BEFORE THE MEDIATOR-ARBITRATOR

In the Matter of the Petition of :

LOCAL 65, WCCME,
AFSCME AFL-CIO
:
To Initiate Mediation-Arbitration
Between Said Petitioner and :

DANE COUNTY :

CASE XCVII
No. 32730 MED/ARB 2611
Decision No. 21587 A
Stanley H. Michelstetter II-
Mediator--Arbitrator

Appearances:
Darold O. Lowe, Staff Representative, appearing on behalf of the Union.

Mulcahy & Wherry, S.C., by John T. Coughlin, Attorney at Law, appearing on behalf of the Employer.

MEDIATION-ARBITRATION AWARD

The Wisconsin Employment Relations Commission, having on April 24, 1984, notified the Undersigned of his appointment as Mediator-Arbitrator, pursuant to Section 111.70(4)(c)(m) 6 Wis. Stats. with respect to the above-entitled dispute and pursuant to said statute, mediation and arbitration having been conducted on June 22, 1984, in Madison, Wisconsin, during the mediation of which no resolution of the instant dispute having occurred. The parties filed post-hearing briefs, the last of which having been received August 14, 1984.

ISSUES

The following is a summary of the issues left in dispute for the parties' 1984 contract year:

1. The Employer proposes a 1.4% wage increase effective December 25, 1983. The Union proposes a 3% wage increase effective March 4, 1984.

2. The Union proposes the following change to the current subcontracting language: (the underlined material is the material which the Union wishes to add to the current contract language)

   "2.02 Subcontracting. When it becomes necessary to determine when, or what, to subcontract, it is, and will be, the policy of the Employer to first consider the impact on the employment security of its employees and to notify the Union. It is the policy and intent of the Employer to use its employees as much as practical for work on the operations involved and to contract work out only when that course is required by sound business considerations. The Employer agrees that it will not subcontract work if laid off employees are qualified to perform the work. The Employer further agrees to bargain the impact of subcontracting with the Union.

   The Employer proposes to retain the current language.

3. The Union proposes the following health and accident insurance language:

"14.01 Health and Accident Insurance:

"(a) A group hospital, surgical, major medical and dental plan as agreed to by the parties shall be available to employees. In the event that the Employer shall propose a change in this plan, this contract shall be re-opened for purposes of negotia - tions on such a proposed change (this re-opener provision also applies to the plans specified below). The Employer agrees to pay the full premium for employees and ninety percent (90%) of premium for dependents. Employees with a spouse on Medicare Plus, will receive a payment not to exceed that paid by the Employer for family coverage. However, the Employer shall pay, not to exceed $14.07 per month for single or $37.83 per month for family, on dental insurance, and $37.83 per month for spouse credit plan.

"(b) The Employer agrees that employees and their dependents may elect to become members of any health plan made available and approved by the Employer. There shall, however, be only one (1) thirty (30) day enrollment period per year during which time employees may change plans. The Employer agrees to pay costs for employees and dependents choosing other plans equal to the premiums for the insurance described in (a) above.

The Employer proposes the following language for the health and dental insurance provision:

"(a) A group hospital, surgical, major medical and dental plan as agreed to by the parties shall be available to employes. In the event the Employer shall propose a change in this plan, this Contract shall be reopened for purposes of negotiations on such a proposed change. For group health insurance the Employer shall pay up to sixty nine dollars and forty four cents ($69.44) per month for employes desiring the 'single plan' and up to one hundred eighty six dollars and sixty three cents ($186.63) per month for employes desiring the 'family plan' and up to one hundred ninety two dollars and four cents ($192.04) for spouse credit family plan. Employes with a spouse on Medicare Plus will receive a payment not to exceed that paid by the Employer for family coverage. For group dental insurance the Employer shall pay up to fourteen dollars and seven cents ($14.07) per month for employes desiring the 'single plan,' up to thirty seven dollars and eighty three cents ($37.83) per month for those desiring the 'family plan' and thirty seven dollars and eighty three cents ($37.83) for spouse credit family plan.

"(b) The Employer agrees that employes and their dependents may elect to become members of any health plan made available and approved by the Employer. There shall, however, be only one (1) thirty (30) day enrollment period per year during which time employes may change plans. The Employer agrees to pay costs for employes and dependents choosing other plans equal to the dollar amounts stated in 14.01 (a)."

