STATE OF WISCONSIN

BEFORE THE ARBITRATOR

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* In the Matter of the Petition of *

* JACKSON COUNTY SOCIAL SERVICES EMPLOYEES, LOCAL 2717-B, WCCME, AFSCME, AFL-CIO *

* To Initiate Mediation-Arbitration Between Said Petitioner and *

* JACKSON COUNTY (DEPARTMENT OF SOCIAL SERVICES) *

* * * * * * * * * *

Case XXXII
No. 30947
MED/ARB 2098
Decision No. 20461-A

I. APPEARANCES

Michael J. Burke, Attorney at Law, Mulcahy & Wherry, S.C., on behalf of the County.

Daniel R. Pfeifer, District Representative WCCME, AFSCME, AFL-CIO, on behalf of Local 2717-B.

II. BACKGROUND

On August 31, 1982, the Parties exchanged their initial proposals on matters to be included in a new Collective Bargaining Agreement to succeed the Agreement which was to expire on December 31, 1982. The Parties met on three occasions in an effort to reach an accord on a new Collective Bargaining Agreement. Failing to reach a voluntary agreement, the Union filed a petition to initiate mediation/arbitration on January 5, 1983. On January 26, 1983, a member of the WERC staff conducted an investigation which reflected the Parties were deadlocked in their negotiations. On March 15, 1983, the Parties submitted their final offers to the investigator as well as a stipulation on agreed-to matters. Thereafter the investigator notified the Parties that the investigation was closed, and subsequently notified the Commission that the Parties were at an impasse. The Commission ordered the Parties to select an arbitrator from a panel of five arbitrators submitted to them. The Parties selected the undersigned as mediator/arbitrator.

The Mediator/Arbitrator met with the Parties in an attempt to resolve the dispute in mediation. Failing to successfully mediate the dispute, the Mediator/Arbitrator served notice to the Parties of his intent to proceed to arbitration. The Parties waived written notice of such intent and the right to withdraw their final offers as extended by the statute. The Mediator/Arbitrator conducted a hearing and received evidence and testimony pertinent to the arbitration. The Parties reserved the right to file post-hearing briefs. The exchange of briefs was completed on July 1, 1983. Based on a review of the evidence, the arguments, and the criteria set forth in Section 111.70(4)(CM)6, Wisconsin Statute, the Mediator/Arbitrator renders the following award.

III. FINAL OFFERS AND ISSUES

The only outstanding issue is salary schedule. The stipulations are attached hereto as Appendix A. The Union's final offer is attached as Appendix B, and the County's final offer is attached hereto as Appendix C.

The Union generates its salary schedule for 1983 by increasing the 1982 schedule by an amount equal to the increase in the Bureau of Labor Statistics Consumer Price Index by comparing the 1967 base, all items report (National Urban Wage Earners) of November, 1981, and November, 1982. The 1984 schedule would be generated in a similar manner.

It is noted as a factual matter that the Union's wage-increase formula is consistent with the formula bargained between the Parties since the advent of collective bargaining in 1976.

The Union's offer thus would increase the 1982 schedule by 4.6 percent which is the difference in the relevant CPI from November, 1981, to November, 1982. When the wage increase is costed with fringe benefits, the Union's offer on a total package basis is 6.4 percent.

The County offers to adjust all wage rates by 4 percent on January 1, 1983, and an additional 4 percent on July 1, 1983, on a non-compounded basis. This generates an annualized wage increase for 1983 of 6 percent. On a total package basis, the County's offer is 7.8 percent increase. In respect to 1984, the County offers a wage reopener.

This case is rather unique in that the Employer's monetary offer is greater (by 1.4 percent) than the Union's. It is apparent that the real issue is not wages, per se, but how the increase should be determined. The County desires to do away with the automatic cost-of-living formula for wage increases, and the Union wishes to retain it.

There is no issue at dispute over the appropriate group of comparable counties. Both Parties utilize the following counties in making their comparisons:

Adams	Buffalo	Juneau	Trempealeau	Wood
Clark	Eau Claire	La Crosse	Monroe	

The County does, however, ask that the Arbitrator recognize that some of these counties are much larger than Jackson County and that other differences exist between the counties. From this they suggest that some counties are more comparable than others. The Union, in fact, asserts that within the general comparable group, there are three groups with different degrees of comparability. The primary comparable group should be Adams, Buffalo, Clark, Juneau, Monroe, and Trempealeau. The next most comparable group would be Wood County; the least comparable would be Eau Claire and LaCrosse. Comparisons to these counties should be given weight in accordance with their degree of comparability, according to the Union.

IV. ARGUMENTS

A. The County

The County recognizes that arbitral authority holds that the burden of proof to justify a change in an existing contract provision is on the Party proposing to affect that change.

Thus they also recognize that the County must advance "persuasive reasons" for the elimination of the COLA clause which has been the result of the negotiation process.

They believe that they have put forth persuasive reasons and believe that the County's offer is more reasonable when compared to the wages paid in comparable counties. In addition, they contend that arbitral authority supports the County's proposal to eliminate the COLA clause.

