BEFORE THE MEDIATOR/ARBITRATOR

In the Matter of the Petiton of WAUKESHA COUNTY LOCALS 1365, 2490, 2494, AFSCME, AFL-CIO To Initiate Mediation/Arbitration Between said Petitioner and WAUKESHA COUNTY	Case LXXIX No. 32683 Med/Arb - 2587 Decision No. 21698-A

APPEARANCES: Michael Best & Friedrich, Attorneys at Law, by MARSHALL R. BERKOFF and THOMAS P. GODAR, appearing on behalf of the County.

RICHARD W. ABELSON, Staff Representative, Wisconsin Council 40, AFSCME, appearing on behalf of the Union.

ARBITRATION AWARD

Waukesha County, Wisconsin, hereinafter referred to as the County or Employer, and Waukesha County Locals 1365, 2490, 2494, AFSCME, AFL-CIO, hereinafter referred to as the Union, were unable to voluntarily resolve certain issues in dispute in their negotiations over the provisions to be included in a new 1984-1985 Collective Bargaining Agreement to replace their 1982-1983 Collective Bargaining Agreement, which expired on December 31, 1983. The Union, on December 29, 1983, petitioned the Wisconsin Employment Relations Commission (WERC) for the purpose of initiating mediation/arbitration pursuant to the provisions of Section 111.70 (4)(cm) 6. of the Wisconsin Statutes. The WERC investigated the dispute and, upon determination that there was an impasse which could not be resolved through mediation, certified the matter to mediation/arbitration by order dated May 18, 1984. The parties selected the undersigned from a panel of mediator/arbitrators submitted to them by the WERC and the WERC issued an order dated June 13, 1984, appointing the undersigned as mediator/arbitrator. A mediation meeting was held on September 5, 1984, at which time the parties resolved a number of issues in dispute and agreed to modify their final offers accordingly. Thereafter, hearings were held concerning the remaining issues in dispute on November 2 and 9, 1984 and January 31, 1985. Verbatim transcripts of the hearings were prepared and received by February 26, 1985. Post-hearing briefs were filed and exchanged on April 4, 1985. Full consideration has been given to the evidence and arguments presented in rendering the award herein.

ISSUES IN DISPUTE

Four issues remain in dispute between the parties. The Union's amended final offer raises two issues and the Employer's final offer raises two issues. All four of the remaining issues relate to proposed changes in the language provisions of the agreement dealing with job posting provisions and certain fringe benefits. The parties are in agreement on all other aspects of the new agreement, including the general, across the board wage increases to be granted during each of the two years of the

agreement. Each of the four remaining issues in dispute will be discussed separately.

1. Transfers and Demotions

Under the provisions of the 1982-1983 Collective Bargaining Agreement, the Employer was obligated to post vacancies, except those occurring at an entry level, and employees could bid for promotion to such vacancies, with the selection from among competing bidders to be made on the basis of the contractual standard. The agreement also required that the County "give consideration" to bids which would result in a demotion or transfer. Both the term "demotion" and the term "transfer" were defined as part of that agreement. The relevant provisions of the prior agreement read as follows:

ARTICLE X

PROMOTIONS, TRANSFERS, DEMOTIONS

"10.01 Any vacancy in a department other than an entry level job, (except Income Maintenance Worker and Social Service Worker), shall be posted weekly in the Courthouse and in the respective department in which the vacancy occurs. Employees interested in the vacancy shall apply by written request to the Personnel Office. Present County employees will be given preference before any new employees are hired.

"10.02 A. Promotion to a higher classification shall be based upon prior work performance, experience, in-service training and seniority. Ability and experience being equal, the employee with the greatest County seniority shall be given the position.

B. Upon promotion, an employee shall be granted a salary increase equal in amount to one step of the higher classification but his new salary shall be no less than the minimum of the new salary range. In the event the salary increase places the employee between salary steps, he shall normally be placed on the next higher step in the new salary range.

"10.03 A. The County will give consideration to employee bids which will result in demotions or transfers.

B. A demotion is the movement of an employee from a position in one classification to a position in another classification having a lower maximum wage.

C. A transfer is the movement of an employee from one position to another in the same classification, into another department; or the change from one classification to another classification having the same wage plan."

During the term of the 1982-1983 Collective Bargaining Agreement, a dispute arose over the Employer's determination not to permit three employees at the County's Northview Home to transfer to certain newly created positions in a new unit in the County's Unified Services Department. The positions in question were filled by newly hired employees and the three employees from Northview filed a grievance protesting the actions, alleging that the Employer had violated the provisions of Article X set out above. In the fall of 1983 an arbitration award was issued wherein the Board of Arbitration, which was chaired by Arbitrator Joseph B. Kerkman, concluded that the Employer had not violated the provisions of the agreement by refusing to grant the requested transfers. According to the Union, its proposal to modify the provisions of Article X is a direct result of that decision. It is the Union's position that, prior to said decision, it held the view that the last sentence of Section 10.01 required that the County grant requested transfers or demotions before hiring new employees, even if there was no qualified bidder for a promotion to the vacant position. The Union's proposal to modify Article X reads as follows:

> "Amend Article X, Section 10.02, Promotions, Transfers, and Demotions,
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> a. Promotion to a higher classification, demotion (the movement of an employee from a position in one classification to a position in another classification having a lower maximum wage), and transfer (the movement of an employee from one position in one classification to a position in another classification having the same wage plan), shall be based upon prior work performance, experience, inservice training and seniority. Ability and experience being equal, the employee with the greatest County seniority shall be given the position. Each employee shall be limited to one demotion or transfer in a twelve month period.
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> b. Upon promotion an employee shall be granted a salary increase equal in amount to one step of the higher classification but his new salary shall be no less than the minimum of the new salary range. In the event the salary increase places the employee between salary steps, he shall normally be placed on the next higher step in the new salary range.
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> "Delete Section 10.03, renumber remaining sections accordingly."

2. Social Worker II Incentive Pay

For a number of years the County has maintained four social worker classifications, consisting of Social Worker I, II, III, and IV. The existence of the four classifications and the eligibility requirements for progression through the series was, in large part, required by state regulations. Around 1980 the County sought and obtained delegation of authority to establish and maintain its own classification system for social workers. The County's personnel committee directed the appropriate personnel in the County's Department of Personnel to conduct a study of the existing classification scheme in relation to job requirements and job duties and the results of that study were apparently made available as of March 1981. Two conclusions

were reached as a result of the study, which precipitated a change in the County's practice with regard to filling vacancies in the four classifications.

First of all, the study concluded that the work being performed by employees in the four classifications was essentially the same. Secondly, the conclusion was reached that the requirements for promotion to the SW III and SW IV classifications, 12 graduate credits toward a master's degree in social work plus in-service training and a master's degree in social work, respectively, were unnecessary for satisfactory performance of the duties of the job. As a consequence, the recommendation was made that the SW I classification be treated as an entry level classification, without any specific requirement of training in social work per se, and that the SW II classification be treated as the normal classification for performance of the duties of a social worker at the objective level. As in the past, promotion from the SW I classification to the SW II classification would take place upon completion of satisfactory performance of the requirements for promotion. Promotion to the SW III and SW IV classifications, which included approximately 12 authorized positions, would no longer take place. However, under the recommendation in question, those employees holding SW III and SW IV positions would continue to do so and their positions would be eliminated through normal attrition.