POSITIONS OF THE PARTIES - SUBCONTRACTING

The Union takes the position that it needs increased subcontracting protection because the Employer has allegedly made changes in the provision of services to the public and over the past three years the unit has lost a number of jobs to subcontracting. It also relies on the award of Arbitrator Ziedler with respect to the Joint Council of unions unit for this proposition.

The Employer takes the view that the Union has failed to establish either that a legitimate problem exists which requires a change in the subcontracting language of longstanding of both parties or that its language effectively remedies such a problem. It argues that the current language has existed since 1968 and that its practice thereunder has been consistent. It takes the position that most of the evidence of subcontracting offered by the Union related to another unit and that in the two instances in the other unit where the employees in that unit were affected the Employer tried to find other county jobs for the employees. It argues all subcontracting was justified for sound business or public policy reasons. Finally, it argues the Union's language is far more restrictive than reasonably justified. It also relies on internal comparisons and the State of Wisconsin comparison.

DISCUSSION - SUBCONTRACTING

The factors which are relevant to the determination of this issue are Section 111.70(4)(cm) 7:

"...

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

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

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."

The subcontracting language from the parties' last collective bargaining agreement is set out above. This language has existed in this and the larger Joint Council unit and other major units unchanged since 1968. No other unit has more subcontracting protection.

The same issue that is presented herein was also presented to arbitrator Zeidler in Dane County (Decision No. 21458 -A) 7/84. This arbitration involved the larger unit represented by the Joint Council of unions, AFSCME, AFL-CIO. In that award, Arbitrator Zeidler adopted the position of the Employer with respect to subcontracting and ultimately adopted the final offer of the Employer in that matter. This is the only other unit which has reached a settlement for this year.

Arbitrators have generally placed the burden of proof upon a party proposing a change in longstanding language to establish a change of circumstances or other persuasive reasons justifying the change and that the proposed change be addressed to effectively remedy the problem. There has been no evidence of a change in administration of this provision. However, there is evidence as to the administration of this provision and its sister provision in the Joint Council unit. There are employees on layoff in this unit. The only evidence of subcontracting in this unit involved a "good deed" subcontract in which the Employer accepted volunteer handicapped employees from Good Will Industries to do flower planting, policing of litter and other similar duties. Good Will's purpose in this arrangement is to induce the Employer to enter into a paying subcontract for this work. Personnel Director Marc Wirig credibly testified that this work is of a type which would not otherwise be done. As long as this is the case, the subcontract does not present any threat to this unit.

The most significant subcontracting situations presented as to the other units involved the elimination of five to seven jobs in the laundry department and the use of intern students in the parks. The Employer eliminated five laundry positions in one of the institutions. This was accomplished by the transfer and/or attrition of the employees in the position. No employee was laid off. While there are two other employees on layoff in that unit, neither is qualified to perform the work.

The other example involves student interns. These appear to be students at Madison Area Technical College or the University of Wisconsin in parks management. This program appears to have started in 1982. These students gain experience in the management of the park and observe the management functions. In addition to this they perform productive work normally performed by unit employees such as cleaning and other functions. During this period, the employer in an unrelated move, eliminated other positions. It appears that it also replaced seasonal or limited term employment students with these employees. The latter group, casual employees, were members of the bargaining unit. The testimony would suggest that there are no employees on layoff who could perform this work. The evidence of the foregoing examples taken with other, more minor examples, demonstrates the Employer will actively consider subcontracting unit work. It appears that these subcontracts will impair unit opportunities for work. The Union's proposal herein, as it relates to bargaining the impact of such decision, clearly addresses this problem. As such, this aspect of the proposal is clearly warranted, particularly because it is a very minor restriction on the Employer's right to subcontract and produces a very needed opportunity for the Union to bargain on this subject. However, the Union's proposal as it relates to restricting the Employer's

right to subcontract where there are employees on layoff does not directly address the type of subcontracting which has occurred, because no employees, in fact, are on layoff to perform the work subcontracted. The Union has failed to show any actions by the Employer which would necessitate the adoption of this restriction. Accordingly, while there is some justification in the Union's position, the overall weight on this issue belongs to the Employer.

POSITIONS OF THE PARTIES - HEALTH INSURANCE

With respect to health insurance, the Union argues that its proposals restore the benefit previously lost in the arbitration award rendered by Arbitrator Howard S. Bellman with respect to this unit, Dane County (private impasse procedure) 5/83. It argued that adoption of the Employer's proposals permit it to require employees to make contributions toward any increase in premiums during any impasse in negotiations for a successor agreement. It relies also on the award of Arbitrator Krinsky Dane County (private impasse procedure) 4/83 involving the Joint Council of Unions. It denies that the Employer's exhibits prove that its proposal lowers premium costs.