The County, even though they recognize the burden is on them, stresses that the continuation of the status quo is not automatic and that given sufficient justification, arbitrators have been willing to eliminate existing Contract provisions. They direct attention to Arbitrator Kerkman's award in City of Greenfield (Fire Department), Decision No. 16283-A(8/78), wherein he awarded the City's final offer which eliminated a COLA clause from the Contract. The County draws attention to the following comments of Arbitrator Kerkman in this award:

> "The undersigned has considered the argument that since the Employer has successfully bargained out cost of living with three other units; and said agreements were settled on the basis of wage offers either equal to or less than the wage offer made by the Employer in the instant dispute; the final offer of the Employer should be adopted. The undersigned finds the employer argument with respect to agreements reached with its other bargaining units to be quite persuasive. If the undersigned were to find for the fire fighters in this dispute, it would mean that the fire fighters here would have the benefit of a cost of living clause which no other bargaining unit of the Employer would enjoy for the years involved under the terms of the Agreement in dispute here."

They also direct attention to Arbitrator Zeidler's award in Walworth County (Sheriff's Department), Decision No. 19811-A (2/83), in considering the removal of a COLA clause. Arbitrator Zeidler commented:

> "It is necessary to comment here on the effect of abandoning the use of COLA. The proposal to stop the use of COLA where it has been in use for a number of years is not one to treat lightly. However, if the use of a COLA provision and fold-in produces a wage base which is out of line when judged in comparison with other comparable counties, then the COLA provision should not be considered sacrosanct. The test is whether the wages being paid compare to what is being paid for like services in other comparable settings. [Emphasis added]

Keying on the test set forth by Arbitrator Zeidler, the County focuses argument on what is being paid for like services in comparable settings. For a variety of reasons, the County submits that the wages of this bargaining unit do not compare or are signficantly greater than the wages paid for like services in comparable counties. As such, they believe there are "persuasive reasons" to eliminate the COLA clause from the Contract.

The County presented a wage comparison between the prevalent positions in the bargaining unit and similar positions in comparable counties. They compare wages at the Social Worker III, Social Worker I, Administrative Assistant, Income Maintenance Worker, Terminal Operator I, and Typist II positions. These six positions, according to the County, make up almost 90 percent of the bargaining unit.

The Social Worker II position has ranked first at the minimum and maximum monthly rates among the comparable counties since 1982. They also feel it is important to note that the differential between the wage paid for this position in Jackson County and the average comparable wage has dramatically increased since 1980. For example, since 1980, Jackson County's maximum monthly wage was $220 per month above the average. It is noted that the average in 1980 at this position was $1,381 versus $1,601 in Jackson County. In 1982 Jackson County's maximum monthly wage in this position had increased to a differential of $385 above the average ($1,589 per month versus $1,974 per month.) The County indicates this is an increase of 75 percent in the differential since 1980. They also submit exhibits which shows the adverse effects of the COLA clause on the differential between the Social Worker III classification and the Social Worker Supervisor, a management position. In 1980, there was a $1,609 per year differential and by 1982, there was only a $475 differential. If the COLA is allowed to remain in the Contract, it will be a matter of time before the Social Worker III is paid more than its non-union supervisor.

The County does a similar comparison for other positions. The Social Worker II position maximum rates also have ranked first since 1980. In 1980, Jackson County's monthly maximum rate was $179 above the average monthly rate, and by 1982 the County's maximum rate was $350 per month above the average or an increase of 98 percent in the differential since 1980. By 1982 Jackson County paid $166 per month or almost $2,000 a year more than the closest comparable county. At the Administrative Assistant position, Jackson County has also ranked first among the comparables since 1980. The differential between the average monthly maximum and Jackson County's maximum rate has been increasing steadily. In 1980 Jackson County paid $203 per month above the average. By 1982, the County's maximum rate was $298 a month above the average maximum rate or an increase of 47 percent in the differential since 1980. In 1982, using maximum rates, Jackson County paid $3,540 per year more for Administrative Assistants than Eau Claire County.

The County draws special attention to the wage comparison for the Income Maintenance Worker position since nearly 25 percent of the Bargaining Unit occupy this position. Along with Social Worker II, these positions make up 57 percent of the Bargaining Unit. Since 1981, both the minimum and maximum monthly rates in Jackson County rank first among the comparables. The maximum rate had ranked first since 1980. In 1980 Jackson County's maximum was $165 above the average maximum monthly rate. By 1982, the County's maximum rate was $316 above the average maximum rate or an increase of 92 percent since 1980. In 1982, at the maximum rate, Jackson County paid $2,376 per year more the next highest-paying county (Wood). Further, Jackson County paid $4,320 per year more than Eau Claire County in 1982 at the maximum rate.