Beginning with a County Board resolution in June 1982, the County has implemented the recommendations by abolishing SW III positions, as they have been vacated and by creating additional SW II positions to take their place. In its discussions with the Union concerning this matter, the County has taken the position that it has the right to determine whether or not it will fill positions or require graduate training for the performance of the duties of a social worker. The Union has not formally challenged that position, but did, on July 12, 1982, write a letter to the County setting out its understanding of the County's policy decision to "phase out the positions of Social Worker III and Social Worker IV" and demanding to bargaining concerning the impact upon wages, hours and working conditions caused by the policy change. Thereafter, the County did meet with Union representatives on three occasions in April, June and August of 1983, for the purpose of such bargaining. During those meetings the Union indicated its belief that the policy change had unfairly eliminated certain promotional opportunities previously available to social workers, even though they had been advised when they were hired or during the term of their employment that such promotional oppportunities existed, and proposed an "educational incentive pay plan" to replace the lost promotional opportunities. The negotiations did not result in an agreement and the Union included its proposal in the negotiations over the terms to be included in the 1984-1985 agreement, which began during 1983.

participating employees shall be paid in accordance with the following schedule in addition to their regular rates of pay:

	+12 Graduate Social Work Credits	M.S.W.
Social Worker II	31¢/hr.	.55¢/hr. "

At the hearing, the Union presented testimony from a number of social workers concerning their individual conversations with management personnel concerning the existence of the promotional opportunities in the social worker series at the time of their hire and during the tenure of their employment. They also testified with regard to the importance that previous managers had placed upon graduate level training and the incentives, consisting of tuition reimbursement and leaves of absence, which had been given to social workers during the 1970's. Finally, they also testified with regard to the actual operation of the promotional system within the social worker series. According to this testimony, those employees who were initially hired as social workers were generally told of the promotion opportunities that existed prior to their hire and those who bid into the social worker classification from other positions learned of the promotion opportunities from management personnel. A large number of the employees working in the social worker classification series currently,received such advice. Employees hired since the change of policy have been specifically advised that such promotion opportunities no longer exist. According to the County, it does not require that job applicants have any formal training in social work per se but at least six of the fourteen social workers hired most recently do have master's degrees in social work already. Others have bachelor's degrees in social work, social science or other related areas. While the testimony of Union witnesses establishes that generally, promotion to SW III and SW IV classifications did in fact accrue to the most senior social worker who met the requisite educational requirements and was not on a leave of absence, it is also clear that promotion followed the normal posting and bidding procedure required by the agreement, which permits the Employer to promote a less senior qualified bidder under the conditions set out in Section 10.02 A, set out above.

3. Pay For Witness Service

Under Article XXI of the parties' 1982-1983 Collective Bargaining Agreement, employees summoned for jury duty or subpoenaed as witnesses in connection with incidents occurring while on duty as an employee of the County were entitled to be paid for the difference between their regular rate of pay and the pay for jury duty or witness pay, excluding any mileage allowance. Specifically, Section 21.02, dealing with witness service, read as follows:

"ARTICLE XXI

JURY DUTY AND WITNESS SERVICE

. . .

"21.02 Employees subpoenaed as a witness connected with an incident ocurring while on duty as an employee of the County shall be paid the difference between their regular rate of pay and the witness pay, excluding any mileage allowance."

As part of its final offer in this proceeding, the County proposes to add a sentence to Section 21.02 as follows:

> "Employees will not be eligible for such payment when the employee is an adverse party or being represented by a party adverse to the County."

According to the County, it has made this proposal part of its final offer because of its belief that it is inappropriate for the County to be required to pay for witness service when an employee is an adverse party in a proceeding against the County or is being represented by a party adverse to the County in the proceeding in question. The fact that the testimony given in other circumstances may be adverse to the County would not constitute a basis for disqualifying the employee from receiving pay for witness service, according to the proposal as worded.

In its presentation of evidence, the County noted that all of its other represented bargaining units have a provision which contains such a limitation on the receipt of pay for witness service. In addition, all non-represented employees of the County are subject to a personnel policy which so provides. In fact, according to the County, that policy applied to a new group of employees, child care workers employed in the Social Services Department (who are to be included under the provisions of the 1984-1985 Collective Bargaining Agreement) during the period beginning with their initial employment in January 1983 and prior to their representation by the Union, which began in June of 1983.

The parties have negotiated an appendix to the agreement which spells out the wages, hours and working conditions which are peculiar to this new group of employees and which will be appended to the new 1984-1985 Collective Bargaining Agreement, after this proceeding has concluded. All of the provisions of that appendix have been agreed to, except for the provision dealing with witness service. As part of its final offer, the County proposes to include a provision dealing with pay for witness service for such employees which reads identically to the provisions of Section 21.02 above, with the additional sentence quoted above. Under the Union's final offer the separate provision dealing with witness service for such employees would be included in the appendix, but would not include the last sentence prohibiting the payment where the employee is an adverse party or being represented by a party adverse to the County.

4. Disability Pay

For a number of years, the agreement has included a provision for disability pay, limited to those circumstances where an employee is absent from work due to an injury or illness compensable under the Worker's Compensation Act. In those circumstances, an employee is entitled to receive regular salary for a period not to exceed three months, provided they are receiving disability pay under the Worker's Compensation Act. Although the procedure set out in the agreement contemplates that the employee will endorse over their worker's compensation checks to the County, that aspect of the procedure has been disregarded in recent years since the County has discontinued the practice of channeling such payments through its insurance administrator, in order to avoid administrative costs for such processing work. Because the County's premiums are computed on the basis of actual claims in relation to anticipated claims plus certain administrative costs, the net result of this procedure, as a practical matter, is that the

County self insures the first 90 days of absence under the program.

In the negotiations preceding the parties' most recent agreement, an agreement was reached to modify this provision to provide that an employee must use accumulated sick leave for the first three days of absence due to an injury or illness compensable under the Worker's Compensation Act. However, under the provision agreed to, the three days of sick leave are restored if the illness or injury necessitates an absence of longer duration. This modification was included at the Employer's request in order to respond to its concern about the frequency of such absences, particularly at the County's Northview Home. The provision, as it was worded during the term of the 1982-1983 Collective Bargaining Agreement, read as follows:

"ARTICLE XX

DISABILITY PAY

"20.01 Any employee absent from work due to an injury or illness compensable under the Worker's Compensation Act shall, without charge to sick leave, continue to receive his regular salary for a period not to exceed three (3) months per injury or illness, and effective April 24, 1982, commencing after the first three (3) days of such illness or injury. An employee otherwise eligible may use accumulated sick leave for the three (3) days. If the illness or injury necessitates an absence of greater than three (3) days, three (3) days will be restored to the employees accumulated sick leave.

"20.02 Full salary for an employee under the provisions of this section shall be paid only as long as disability pay is being received under the Worker's Compensation Act.

"20.03 Employees covered by provisions of this section will continue to receive their regular salary only if they endorse and turn over to the County all the disability payment checks they receive under the Worker's Compensation Act."

As part of its final offer in this proceeding, the County proposed to modify the provisions of the disability pay article. Specifically, the County proposes to reduce the amount of disability pay received during the three month period from full salary to 80% of full salary. In addition, the County proposes to reword Section 20.02 to clarify its meaning in relation to current practice and to delete Section 20.03 as obsolete. Finally, the County would add a new Section 20.03 to prohibit the use of accumulated sick leave, holidays or vacation time to supplement worker's compensation benefits if the period of disability extends beyond 90 days. Although the wording of the County's proposal does not specifically address that question, the County took the position during bargaining and in the proceeding here, that its new Section 20.03 would not cause an employee to forfeit such accumulated time off with pay, which would be paid out at the end of the year, in accordance with existing County practice. As noted below, the Union contends

that the County's position is inconsistent with the wording of its own proposal and that such inconsistency affects the reasonableness of the proposal.

