spread of disease; they both have a common interest in providing education and services relating to the health of their community. The Union points out that both the sanitarians and public health nurses are end-line professional positions within the same department, sharing the same goals, the same work location, and the same working conditions, and that both positions report to the same director. These

similarities, according to the Union, justify a valid comparison between the two classifications and form the basis for wage comparability between the two classifications.

The Union maintains that pay equity based upon skill, effort, and responsibility should exist between the sanitarians and the nurses. The Union points out that this concept of "comparable worth" is not limited to equal pay for equal work, but rather there should be equal pay for comparable work. The Union's final offer is premised upon the comparability in work factors between nurses and sanitarians.

Of the 20 nurses in the bargaining unit, 18 are classified as Public Health Nurse II. Virtually all of the Union's comparisons with other nursing positions is done on the basis of this latter classification. For the Public Health Nurse II, the Union proposes increases of 7% at the beginning of each year of the two-year contract, and mid-year increases of 3% in each of the two contract years. For Public Health Nurse I and Registered Professional Nurse, the Union proposes the same 7% increase at the beginning of each year, and the addition of a sixth step in the salary schedule on July 1, 1982. The Union's wage proposal would decrease the differential at the top steps between the Public Health Nurse II and the Sanitarian II during the two-year contract. The Union argues that it is attempting to correct a disparity in wages by phasing in pay equity increases, rather than trying to reach equality with one giant increase.

The Union notes that in 1981, the top step for the Public Health Nurse II and the top step for the Sanitarian II differed by $88.94, or 12.2%. The Union points out that, if its wage offer is accepted, the differential between the two positions would decrease during 1982 to $71.75 bi-weekly, or 8.9%; and that for the second year of the contract, the differential would be decreased to $50.97 bi-weekly, or 5.8% between the two positions. The County's offer, on the other hand, would perpetuate the original disparity between the two positions, since the wage increase for the sanitarians in 1982 and again in 1983 is a straight 7% increase at the beginning of each of those years. The Union maintains that the mid-year boost of 3% in 1982 and again in 1983 is necessary to close the gap between the two positions.

The Union has selected 14 communities which it claims comprise representative comparables. All of these communities are in the southeastern corner of Wisconsin. Since only two classifications are being compared, the Union argues that it should not be required to compare counties to other counties, but rather that the establishment of comparables should be based on a review of the general geographic area from which nurses and sanitarians are hired. The Union, therefore, proposes that the following communities be used as comparables: the City of Milwaukee, the City of West Allis, the City of Wauwatosa, the City of Greenfield, the City of South Milwaukee, the City of Cudahy, the Village of Brown Deer, Washington County, Ozaukee County, the City of Racine, Racine County, Walworth County, Kenosha County and the City of Kenosha. The Union maintains that all of these communities employ sanitarians and/or public health nurses and that all of these communities are in the southeastern corner of Wisconsin, and, therefore, they are appropriate comparables. The Union maintains that all of these communities share a common labor market and are affected by similar economic influences.

The Union points out that under its final offer, Waukesha County Public Health Nurse II positions will be paid $9.75 per hour as of January 2, 1982. This rate, when compared with the

other communities in the Union's list of comparables, demonstrates that Waukesha County Public Health Nurse II positions rank tenth out of 15; PHN II's in Waukesha County are paid less than their equivalent position in the Cities of Milwaukee, West Allis, Wauwatosa, South Milwaukee, Ozaukee County, Racine County, Walworth County, Kenosha County, and the City of Kenosha. Sanitarian II's in Waukesha County will be compensated at the rate of $10.94 per hour beginning January 2, 1982. Seven other comparable communities employ sanitarians. Waukesha County sanitarians are ranked fifth out of eight communities. However, according to the Union, of the seven other communities which employ both sanitarians and public health nurses, only the City of Wauwatosa and the City of Kenosha pay public health nurses less than sanitarians; the other five communities (Cities of Milwaukee, West Allis, Racine, Walworth County and Kenosha County) pay public health nurses a salary equal to or greater than the salary that they pay their sanitarians. Thus, argues the Union, from a comparability standpoint, an offer which begins to bring the nurses' pay schedule up to a level with the sanitarian pay schedule is a more reasonable offer; the Union's final offer is, therefore, more reasonable than the County's final offer.

The Union attacks the comparable communities selected by the County as being absurd and self-serving. The Union contends that the County has limited its comparisons to non-industrialized, rural counties to the north and west of Waukesha, thus comparing Waukesha with rural areas "nestled in the non-urban hinterland of Wisconsin." The Union points out that Waukesha, far from being a rural county, is the third most populous county in the state and the second richest county.

As a secondary set of comparables, the Union compares public health nurses with nurses working in the private sector in a hospital setting. Within this classification, the Union points out that the best comparable category is the category of "general day nurses." For the Milwaukee area, the middle range of pay in October of 1981 for general duty nurses was between $8.48 per hour to $9.45 per hour. During this same time period, Waukesha County Public Health Nurse II's received between $8.00 and $9.12 per hour.

The Union maintains that the County's private sector comparables are of no value because they are not representative and they lack vital information. In addition, the County's comparables deal with non-degreed registered nurses, whereas 18 out of the 20 public health nurses in Waukesha County have degrees as Registered Nurses.

The Union places a great deal of reliance on a document entitled "Findings on the Relative Worth of Public Health Nurse II and Sanitarian II, Waukesha, Wisconsin." The study draws conclusions about the relative worth of the positions of the Public Health Nurse II and the Sanitarian II in Waukesha County, and was prepared by Dr. George Hagglund, Professor of Labor Education at the University of Wisconsin-Madison. The Union points out that Dr. Hagglund's credentials confirm his status as an expert in the field of industrial relations; and further, Dr. Hagglund has been qualified in Federal Court as an expert in the field of job evaluation.

The Union next argues that the job analysis of the Public Health Nurse II and Sanitarian II prepared by Dr. Hagglund is accurate in spite of the refusal of the County to allow Dr. Hagglund access to the workplace to observe and gather information about these jobs. The Union points out that these proceedings are adversarial in nature and that the County's expert witness has never been involved in preparing a job

description in the context of an adversarial proceeding. The Union disputes the County's premise that accurate job descriptions cannot be prepared without the input of management. The Union asserts that even if the methodology used to prepare the job descriptions was incorrect, the descriptions themselves are accurate and were established through cross-examination of witnesses. Thus, argues the Union, the County's attempt to discredit the job descriptions used in the comparable worth study "fails miserably," and any criticism of the job descriptions is "purely speculative in nature."