A comparison of the Typist II position among the comparables

Based on their position by position comparisons, the County asserts that the wage rates in general are simply out-of-line with the comparables. Rhetorically they ask why should Jackson County in 1982, for instance, pay $3,336 per year for Social Worker II than Eau Claire County? The effects of the COLA clause are obvious to the County and have, in their opinion, grossly distorted the wages paid in Jackson County compared to the wages in comparable counties. Thus, if the test of retaining or eliminating a COLA clause is "what is being paid for like services in comparable counties"(Walworth County, supra), then they believe they have provided sufficient justification, because Jackson County salary schedule reflects wages far in excess of what is being paid for like services in comparable settings. The County asserts that the continued impact of the COLA clause has caused a dramatic increase in the salary schedule, especially at the schedule maximums, whereby the current wage rates are totally unrealistic when compared to the wage rates in comparable counties. They believe that the County's established that its wages are far in excess of those paid in comparable counties. Therefore, based on the test articulated by Arbitrator Zeidler in Walworth County, supra, the County has justified its proposal to abandon the use of COLA in determining the appropriate salary schedule.

Additionally the County notes other aspects of the County's offer which they believe justify the removal of the COLA clause. First, by proposing a 4 percent-4 percent split increase for 1983, the County is "buying out" the cost of living clause. The County is willing to offer more than the COLA clause increase in order to further justify its final offer. In this regard, they direct attention to Greendale School District, Voluntary Impasse Procedure (9/78) wherein Arbitrator Kerkman rejected the district's proposal to eliminate a COLA clause with the following rationale:

> "It is the opinion of the undersigned that the Employer has failed to offer a sufficient economic settlement 'to buy out' the cost of living provision in disupte here."

The County suggests the opposite rationale would apply to this case and since their offer generates a 3.4 percent additional "lift" over the 1983 contract year, the County has met its burden to "buy out" the cost of living clause. The County also draws attention to the fact that the final offer generates increases in excess of increases received by other Jackson County employees in 1983. The County's argument suggests that this should operate as further justification for their award, because in Walworth County, supra, Arbitrator Zeidler, while recognizing that the COLA clause is not sacrosanct, refused to eliminate the COLA clause because the County's offer in that case was less than what was being offered other employees internally. He stated:

> "Because of the low percentage increase being offered to the Association under the Employer's offer when compared to much larger percentage increases afforded other employees internally, the arbitrator believes that this will have too much of an adverse effect on the morale of law enforcement officers, thus affecting public interest."

Clearly, in this case, the selection of the County's final offer will not have the adverse effect on the morale of the Social Services Department as Arbitrator Zeilder felt the employer's lower offer would have an adverse impact in Walworth County. The County's offer will not have an adverse impact since it provides for increases in excess of those

negotiated with other Jackson County bargaining units. The following represents a listing of those increases received by other Jackson County employees unionized and non-unionized:

1983	
Social Service (Mgmt)	3.0% + 23¢/hr.
Courthouse (AFSCME 1981)	5.0%
Courthouse (Mgmt)	3.0% + 15¢/hr.
Law Enforcement (WPPA 1980)	(1-1) 4.0% (7-1) 2%
Highway (nonrepresented)	4.7%

The County also takes the position that their proposal to eliminate the COLA clause is consistent with the fact that there are no other COLA clauses within Jackson County or in comparable counties. This is significant, according to the County, and they direct attention to Arbitrator Kerkman's award in the City of Greenfield (Fire Department), supra, wherein he awarded the city's offer to eliminate the COLA clause. He stated:

> "The undersigned finds the Employer argument with respect to agreements reached with its other bargaining units to be quite persuasive. If the undersigned were to find for the fire fighters in this dispute, it would mean that the fire fighters here would have the benefit of a cost of living clause which no other bargaining unit of the Employer would enjoy for the years involved under the terms of the agreement in dispute here."

The Union takes the position that their final offer is more reasonable when considered in terms of the public interest. In asserting that the County's final offer is more reasonable when compared with the public interest, the County submits that the Arbitrator must look beyond 1983 and weigh the final offers in terms of the impact on the public interest in 1984 and thereafter. Indeed, this case does involve the appropriate salary schedule for 1984. It is the County's position that it is in the public interest to eliminate the cost of living clause in the Contract and beginning in 1984 to return to conventional negotiations on the appropriate wage increase and structure of the salary schedule. Quite simply, the COLA clause must be eliminated if anything is to be done regarding wage comparisons with other counties and the growing differential between the minimum and maximum rates with the salary schedule.

The County contends that there is a growing national trend away from COLA clauses. They submit exhibits which document that in a variety of collective bargaining spheres that cost of living or COLA clauses have been revised or eliminated.

The County submits that the current economic conditions within Jackson County also support the removal of the COLA clause. They do not believe it is reasonable to expect the taxpayers in Jackson County to continue to absorb the high cost associated with the COLA clause and they submit a number of exhibits which document the current "plight" of a Jackson County taxpayer. They note that the Jackson County Iron

Company, the largest private sector employer in the County was forced to shut down operations in April, 1982, with no definite plans to reopen the plant. As a result, the unemployment rate in Jackson County has increased from 12.4 percent in January, 1982, to 22.5 percent in January, 1983. In 1982 the average rate of unemployment was 15.8 percent which is greater than the national average of 9.8 percent and a state average of 10.3 percent. Clearly with over one-fifth of the work force out of work, the County cannot continue to apply the cost of living clause to the existing Social Services Department salary schedule. As such, the public interest, in the opinion of the County, demands the removal of the COLA clause.