Under the County's proposal, as set out in its final offer, Article XX would be reworded to read as follows:

> "Section 20.01 -- Any employee absent from work due to an injury or illness compensable under the Worker's Compensation Act shall, without charge to sick leave, continue to receive eighty percent (80%) of the employee's regular salary for a period not to exceed three (3) months per injury or illness, commencing after the first three (3) days of sick illness or injury.
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> An employee otherwise eligible may use accumulated sick leave for the three (3) days. If the illness or injury necessitates an absence of greater than three (3) days, three (3) days will be restored to the employees accumulated sick leave.
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> . . .
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> Section 20.02 -- 'Salary for an employee under the provisions of this section shall be paid only as long as an employee is eligible to receive temporary total disability payments under the Worker's Compensation Act.'
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> . . .
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> Section 20.03 - Upon expiration of disability pay, an employee who is still unable to return to work shall be ineligible to use accumulated sick leave, holidays, or vacation."

The County's rationale for its proposal is that the current disability pay provision constitutes a form of "over insurance" which creates an incentive for employees to make claims of disability and to prolong absences due to claimed disabilities. In support of this rationale, the County introduced substantial evidence concerning the actual dollar value of the current disability pay provision to employees making claim thereunder, especially in light of the tax consequences of such payments, which results in "over insurance." In addition, the County introduced evidence in the form of expert testimony from a consulting actuary and certain learned treatises concerning the actuarial principles utilized for determining disability pay plan and worker's compensation pay plan premiums. That evidence establishes that, in the insurance industry, great care is taken to calculate the actual value of disability pay and worker's compensation pay benefits in terms of replacing lost income and avoiding the phenomenon of "over insurance." According to the County's expert, the practice in the insurance industry is to generally limit such insurance to 80% of net income or 50% to 66 2/3% of gross income.

UNION'S POSITION

According to the Union, its proposed comparables (Racine County, Walworth County, Kenosha County, Washington County, Ozaukee County and Milwaukee County) are appropriate for purposes of the comparability criterion and the County's proposed comparables are selective, inconsistent and inappropriate. The Union's comparables are appropriate based upon considerations of population, industrialization, proximity to Milwaukee,

proximity to the industrialized corridor between Milwaukee and Chicago, value of taxable property and per capita value of taxable property. The County's comparables ignore many of these factors, relate to rural or more distant population centers and vary "from issue to issue," according to the Union. In this regard, the Union points out that the County's proposed comparables for purposes of the disability pay proposal range from Dane County, Dodge County, Fond du Lac County and Sheboygan County to the City of Milwaukee. On the other hand, it is pointed out, that the County relies upon a different set of comparables for purposes of evaluating the pay received by social workers which, in the Union's view, would portray the County as "a sleepy, unindustrialized rural county nestled in the non-urban hinderland of Wisconsin."

The Union characterizes its proposal dealing with transfers and demotions as a change in the criteria used for purposes of determining whether employees will be selected for transfers and demotions. Thus, according to the Union, employees requesting transfers and demotions would no longer be given "consideration" but would be entitled to be selected on the basis of the same criteria applicable to employees seeking promotions. According to the Union, its proposal does not result in a change in the definitions of demotions and transfers, but merely relocates the placement of those definitions.

The Union seeks to justify this proposed change, based upon the outcome of the arbitration proceeding described above. While the Union acknowledges that it always understood that the County merely had to "consider" such applications, it contends that it was surprised by the outcome of the arbitration proceeding, to the extent that it permitted the County to hire new employees without giving "preference" to employees requesting transfers or demotions. The Union points out that, since the arbitration award in question, there has been at least one additional instance where an employee was passed over on a demotion request in favor of a new hire.

According to the Union, it has given consideration to the County's concern about the impact such language may have upon the posting and bidding process and has agreed to discourage "job hopping" by including a 12 month limitation on the frequency of such changes.

Referring to its own exhibits dealing with represented bargaining units in comparable counties, the Union contends that no differentiation is made between promotions, transfers or demotions in Racine County, Walworth County, Kenosha County, Washington County Social Service Department or Milwaukee County. It is only in the unrepresented groups in Ozaukee County and Washington County where employers are permitted to select from among applicants with wide discretion, for such purposes.

According to the Union, the Employer's stated objections to the Union's proposal are without merit. While it is understandable that the County wishes to retain the right to select from among employees seeking a "promotion" the Union argues that this objection merely reflects normal Employer resistance to giving greater consideration to seniority. The claim that the current system "works well" is "amusing" and "self-serving," according to the Union. It contends that the current system may work well from the County's point of view, but it does not work well from the employee's point of view since employees have been passed over for no apparent reason and without being told why. Finally, with regard to the possible increase in movement by employees, the Union argues that such fact is one of the accepted by-products of collective bargaining.

Further, according to the Union, it has given consideration to such claim by the 12 month limitation included in its proposal. Also, the Employer's example given at the hearing, which showed a substantial increase in the number of postings and job changes required under the Union's proposal, was speculative and based upon an unusual job opening.

The Union argues that it is significant that the County made no effort to counter the Union's proposal based upon external comparables. This failure, according to the Union, amounts to an admission that other counties do not engage in the same practices as Waukesha County in this regard.

In support of its educational incentive pay proposal for social workers, the Union first reviews the evidence concerning the promotion opportunities that historically existed and the Employer's actions which terminated those opportunities. The Union also reviews certain of its own exhibits relating to the value of formal training in social work in relation to the performance of work in that field.

According to the Union, the purpose of its proposal is to "provide a justified economic benefit to continue to compensate social workers for the additional skill levels that they bring to their job with additional education." So long as the social worker classification series existed and rewarded employees for their educational attainments by offering them promotions, an educational incentive pay proposal was unnecessary, according to the Union. However, when the County acted to eliminate the promotional opportunities in question, such a proposal became "critical." The 31 cents per hour difference for those employees with at least 12 graduate credits is equal to the existing difference between the pay rates for SW II and SW III positions. The proposal to add 55 cents per hour for those employees who had a master's degree represents approximately one-half the difference between the SW II and SW IV rate, according to the Union.

The Union acknowledges that the mechanics of its proposal are somewhat complex but indicates that it considered and rejected a "blanket" educational incentive plan because of its potential expense to the County. Because the County has encouraged graduate training in the past and because the County has hired a number of SW I's and II's who already possess master's degrees, the implementation of a blanket educational incentive plan would have impacted a larger number of employees than had been promoted to SW III and IV positions in the past. It was for that reason that the Union proposed that the number of employees who could receive the incentive would be limited to 14. The wording of the provision allows the County to limit the amount of money paid out to an amount reasonably close to that paid out in the past due to promotions and is flexible, in the event the County determines to fill Social Worker III and IV positions in the future.

According to the Union, its incentive pay proposal is supported by the comparables it relies upon since all of those counties, except for Racine County, compensate social workers with master's degrees in a separate classification. On the other hand, Racine County compensates social workers at a higher level than does Waukesha County. Even the State of Wisconsin, which does not have inflexible degree requirements, recognizes that a higher classification of pay is warranted for employees with training which may have been gained through the successful completion of two years of graduate training in an accredited school of social work.

Also, according to the Union, its educational incentive pay proposal is not unique in Waukesha County. It notes that there is already in existence an educational incentive pay plan for Sheriff's Department employees, including pay credit toward the attainment of undergraduate credits, with no limit on the participation in the plan. According to the Union, the Employer offered no reason why deputies should continue to receive such pay while social workers do not.