The Union points out that when Dr. Hagglund performed the job evaluation comparing Sanitarian II's and Public Health Nurse II's, he concluded that:

> "It is the opinion of the undersigned that the classification of Public Health Nurse II is equal to or exceeds the relative worth of the classification of Sanitarian II when the two are compared on the factors of skill, responsibility, effort and conditions."

The Union maintains that Dr. Hagglund chose the appropriate evaluation instrument, and that he did not amend the instrument; thus, bias has been avoided. In choosing the ranking or rating for various job factors, Dr. Hagglund relied upon the job descriptions which were painstakingly developed, as well as his extensive expertise in the field of job evaluation. According to the Union, Dr. Hagglund took special care to avoid allowing bias to enter into the evaluation process. Having thus completed a valid and unbiased comparison of the two jobs, the Union points out that since the nurses received many more points than the sanitarians, "there is clearly no justification for paying the PHN II much less than the pay of a San. II."

On the issue of overtime, the Union proposes to add a definition of overtime on a daily basis. At the present time, the contract contains language providing that overtime be paid when that time is accumulated over the period of a week. The Union points out that the language of its final offer on overtime is the same language as that contained in the AFSCME Master Labor Agreement covering approximately 750 other employees in Waukesha County. The Union further argues that the sanitarians have a daily definition of overtime in their labor agreement. When measured against comparable communities proposed by the Union, eight of 13 communities have daily definitions of overtime of eight hours per day. Thus, argues the Union, both from an internal comparative point of view and an external comparative point of view, the Union's final offer on the issue of overtime is reasonable and should be adopted by the Arbitrator.

Finally, on the County's proposal providing for the loss of pay for accrued vacation time if an employee quits without giving the County at least two weeks' notice, the Union maintains that there is no justification for this provision and that the County has put forth no rationale for the inclusion of that provision in a new agreement. Furthermore, argues the Union, the County has not demonstrated that this provision exists in other labor agreements either within the County or in labor agreements in comparable communities. The Union further asserts that there is no evidence that nurses tend to leave without giving sufficient notice to the employer. The Union labels this proposal as a "ringer" and maintains that it is unjustified on any basis whatsoever. The Union argues that the inclusion of this item should weigh heavily against the County.

The Employer's Position:

The County argues that its offer to increase the wages of public health nurses by 7% in both 1982 and again in 1983 and their agreement to pay for the increase in health insurance costs for the two years is fair and reasonable; whereas, the Union's proposal of 7% annual increases with mid-year increases of between 3% and 4% in each of the two years is unreasonable. The County maintains that the Union's wage proposal is far in excess of the wage increases granted to other County employees and cannot be justified by traditional comparisons with other employees in both the public and private sectors. The only basis, argues the County, upon which the Union can attempt to justify its excessive wage demands is the "comparable worth" study, and this study is totally flawed and, therefore, invalid.

The County points out that prior to the arbitration of this case, agreement had been reached with all of the other represented employees in the County. All of these employees, numbering in excess of 1,000, agreed to a 7% increase in their wages for 1982 and a 7% increase for 1983. The County further points out that a number of employees, including the deputy sheriffs, the attorneys and the ACCORD unit, agreed to pick up a share of the increased cost of health insurance. The County's final offer to the public health nurses includes a provision paying for all of this increase in the cost of health insurance. The County computes this figure to be valued at 27¢ per hour, or an increase of 2.45% over the 1981 wage rates. The County further points out that a 7% increase in actual wages in each of the two years allows the County to maintain internal equity among all of the represented employees. This internal equity is important, argues the County, to avoid labor relations problems, including morale problems and the use of whipsawing techniques by unions in negotiations. The County states that a number of arbitrators have placed great significance upon maintaining internal equity within an employing entity.

The County also demonstrates that its final offer compares favorably with the wage rates paid to public health nurses in comparable municipalities. The County chooses to compare itself to contiguous counties which employ similar positions. Two counties are not included because there are no public health nurses in Milwaukee County or Walworth County. There are four remaining contiguous counties which do employ public health nurses. These are Dodge, Jefferson, Washington and Racine. The County demonstrates that its wage offer of $9.76 per hour (the rate paid to the majority of public health nurses in Waukesha County) ranks Waukesha County as the second highest-paying county out of the five. The County argues that, using its comparables, the compensation received by public health nurses equals or surpasses that paid in the surrounding counties.

The County contends that the comparables chosen by the Union are improper since they are a mix of large and small municipal units, most of which are not counties, many of which are concentrated in the City of Milwaukee. The County further points out that there is no substantial explanation offered by the Union as to why it chose only seven of the 18 separate municipalities within Milwaukee County. Furthermore, argues the County, the Union has not substantiated that the public health nurse designations in other communities is comparable to the public health nurse description for Waukesha County. Even with these limitations, the County compares favorably with the Union's list of comparables and shows that its final offer places Waukesha County in the middle of these comparable communities. Waukesha County's final offer would result in six

communities paying higher rates, three communities paying similar rates, and two communities paying substantially lower rates than in Waukesha County. Thus, argues the County, even using the Union's comparables, the County's final offer is reasonable and falls within the prevailing wage rate paid to other public health nurses in surrounding communities.

The County maintains that the Union has failed to justify its proposed 21.4% wage increase for Public Health Nurse II's. More specifically, the County points out that nowhere has the Union made an argument suggesting that there is a need to catch up with other public health nurses in comparable communities, and thus has not justified the 3% mid-year hikes in each of the two years. The County points out that there is no need for a catch-up since the County presently pays its public health nurses at a rate equal to or better than that paid to public health nurses in comparable communities. Furthermore, argues the County, the 3% mid-year increases impact on the base for which the next year's salaries are computed, thus giving an inflated value to the base pay in the subsequent years. Since the County's final offer allows public health nurses to remain competitive with their counterparts in surrounding communities, and since the Union has failed to justify the need for mid-year raises, the County's final offer must be deemed the more reasonable of the two.

The County next compares the salaries of public health nurses with salaries earned by registered nurses in nursing homes and home health care settings. The County argues that this is a reasonable basis for comparing public health nurses and private sector nurses, whereas the Union's comparison of public health nurses with hospital nurses is inappropriate. The County points out that hospital nurses are responsible for "hands-on" care, but that public health nurses have, as their major duties, instruction and referral. A registered nurse in a nursing home uses skills and performs tasks which are similar to those performed by a public health nurse; a hospital nurse performs different tasks and employs different skills.