The County additionally contends that their final offer is more reasonable when compared to total compensation received by employees of comparable counties. A review of the data, according the County, indicates that Jackson County, in addition to being wage leader, also provides an excellent fringe benefit package to their employees. There are benefits in Jackson County which exceed those in other comparable counties which include benefits such as 100 percent paid health insurance, whereas the average employer in the comparable group pays only 87 percent for the family plan. The County also contributes to life insurance policies and that contribution exceeds that provided by many comparable counties. Further, other benefits offered by the County are consistent with the comparable counties such as hours per week, holidays, and vacations. The County also addresses Arbitrator Imes decision which resulted in the predecessor agreement to the Contract at dispute. Arbitrator Imes' award rejected a modification to the COLA clause. They note a paragraph critical in her analysis:

> "While it is clear to the undersigned that Jackson County's social services employees are wage leaders, it cannot be concluded that this is the result of the cost of living adjustment clause. There is no substantial change in the percentage spread in comparable positions except as affects the IM worker, where the Union noted the change in pay was by mutual agreement and in accord with the Civil Service Merit System. Further, the percentage difference between Jackson County and the comparables does not differ significantly from 1980 to 1981. (Dec. No. 18409-A, at p. 7)

The County submits that the above statement made by Arbitrator Imes is simply no longer true. This suggests that Arbitrator Imes' award thus should have no bearing on this dispute. The County now is a wage leader as a result of the COLA clause. In addition the dollar differentials between the minimum and maximum rates within each of the salary schedule classifications are increasing. Further, the percentage difference between Jackson County and the comparables has increased dramatically since 1980 and thus, the County has justified its proposal to eliminate the COLA clause from the 1983-84 Contract.

B. The Union

The Union first notes that the ability to pay is not at issue. For instance, a Union Exhibit indicates that Jackson County substantially lowered its 1983 tax levy and secondly, the final offer of the Employer exceeds the cost of the Union's final offer by 1.4 percent.

The Union does believe, however, that the interest and welfare of the public are important issues. They note the testimony of Mr. John Rulland, a County Board member. He

testified at the arbitration hearing that the Finance Committee has informed various County committees that no money beyond the 1983 budgeted increase of 5 percent would be allotted for operations and that if a department was running at a deficit, that department would have to correct said deficit from internal operations. Therefore, in the opinion of the Union, if the County's offer is awarded, it is more likely that layoffs may occur than if the Union's final offer is awarded. Possible layoffs are not only detrimental to the members of the bargaining unit but also impact greatly on the public.

The Union recognized that the unemployment rate exceeds both state and national averages and that much of the problem is caused by the closure of the Jackson County Iron Company. However, it is the Union's position that the services of the Social Services Department become more valuable during periods of high unemployment. For instance, they note the amount of payments under the Aid to Families with Dependent Children Program have risen dramatically in the past year. It is the position of the Union that if the offer of the County were implemented and layoffs occur because of said implementation, not only will certain employees of Local 2717-B suffer, but the public may also suffer because of a lack of social services during a time of high unemployment.

In respect to a comparison of wages, the Union directs attention to the 1981 decision of Arbitrator Imes (Jackson County Social Services, Case XXV, No. 27232 MED/ARB 972) wherein she stated:

> "While it is clear to the undersigned that Jackson County's social services employees are wage leaders, it cannot be concluded that this is the result of the cost of living clause. There is no substantial change in the percentage spread in comparable positions except as affects the IM worker, where the Union noted the change in pay was by mutual agreement and in accord with the Civil Service Merit System. Further, the percentage difference between Jackson County and the comparables does not differ significantly from 1980 to 1981. While an increase tied to the CPI may result in a high percentage increase during inflationary times, the comparables indicate they too attempt to meet the escalating cost of living in the percentage increases offered their employees. Thus, even though the Employer's offer does maintain the same rankings as the Union's demand and among comparable counties, the undersigned does not find justification for modifying the cost of living adjustment clause on the basis of wage compensation."

The Union believes that the same conditions exist in the 1983-84 Contract as existed in Ms. Imes' 1981 decision.

The Union also directs attention to exhibits which indicate that either final offer would maintain the historical relationship of Jackson County as a wage leader and that the Employer's wage offer would also increase the spread between the wages of Jackson County and comparable counties. They do acknowledge that the County has offered many exhibits which show poor economic conditions both locally and nationally and that the wage increases of late have been smaller than in previous years. The Union takes the position that the aforementioned County exhibits tend to bolster the Union's final offer because the Union is seeking a smaller increase than the County is offering.