Referring to the three specific objections to the educational incentive pay proposal identified by the County at the hearing, the Union argues that those objections are unconvincing. In response to the claim that the County should not have to pay for requirements it no longer has, the Union contends that this argument is contrary to the fact that employees continue to bring the same expertise to their employment, even though the County no longer is willing to pay for that expertise. The claim that the Union is requesting a "penalty" for the County's exercise of its rights, the Union contends that such a claim is "ludicrous," since the Union's proposal is for compensation for a level of proficiency and training brought to the job by the employee. The claim that it is not a true educational incentive plan because it is limited in the number of participants ignores the fact that the Union limited the proposal so as to avoid a County claim that it exceeded that which was needed to replace the lost incentive previously provided by the promotional system.

Finally, with regard to comparables, the Union argues that the County's comparables should be disregarded for the reasons set out above. On the other hand, according to the Union, its comparables demonstrate that the Union's educational incentive pay plan fits into the "mainstream" of wages paid by the counties which it deems to be comparable, in the case of social workers holding master's degrees.

Turning to the County's disability pay proposal, which would in effect reduce the amount an employee would receive as supplemental pay for workers compensation, the Union argues that the County's proposal should be rejected for six basic reasons:

"1. The County has failed to demonstrate a need for a major reduction in worker's compensation supplemental pay.

2. The language of the County proposal is deficient in that it does not reflect the interpretation set forth by the County.

3. Neither the internal or external comparables support a change in the Worker's Compensation supplemental pay.

4. The bargaining history of the Worker's Compensation supplemental pay provision does not support a change in language.

5. The County has not offered to pay for the reduction of a significant fringe benefit, the Worker's Compensation supplemental pay.

6. The County proposal does not take into consideration the potentially changing tax structure."

In support of its first point, the Union argues that the County's evidence concerning the mechanics of its proposal was largely unnecessary since the thrust of the proposal is to reduce the supplemental payment for worker's compensation injuries and illness (over and above the two-thirds payment by statute)

so that employees receive 80% of full pay rather than 100% of full pay. Contrary to the reasons given by the County for its proposal, it is the Union's contention that the proposal is designed to save the County money at the expense of employee benefits. According to the Union, the County attempts to cloak its real purpose in theoretical terms, utilizing the concept of "over insurance" and expert testimony, produced at great expense. The thrust of that testimony was that, because of existing tax laws, employees earn greater take home pay while receiving the benefits in question causing them to submit claims more frequently and stay off work longer. However, according to the Union, the facts in the present case do not support these claims. In support of this argument the Union points to the testimony of one of the County's witnesses regarding the frequency of cases where the County has determined that employees have failed to return to work after their physical disability had ended. According to the Union, that testimony establishes that of the 539 claims attributable to Union represented employees, there have been approximately two cases where employees malingered. The County's proposal also ignores the realities of the worker's compensation system, according to the Union. The Union points out that there are a number of safeguards inherent in that system as well as through the administration of benefits by the County's insurance carrier which help to safeguard against such alleged abuses.

The Union questions the expertise of the County's witness with regard to the issue in this proceeding. According to the Union, his testimony demonstrated that he had little or no expertise in the worker's compensation field. The Union also questions the value of a number of the treatises introduced into evidence by the County on the basis that they deal with long term and short term disability pay plans. Consequently, according to the Union, they fail to recognize one critical difference, that being that the standards and qualifications for payment eligibility for worker's compensation benefits are more stringent, according to the Union.

The Union also faults County exhibits dealing with the mechanics of its proposal, at least with regard to the inferences that might be drawn from those exhibits. Thus, it does not necessarily follow that full payment of salary during the first three months will result in abuses, nor does it follow that an employee's gross income will continue indefinitely after 90 days have elapsed. Continued salary is dependent upon the availability of accrued vacation,holidays and sick leave. Also, even if it is assumed that employees would not forfeit accrued holidays and vacations at the end of the year under the County's proposal, as the County contends, payment at that time would defeat the County's stated purpose if the employee was still unable to return to work at that time.

As noted above, the Union disputes the County's claim that, under its proposal, employees would not forfeit accumulated holidays, vacations or sick leave. Such claim is in direct conflict with the wording of Section 20.03 in the County's final offer, according to the Union. If the County had intended such end of the year payout, it should have said so in its proposal. According to the Union, the arbitrator should not place language into the agreement that is in conflict with the stated intent of the County.

With regard to comparables, the Union first reviews the County's evidence concerning internal comparisons. It notes that, according to the data submitted by the County, the Union represented group is by far the largest group of represented employees and is almost three times larger than all of the other represented employees combined. County data also shows

that employees at the Northview Home, represented by Local 2490, have among the highest incidence of worker's compensation claims. Assuming County testimony concerning the duration of claims is accurate, the Union argues that the County's proposal would have the greatest impact on employees at the Northview Home, in the Sheriff's Department and in the Highway Department. Thus, the agreement by civilian dispatchers in the Sheriff's Department and the attorneys' group is understandable, according to the Union. While the agreement by the Teamsters is less clear, the Union points out that there is no indication of what trade-offs, if any, may have been offered to gain the language in question. While the WPPA had agreed to the County's proposal as part of a package proposal, the County had not agreed to that package.

According to the Union, mediation/arbitration should not be utilized for the purpose of implementing provisions that could not be gained by a party in free collective bargaining, absent a clear and compelling demonstration of need. Here, the County has not made such a showing since it has failed to attain the desired change in two of the units in which it will have the most impact. The County should not be permitted to "whipsaw" a provision into the agreement with the Union through negotiations with smaller and weaker groups, especially since it had failed to bargain the provision with its second largest union, the WPPA. The Union also points out that unrepresented employees, who are limited to 80% by personnel policy, also receive long term disability insurance, a significant benefit not received by represented employees.

Turning to external comparables, the Union notes that Kenosha County pays 100% for six months; Walworth County pays 100% for one year; Washington County pays 100% for three months; and Milwaukee County pays 100% for one year. Racine County allows employees to supplement worker's compensation with accumulated sick leave to achieve 100% of their regular pay. Thus, of the comparables relied upon by the Union, only Ozaukee County, which is unrepresented by a union, has an 80% level of compensation, supplemented by sick leave. On the other hand, the counties relied upon by the Employer in relation to the educational incentive pay proposal do not support the County's position on this issue, according to the Union. It was for this reason that the County introduced evidence with regard to Dane County, Dodge County, Fond du Lac County, Sheboygan County and the City of Milwaukee. Although the Union maintains that these comparables are self-serving and should be rejected because of the County's inconsistency in selecting comparables, the Union points to certain additional information concerning those counties, which it introduced at the hearing. That evidence demonstrates that the counties in question generally provide supplemental pay at a higher benefit level and for a longer duration than under the County's proposal.

The bargaining history of the supplemental pay provision also supports the Union's position, it contends. Thus, in the most recent agreement the Union agreed to a substantial modification in the provision with regard to the three-day waiting period. This indicates that the Union is prepared to respond to County concerns when there is a justifiable need for change. However, according to the Union, the Employer here has failed to offer any justification for its proposed change other than a "theoretical industrial standard."

According to the Union, it is a well established principle of labor relations that economic concessions are generally

not made without receipt of some benefit in return. Thus, according to the Union, the County's proposal is unjustified because there is no trade-off or quid pro quo offered in exchange for the reduction in benefit in question.

Lastly, in connection with the supplemental pay proposal, the Union points out that the County's proposal does not take into account possible changes in the taxability of worker's compensation benefits. Relying on testimony and exhibits introduced at the hearing, the Union contends that there is a strong possibility that such benefits will become taxable in the future, thus undermining the underlying premise of the County's proposal.