Using data from several different surveys, the County demonstrates that the salary paid to public health nurses in Waukesha County far exceeds the wage rate for nurses providing care in private homes as well as registered nurses at skilled nursing homes. Furthermore, even using the Union comparisons with hospital nurses in the Milwaukee metropolitan area, the salary paid to the public health nurse in Waukesha County compared to that paid to a general duty nurse in the Milwaukee area is approximately the same. The County also points out that the duties for nurses in hospital settings are more demanding and that the hours are much less desirable than those of public health nurses. Furthermore, there is nothing to indicate that nurses in the private sector will receive a 14.5% wage increase over the two-year period covered by the County's final offer; there is certainly nothing to indicate that an increase in excess of 20% as proposed by the Union will occur in the private sector.

The County further supports the reasonableness of its final offer on the basis of the state of the economy and its ability to pay. The County has taxed at 99.7% of its levy limit. The County has either eliminated or failed to fill 155 positions in County employment in order to fund its 1982 budget. The County further points out that there was a 30% delinquency in its property tax payments between 1981 and 1982. In addition, the economy as a whole experienced a rather small increase in the cost of living during 1981 and 1982. Between July of 1981 and July of 1982, the cost of living only increased by 3.8%, which is only about half of the County's offer. On a national level,

unionized workers settled for an average of 3.8% wage increases for contracts which began in 1982.

Given the County's tax levy limits and the low cost of living increases over the last several years, the County maintains that its offer is more than generous, while the Union's final offer is indeed excessive. The reasonableness of the County's offer is even more graphic when it is recalled that the County has agreed to pay for all of the increased costs for health insurance during the two years of the contract.

The County points out that the Union's final offer is unreasonable not only as to the Public Health Nurse II's, but also as to the PHN I and the RPN, both of whom would receive a July 1, 1982 increase as a result of adding a sixth step to the salary schedule under the Union's offer. The County points out that the Union has not justified the need for adding these steps, especially since the Hagglund study does not even address the comparability of the PHN I and RPN positions with any other position.

The County next argues that the proposal in its final offer which would require that a nurse give two weeks notice prior to quitting employment with the County, or lose unpaid vacation pay, is reasonable and straightforward. The County maintains that this provision is important to the Department of Health so that work schedules and case loads can be adjusted. Furthermore, argues the County, this provision has previously been accepted by the other AFSCME unit of the County, which represents some 750 employees. The County points out that the Union has offered no evidence that this particular provision would create a hardship for employees in the bargaining unit.

The County objects to the proposal in the Union's final offer establishing a daily overtime provision. The County points out that public health nurses are professional employees whose commitment sometimes requires that they work more than eight hours a day. There are occasional Saturday health fairs and sometimes home visits may go beyond their normal eight-hour day. The County argues that if it is forced to pay overtime for more than eight hours in a given day (as opposed to the present system of paying overtime for more than 40 hours in a given week), services will have to be further curtailed. Even relying on the data provided by the Union, it is clear that only five communities offer overtime pay on a daily basis. Three of the Union's comparables offer no overtime pay whatsoever. The County maintains that there is no reason nor basis for disturbing the status quo in the area of overtime.

The remaining arguments on the part of the County relate to the Union's heavy reliance on the comparable worth between public health nurses and sanitarians. The Employer maintains that the comparable worth study has virtually no evidentiary value whatsoever since it is grossly flawed; and furthermore, the County maintains the position previously advanced (see Appendix B) that comparable worth is not an appropriate factor for consideration in the context of the mediation-arbitration process.

The County points out that Mr. Hagglund failed to conduct a job evaluation across an entire job family or unit. The County contends that the system utilized by Hagglund, developed by Management Resources Association, requires that it be applied to an entire family of jobs after an organizational study has been performed. This is the very first step in applying the MRA system; without performing an organizational study, the MRA plan has no foundation.

According to the County the particular MRA plan chosen by Mr. Hagglund was inappropriate for conducting an evaluation of the public health nurse and sanitarian positions. In short, the County contends that Hagglund selected the wrong evaluation system. This is indicated by Hagglund's need to change definitions, substitute phrases, and engage in speculation as to meanings contained within the system. According to the County's expert witness, Mr. Hagglund's selection of the wrong plan caused him to "fabricate information." Another indication of the inapplicability of the MRA plan chosen by Mr. Hagglund is the fact that the position of sanitarian does not fit one of the three job categories for which the plan was designed. The County contends that the plan, at best, fits one of the jobs (the public health nurse position), but cannot and does not fit the sanitarian position. This results in the public health nurse position being over-valued and the sanitarian position being under-valued with this MRA evaluation system.

The County next attacks the methodology used by Hagglund to gather and analyze data for his report. The County points out that Hagglund disregarded substantial amounts of information supplied by the County, that leading questions were asked of a few public health nurses and sanitarians by a student with no job evaluation experience, that Hagglund himself never visited the County or interviewed people whose statements formed the basis for the job descriptions, and that there was no participation in the formation of job descriptions by management personnel. In addition, the same person did not gather and apply the information. According to the County, this is essential for a proper job evaluation. Thus, the job descriptions which evolved were inaccurate and incomplete.

The County points out that Hagglund never received training in the MRA plan or the application or use of its controls or norms. The system has extensive built-in controls, norms and benchmarks which are essential for the proper application of the MRA plan utilized by Mr. Hagglund; without utilizing these controls, there can be no assurance of validity or lack of bias, according to the County. Thus, a lack of consistency and a lack of proper application of the instrument chosen by Mr. Hagglund for his evaluation could not help but produce erroneous results and an invalid job evaluation. The County maintains that Mr. Hagglund did not have the proper experience to utilize the system he chose and thus, "the improper application of the MRA plan that resulted is totally invalid and without probative value."

In addition to improperly applying the plan, the County maintains that Mr. Hagglund also had no idea about the job duties and responsibilities of the sanitarian position. This resulted from Hagglund's failure to pose proper questions to the sanitarians, reliance by Hagglund on job duties from the City of Madison sanitarians as opposed to Waukesha County sanitarians, and the improper application of degrees to various factors in the MRA plan.

The County maintains that even if a comparison between Public Health Nurse II's and sanitarians could be validated, the proper comparison would be with the compensation level for a Sanitarian I, and not a Sanitarian II. In part, this is true because the Sanitarian II job position performs the same functions as the Sanitarian I position; also, there are seven Sanitarian I's and only three Sanitarian II's. It is noteworthy that Sanitarian I positions are paid less than PHN II's. All sanitarians have the same basic duties and operate within specific geographic areas within the County. In fact, there is nothing in regard to their duties and responsibilities that accounts for the differential in pay between Sanitarian

I's and II's; the differential in pay is the result of the historic development of the job, dating back to almost 20 years ago when the County had intended to create a lead worker position. Thus, even if the invalid study performed by Hagglund is to be taken into account, the result clearly establishes the pay equities between the two positions, i.e., salary equities between the public health nurse positions and the sanitarian positions. Therefore, there can be no question about the reasonableness of the County's final offer and the unreasonable nature of the Union's final offer.

DISCUSSION:

It is obvious that the Union's final offer on the issue of wages cannot be justified on the basis of internal comparables. All of the represented employees within the County had previously settled for wage increases of 7% in 1982 and 7% in 1983. The County, by their final offer, has offered to match that wage increase for public health nurses.

Similar treatment among represented groups of employees is an extremely important consideration for any employer. It is, of course, reasonable for an employer to attempt to treat its various groups of employees with some degree of consistency in order to avoid internal dissention. In the instant case, five other collective bargaining units engaged in vigorous negotiations and voluntarily reached agreement with the County for a 7% wage increase in each of the two subsequent years. The mediation-arbitration process should not be used to subvert the collective bargaining process. If the parties engaged in collective bargaining perceive the mediation-arbitration process as a method for achieving results which they could not have achieved through collective bargaining, the entire bargaining process itself will become distorted. Bargaining will no longer take place between unions and employers, but rather wages will be established and other conditions of employment will be set by third parties (arbitrators); the undersigned does not believe that the goal of the mediation-arbitration process is that of eliminating arms-length collective bargaining. "The arbitrator must try to achieve a result that would be comparable to what would have been agreed upon between a strong and realistic union and a strong and realistic employer." (City of Milwaukee, Dec. No. 17143-A, Rice, 1980). If a group of employees wishes to break the pattern of settlements within an employing entity, strong evidence must be presented to support the unique position of those employees. In the instant matter, the Union maintains that the relationship between public health nurses and sanitarians justifies a final offer which is in excess of the general pattern of settlement in Waukesha County.

When salaries for Waukesha County public health nurses are viewed in relationship to salaries paid to public health nurses in surrounding communities, further analysis of the parties' final offers can be made. The County and the Union disagree as to what comparable communities are appropriate for comparing Waukesha County public health nurse salaries. The County proposes comparing Waukesha public health nurses with public health nurses in only four surrounding counties, excluding Milwaukee County because there are no public health nurses in that county, and excluding Walworth County because apparently it has no comparable position. The Union proposes using 14 employing entities in Southeastern Wisconsin, all of which employ public health nurses. The Union's comparables do not include two counties proposed by the Employer -- Dodge and Jefferson Counties. If these counties are added to the list of 14 communities proposed by the Union, an overall composite of all communities which employ public health nurses in

Southeastern Wisconsin can be developed. Table I below is a list of 17 employing entities in Southeastern Wisconsin which employ public health nurses. Table II compares salaries for public health nurses by counties only.

TABLE I

Community	1982 Hourly Rate	Rank
Waukesha County	$ 9.76	11
(7/1/82 Union Final Offer)	(10.05)	(9)
City of Milwaukee	11.46	1
West Allis	9.82	10
Wauwatosa	10.21	6
Greenfield	8.79	16
South Milwaukee	10.09	8
Cudahy	8.46	17
Brown Deer	9.62	13
Washington County	9.70	12
Ozaukee County	11.29	2
Racine County	10.13	7
City of Racine	10.69	4
Walworth County	9.90	9
Kenosha County	10.92	3
City of Kenosha	10.67	5
Dodge County	9.42	15
Jefferson County	9.57	14
Average for 16 other communities	$10.04/hour	

TABLE II

County	1982 Hourly Rate	Rank
Waukesha County	9.76	5
Washington County	9.70	6
Ozaukee County	11.29	1
Racine County	10.13	3
Walworth County	9.90	4
Kenosha County	10.92	2
Dodge County	9.42	8
Jefferson County	9.57	7
Average for 7 other counties	$10.13/hour	

The undersigned has used all of the communities proposed by the Union, although there is some serious question as to the information supplied for some of these communities. The undersigned Arbitrator chose to include Milwaukee as one of the comparable communities, even though the job description of the public health nurse has significant supervisory responsibilities included. The undersigned has also included Walworth

there is a concentration of employees in these upper ranges. For comparison purposes, the highest amount paid to a public health nurse has been used. It may very well be that there are very few, if any, employees at these upper ranges.

Given all of the shortcomings of the statistics available, it is still possible to get some indication of the position of the public health nurse in Waukesha County relative to that same position in surrounding communities. Under both the Union and the County proposals, the Waukesha County Public Health Nurse II at the fifth step will receive, after January 1, 1982, the rate of $9.76 per hour. Out of the 17 communities, Waukesha County public health nurses would rank eleventh. If the Union offer for a 3% mid-year increase is used, Waukesha County public health nurses would receive $10.05 per hour after July 1, 1982. The ranking for public health nurses in Waukesha County at this new rate would rank them nine out of the 17 communities. The average wage paid to public health nurses in the 16 other communities is $10.04 per hour, or 28¢ an hour more than that paid to public health nurses in Waukesha County. The mid-year rate increase proposed by the Union brings the public health nurse salary to $10.05 per hour, or 1¢ more than the average for the other 16 communities.

In reviewing the comparables, it would appear that the Union's final offer might be slightly favored because, according to Table I, the Union's proposal would allow Waukesha County public health nurses to basically earn the average paid in the 16 surrounding communities. However, because there are so many shortcomings in the data, the undersigned is reluctant to give a great deal of weight to this analysis. In any event, even using these figures, it is apparent that public health nurses in Waukesha County do not receive salaries which are significantly lower than those paid in surrounding communities. If the Union's final offer were to be selected, Waukesha County public health nurses would move from the eleventh position to the ninth position in terms of pay. The change in rank is not particularly significant, and does not result in either offer being preferred.

Table II sets out the comparison between Waukesha County public health nurses and the rates of pay for public health nurses in the surrounding counties. Of the eight counties in Southeast Wisconsin which employ public health nurses, Waukesha County is ranked number five; four counties pay their public health nurses more and three counties pay their public health nursees less than Waukesha County. The average pay for public health nurses in the seven other counties is $10.13, 9¢ more than the average for the 16 communities listed in Table I. If the average is used as the basis for determining the proper rate of pay for public health nurses, again the Union's final offer would be preferred. However, the data is incomplete and an accurate statistical analysis is impossible.

The overall analysis of salaries paid to Waukesha County public health nurses and salaries paid to public health nurses in surrounding communities leads the undersigned to conclude that both the Union and the County final offers are reasonable, are not out of line with the prevailing wage rates in surrounding communities, and, at best, slightly favors the Union's final offer for the first year. The mid-year boost proposed by the Union would provide Waukesha County public health nurses with a pay level equal to the average of all of the communities surveyed. However, the mid-year hike for 1983 has not been adequately explained. If the July 1, 1982, 3% raise brings the salary of Waukesha County public health nurses in line with the average paid in surrounding communities, then a moderate increase in the following year without additional mid-year

increases would be warranted. In other words, once the Waukesha County public health nurse salary is on track with that paid in surrounding communities, any catch-up arguments which might support a mid-year raise are no longer valid. Thus, the Union's final offer for 1983, which proposes a July 1 3% hike for Public Health Nurse II's, is out of line with wages paid in comparable communities. In this regard, then, the Union's final offer is not more reasonable than that proposed by the County.

When salaries of Waukesha County public health nurses are compared with salaries paid to nurses in the private sector, it would appear that the final offer of the County is more than adequate to permit PHN's to remain competitive. While the Union asserts that a valid comparison exists between public health nurses and nurses working in hospitals in the private sector, the Arbitrator is of the opinion that a more valid comparison exists between public health nurses and registered nurses in nursing homes. This is due to the nature of the job tasks for public health nurses and nurses working in nursing homes. There is a significant amount of dissimilarity between the tasks performed by public health nurses and those tasks performed by nurses in a hospital context. While the information supplied by the County is suspect on many levels and is incomplete, it is clear that public health nurses in Waukesha County earn at least as much, if not more, than their counterparts in nursing homes and home health care settings. Even the Union has suggested that comparables in the private sector be used as a secondary set of comparisons only, due to of the lack of similarity of job functions for public health nurses and private sector nurses. And even the Union's analysis of wage rates between general duty nurses in the hospital setting and public health nurses in Waukesha County demonstrates that Waukesha County public health nurses are paid approximately the same as duty nurse. Thus, in viewing the private sector comparables, it is apparent that the County's final offer is reasonable and that the salary proposed by the County for its public health nurses will allow those employees to remain competitive with their counterparts in the private sector.

When the parties' final offers are measured against the cost-of-living data, it is clear that the County's final offer is more reasonable. In fact, the County's two-year offer of 14.5% increase exceeds the cost of living for that time period. Whether the CPI-U increase of 9.4% or the CPI-W increase of 12.10% is used as the yardstick, it is clear that the 21.5% increase proposed by the Union is excessive when measured against the cost of living.

The Union's main basis for supporting its final offer is the belief that public health nurses should be paid at a level equal to that of the County sanitarians. The Union supports this position through the comparable worth study performed by Mr. Hagglund. While the County continues to maintain that comparable worth is not an appropriate factor for consideration under sec. 111.70(4)(cm)7, the undersigned Arbitrator is firmly of the belief that a valid statutory basis exists for the recognition of this type of data. But while comparisons between jobs may very well support a wage increase which would otherwise appear to be out of line, the comparable worth study in the instant matter suffers from some serious flaws; the County has raised some issues concerning the study, and the undersigned Arbitrator is not convinced that the Union has adequately responded to these objections.

At the outset, it should be noted that Professor Hagglund's qualifications are not in issue here. The record is clear that

Dr. Hagglund is an expert in the field of job evaluation. The objections that have been raised deal with Mr. Hagglund's methodology in performing the job evaluation and in his use of the job evaluation instrument.

The first question deals with the job analysis or development of job descriptions. While the County contends that the job descriptions were incomplete, one of the sources for that problem is the County itself. The Union had requested access to the work site in order to gather information and observe public health nurses and sanitarians performing their jobs. The County denied this request. Furthermore, there was no validation by supervisory personnel of the job descriptions prepared by Dr. Hagglund. Yet, overall, the job descriptions tend to be accurate.

More troublesome than the accuracy of the job descriptions is whether or not an appropriate instrument was chosen for performing the job evaluation. Professor Hagglund chose an MRA plan used at Oconomowoc Memorial Hospital. This MRA system is designed to be applied to jobs that fit one of three categories: technical service jobs; administrative and clerical positions; or maintenance and support services. The County's expert witness, Judith L. Harrington, concluded that the sanitarian position fit none of these categories. While the Oconomowoc Memorial Hospital plan is a health care-related evaluation instrument, it may very well be that the plan itself is inappropriate for evaluating a system outside of the hospital setting. And while the plan may lend itself to an evaluation of a public health nurse job, it may not be a valid plan for evaluating County sanitarians. There is no sanitarian position in a hospital setting. If the instrument is appropriate for one job but does not fit the second job being evaluated, it is very possible that the job which clearly fits within the instrument will be overvalued on a relative basis. It is very possible that that situation has occurred here.

Even more disturbing than the questionable choice of the evaluation instrument, is the application of the instrument. Dr. Hagglund testified that he never used the set of instructions on the application of the degrees to the factors in this system. There are extensive controls, norms and benchmarks that are used in applying the MRA plan; the record indicates that Professor Hagglund did not know of these. In the Education factor, the proper use of the plan requires that the minimally acceptable level of education to perform the job is the standard to be applied, not the hiring level of education required by the employer. Professor Hagglund used the hiring requirement. There is some question as to whether Mr. Hagglund properly rated the Experience factor. There is a question as to whether there was a proper rating under the factor of Responsibility for Preventing Losses and Errors, since the rule of "most of the time" is to be used. On the factor of Responsibility for Contacts, Professor Hagglund gave the public health nurses a fifth degree rating; according to the instructions, that assignment is only appropriate for a true supervisor. PHN II's are not supervisors. On the factor of Supervision, the instructions require that only one position in a hierarchy can be accorded Supervisor credit. Even though there is a supervising nurse to whom the PHN's report, Dr. Hagglund gave a supervisory rating to PHN II's. The same is true for the factor of Character of Supervision, as well as Number of Employees Supervised.

The County also points out a number of possible errors in the assignment of degrees to factors when evaluating the sanitarians. However, the major error was not in undervaluing the components of the sanitarian's job, but rather the Union's

comparison of wages received by Public Health Nurse II's with the wage rate of Sanitarian II's. The Union claims the wage rates for these two classifications is the appropriate basis for comparison; and that, since Sanitarian II's are paid more than Public Health Nurse II's, and the comparable worth study shows that the relative worth of a Public Health Nurse II is at least the same as that of a sanitarian, wage rates should be adjusted upward for public health nurses. It should be noted, however, that 70% of the sanitarians are in the Sanitarian I classification. Furthermore, Sanitarian I's perform exactly the same work as Sanitarian II's. The record indicates how the Sanitarian II classification came into existence (primarily as a lead worker). The Union has chosen to compare the work of Public Health Nurse II's with functions performed by sanitarians, but then relies on the Sanitarian II wage classification as the appropriate wage to be paid to nurses and sanitarians. However, with 70% of the sanitarians receiving a Sanitarian I wage, it is difficult to support the Union's reliance on the comparability for Sanitarian II's.