The Employer takes the postion that the Union has failed to meet its burden of proof to change the status quo. Turning to the merits, it argues that its offer is financially more advantageous to employees. Because its payments are equal to 100% of the cost. It also argues that its position is necessary to educate employees about health care costs. It notes that in 1984 employees have a vast number of health care options to choose from (Exhibit 2). In 1983, it argues there were only two plans available for county employees, the WPS plan and the greater health cooperative (NHMO). Now there are 3 additional HMO's. All of the new HMOs are less expensive than the standard WPS plan. It argues that if the arbitrator were to adopt the Union's proposal, the health care costs would become obscured again.

DISCUSSION - HEALTH INSURANCE

Prior to 1981 apparently all seven bargaining units had language identical to that which the Union is proposing. The Employer proposed language essentially identical to that it proposes to keep herein in each unit and the matter was submitted to arbitration in the attorney's unit before Arbitrator Kerkman who held that there was no proof that the Employer's plan would work; however, his award ruled for the Employer's final offer on other grounds. This award occurred in February, 1983. The issue again was presented as a sole issue in an arbitration involving the AFSCME represented Joint Council unit to Arbitrator Krinsky who ruled that there was no evidence it would work and adopted the final offer of the Union in April, 1983. The issue was then submitted to Arbitrator Mueller as the sole issue with respect to the ASFCME represented social services unit. He reviewed both prior awards and adopted their reasoning. He also adopted the Union's final offer in April, 1983. The parties also submitted the same issue to Arbitrator Bellman as the sole issue with respect to this unit. In spite of the other awards, of which he apparently was aware, he adopted the Employer's position on the theory that the potential benefits outweighed any potential risk. In negotiations leading to the 1984 agreements, the Employer has repro-

posed keeping or adopting the scheme it had proposed before in apparently all seven units, while at least AFSCME has proposed returning or keeping the pre-1981 practice in apparently all of the units which it represents. (There is no contract in the social work unit, and there is no indication as to whether an arbitration is pending in that unit.) The parties again fully reiterated the health insurance issue as one of many other issues in an arbitration before Arbitrator Zeidler involving the AFSCME Joint Council unit. He reviewed the merits of prior awards and applied reasoning similar to that of Arbitrator Bellman. He ultimately adopted the Employer's final offer on July 30, 1984. In view of the history of these proposals, it does not appear the instant decision will permanently dispose of this issue.

Under the current circumstances, the Employer's offer results in the employees receiving a fully paid single and family plan unless, and until, an impasse develops for a successor agreement at a time when premiums have increased beyond the dollar maximum limit. The Union's final offer guarantees that employees will have to make significant monthly contributions. The economic benefit to employees likely outweighs the potential risk. Under the current set of circumstances employees are for the first time this year required to choose among five different plans, each of which has a different policy. There is no way to know whether the employer's plan of merely specifying dollar amounts will educate employees and/or cause them to be cost conscious in their selection. However, I am convinced that the hope of achieving the desired benefit far outweighs the risks dependent upon impasse. Accordingly, for this contract term, I find the Employer's offer is preferable.

POSITIONS OF THE PARTIES - WAGES

The Union takes the position that its wage offer of 3% (lift) averages 2.7% over the bargaining unit and is 2.3% total package and even less when the March 4, 1984 effective date is considered. It relies upon comparison to the wage increase received by the seven largest counties in Wisconsin, and three large public employers in Dane County - the State of Wisconsin, City of Madison, and Madison Schools. It notes the average wage increase of these is 3.36% in 1984, 3.05% if the 0% increase granted state employees is considered. It also relies upon the award of Arbitrator Zeidler in Dane County (Decision No. 21458-A) 7/30/84 which decision concluded that the wage offer of the union therein was preferable to the Employer's offer therein.

The Employer principally relies upon comparison to the wage rates and wage increases received by employees of the State of Wisconsin and City of Madison. It argues that Dane County's wages and benefits are high when compared to similar positions at those employers and those in contiguous and similarly sized counties. It takes the position that acceptance of its offer would not reduce its relative rank in these comparisons. It also argues that since it has a large pool of applicants for each position, its wage offer is more than adequate compensation for each position. It finally argues that settlements for this unit have historically followed settlements in similar units for the City of Madison and State of Wisconsin and that its offer both with respect to wage increase and total package increase to the increases perceived by those unions.