It is also the Union's position that the 1983 wage settlements in comparable counties are closer to the Union's final offer and therefore, support the Union's position. The Union submits the following list of 1983 settlements in the comparable counties.

1983 WAGE SETTLEMENTS IN COMPARABLE AREAS	
County	1983 Settlements
Jackson	Union Proposal - 4.6% County Proposal - 1/1/83-4%; 7/1/83-4% = Cost of 6.00% Courthouse Settlement - 5%.
Adams	Wages-2½%; Insurance 4%; Adjustments ½% = Total Package - 7%.
Buffalo	5% with a furlough of 5 days in 1983.
Clark	5%.
Juneau	Wages-4½%; Adjustments-1.5% = Total Wage Increases - 6%.
Monroe	5%.
Trempealeau	5% effective 1/1/83; 2% effective 7/1/83.
Wood	5%.
Eau Claire	8% (second year of a multi-year agreement).
La Crosse	Professional - 7% Non-professional - 6% effective 1/1/83; 2% effective 7/1/83 (Both are the second year of two year agreements.)

The Union also believes that the fact that their offer is closer to the internal comparables within Jackson County also supports their position.

The Union makes specific rebuttal to an Employer exhibit and the assertions surrounding that exhibit which shows the wage relationship between the supervisors and the Union employees. The Union believes that this is irrelevant to the present case, since the Union has no jurisdiction over supervisor personnel, and if the County chooses to pay supervisors at a rate close to bargaining unit personnel, that is the County's option. The County also has the option of paying supervisors at a greater rate, but obviously has not done so.

In regard to the cost of living formula on which their salary schedule is based, they note that the cost of living provision was voluntarily negotiated in the first agreement between the parties and has remained the same since that time. The employee wage increases have been based on that cost of living formula and they have received no more or no less than the percentage increase generated by cost of living.

Again, directing attention to Arbitrator Imes' 1981 decision, they note her following comments:

> "As has been the issue in previous arbitration cases, the question arises whether the Consumer Price Index is an appropriate measurement of the cost of living increases. Most typically, the Employer has asserted that the Personal Consumption Expenditure Survey is a more appropriate index to be used when measuring the cost of living increases since it reflects how people choose to spend their money. The undersigned finds that while the Personal Consumption Expenditure Survey does reflect how people actually spend their money and while the Consumer Price Index measures increases in price of certain items, it cannot be concluded that either index reflects a compromise between the cost to maintain a certain standard of living and the actual spending habits of individuals during inflationary times. Thus, both indexes must be reviewed with caution. As to which index should be more appropriately used in relationship to seeking wage increases or in relationship to attaching a value to a cost of living adjustment factor, the undersigned does recognize the problem in the Consumer Price Index relevant to housing costs and relevant to its measurement of a fixed market basket, but still notes this index is the national indicator both for governmental purposes and for the cost of living adjustments sought both within the private sector and the public sector. Therefore, there is no persuasive reason for the undersigned to modify the cost of living adjustment clause because it uses the Consumer Price Index as the measurement for the wage increase."

The Union believes that the rationale which was present in 1981 also applies in this case and takes the position that if Ms. Imes did not place a cap on the cost of living provision during times of high inflation, it would be inappropriate for this Arbitrator to delete the cost of living provision during times of low inflation.

Regarding total compensation, the Union notes again Arbitrator Imes in respect to total compensation stated in her 1981 decision, "thus, the undersigned is not persuaded by the total compensation comparisons that the clause won by the bargaining unit should be capped." It is the position of the Union that the relationship of Jackson County's overall compensation and that of comparable counties has not changed significantly since Ms. Imes' decision, and therefore, her rationale would still apply.

In rebuttal to the County's arguments on the increase between the minimum and maximum salaries, the Union notes that the Employer has previously argued that the cost of living provision is inequitable because it is constantly based on a percentage and therefore the employees in the lower classifications do not receive a comparable wage increase. The Union contends that the Employer's argument is not relevant inasmuch as the County's final offer also contains an increase based on a percentage.

The final issue addressed by the Union is that of the duration of the Contract. The Union proposes that the 1984 wage increase be based on the cost of living. The County proposes that there be a wage reopener for 1984. It is the Union's position that it is more reasonable to establish the 1984 wage rate at this time. The parties arbitrated the 1981-82 settlement and are again in arbitration for the 1983-84 agreement. The Union believes its position in relation to the 1984 wage will give the parties a year when there is not a dispute over wages, and therefore, generate

an additional year of labor peace. In summary, the Union draws particular attention to the fact that the cost of living clause was voluntarily and bilaterally negotiated and has been a historical part of the agreement since its inception. Further, they assert that the County did not present any evidence that the maintenance of the cost of living provision would cause damage or irreparable harm to Jackson County. Conversely, if the final offer of the Employer is awarded and layoffs have to be effectuated, the citizens of Jackson County may be harmed.

V. DISCUSSION AND FINDINGS

As stated in the Background, this is a unique case. The critical issue is the County's proposal to eliminate the cost of living clause as the method for determining the annual bargaining unit wage increases. Both parties note that the cost of living formula has been the sole basis for determining wage increases since the first collective bargaining agreement in 1976.