Sanitarian I's are actually paid less than Public Health Nurse II's. Thus, if a proper comparison were to be made between Public Health Nurse II's and those job duties performed by sanitarians, perhaps the wage rate that should be looked at is a wage that takes into account 70% of the Sanitarian I wage and 30% of the Sanitarian II wage. Since the argument of comparable worth deals with job tasks and not level of pay, even if the study were valid it is not clear that the appropriate salary benchmark is the Sanitarian II level of wages. While the Union maintains that the proper level of wage comparison is with the highest common denominator and not the lowest common denominator, the undersigned is not convinced that this analysis is correct. After all, Professor Hagglund made no observations concerning the proper level of wages to be paid to Public Health Nurse II's or Sanitarian II's. What Professor Hagglund's study attempts to establish is a relative value, translated into points, for various common characteristics of the two jobs under study. Since Sanitarian I's and II's do exactly the same work, the points assigned under the job evaluation plan to Sanitarian II's could be equally assigned to Sanitarian I's. And they earn less than Public Health Nurse II's. Thus, under this type of analysis, there is no justification for mid-year raises of 3% for the public health nurses.

There are two other issues which are contained in the final offers. These issues are insignificant when compared to the issue of wages, but some discussion of these issues is warranted. The Union's final offer contains a provision which would require the County to pay overtime for all hours beyond eight hours in a given day. Presently public health nurses earn overtime when they work more than 40 hours in a week; but there is no overtime payment when a public health nurse works more than eight hours in a day. While it is true that the public health nurse is a professional position, it is equally true that the sanitarians are professionals. The contract under which the sanitarians work does contain a daily overtime provision quite similar to that proposed by the Union. Thus, based on internal comparables, it would appear that the overtime provision proposed by the Union is a legitimate proposal and is to be favored.

In relationship to the external comparables, less than a majority of the Union's proposed comparables provide daily overtime. Thus, the external comparables are not strongly in favor of the Union's proposal; however, at least six of those comparables do have daily overtime provisions of the type proposed by the Union and, therefore, lend support for the Union's final offer.

The County's final offer contains a provision which requires that a nurse give two-weeks notice prior to quitting her employment with the County; the employee's failure to give that notice would result in the loss of pay for unused vacation time. This notice requirement is the same provision that has been accepted by the other AFSCME unit, including the sanitarians. (See Section 17.06, Collective Bargaining Agreement for the years 1982 and 1983, AFSCME Local Union #2494.) Thus, again based on internal comparables, it would appear that the County's proposal for two-weeks notice or loss of vacation pay is justified. There is no evidence in the record whatsoever to determine whether this provision exists in other external comparable communities.

CONCLUSION:

The most important issue in this proceeding is the salary schedule for the 1982 and 1983 calendar years. While there are two collateral issues, each of which can be justified by the proponent for that provision, clearly these collateral provisions are insignificant when compared to the issue of wages. As previously discussed, there is little in the record to support the Union's contention that mid-year wage hikes of 3% in each of the two years is justified. Certainly the internal comparables with other bargaining units in Waukesha County does not support the Union's position. To the contrary, the County's final offer is at least the same as that adopted by all of the represented employees in the County and strongly favors the County's final offer. As far as public sector comparables in surrounding communities, the information upon which an analysis can be made is sketchy, at best. Based on this fragmented information, the Union's final offer in the first year might be justified, but it is not clear that their second-year proposal is justified. Finally, the external comparables for the private sector would favor the County's final offer rather than the Union's final offer.

As to the comparable worth study, there are some serious flaws in the study itself. Even if the study were to be accepted on its face, there is a fundamental question about whether it might not be more appropriate to compare Public Health Nurse II salaries with Sanitarian I salaries. If that were the appropriate comparison, it would appear that the public health nurses already earn more than the sanitarians do. While it is possible that a comparable worth study alone might be justification for a salary proposal which is inconsistent with either internal or external comparables, the instant case does not lend itself to that conclusion. Rather, at best, while sanitarians and public health nurses may have the same relative worth, it is also arguable that the majority of people in each of those classifications is earning the same relative salaries. Thus, there is no basis for awarding the Union's final offer on the basis of comparable worth alone.

The mediation-arbitration process provided for in 111.70(4)(cm) under which the instant award is being made requires that the mediator-arbitrator choose the complete final offer of one of the parties. No compromise of any kind is permitted absent a mutual agreement to that effect, and there has been no such mutual agreement in this case. Thus, while the Arbitrator might wish to pick and choose elements from each of the parties' final offers, the award herein directs that the County's entire final offer be incorporated in the 1982-83 agreement. The Arbitrator concludes that the County's proposal is more reasonable because the salary proposal of the County is preferable, and the salary issue is, in the Arbitrator's view, the primary issue in this proceeding.

AWARD

For the foregoing reasons, and based on the record as a whole, it is the decision and Award of the undersigned that the Final Offer of Waukesha County shall be incorporated into the parties' written Collective Bargaining Agreement for calendar years 1982 and 1983.

Dated at Madison, Wisconsin, this 3rd day of August, 1984.

Michael F. Rothstein
Mediator-Arbitrator

APPENDIX A

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February 28, 1983

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RE: Waukesha County (Department of Public Health)
Case No. LXXIV No. 29487 MED/ARB-1600

Gentlemen:

This letter is in response to the motion filed by the Union on February 10, 1983, entitled "Motion for Order Allowing On-Site Job Survey." As I explained in my letter of February 14, 1983, the parties would be afforded an opportunity to respond to the motion, and I would issue a written decision in letter form. Both parties have complied with my request to respond to the Union's motion, and this letter will serve as my written decision on that motion.

The motion, attached hereto as an appendix, is hereby denied. The basis for the motion and the underlying reasoning in support of that motion appears to be based upon the necessity for the Arbitrator to have available the necessary information for evaluating Professor Hagglund's report on comparable worth. The Union contends that the Arbitrator is under a statutory obligation to pursue information which will allow him/her to render a decision based on statutory criteria: If the Arbitrator has not been presented with adequate evidence to allow the necessary evaluation, the Union argues that the Arbitrator can order the parties to produce that information. As a general legal posture the Union's position is probably correct. The undersigned has, on occasion, requested the parties to provide in greater detail supplemental data to support their position. It is not uncommon, for instance, for a mediator-arbitrator to request that the parties provide supporting documentation for the general propositions they put forth during the hearings in such matters.

The instant motion on the part of the Union can clearly be distinguished from those situations wherein supporting documentation is necessary to fully apprise the Mediator-Arbitrator concerning the correctness of the conclusions put forth by a party in this type of preceding. Here the Union has requested the Mediator-Arbitrator to permit the author of a report to validate his report after that report has been placed into evidence. The distinction is that the witness has previously testified to the accuracy of the report and has reaffirmed the validity of the report under intensive examination by opposing counsel. In its simplest form, the Union's motion would permit a defective report to be corrected by the author of that report once the inherent defects of the study have been demonstrated by the process of cross examination. We are not, therefore, discussing the issue of the underlying data which may have been utilized to produce the report; rather, the Union is suggesting that if the report is not complete, the author of the report should be given an opportunity to cure the defects of that report. In short, the Union has asked the Mediator-Arbitrator to allow its expert witness to again tackle the problem of comparable worth. The Mediator-Arbitrator is of the opinion that the Union's motion is untimely and improper.

The Union's motion is improper because the author of the report has previously testified to its accuracy. To permit the Union's expert witness to cure any defect which might exist concerning the accuracy of the report would be tantamount to allowing a party which has failed to carry its burden of proof to "try again." As to the issue of timeliness, if it were necessary for the author of the report to provide an accurate study by conducting on-site visits and interviews with employees prior to producing the report, the motion clearly should have been made prior to the introduction of the report rather than after the report was introduced and claimed to be accurate. Only after a strenuous objection to the adequacy and accuracy of the study was made by the Employer did the Union raise the issue, by motion to the Mediator-Arbitrator, for the necessity of an on-site visit. Finally, the Union's motion must be viewed in terms of the testimony previously adduced at the hearing: The author of the study has previously testified that the study is accurate. The necessity for permitting an on-site visitation has therefore been eliminated by the witness himself.

The Mediator-Arbitrator in this case appreciates the Union's concern that I have available to me sufficient information in order to make an intelligent ruling on the validity and weight to be accorded the study of Professor Hagglund. However, I

deem it inappropriate to obtain that information by permitting the Union and Professor Hagglund to prepare a "new" study. The Union had presented its evidence; the weight to be accorded that evidence has not yet been determined and is the subject of additional motions filed by the County and responded to by the Union.

Based upon the foregoing analysis, the undersigned Mediator-Arbitrator concludes that the motion filed by the Union on February 10, 1983, for an on-site job survey should be denied.

After receipt of the County's brief in support of its motion to strike, I will issue a decision on that motion.

Sincerely,

Michael F. Rothstein
Mediator-Arbitrator

MFR:ae

Attachment

APPENDIX B

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between:	)	
WAUKESHA COUNTY PUBLIC HEALTH NURSES, LOCAL 2494, WCCME, AFSCME, AFL-CIO,	)	Case LXXIV No. 29487 MED/ARB-1600
and	)	
WAUKESHA COUNTY (DEPARTMENT OF PUBLIC HEALTH.	)	

DECISION ON MOTION TO DISMISS
UNION EXHIBIT NO. 8 AND TO STRIKE
ALL TESTIMONY RELATED THERETO

The above-captioned parties, having previously filed a Petition for Mediation/Arbitration and having selected the undersigned Arbitrator to resolve the dispute between Waukesha County and the Public Health Nurses, have been involved in presenting evidence in support of their respective positions based upon final offers obtained through the mediation/arbitration process. On January 20, 1983 (the fourth day of formal testimony/evidence), the County made a motion to exclude and strike from evidence a report previously identified as Union Exhibit No. 8. This report was prepared by Professor George Hagglund and is entitled "Findings on the Relative Worth of Public Health Nurse II and Sanitarian II."

While the County orally argued its case in support of the motion to strike, there was mutual agreement that the parties would subsequently submit briefs relative to the motion raised by the County. The briefs were to be simultaneously exchanged through the Arbitrator. In the interim, however, the Union filed a formal motion requesting that an on-site job survey be permitted and that related data be supplied to the Union. Thereafter, the County filed its brief in support of its motion to strike. The Union, on the other hand, had previously filed a brief regarding both the motion for an on-site job survey as well as arguments in support of the introduction and acceptance into evidence of Exhibit No. 8 and the related testimony of Professor Hagglund.

On February 28, 1983, the undersigned Arbitrator issued a ruling denying the Union's motion to permit Professor George Hagglund to conduct an on-site job survey. Therefore, the only issue which remains unresolved as a result of the motions filed by the parties is whether the report of Professor Hagglund and the testimony related to that report should be stricken from the record.

The County filed an extensive brief in March of 1983 in support of the County's motion to strike. Thereafter, in April of 1983, the undersigned Arbitrator received a rebuttal brief from the attorneys representing the Public Health Nurses. The extended briefing schedule is due, in large part, to the fact that the undersigned Arbitrator and the parties are aware that Professor Hagglund's report and the subsequent decision of the Mediator/Arbitrator involves an issue of "first impression," which both parties deem to be extremely important for the future of labor relations in the State of Wisconsin. The undersigned Arbitrator therefore permitted the parties to exercise extensive latitude in the presentation of supporting case law and reasoning for their respective positions.

The County has put forth four primary reasons for excluding the Hagglund report: (1) The statute providing for mediation/arbitration limits the factors to be utilized by the Mediator/Arbitrator and, therefore, precludes the Arbitrator from assessing the comparable worth of different jobs; (2) Recent court decisions dealing with the constitutionality of the mediation/arbitration law suggests that the articulated factors listed in the statute are the only factors which are available to the Mediator/Arbitrator for utilization in rendering a decision as to the reasonableness of a party's final offer. Since relative worth is not one of the articulated factors within the statute, comparisons between unlike positions cannot be utilized by the Mediator/Arbitrator in rendering an award; evidence of "relative worth" would result in delegating overly-broad authority to the arbitrator and could be considered unconstitutional; (3) Under established rules of evidence "expert testimony" requires that the subject matter achieve a sufficient level of development to permit a reasonable opinion to be asserted by an expert. The County argues that job evaluation as used in the instant matter has not reached the minimum threshold of acceptability to permit an individual to formulate an opinion and qualify as an expert in the field; and (4) The methodology used to obtain the information contained in the report is so defective and lacks accuracy and reliability and should be rejected on its own weight. The County further points out that if the Mediator/Arbitrator grants the County's motion to strike Union Exhibit No. 8 and the testimony related thereto, additional rebuttal evidence will be unnecessary and the parties would be spared the time and expense of additional litigation.

The Union's response to the County's motion argues that the issue of comparable worth is a clearly defined factor which is to be considered by the Arbitrator in resolving disputes pursuant to sec. 111.70(4)(cm)7d, Wis. Stats. That section reads as follows:

> "7. 'Factors considered.' In making any decision under the arbitration procedures authorized by this subsection, the mediator/arbitrator shall give weight to the following factors:
>
> ...
>
> d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration procedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and private employment in the same community and in comparable communities."

Since the Union's case is based upon attempting to demonstrate through the use of Professor Hagglund's report a comparison in the conditions of employment of Public Health Nurses with that of Sanitarians, the Union maintains that the similarity of services provided by both groups of employees clearly qualifies as an express factor recognized by the legislature in the drafting of sec. 111.70(4)(cm)7d.

The Union further points out that arbitration proceedings generally employ a liberal attitude toward the admission of evidence. Since the Arbitrator must ultimately determine the proper weight and relevancy of any evidence offered, the Union maintains that there is no need to protect the Arbitrator from reviewing the report and determining its relevancy and the appropriate weight to be attributed to the report. The Union argues that Professor Hagglund has been qualified as an expert in the area of job evaluation and job analysis; the Union reminds the Arbitrator that in a recent United States District Court case (Briggs v. City of Madison), Professor Hagglund was qualified as an expert in the field of job evaluation.

Finally, the Union maintains that when the County's motion for exclusion of the Hagglund report is stripped of its clever remarks and convoluted reasoning, the issue boils down to one of determining the appropriate weight to be accorded Professor Hagglund's report and supporting testimony. The Union maintains that it is for the Arbitrator to determine the degree of importance to be attached to the Hagglund report; a motion to exclude the evidence is clearly improper given the

nature of arbitration proceedings in general and the relevancy of the Hagglund report in the instant matter. Based upon this reasoning, the Union requests that the Arbitrator deny the County's motion and accept Union Exhibit No. 8 into evidence.

The County's motion is well argued and forcefully presented. The Arbitrator is of the opinion, however, that the report of Professor Hagglund previously marked as Union Exhibit No. 8 is relevant to the instant dispute and should be admitted into evidence. Therefore, the County's motion to exclude the report and strike the testimony of Professor Hagglund related to that report is denied.

The undersigned Arbitrator believes that sec. 111.70(4)(cm)7d does permit parties to argue the relative comparability of wages, hours and conditions of employment of those employees who are performing similar services. While the County maintains that Sanitarians and Public Health Nurses do not perform similar services, the thrust of the Union's position is that similar services are, in fact, being provided by both sets of employees, but the Nurses are paid less than the Sanitarians. Whether or not Sanitarians and Public Health Nurses in fact perform similar services is a decision which must be made by the Arbitrator. The rebuttal evidence which the County suggests it will introduce in subsequent hearings may ultimately prove that the tasks performed by the two groups are vastly dissimilar and that the report of Professor Hagglund is entitled to minimal consideration; however, the Arbitrator is not in a position to exclude the report based on the County's argument that Sanitarians and Public Health Nurses perform different tasks and do not share a common framework which would permit the Arbitrator to utilize sec. 111.70(4)(cm)7d.

The denial of the County's motion to exclude the Hagglund report is further supported by the widely-accepted premise that strict observance of rules of evidence should not be applied to arbitration proceedings. Rule 28 of the American Arbitration Association provides, in part, that the Arbitrator shall be the judge of the relevancy and materiality of the evidence offered, "and conformity to legal rules of evidence shall not be necessary." In their book Evidence In Arbitration, (Marvin Hill, Jr. and Anthony Sinicropi), the authors state that "unlike the judicial system, however, arbitrators rarely deny the parties the opportunity to present evidence on the basis that it is immaterial or irrelevant." While many arbitrators subscribe to the philosophy that all evidence is admissible and will be accepted "for what it is worth," the undersigned Arbitrator does not subscribe to that school of thought; on the other hand, where evidence presented at a hearing has some probative value and helps the arbitrator to understand and decide the problem presented to him/her, such evidence will be admitted into evidence.

In the instant case, Professor Hagglund's report attempts to compare the nature of the work performed by two groups of employees. While the County maintains that the two groups perform dissimilar functions, the Union staunchly holds to the position that Public Health Nurses and Sanitarians are essentially involved in the same types of tasks and service to the public. It is for the Arbitrator to determine the extent to which these two positions share a commonality such that a valid comparison may be made.

In short, the crux of the dispute between the County and the Union is whether or not these two groups of employees do have sufficient similarity to warrant a significant wage increase for the Nurses so that they begin to approach parity in pay with the Sanitarians. To exclude the report of the Union which attempts to establish this similarity would require the undersigned to conclude that the report has no relevance to the issue of whether, in fact, the two job classifications are sufficiently alike to warrant the type of pay increase requested by the Union. Such evidence is clearly relevant to the issue being argued by the Union, and therefore it should not be excluded.

The County, however, goes beyond the issue of relevancy and argues that the report is so defective on its face that it fails to meet even minimal standards of reliability. Because the report is so defective in the methodology and the selection of the instrument used to make the comparisons between the Nurses and the Sanitarians, the County maintains that the report should be excluded from evidence based on its own internal deficiencies. The position taken by the County may very well go to the appropriate weight to be accorded Professor Hagglund's report; that position does not, however, justify the conclusion that the report must be excluded from evidence.

Perhaps the rebuttal evidence of the County will demonstrate to the Arbitrator that the Hagglund study is of little or no value in the instant proceedings. However, the undersigned Arbitrator feels that it is his duty to permit the parties to place in evidence documents of information in support of their position, even if that evidence may be attacked on the basis of reliability. Until such time as it is demonstrated that the evidence has no probative value whatsoever in resolving the dispute between the parties, the Arbitrator must accept into evidence the proffered exhibit as a document relating to the very essence of the instant dispute. And while it may very well be a fact that the report is defective, that conclusion simply affects the weight which the trier of fact assigns to that particular piece of evidence.

Given the wide latitude which is normally accorded evidence in arbitration proceedings, the undersigned Mediator/Arbitrator is of the opinion that the Hagglund report has some relevance to the dispute at hand, and it is not so totally unreliable as to remove it from having probative value. Therefore, the report of Professor Hagglund (Union Exhibit No. 8) and Professor Hagglund's accompanying testimony will be accepted into evidence by the undersigned Arbitrator. While the extensive cross examination of Professor Hagglund would suggest that the report suffers from a number of defects, I cannot conclude that it has absolutely no probative value or relevance to the instant dispute.

Based upon the foregoing discussion, the MOTION of the County to strike the report of Professor Hagglund and his accompanying testimony is hereby DENIED.

Dated at Madison, Wisconsin, this 20th day of June, 1983.

Michael F. Rothstein
Mediator/Arbitrator