Turning to the County's proposed modification in the witness pay provision, the Union argues that the County's real purpose is to avoid paying for witnesses who are called by the Union, regardless of whether they are called in a prohibited practice case or grievance case or other case. Further, according to the Union, the County has demonstrated no need for this proposed modification. There is no evidence of claimed abuse and no external comparables have been offered to justify the proposal. While the County does rely upon its agreements with its other unions, the Union argues that, because of the number of employees involved, there is no internal pattern in Waukesha County until the Union here agrees to an item. While the Union does represent the small unit of nurses (22 employees), the provision was included in the agreement there prior to the time when the Union succeeded the Wisconsin Nurse's Association as the exclusive bargaining agent. In the case of the Child Care Center employees, the Union contends that their situation is quite different since they had never been represented before. According to the Union, the arbitrator should select the Union's proposal to maintain the status quo with regard to this benefit for the above reasons.

For the above and foregoing reasons the Union contends that its two proposals have been thoroughly justified under the statutory criteria and that the County's proposals have been shown to have numerous deficiencies under the statutory criteria. The Union asks that the arbitrator therefore select its final offer and direct that it be incorporated, along with the stipulations of the parties, into the parties' 1984-1985 Collective Bargaining Agreement.

COUNTY'S POSITION

According to the County, the Union's request for extra pay for certain social workers based upon their level of education, is merely a wage increase proposal which should be denied for a number of reasons. First, the County argues that the proposal would penalize the County for exercising a management right to abolish an obsolete classification. The County notes that it employes 64 social workers--4 SW I's, 50 SW II's, 1 SW III, and 8 full time and one part-time SW IV's. The existence of the four classifications was mandated by the State of Wisconsin and maintained after the County obtained the authority to create it own classification system, until the County dealt with the matter through a civil service ordinance. Before doing so, it conducted a study which concluded that the SW III and IV classifications were unnecessary since the SW II's performed the same work. The advanced educational credits previously required for those two classifications were likewise found to be unnecessary for proper job performance by SW II's.

The County notes that it does not propose to reduce the pay of incumbent employees in the two classifications or even red circle their rates. Instead, it has abolished the SW III and IV positions as they have become vacant. The County has

also eliminated any graduate level requirement for any social worker position. According to the Employer, the Union's proposed educational incentive plan, which is premised on an assumed loss of promotion opportunities, is really a disguised demand for extra pay. It only applies to a small number of employees, based upon an artifical number of "vacancies," and there is no showing that it has any relationship to educational incentive. The effect is to render an economic nullity, the County's right to abolish positions, which is recognized in the agreement itself. The fact that it serves as a penalty is easily demonstrated by an example whereby an employee receiving an extra $645 or $1,144 per year could be "bumped" out of such pay if a more senior SW II subsequently completed the necessary graduate level work.

The County cites two interest arbitration awards wherein arbitrators rejected proposals dealing with educational incentive pay, when it was concluded that the proposals were not really designed for that purpose but would otherwise increase the Employer's costs, even in the case of employees who had already attained advanced credits and degrees. In this connection, the County points out that almost half of the 14 individuals hired since 1982 already had master's degrees.

The County also points out that part of the Union's rationale for its proposal was the assumption that the County had authorized a maximum of 14 SW III and IV positions in the past. According to the County, this premise is incorrect since the County never authorized more than 12 such positions, exclusive of the one period of time when the number was over-filled as a result of a demotion of a supervisor.

According to the County, neither the internal nor external comparables justify the Union's proposal. The County has in the past abolished obsolete positions, which might have been viewed as promotional opportunities for certain represented employees, but has never been faced with a request that the remaining employees be given extra pay as a consequence. While the Union may argue that employees held the belief that their attainment of additional college credits would qualify them for promotion, the agreement itself specifically reserves to the County the right to abolish positions. If it is concluded that once a promotional opportunity exists, it must be perpetuated, such conclusion would be contrary to the legitimate expectations of the parties. It would also effectively preclude the Employer from making management decisions with regard to the elimination of positions. The County acted reasonably when it concluded that incumbents would not be demoted or have their salary frozen. Thus, under the County's proposal, the incumbents will be entitled to receive the same 4% and 3% wage hikes provided in the two years of the agreement.

According to the County, tying the availability of the payments directly to seniority is inconsistent with the Union's own theory of lost promotional opportunities. This is so because promotion has always been pursuant to the multiple requirements of prior work performance, experience, in-service training and seniority, not just seniority. The evidence discloses that promotional opportunity has never been automatic and was never guaranteed by seniority and educational credits. Instead, the evidence shows that there were numerous applicants for each of the positions and numerous applicants were rejected in the past.

Also, the County has not used educational incentive pay as a fringe benefit in the past. Nor has it substituted such a fringe benefit for the abolition of positions. The only group in the County to receive educational incentive pay is the deputy sheriffs and there, the evidence shows, the County has successfully sought to reduce and restrict the use of that system over time. The County also points out that the Union has failed to identify even one other social work group having a true educational incentive plan, let alone a plan granting extra pay premised on a claim of lost promotional opportunities. Instead, the Union attempts to justify its proposal by offering evidence with regard to pay rates in other communities. It does so, in spite of the fact that the parties have agreed on across the board wage increases and in spite of the fact that the Union never offered any equity or catch up argument during negotiations. Without conceding the appropriateness of drawing comparisons, the County points out that its evidence regarding the maximum monthly salaries received by social workers in four contiguous counties (Dodge, Jefferson, Walworth and Washington) establishes that the wage rates for SW II's in Waukesha County are substantially higher. The difference is even greater when a weighted average is utilized.

Even if the counties relied upon by the Union are utilized for purposes of comparison, the County ranks fourth after Racine, Milwaukee and Ozaukee, according to the Employer, It remains ahead of Washington, Jefferson, Dodge and Walworth Counties.

In the County's view, a heavy burden should be placed on the Union because it seeks to introduce a substantial change in the agreement and it has failed to do so for the above reasons. While the proposal is disguised as an educational incentive, it really inures to the benefit of some of the most senior employees in the SW II classification, not the best educated or most proficient. Such a "discriminatory tax" has not been justified by comparisons, either internal or external, it is argued.

Turning to the Union's proposed change to allow lateral transfers and demotions on the same basis as promotions, the County argues that such proposal has no demonstrated positive affect, but would introduce substantial inefficiencies, costs and inequities, and should therefore be denied. While the Union indicates that it is requesting such change because of its dissatisfaction with the three employees who were subject to the grievance filed in 1981, the results of that case would not be changed by the proposal offered by the Union, according to the County. In that case, the grievants were not moving from one classification to another classification, as is a requisite under the Union's proposal in order for it to be considered a transfer. Instead, two of the grievants in that case requested a shift change within the same classification and the third merely requested to be employed in a different department, but in the same classification. Further, the proposal is defective because it fails to propose any change in the provisions of the agreement dealing with incumbent preference or requests for shift changes within departments.

According to the County, the failure of the Union's proposal to meet its claimed objections would likely lead to an arbitration the first occasion after the County denied a "transfer" from one shift to another within the same classification or brought in a new hire instead of granting an intra classification "transfer." Citing prior arbitration awards to that effect the County argues that this is an independent reason why the

Union's proposal should be rejected.

Historically, the posting and bidding procedure has been reserved for the purpose of providing employees with promotional opportunities. Under the Union's proposal a more senior employee seeking a demotion would be given preference over an equally qualified employee seeking a promotion. Such a result would be contrary to the County's belief that upward opportunity must be available to reward effective employees. In prior agreements the parties had agreed that the County should give consideration to transfers and demotions and the evidence indicates that a substantial portion of all job openings have been filled through transfers and demotions in the past. However, to treat requests for transfers and demotions on the same basis as bids for promotions would result in a substantial increase in the number of job changes which might occur.

Relying upon evidence presented by one of its witnesses at the hearing, the County argues that the Union's proposal would generate numerous additional postings for each vacancy and would also require a longer time to complete the process of filling vacancies. The County cites one example where a vacancy could arguably generate seven sequential postings taking approximately three months in which to complete the posting process. This introduces additional inefficiencies as well, as supervisors were required to leave their regular duties to train employees. No other unit has this contractual language, according to the County, even though many have multiple classifications. Citing arbitration awards to that effect, the County argues that the burden should be placed on the Union to prove that major problems exist necessitating a change in a well established practice in this regard.

Turning to its own proposals, the County first addresses its proposal with regard to disability pay. According to the County, its proposal in this regard is an appropriate response to the over insurance plaguing the current disability pay plan.

In support of its proposal regarding disability pay, the County first reviews the operation of its proposal in relation to existing tax laws and existing practices. Currently, employees receive 100% of their regular pay, subject to the usual withholding for federal, state and social security taxes. At the end of the year, employees are provided with information sufficient for them to exclude from taxable income that portion of these payments which is considered to be untaxable worker's compensation. Under the County's proposal, it would pay employees 80% of their regular wages, less withholding taxes on the 13.3% of such payment (80% less 66.7%) which would be taxable. In this way, the take-home pay of the employee would approximate, i.e., be slightly less or slightly more depending upon their withholding circumstances, his or her take-home pay under the current system. [However, the employee will have had less money withheld for tax purposes and will either owe more or receive a smaller refund, depending upon his or her individual tax circumstances.] After the 90 day period provided, employees will receive substantially less take-home pay (equal to two-thirds of their regular income) regardless of whether or not they have accumulated sick leave, holidays or vacation time. Under the existing system, employees who have such accumulated time and choose to utilize it are able to substantially increase their take-home pay (by two-thirds) over and above their predisability take-home pay, at least until they run out of such accumulated leave time. It is the Employer's position that, under its proposal, an employee would be entitled to receive accumulated holiday and vacation pay at the end of the year if their disability would not permit them to return to work by that point

in time, and would receive a pay out if their disability was subsequently determined to be permanent.

According to the County, its objective, to avoid an economic disincentive to return to work, justifies its proposal. In particular, it points to the testimony of its witness, Edward Klein, deputy personnel administrator, to the effect that the County has been urged by professional loss control representatives and insurance brokers to eliminate the current system which provided for "over insurance." The number of claims among workers represented by the Union has steadily increased and it was estimated that the cost of the 90 day provision alone approximated $40,000 to $50,000 in each of the last two years of the agreement. Employees working at the Northview Home experienced claims nearly three and one-half times the anticipated rate for employees performing similar tasks. While Klein was only able to testify with regard to a few employees who extended their disability beyond that which was justified by their medical condition, it only takes a few cases to throw actuarial calculations out of wack, according to the County.

The 80% figure was arrived at by the County in order not to materially diminish the employees' compensation, taking into account the tax advantages of worker's compensation payments. According to the testimony of the County's actuarial expert, the goal of the insurance industry is to replace no more than 80% of an individual's take-home pay or 66 2/3% of an individual's gross pay and the replacement of 100% of an individual's take-home pay is considered to be "a practical limit" on the amount of insurance that ought to be provided. He also testified with regard to the numerous factors which are taken into account by the insurance industry in computing the amount of insurance that ought to be provided, including other sources of income that the employee would have in such circumstances, the reduced expenses incurred by employees not working and the tax treatment of such payments. In its brief, the County reviews the testimony of its expert and the treatises relied upon in some detail. That review demonstrates the great importance attached to the avoidance of over insurance by the insurance industry in setting levels of insurance and establishing insurance premiums for purposes of disability pay plans and supplemental worker's compensation plans. In fact, according to the Employer, those portions of the treatises included in the record at the Union's request likewise stress the importance of these same considerations.

The importance of avoiding over insurance is not a concept limited to actuaries and risk managers, according to the County. Thus, it cites polls of public opinion which support the same conclusions. Further, this common sense conclusion is supported by statistical data gathered by the society of actuaries, according to the Employer.

The County also reviews the conclusions drawn by its expert, based upon the facts in this case, which demonstrate that the County's existing disability provision provides for over insurance; the proposed change is more consistent with sound actuarial principles; and the change is designed to reduce the economic disincentive to return to work which is inherent in the current plan. The County contends that these conclusions are sound based upon its exhibits in the record.

Also in support of its proposal, the County points out that numerous other County employees have agreed to a similar proposal.

Also, all unrepresented employees in the County are subject to the same policies included in the proposal here. According to the County, it is particularly significant that the Teamsters, which represents 80 County Highway Department employees, has agreed to the proposal, since that group experiences far more claims per 100, on average, than does the Union. Even the employees included in Local 2490 have somewhat fewer claims per 100 than do the Teamsters. It is also significant, in the County's view, that the settlement with the Highway Department included the same 4% and 3% increases agreed to here.

According to the County, internal consistency over terms and conditions of employment is a significant factor in determining which contract offer an arbitrator ought to select. The fact that other employees have voluntarily agreed to a proposal demonstrates its presumptive appropriateness, according to the County.

As to external comparisons, the County argues that other communities dealing with represented employees have reached solutions similar to that offered by the County here. In this regard it cites agreements in Dane County, Fond du Lac County, Sheboygan County and the City of Milwaukee. In those agreements the parties have agreed to shift from 100% of gross pay to 80% of gross pay as a level of benefits for disabled employees, according to the County. Even in Milwaukee County, a community claimed comparable by the Union, such a change has been agreed to, according to the Employer.

With regard to the Union's claimed comparables, the Employer challenges the Union's argument that they provide superior benefits, noting that in at least two cases they charge any benefits in excess of those provided by the worker's compensation law to the employee's sick leave account. On the other hand, the Union's rebuttal evidence with regard to the County's comparables actually served to confirm that moving from 100% to 80% constitutes a current trend. The County's expert testified that he was aware of no private sector employer who provided benefits which are as generous as those currently provided by the County and the Union has failed to provide any private sector comparisons to dispute that testimony, the County notes. On the other hand, public sector employers are "moving away from over insurance" and the County asks that the arbitrator accept the County's proposal to do so in this case.

Finally, in connection with its proposal to limit witness pay, the County argues that its proposal is an appropriate amendment to the existing agreement. According to the County, its proposal would deny such pay in only one "limited circumstance." Otherwise, an employee who is subpoenaed to testify would receive his or her full pay even if the information provided resulted in a decision adverse to the County. Only where the employee would be testifying in the capacity of an adverse party or being represented by an adverse party would such pay be denied. The County notes that the limitation in question is already included in contracts with other represented employees including deputy sheriffs, highway personnel and attorneys. It is also significant that the public health nurse unit, also represented by the Union, has similar language in its agreement with the County. There is no showing why such an agreement is reasonable for that unit but not reasonable for the employees here. Therefore, in order to maintain internal consistency,

the County argues that its proposal in this regard should be found to be preferred over the Union's proposal to maintain the status quo in this unit.

DISCUSSION

In the process of reviewing the parties' final offers, it is first appropriate to consider each of the issues separately. After doing so, the final offers can be reviewed in their entirety.

1. Transfers and Demotions

While the Union contends that this proposal is intended to reverse the outcome of the adverse arbitration award discussed above, the undersigned notes that the provision goes beyond the interpretation of the agreement advanced by the Union in that proceeding. Thus, it would be sufficient to reverse the outcome of that proceeding if the Union merely proposed to add an additional sentence to Section 10.03 A requiring the County to give preference to present County employees before hiring new employees to fill vacancies for which employees have requested demotion or transfer. In effect, the Union's proposal requires the County to give employees requesting demotion or transfer the same consideration, under the same criteria, as employees who are seeking promotions.

In addition, the County would appear to be correct in its contention that the actual wording of the Union's proposal may nevertheless fall short of its stated goal, at least in the case of employees who seek to "transfer" to a different shift or department within the same job classification. Contrary to the Union's characterization of its own proposal, the existing definition of a "transfer" has not been simply "relocated" under its proposal. The wording of the definition itself has been changed with the apparent result of restricting transfers to situations where employees are changing classifications having the same wage plan. Whether such modification in the definition was intended or not, the Union's final offer, as certified by the WERC, results in such a change.

However, putting aside these two aspects of the Union's proposal, a number of the Union's arguments in support of its proposal are deemed persuasive. First, as the Union points out, the existing language, as interpreted, gives the County sufficient discretion to deny employees requested transfers and demotions in favor of new hires, without regard to their actual qualifications or tenure of employment. The County need only give them "consideration."

A review of the comparables relied upon by the Union generally supports its contention that other County employers, comparable in size, proximity and other factors, generally include applications for transfers and demotions in the same procedure, and subject to the same criteria, as applications for promotions. Such treatment would seem reasonable under circumstances such as those present here where the Employer has reserved the right to consider prior work performance, experience and in-service training as well as seniority and where seniority is deemed to be a tie-breaking consideration where ability and experience are deemed equal.

The County's expressed desire to maintain a system of promotions for employees is understandable and reasonable. However, it does not necessarily follow that such a system will be jeopardized by a provision which requires that applications for certain types of transfers and demotions be treated on an equal footing with applications for promotion. The existing language of the agreement affords the Employer considerable protection from the need to transfer or demote an employee whose performance is substandard or substantially inferior to less senior employees seeking a promotion. Also, the denial of requested transfers and demotions to employees who qualify under the agreed to criteria adversely impacts upon morale as well. The desirability of such changes in job assignments can be as great or greater than the desirability of a promotion, and the denial of same to long service employees can have an equal or greater negative impact than the denial of promotions.

The undersigned has reviewed the County's evidence and arguments about a possible substantial increase in the number of job postings and the amount of time that may be required to fill vacant positions and train employees. Such evidence and arguments would appear to be somewhat exaggerated and, in the last analysis, unpersuasive. The example relied upon at the hearing in support of the claim that there will be a substantial increase in job postings and training was somewhat speculative and assumed multiple transactions (made possible by the demotion aspect of the procedure) which are not by any means inevitable. Further, the County itself acknowledges that it has granted numerous transfer and demotion requests in the past. While it should be assumed that there may be an increase in the number of such requests under the Union's proposal, it should also be remembered that the Union's proposal contains a 12 month limit. Further, even if there is an increase in the number of postings, the number of vacancies that must be filled and in the amount of training that must be provided, those things are the consequence of any fair system dealing with promotions, transfers and demotions. While the undersigned does not mean to minimize the administrative problems attendant upon such a system, consideration must also be given to such factors as the efficiencies which can be gained through the improvement of employee skills, knowledge and morale that can result from a fairly administered system.

For these reasons, the Union's proposal dealing with transfers and demotions, standing alone, is favored over the Employer's position with regard to maintenance of the existing contract provisions, as interpreted, without change.

2. Social Worker II Incentive Pay

At the outset of the analysis of this Union proposal, two preliminary observations are appropriate. First, the undersigned believes that the County is correct in its contention that it has the right to decide, as a policy matter, whether it desires to require graduate training on the part of its social workers or to otherwise emphasize the desirability of acquiring such training on the part of its social workers in the Department of Social Services. The arbitration of disputes involving wages, hours and working conditions does not constitute an appropriate vehicle for resolving the question of the appropriateness of such policy determinations. On the other hand, the Union makes a valid point, in the view of the undersigned, to the effect that the policy now being pursued by the County has had a substantial, adverse impact upon incumbent social workers, particularly those who were hired as social workers and those who sought graduate training while working as social workers, during the period when the promotional opportunities existed.

Given the County's right to pursue the policies in question, the impact of the new policies should be viewed in terms of compensation, in the view of the undersigned. Thus, regardless of the policies pursued by other comparable employers, the fact remains that employees who do the same work and in fact have a similar educational background receive a relatively wide range of salary for such work. Under the comparability criterion, employees working for the County are entitled to receive a similar range of compensation for such work, particularly since the employees here in fact have a comparable level of education and/or skills. However, even under this view, the undersigned has a number of problems with the Union's proposal.

The County would appear to be correct in its contention that, overall, the Union's proposal appears to be designed to maintain and encourage the continuation of educational requirements and incentives which this County has sought to eliminate. The additional compensation provided is paid, in large part, for meeting educational requirements that no longer exist. The fact that the County has an existing educational incentive plan for deputy sheriffs (which the County in fact is seeking to reduce or eliminate) would appear to be irrelevant, since the County has no expressed desire to create such an incentive or requirement for social workers. Nevertheless, the Union's proposal is designed to reward (senior) employees for educational achievements no longer required.

While the undersigned is aware of the Union's contention that it placed a numerical limitation on the number of employees who could qualify for such additional payments in order to limit its cost to an amount similar to the cost of the prior promotion opportunities, the undersigned must agree with the Employer that the proposal, as written, could result in some very questionable applications. This is due to the strict seniority approach taken by the proposal.

The County argues that the proposal should be rejected because it is simply a monetary proposal and not a true educational incentive. In fact, the undersigned would feel more comfortable with the Union's proposal if it were simply a monetary proposal and were not geared toward the continuation of educational requirements and incentives which have been eliminated. A better approach, and one generally supported by the existing salary ranges among the comparables relied upon by the Union, would have been to adjust the salary range for Social Worker II's or extend the range itself to provide for a higher maximum salary for Social Worker II's. The parties themselves may have been able to achieve some other approach, even more acceptable to them, had the bargaining focused on compensation levels rather than an effort to maintain requirements and incentives that the County wishes to abandon.

For the above and foregoing reasons the undersigned concludes that if he were called upon to decide whether or not this proposal should be included in the agreement, standing alone, he would feel compelled to reject the proposal. However, the impact of the policy changes implemented by the County, especially when consideration is given to comparable salary ranges, would appear to justify some economic adjustment in the case of social workers and the Union's proposal, to the extent that it seeks to make such an economic adjustment, has some merit.

3. Pay For Witness Service

Of the four issues in dispute, this particular issue would appear to have the least impact on the outcome of this proceeding. Nevertheless, the undersigned has concluded, based upon the evidence and arguments presented, that, standing alone, the Union's

position on this proposal should be favored.

The County advances essentially two reasons for its proposal to reduce the availability of this existing benefit. Its first reason is essentially philosophical, to the effect that it is inappropriate for an employer to pay an employee his or her regular salary while serving as a witness in a proceeding brought by the employee or its "representative" against the employer. While the undersigned can understand the County's dislike for that aspect of the existing provision in the abstract, there is no evidence in this record to indicate that it has proven to be a problem. In fact, there is no evidence concerning the types of proceedings which would be affected by the County's proposal. The existing provision is limited to circumstances where employees are subpoenaed in connection with "an incident occurring while on duty as an employee of the County." Thus, even though an employee might be an adverse party or represented by an adverse party, the subpoena would not fall under the existing language unless the testimony the employee was to give was in connection with an incident occurring while on duty as an employee of the County.

The second reason advanced by the County in support of its proposal, relates to "internal comparables" and the related argument that the level of benefits ought to be consistent among the various groups of County employees. However, the dispute here is not concerning what level of benefits should be established. There already exists a difference in the level of benefits, to the extent that employees represented by the Union, who constitute the overwhelming majority of represented employees in the County, do not have such a restriction. In fact, an argument could be made, on behalf of those other represented groups, that the County is being inconsistent with providing a lower level of benefits in the case of those bargaining units and that consistency requires that the existing restriction be eliminated.

In summary, the undersigned concludes that, in the absence of a showing that the restriction is required for purposes of eliminating a serious problem with the administration of this benefit in this bargaining unit, the fact that other, smaller bargaining units and unrepresented employees of the County already have such a restriction is insufficient to justify such a change in the status quo in the case of most of the employees covered by the agreement. The situation involving the employees covered by the new appendix is obviously different, because those employees cannot be said to have an unrestricted benefit under the status quo. However, in view of the small number of employees involved and the fact that they will be covered by the existing agreement for most other purposes, there would appear to be no sound reason to reach a different conclusion overall on this issue.

4. Disability Pay

It is important to note that, nothwithstanding the fact that the title of Article XX is "Disability Pay," Article XX provides for what amounts to a worker's compensation supplement of limited (90 days) duration with a waiting period. Thus, the points made by the Union, with regard to safeguards and limitations already agreed to, have some merit. While it is no doubt true that employees sometimes obtain worker's compensation benefits or extend worker's compensation benefits even though they are not truly entitled to those benefits, requirements of the worker's compensation law

must be met for the purpose of showing that the employee actually suffered a work-connected accident or illness. Further, there is a disincentive to exaggerate minor accidents or illnesses under the current provision because the employee stands to lose sick leave unless he or she can demonstrate that the period of temporary total disability exceeded three days.

The Union's comparables, and even the Employer's comparables which are deemed to be less persuasive because of their geographic dispersal and selective nature, establish that the existence of such supplemental worker's compensation benefits are common in public employment. This is not surprising when one takes into account the fact that most public employees receive 100% of their regular pay, in the form of sick leave, when they suffer an accident or illness off the job which requires them to be absent from work. If an employee receives 100% of his or her regular salary under such circumstances, a strong argument can be mounted that it is unfair for such an employee to receive only two-thirds of his or her regular salary when the absence is occasioned by an accident or illness incurred while working for the Employer.

Having said that the existence of such a benefit, limited only in duration, is common in public employment and that the probable reason for its prevalence is understandable, it does not necessarily follow that a proposal to change such a benefit, because of a potential for abuse, must be rejected out of hand. The Employer has presented considerable testimony and other evidence establishing that the existing benefit constitutes a form of "over insurance" which the insurance industry and most private sector employers have sought to avoid. Further, even though some of the County's evidence establishes that it has a better than anticipated claims record in relation to manual premiums, the employees represented by the Union at the Northview Home have a much worse than anticipated level of claims. Finally, while the record does not include extensive evidence in that regard, there is unrebutted testimony to the effect that there have been several documented cases of abuse in the past.

It is the County's contention that there is a "trend" toward recognizing the fact that a problem of "over insurance" exists with regard to benefits such as that provided here and that such trend is reflected in the County's comparables. However, a review of the Union's comparables fails to establish that such a trend is currently prevalent among employers deemed more comparable than those selected by the County and that, comparatively speaking, the 90 day limit contained in the existing benefit causes the County to place at or near the bottom of the comparables.[1/]

The strongest evidence of a "trend" which ought to be deemed persuasive advanced by the County, consists of the agreements reached with the County's other bargaining units. That evidence, particularly the evidence regarding the agreement reached with the Teamsters Union in the Highway Department, strongly suggests that it may be a "time for change." However, it must be remembered that the County here seeks to reduce the level of an existing benefit which is already relatively low in relation to the more persuasive external comparables. The County's goal of eliminating the "over insurance" aspect of the existing benefit could be achieved in other ways, such as an extension of the time period

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1/ One of the significant differences between the various provisions relates to whether or not an employee is required to use sick leave to supplement worker's compensation benefits. Under the existing benefit here, the 90 day supplement is received for an accident or injury, without regard to any existing sick leave balance.

during which the benefit will be payable, but at a lower level. However, as the Union points out, there is no "quid pro quo" included in the County's proposal.

At least two other aspects of the County's offer are also troubling to the undersigned. First, while the wording of the County's offer would not require a forfeiture of accumulated sick leave, holidays or vacation time, the impact of the County's proposal with regard to the payment of those benefits when an employee continues to be "ineligible" beyond the end of the calendar year or is declared to be permanently disabled is far from clear. However, assuming that no forfeiture will occur, the net affect of the County's proposal is somewhat at odds with its stated purpose, at least in the case of those employees whose disability extends for that period of time.

Another serious problem that exists with the County's proposal relates to its failure to take into account proposed revisions in the tax laws on both a federal and state level. There exists in this case a real risk that, by the time such a change has been implemented under the terms of the parties' agreement, the tax laws may be changed in such a way as to seriously undermine one of the County's basic premises for proposing the change.

In summary, the above considerations establish that, while there is some support for the proposed change based upon the problems of "over insurance," an unusually high rate of claims at the Northview Home and internal comparables, the County has not met its burden of proving a need for the change, as proposed, through arbitration rather than possible voluntary agreement.

Once it has been determined if the tax laws will be changed the parties will be in a position to reevaluate the appropriateness of the existing level of benefits in this area and undoubtedly could negotiate a provision, or at least propose a provision, which is more balanced in relation to external comparables and gives appropriate consideration to the other factors mentioned herein.

The two issues in this proceeding which have the greatest impact are the Union's educational incentive pay proposal and the Employer's disability pay proposal. For reasons set out above, the undersigned has indicated that, standing alone, he would be inclined to reject the Union's educational incentive pay proposal, even though some economic adjustment would appear to be appropriate for the employees covered by that proposal. The Employer's disability pay proposal has been found to be less reasonable than the Union's proposal to maintain the status quo with regard to the existing level of benefits in the form of supplemental worker's compensation payments. Because the County's disability pay proposal would impact upon the entire group of employees and because it is not designed to replace, but instead reduces, the existing level of wages, hours and working conditions, the impact of that proposal is deemed to be greater than the impact of the Union's educational incentive pay proposal.

While the Union's proposal with regard to transfers and demotions seeks a change in the status quo, its arguments in support of that change are found to be more persuasive than the County's objections to that proposed change. This conclusion constitutes an additional reason for accepting the Union's final offer and rejecting the Employer's final offer. For reasons stated above, the Employer's proposal to restrict the conditions under which

pay for witness service could be received has been found to be insufficient to support the inclusion of that proposal, standing alone, in the agreement. Again, these conclusions tend to support a finding that, overall, the Union's final offer should be favored over that of the Employer.

Were it not for the fact that the undersigned is restricted to the selection of one of the two final offers in this proceeding and may not reject both offers or select among the proposals presented in each of the two offers to achieve what he might consider to be a more "balanced" outcome, the undersigned would rule differently in this case. However, under the statutory criteria and the constraints of the law, the undersigned feels compelled to select the Union's final offer in its entirety and renders the following

AWARD

The final offer of the Union, together with the issues resolved by stipulation, shall be incorporated in the parties 1984-1985 Collective Bargaining Agreement, along with the provisions therein which are to remain unchanged.

Dated this 24th day of May, 1985.

George R. Fleischli
Mediator/Arbitrator