Arbitrators have and should be extremely reluctant to remove provisions from contracts especially when they are the product of voluntary settlements. Arbitrators have overcome this reluctance when the party proposing the change has shown "persuasive reasons" for the removal of the disputed item.

There have been, in a general sense, a variety of "persuasive" reasons acceptable to Arbitrators. Arbitrator Stern in City of Greenfield Police Department, WERC Case XLI, No. 20663, MIA-255 (March, 28, 1977) required that the employer in that case show that they were successful in negotiating the removal of the disputed item in negotiations with other bargaining units of the same employer or that the prior existence of the clause had hampered efficiency. In addition, Arbitrator Kerkman in Greendale School District, Voluntary Impasse Procedure--a case involving a proposal to eliminate a cost of living provision--suggested along with some degree of "persuasiveness" surrounding the reasons given for their desired removal of the cost of living clause that the employer should offer a sufficient economic settlement to "buy out" the cost of living clause. Arbitrator Zeilder in Walworth County Deputy Sheriff's Association and Walworth County (Sheriff's Department) Case LVII, No. 29407, MIA-659, Decision No. 19811-8, a case cited by the County, added another important test in determining whether the cost of living clause should be eliminated. The other test was the impact of the cost of living clause on the wage rates in the comparable group. Moreover, Arbitrator Zeilder held that the reasonableness of the offer to eliminate a cost of living clause would also be judged on how its monetary aspect measured up relative to the internal comparables.

Thus it is seen from the standpoint of precedent, Arbitrators find a variety of factors important in the general consideration of "give backs." Moreover, these considerations have been applied to the specific consideration of the removal of cost of living clauses. This Arbitrator will, in line with the thought of other Arbitrators, consider whether there is a justification for the removal of the cost of living provision in terms of (1) impact on the external comparable relationships (2) impact on the internal comparables, (3) the sufficient or insufficient nature of the "buy out" in combination with the other facts, and (4) the impact on efficiency.

It is the conclusion of the Mediator/Arbitrator that the Employer has sufficiently justified their posposal to eliminate from the Collective Bargaining Agreement the COLA formula as the basis of generating annual wage increases.

Probably the most important factor in arriving at this conclusion was the dramatic effect--which was not present in 1981 when Arbitrator Imes considered the 1981-82 Contract--of the COLA clause on the external comparable wage relationships. Arbitrator Imes stated in her award:

> "While it is clear to the undersigned that Jackson County's social services employees are wage leaders, it cannot be concluded that this is the result of the cost of living adjustment clause. There is no substantial change in the percentage spread in comparable positions..."

In this case, the facts are just the opposite of those present at the time of the Imes' award. Although the department is still a wage leader, it is now clear that the percentage differential or spread has changed substantially and has changed as a direct result of the COLA clause in the 1981-82 Contract.

The Employer has adequately documented the fact that the percentage distribution between Jackson County and the rest of the comparables has increased significantly in the last two years. These distortions are even more apparent if the analysis is done between Jackson County and the counties most comparable within the general comparable group. These would be Adams, Buffalo, Clark, Juneau, Monroe, and Trempealeau Counties. The following shows the differential between individual positions in Jackson County and those in the comparables on an average basis since 1980.

THE COMPARISON OF DIFFERENCE BETWEEN MAX. RATES IN JACKSON COUNTY AND THE AVERAGE OF COUNTIES (ADAMS, BUFFALO, CLARK, JUNEAU, MONROE, TREMPEALEAU)

Position	1980	1981	1982	1983	
Social Worker III					
Jackson County	$1,601	$1,804	$1,974	$2,053	1/1 Co.
				2,132	7/1
				2,065	U.
Average	$1,348	$1,516	$1,514	$1,586	
Social Worker II					
Jackson County	$1,463	$1,649	$1,804	$1,876	1/1 Co.
				1,948	7/1
				1,887	U.
Average	$1,220	$1,361	$1,401	$1,469	
Administrative Asst.					
Jackson County	$1,168	$1,316	$1,440	$1,498	1/1 Co.
				1,555	7/1
				1,506	U.
Average	$ 973	$1,064	$1,146	$1,200	
Income Maintenance					
Jackson County	$1,022	$1,230	$1,346	$1,400	1/1 Co.
				1,454	7/1
				1,408	U.
Average	$ 863	$ 952	$1,040	$1,081	
Terminal Operator I					
Jackson County	$ 953	$1,074	$1,175	$1,222	1/1 Co.
				1,269	7/1
				1,292	U.
Average	$ 763	$ 868	$ 955	$1,003	

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Position	1980	1981	1982	1983	
Typist II					
Jackson County	$ 884	$ 996	$1,090	$1,134	1/1 Co.
				1,177	7/1
				1,140	U.
Average	$ 746	$ 852	$ 939	$ 986	

** where a split increase occurred, the year-end rate was taken.

It is the Arbitrator's opinion that the differentials, as exhibited from the previous table, have increased due to the cost of living clause to a point where relief from the possibility of further increased differentials under the Union's COLA offer in 1984 is needed and justified. It is noted also that no other bargaining unit among the comparables have a cost of living clause. Had the Union's offer provided some form of relief from the continued distortion of the wage relationships in the comparables, either on a temporary or permanent basis, it would have made their offer more reasonable than its present form. The Employer offer is preferred because it puts the parties in a position to bargain conventionally and gives them the flexibility to bargain in the future on a basis most consistent will all statutory criteria including increases in comparable counties. The Employer's offer also eliminates the possibility of uncontrolled wage increases.