It denies that changes in a consumer price index support the Union's view in that wage rates in this unit have exceeded cost of living increases in the previous two years. It also denies the Union's comparisons to 1984 wage rate increases in the largest counties is appropriate in that the Union has not produced evidence of the total package increase in those counties and without a historical comparison lacks meaning. It notes that since Milwaukee, Racine and Kenosha counties had no wage increase in 1983 while Dane County had a substantial increase in 1983, that a lesser wage increase than received by the others would be appropriate. It also notes that Milwaukee, Rock and Racine are multi-year agreements negotiated in a different economic climate and that the Union has failed to provide wage rate information for the Madison Schools.

DISCUSSION - WAGES

The only evidence presented by the parties relates to the following factors in Section 111.70(4)(cm). '... c. The comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings, with the wages, hours and conditions of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communites...f. The overall compensation presently received by the employees, 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 pendancy of the arbitration proceedings. h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration and 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." The 1983 wage rate comparative data offered by the parties is summarized in the following comparisons. In these comparisons I use patrolmen (24% of the bargaining unit), skilled worker (22%), mechanic (9%) and labor (14%).

External Comparisons

MADISON AREA PUBLIC EMPLOYERS[1] 1983
(Total Comp.)

	Ptmnm	Skilled Worker	Mech.	Laborer
City of Madison	12.28	14.51	14.92	12.64
State of WI	--	10.47	12.47	10.49
Dane County	13.50	13.78	14.47	13.17

1/School board data not available

1983 TOTAL COMPENSATION
CONTIGUOUS COUNTIES *

	PTMNM	Skilled Worker	Mech.	Laborer
-Rock	11.64	11.95	11.99	11.43
-Iowa	9.97	10.26	10.26	--
-Sauk	10.02	9.96	10.04	9.71
-Columbia	9.45	9.49	9.59	9.41
-Jefferson	11.21	11.67	11.67	11.00
-Dodge	11.46	11.68	11.73	11.36
AV	10.62	10.84	10.87	10.58
Dane	13.50	13.78	14.47	13.17

*Green county did not respond to the survey

SIX LARGEST COUNTIES, EXCLUDING MILWAUKEE
(end) Maximum Wage Rate (1983)[3]

	Patrolmen	Skilled Worker	Mechanic	Laborer
Waukesha	9.18	9.50	9.71	9.18
Brown	8.92	9.05	9.35	8.92
Racine	10.07	10.18	10.49	10.00
Rock	8.19	8.43	8.43	8.03
Kenosha	10.34	10.46	10.67	10.34
Sheboygan	8.80	8.80	8.80	8.60
Av w/o Dane Cty	9.25	9.58	10.05	9.18
Dane County	9.31	9.52	10.05	9.07

3/information for Milwaukee was not available

The evidence of external comparisons demonstrates that few close comparisons exist. In each logical grouping, wide disparities exist, probably relating to factors for which numerical adjustments cannot be made.

Given Dane County's demonstrated independent labor market the strongest comparison is to the wage increase received by similar units of public employees in Dane County. (Total compensation data is not fully available.) The following is a summary of the available comparisons:

1984 WAGE INCREASE COMPARISONS
PUBLIC SERVICE (DANE COUNTY AREA)

City of Madison	1%
State of Wisconsin	1.92% (average over 1983-84)
Madison Schools	3%
Average w/o Dane Cty.	1.97%
Dane Er.	1.4% (.54%)
Un.	2.7% +.73%

Accordingly, this factor tends to favor the Employer's position.

Internal Comparison

In Dane County (21458-A) 7/84, Arbitrator Zeidler adopted the final offer of the Employer of a wage increase of 1% for the calendar 1984 contract over that of the Joint Council of Unions by 2.23%. In that case, he favored the Union offer, but because of the weight of other issues, adopted the Employer's final offer. This wage increase is the only internal comparison available. Although this factor favors the Employer, it is given less than determination weight.

Based upon the foregoing, I conclude the Employer's wage offer is to be preferred.

AWARD

That the final offer of the Employer be, and the same hereby is, adopted.

Dated at Milwaukee, Wisconsin, this 24th day of October, 1984.

Stanley W. Michelstetter II,
Mediator-Arbitrator