The continuation of the cost of living formula would also have the potential of "running away" from the internal comparables. Not only is there an absence of any kind of cost of living formula in the other union contracts in the county, but the data shows that the wage increase based on the COLA clause in Social Services in 1981-82 exceeded other internal union settlements. They are as follows:

	1981	1982
Courthouse AFSCME	10.0 %	NA*
Law Enforcement AFSCME	10.0 %	7.5%
Social Services	12.77%	9.4%

* not expedited as percent in record

The Employer has also justified the elimination of the clause with a sufficient economic "buy out." There is not only justification based on the external wage relationships but there is a sufficient economic quid pro quo because the Employer's offer exceeds that of the internal and external comparables in terms of dollars and further, provides somewhat of a "lift." It has clearly distinguished this case from Walworth County, wherein Arbitrator Zeidler stated while finding there was some merit to the employer's contention that the cost of living should be eliminated to reduce the "spread" between comparable counties, refused to eliminate the cost of living clause because a 3.5 percent offer by the employer was too low compared to the internal comparables. Elsewhere he also expressed the idea that 3.5 percent was too low compared to the external comparables.

Thus, it is clear from Walworth County that while there was a need to eliminate the cost of living clause because of the increased wage differentials, the "buy out" was insufficient in comparison to the external and internal comparables. The Employer's offer here does not have the same affect.

The impact on efficiency is a general consideration applied by Arbitrators in considering whether there should be a change in the contractual status quo. However, this consideration is not particularly pertinent here.

The Arbitrator would also like to address a paradox that might be present in this case. While the Union's offer is rejected because of the past adverse impact of the cost of living on the wage differentials and because of the potential for further wage distortion relative to the comparables, the Employer's offer is preferred. This seems paradoxical because the Employer's offer distorts the wage differentials more in 1983 than the Union's.

Although this paradox seems present, it is easily resolved. The critical factor is the continued impact of the cost of living clause in the long run. The Employer's offer limits the possibility of uncontrolled increases and puts the bargaining unit on a consistent bargaining basis with everyone else. Moreover, precedentially speaking, the Employer had to offer, among other justifications for the elimination of the COLA clause, a sufficient economic "buy out." While this ruling might seem paradoxical, an opposite holding would be undeniably illogical. It would be inappropriate to keep the Employer inextricably hoisted on the horns of a two-pronged dilemma by recognizing there was a need to ease the potential for increases in differentials, but holding on the other hand, that they couldn't "buy out" the cost of living, because it increased those differentials. While the economic "buy out" might have taken other forms of compensation which would not have increased the base wage differentials, failure, by the County, to consider these was not fatal.

Comment is also necessary on the Union's argument regarding layoffs. They argue their offer would be preferred, because if layoffs were necessary, more layoffs would be necessary under the Employer's offer because it was larger. While it is bigger, it is only 1.4 percent or $4,948 larger. While noteworthy, this difference would not seem to create a dramatic or significant need to have an increase in layoffs.

VI. AWARD

The 1983-84 Collective Bargaining Agreement between the Jackson County Social Services Employees, Local 2717-B and Jackson County (Department of Social Services) shall include the final offer of Jackson County (Department of Social Services) and the stipulations of agreement as submitted to the Wisconsin Employment Relations Commission.

Dated this 30th day of September, 1983, at Eau Claire, Wisconsin.

Gil Vernon, Arbitrator

APPENDIX A

Jackson County and Jackson County Social Services, Local 1717-B, WCCME, AFSCME, AFL-CIO.

STIPULATIONS OF THE PARTIES

1. Holidays - Delete "New Year's Eve (½ day)"; Add "Day After Thanksgiving".

2. Guaranteed maternity leave of up to 12 weeks with the option to use accumulated sick leave and/or vacation as part of the leave.

3. Increase payout of sick leave upon termination from thirty (30) days to thirty-five (35) days.

4. Duration - 1/1/83 - 12/31/84

5. Article 4, Section 4, Step 2 - Last sentence to read: "The grievant, with such Union representation as he desires, shall meet with said committee to discuss the grievance, and the committee shall answer the grievance, in writing, within thirty (30) days following said meeting". Add: "The Union will reply, in writing, within thirty (30) days of receipt of the Committee's answer; indicating whether they wish to drop the grievance or proceed to binding arbitration."

6. Article 7, Section 2 to read: "Employees filling a vacancy or a new position that is an advancement shall be placed on the salary schedule at the first step which allows an increase over their rate on the job they left."

7. Article 6, Section 1, Add to the end of the first paragraph: "Seniority shall begin on the first day of employment with the Jackson County Department of Social Services."

8. Article 21, Section 2, Subsection 1, On-Call Duty - Adjust on-call rates to 85$/hr. on 1/1/83 and 90¢/hr. on 1/1/84.

9. Article 21, Section 3: PART TIME EMPLOYEES:
   1. Regular part-time employees shall be reimbursed in accordance with the wage schedule currently in effect (i.e. 2080 hours = 1 year), and shall be placed in the appropriate classification for the position in which they are qualified. New part-time employees shall be placed at a step in the salary range commensurated with training and experience, as determined by the employer

   2. Salary increases for regular part-time employees shall occur in the same manner as for all full-time employees (i.e. 2080 hours = 1 year).

3. The employee benefits of vacation, sick leave, holidays, insurance plans and seniority for part-time employees shall be earned in a proportion of the amounts and times specified in the work agreement for full-time employees commensurate with the proportion of time regularly work by the part-time employee (i.e., half time employment = half time benefits). In lieu of the above benefits, the employee may elect to receive a ten (10%) percent increase over gross salary. Under this option, the employee is eligible to participate in the County insurance plans, with the stipulation that the employee pay the total premium cost.

4. Hours and days worked shall be determined by the agency director.

5. Regular part-time employees shall be subject to the same terms and conditions as agreed for all full-time employees, except as specified in this section.

6. The probationary period for part-time employees shall be six (6) calendar months.

10. The terms of the 1982 contract will be extended through 1984, except as otherwise contained in these stipulations and the final offers.

11. All items in the stipulations retroactive to January 1, 1983.

Dated this 14th day of March, 1983.

FOR JACKSON COUNTY

Michael J. Burke
Michael Burke

FOR LOCAL 2717-B, ASFCME, AFL-CIO

Daniel R Pfeifer
Daniel R. Pfeifer

APPENDIX B

Name of Case: JACKSON COUNTY (DEPT. OF SOCIAL SERVICES)
CASE XXXII
No. 30947
MED/ARB-2098

The following, or the attachment hereto, constitutes our final offer for the purposes of mediation-arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me.

3/11/83
(Date)

Daniel R Pfeifer
(Representative)

On Behalf of: Jackson County Social Services, Local 2717-B,

WCCME, AFSCME, AFL-CIO

Union's Final Offer

Exhibit A - Wages

Section 1. Effective January 1, 1983 the wage schedule shall be then increased by an amount equal to the increase in the Bureau of Labor Statistics Consumer Price Index by comparing the 1967 base, all items report of November 1981, and November 1982. (National Urban Wage Earners) The 1983 wage schedule is as follows:

Clerical and Para-Professional

Classification	Start	6 month	18 month	24 month	36 month	48 month
I	708	745	815	852	886	936
II	826	878	985	1038	1090	1140
III	913	997	1072	1127	1179	1229
IV	1003	1056	1161	1216	1268	1318
V	1093	1145	1251	1305	1355	1408
VI	1189	1241	1348	1402	1454	1506

Positions by Classifications

I	Typist I, Clerk I
II	Typist II, Clerk II, Income Maintenance Assistant, Social Services Aid I, Homemaker I
III	Terminal Operator
IV	Typist III, Clerk III, Social Services Aid II, Homemaker II
V	Income Maintenance Worker
VI	Administrative Assistant I

Professional Social Workers

Classification	Start	6 month	18 month	24 month	36 month	48 month
I	1419	1463	1534	1587	1640	1692
II	1561	1615	1720	1774	1837	1887
III	1738	1793	1898	1950	2013	2065

Section 2. Effective January 1, 1984, the wage schedule shall be then increased by an amount equal to the increase in the Bureau of Labor Statistics Consumer Price Index by comparing the 1967 base, all items report of November 1982, and November 1983. (National Urban Wage Earners)

FOR LOCAL 2717-B:

Daniel R Pfeifer

Daniel R. Pfeifer, Dist. Rep.

APPENDIX C

Name of Case: JACKSON COUNTY (DEPT. OF SOCIAL SERVICES)

CASE XXXII
No. 30947
MED/ARB-2098

The following, or the attachment hereto, constitutes our final offer for the purposes of mediation-arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me.

January 31, 1983
(Date)

John D. Rulland
(Representative)

On Behalf of: JACKSON COUNTY - EMPLOYER

JACKSON COUNTY DEPARTMENT OF SOCIAL SERVICES
JACKSON COUNTY'S FINAL OFFER

1. All items previously agreed to (see attached stipulations)

2. EXHIBIT A - WAGES - Adjust all wage rates by 4% on January 1, 1983 and an additional 4% on July 1, 1983 non-compounded.

3. Effective January 1, 1984 - Wage reopener.

DATED: January 26, 1983

Michael J. Burke
For the County: