STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of		
WISCONSIN COUNCIL OF COUNTY AND MUNICIPAL EMPLOYEES		Case 12 No. 33181 Med/Arb-2709 Decision No. 22428-B
To Initiate Mediation/Arbitration Between Said Petitioner and		
GRANT COUNTY		

APPEARANCES

For the Union: Jack Bernfeld, Staff Representative

For the Employer: Jack D. Walker and JoAnn M. Hart, Attorneys at Law, Melli, Walker, Pease & Ruhly, S.C.

I. BACKGROUND

On January 10, 1984, the Parties exchanged their initial proposals on matters to be included in an initial collective bargaining agreement. Thereafter, the Parties met on three occasions in efforts to reach an accord on a new collective bargaining agreement. On April 9, 1984, the Union filed the instant petition requesting that the Commission initiate Mediation/Arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. On June 5, June 30 and September 10, 1984, a member of the Commission's staff conducted an investigation, which reflected that the Parties were deadlocked in their negotiations. By March 7, 1985, the Parties submitted to the Investigator their final offers, and thereupon the Investigator notified the Parties that the investigation was closed. The Investigator has advised the Commission that the Parties remain at impasse.

The Parties were ordered to select a Mediator/Arbitrator and the undersigned was selected. The Commission appointed the undersigned March 28, 1985. On April 11, the Parties agreed on July 9, 1985 for Mediation. On April 29, 1985, they also agreed that if Arbitration was necessary, it would be conducted on August 9, 1985.

The Parties met on July 9, 1985, and no issues were resolved. Accordingly, the Arbitrator advised the Parties to appear at an Arbitration hearing on August 9, 1985 to present evidence.

On August 2, 1985, the Arbitrator received a subpoena duces tecum from the Employer. They requested it be served on Robert Lyons, Executive Director of Council 40, AFSCME. The subpoena demanded that he appear, and bring with him, certain documents to the Arbitration hearing scheduled for August 9, 1985. The subpoena related to the issue of fair share, which was one of the issues at dispute in the proceeding before the Arbitrator. More specifically, the documents requested related to any procedure for determining the proper amount of a fair share payment and a proper procedure for collecting a fair share payment from dissenting non-members.

The subpoena was signed and returned to the Employer on August 5, and served on August 6. On August 7, the matter was orally argued in a conference telephone call between the Arbitrator and the Parties' attorneys. The Parties, absent the Arbitrator and at his request, continued to discuss the matter. An understanding was reached thereafter, and the Parties advised the Arbitrator of the arrangements in separate phone conversations on Thursday, August 8, 1985.

The arrangement was to conduct the Arbitration hearing, as originally scheduled on August 9, 1985. It was agreed either Party was free to present testimony on fair share -- subject to objection. The Union was free to file a motion to quash the subpoena and both Parties were extended the right to file briefs and reply briefs in support or opposition of the motion. The principal briefs were due August 16, and reply briefs were due August 23, 1985. It was further agreed that at the conclusion of the hearing on August 9, 1985, the record would be closed, except for that evidence under subpoena that may be compelled by the Arbitrator, and evidence which it was agreed at the hearing could be submitted as delayed exhibits by August 16. It was also agreed that all exhibits were being accepted into evidence subject to verification.

On August 16, 1985, the Union submitted several delayed exhibits and took exception to the accuracy of several County exhibits and made some corrections in their exhibits. On August 27, 1985, the County responded to the Union's letter and offered several corrections. The Union responded on September 23, 1985.

On September 9, 1985, the Arbitrator granted the Union's motion to quash the subpoena. Thus, the record was closed as of that date with the exception of corrections.

The Parties had agreed to submit briefs 30 days after receipt of the transcript which was received August 23, 1985. On September 18, 1985, the Arbitrator was advised of a revised briefing scheduled. They were now, by agreement of the Parties, due October 7, 1985. On September 26, 1985, the Union offered minor corrections to the transcript. On October 3, 1985, the due date for briefs was changed to October 11, 1985. On October 10, 1985, the due date was changed to October 28, 1985. The briefs were submitted on that date and exchanged by the Arbitrator on October 30, 1985. Reply briefs were due November 22, 1985. On November 18, 1985, the due date for reply briefs was changed to December 13, 1985. They were exchanged on that date. On December 23, 1985, the Union took exception to a reference in the Employer's brief concerning an exhibit they had not received and a reference to an Arbitration decision cited by the County. They were requesting the record be reopened to respond to this exhibit and the Arbitration decision. The County responded on December 30, 1985. The Union replied on January 2, 1986. The Arbitrator responded on February 18, 1986, indicating the record would not be reopened unless necessary.

The following award is based on the relevant statutory criteria, the evidence and the arguments of the Parties.

II. INDIVIDUAL ISSUES -- CONTENTIONS AND DISCUSSION

A. Introduction

As noted in the background, this case involves the Arbitration of a bargaining impasse between the Parties involving a first time contract. The unit is a professional unit covering full-time and part-time Social Workers, Nurses and Attorneys.

The total bargaining unit consists of 35 employees. The exact configuration of this unit is 20 Social Workers, 2 Assistant District Attorneys and 11 Nurses. There are 20 full-time; the rest work part-time -- some more than half-time, some less than half-time.

In their final offers, both Parties agree that the duration of the first contract should be January 1, 1984 to December 31, 1985. Beyond this, virtually everything else is disputed. There are no stipulations of agreement and the final offers consist of entire contracts. The Union's final offer is 17 pages in length and the Employer's final offer is 24 pages in length. There are a few items in each of the proposed contracts which are identical, but as noted for the most part, everything is at dispute.

Additionally, as could be expected based on the breadth of the unresolved issues, the exhibits and the arguments presented by the Parties is voluminous. It is easier to measure the volume of exhibits in inches than pages, and between the two Parties, there is nearly 225 pages of argument in the form of briefs and reply briefs.

In view of the state of the record, the Arbitrator will walk through each issue one at a time, stating a succinct summary of the extensive arguments of each Party on that issue, and subsequently discussing each proposal on that particular issue. A preference will also be stated. After evaluating the individual proposals, the proposals, as a whole, will be evaluated.

B. Ancillary Issues

1. Comparables

a. The Union. The Union proposes that in the context of statutory criteria [1] the external comparables should be as follows:

Columbia County
Crawford County
Dane County
Green County
Iowa County
LaCrosse County
Lafayette County
Sauk County
Richland County
Vernon County

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1. 7. Factors considered. In making any decision under the arbitration procedures authorized by this subsection, the Mediator/Arbitrator shall give weight to the following factors:

a. The lawful authority of the municipal employer.
b. Stipulations of the parties.
c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

It is their opinion that in determining the basis for reasonable conditions of employment, the principle criteria must be how other professional employees in municipal employment are treated. Thus, they concentrate on these municipal employers which they believe to be comparable, based on "traditional consideration" developed in Arbitration case law.

The Union relies on these nine counties principally in connection with Social Workers, since within the comparable group, all Social Workers are unionized. However, Nurses are unionized in only two counties and none of the Assistant District Attorneys are unionized. Thus, in terms of analyzing the Attorney group, they rely on an additional comparable -- Dane County -- who maintains a bargaining relationship with its Assistant District Attorneys. Regarding the Nurses, they note that Arbitrators have generally concluded that employees in non-union settings are not strongly comparable with their unionized counterparts. However, in this case, in their opinion, the problems associated with the lack of unionization among Public Nurses and Attorneys in this region can be overcome in this case, because within each comparable county the conditions of employment among the "non-union" Nurses and Attorneys are virtually identical with the unionized Social Workers. Moreover, the conditions of employment of employees in this bargaining unit are so inferior to even their unrepresented counterparts, that the distinction between Union and unrepresented status is blurred. Thus, they concentrate on Social Workers for their comparative analysis.

In terms of rebuttal to the Employer's selection of comparables, the Union notes that none of the employing units offers contain Social Workers, Attorneys or Nurses -- or any professional employees (with the exception of Richland County Social Workers and one page from the professional unit of Social Workers employed by the State of Wisconsin). Thus, the occupations of workers in the Employer's group of comparables are performing dissimilar task. Moreover, Clayton County Iowa should be rejected because it is out-of-state. In this regard, they cite Arbitrator Richard J. Miller in Douglas County, Decision No. 20765-A and Arbitrator Richard U. Miller, City of Hudson, Decision No. 18526-A and Arbitrator Byron Yaffe, St. Croix County, Decision No. 18491-A.

Footnote 1 continued:

e. The average consumer prices for goods and services, commonly known as the cost-of-living.
f. The overall compensation presently received by the municipal 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 beneifts 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 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.

In terms of internal comparables, the Union offers the following. First, they note that the County has entered into only one other collective bargaining arrangement with a group of employees -- the Sheriff's Department. Because of this, it should not set a pattern.

b. The Employer. The County proposes the following as comparables:

The Unified Board of Grant and Iowa Counties
Clayton County, Iowa
Loudspeaker Component Corporation of Grant County
Grant County Sheriff's Department
Unrepresented Grant County employees

They also present evidence concerning the following:

Richland County
City of Waupaca
City of Mineral Point
City of Lancaster
Stoughton Area School District
City of Middleton
State of Wisconsin
Research Products

The Employer believes these comparables to be most appropriate because they exist in the same setting in which the taxpayers and the Employer functions. In so far as the Unified Board, the Employer believes they are the most comparable employer because of their geographic and economic overlap. Clayton County, Iowa is comparable in their mind because it is directly across the Mississippi River from Grant County, and directly north of Dubuque County in Iowa, where a sizable number of Grant County citizens commute. Loudspeaker Component Corporation is comparable because it exists in Grant County and also negotiated a first time contract in 1984.

In terms of rebuttal, the Employer offers the following regarding the Union's proposed comparables. First, they state that none of the units in those counties are comparable to the professional unit in Grant County because everyone has been involved in collective bargaining and the mediation/arbitration process for many years. Their position implies that first time contracts can only be compared to first time contracts. They believe first time contracts are limited in scope, and that language should develop as the result of voluntary collective bargaining, not be imposed by an Arbitrator in a first time contract. They cite Arbitrator Krinsky in School District of Barron, Decision No. 16276-A. As such, long existing contracts are not comparable because they have gone through a historical give-and-take process and were not the product of one negotiation.

Another reason the Union's comparables should be rejected, is that Grant County's economic crisis is not comparable to the Union's counties proposed as comparables. In terms of documenting this crisis, they note statistics concerning tax delinquencies, declining land values, average weekly wages and business closing. Based on their analysis of these statistics, they believe Grant County is distinguished from those counties utilized by the Union.

c. Discussion. It is the opinion of the Arbitrator that neither Party puts forth a fully reasonable set of comparables. However, the Union's set of comparables is much closer to the mark than the Employer's set of comparables.

The Employer argues that the counties proposed as comparable by the Union are too dissimilar, based on economic conditions, to be meaningful. While there may be reason to argue there are differences, the Arbitrator does not believe they are so dissimilar to render them invalid. These employers are the only employers, public or private, with the exception of the Unified Board, that employ people who perform similar or identical functions to the employees in the instant bargaining unit. Thus, not to use them would handcuff the Arbitrator and leave him with little reasonable guidance as to what are reasonable wage levels and working conditions for employees performing these types of duties. Moreover, there is no reason, per se, to dismiss them as comparable because they are not first time contracts. While this might have some influence on the consideration of the merits of the offers as a whole, it is not a basis to totally discount them as reasonable guidelines.

Certainly, comparisons are not perfect, but the Union's comparables are -- with a couple of exceptions -- more valid than the comparison urged by the County. For instance, Clayton County, Iowa has no relevance here. Arbitrators, as pointed out by the Union, have been loath to accept out-of-state comparables based on the fact they were negotiated in a different statutory environment. Additionally, little weight can be given to the contract with the Loudspeaker Component Corporation and Research Products. As a private sector employer, its income base is radically different, in addition to the fact that the duties and skills of its employees are ultimately different.

With respect to the City of Waupaca, City of Mineral Point, City of Middleton, Stoughton Area School District and State of Wisconsin, the Arbitrator believes it is essentially unnecessary to look at these since the Union's group contains a sufficient sample of county governments. Moreover, other counties provide a more reasonable basis of comparison than distant cities, school districts or state governments which do not necessarily employ similar employees.

On the other hand, the Arbitrator believes that as external comparables, the Unified Board, and in some respects the City of Lancaster, should be used for comparison purposes. By utilizing the Unified Board as comparable, some viewpoint can be gained on what is a reasonable wage level for similar employees under local economic conditions.

Accordingly, the following external employers will be utilized for comparison purposes:

Columbia County
Crawford County
Green County
Iowa County
LaCrosse County
City of Lancaster
Lafayette County
Sauk County
Richland County
Unified Board of Grant & Iowa Counties
Vernon County

It is believed these employers give the most reasonable mix of relevant comparability factors -- including similarities in employment, size, geography and economic factors.

In terms of internal comparables, weight will be given to the only unionized group of employees -- the Sheriff's Department. The relative weight of internal versus external factors will be dependent on the nature of the individual issues.

C. Individual Issues

1. Recognition

a. The Union. The Union proposes the following in terms of a recognition clause:

Article 1 - Recognition

> "1.01 Employer recognizes the Union as the exclusive collective bargaining representative for all regular full-time and regular part-time professional employees of Grant County, excluding managerial, supervisory and confidential employees, and all other employees, for the purpose of conferences and negotiations with the above-mentioned municipal employer, or its lawfully authorized representatives, on questions of wages, hours and conditions of employment, pursuant to certification by the Wisconsin Employment Relations Commission, Case VII, No. 31434, ME-2205, Decision No. 21063, dated November 29, 1983. This provision describes the bargaining representative and the bargaining unit covered by the terms of this collective bargaining agreement and is not to be interpreted for any other purpose."

The main difference in the offers here is the Union's reference to the WERC certification number and a limitation on the purpose of the clause (last sentence). The Union asserts that this limitation sentence is consistent to WERC rulings. On the other hand, the County has offered a vague counterpart, whose meaning is untested.

b. Employer. The Employer proposes the following in terms of a recognition clause:

Article I

Intent - Purpose - Recognition

> "1.01 The County recognizes the Labor Organization as the exclusive bargaining representative for all regular full-time and regular part-time professional employees of Grant County, excluding managerial, supervisory, confidential and all other employees. This section is descriptive only and does not confer any right and does not impose any duty."

The Employer argues that the WERC case number is surplusage. In addition, they believe their limitation language serves the purpose to prevent the recognition clause from being interpreted by Arbitrators to relate to issues beyond the identity of the unit, such as unit clarification or questions of bargaining unit work. Moreover, they note that the WERC has recognized the need to include limiting language in order to make the recognition clause a mandatory proposal. See Sauk County, Decision No. 18565. Based on their analysis, they contend that the Union's language is not consistent with Sauk County. They contend their limitation more accurately serves the purpose of a recognition clause.

c. Discussion. First, the lack of a reference to, or the inclusion of, the WERC number is irrelevant. More relevant is the language concerning the limiting effect of the recognition clause. Both Parties recognize that Sauk County set forth the recognition clauses. WERC stated therein that such provisions must be included:

> "... only when such provision includes a statement to the effect that said provision is set forth merely to describe the bargaining representative and the bargaining

unit covered by the terms of said collective bargaining agreement, and is not to be interpreted for any other purpose."

The only word missing from this standard and the Union's language is the word "merely". It is not believed that this is significant or changes the limiting effect of the language. Even if the lack of this word raises some ambiguity about the intent of the limitation, it raises less ambiguity than the Employer's language. Thus, the Union's language is more consistent with the applicable case law and therefore preferrable.

2. Non - Discrimination

a. The Union. The Union proposes the following language:

"1.02 Non - Discrimination: The parties hereto agree that there shall be no discrimination with respect to any employee because of age, sex, race religion, handicap, national origin, union affiliation, marital status or sexual orientation, contrary to applicable state and/or federal law."

The Union suggests that the County's language would prevent an employee from processing a grievance related to alleged discrimination to arbitration, whereas the Union would permit allegations of discrimination to be treated like any other alleged violation of the contract. They also noted that the Union's offer is similar to that contained in the County's personnel policies. Moreover in their opinion, it is also a common contractual provision, and none of the comparables proposed by the Union limits the scope of the review of such matters.

b. The Employer. The Employer proposes the following:

"1.06 The County and the Labor Organization will comply with any applicable employment laws, however, this Agreement does not confer any contractual rights, to enforce such laws, or based upon such laws, as a grievance or breach of contract action."

In support of their proposal, the Employer noted among other things that the Grant County Sheriff's Department contract has never contained a provision similar to either the County's or Union's proposal in this unit, and that the Unified Board of Grant and Iowa counties contract contains an agreement that the nondiscrimination clause will not be subject to the arbitration provisions of the contract. With respect to the Union's comparables, they draw attention to the fact that the AFSCME contracts with Columbia, Crawford, Richland, and Vernon counties contain no language about compliance with employment laws. Thus, only two of the eight counties which the Union proposes as comparables contain any similar provision.

c. Discussion. There is no clear preference for either offer. On one hand, the comparables tend to support the Employer, and on the other hand, reason supports the Union's position. By making arbitration available for such claims, a relatively quick and inexpensive resolution process is available which may have satisfactory results for the parties, thus avoiding the expense of pursuing remedies or defending claims elsewhere. Even if a preference were clear, this is viewed as a minor item having no singular meaningful impact on the offers.

3. Definition of Employees

a. The Union. The Union proposes the following:

1.03 Definition of Employees

"A) Regular Full-time Employee: A regular full-time employee shall be defined as an employee who is regularly scheduled to work forty (40) hours per week.

"B) Regular Part-time Employee: A regular part-time employee shall be defined as an employee who is regularly scheduled to work less than forty (40) hours per week. Regular part-time employees who are regularly scheduled to work an annual average of twenty (20) hours or more per week shall be entitled to all fringe benefits as provided in this Agreement on a pro-rata basis, except that insurance benefits shall not be pro-rated. Regular part-time employees who are regularly scheduled to work an annual average of less than twenty (20) hours per week shall not be entitled to fringe benefits, except that employees who work 600 hours or more per year shall be entitled to Wisconsin Retirement Fund benefits, subject to applicable sections of the Wisconsin Statutes and administrative rules made in accordance therefore.

The Union believes that the offers are similar except that the County offers an incomplete enumeration of benefits. They note that vacation and discretionary days are excluded from the enumerated benefits under Article 18, yet are deemed benefits under the Employer's Article 9 and Article 17, respectively.

b. The Employer. The Employer proposes the following:

ARTICLE XVIII

Part-Time Employees

"Regular part-time employees are entitled to pro-rata sick leave, holiday pay, funeral pay, jury pay, military pay, according to the percentage of full-time which they regularly work, and are entitled to insurance under Article XIII, as if they were full-time. Regular part-time employees are those regularly scheduled to work 1,040 or more hours per year, but less than 2,080 hours per year. Employees who regularly work under 1,040 hours per year receive none of these paid fringe benefits, except Wisconsin retirement if eligible."

The Employer does not believe there is a need to define "regular full-time" and "regular part-time" employees. Beyond this, they believe the language of both offers produces the same result for fringe benefits. Employees who regularly work, or are regularly scheduled to work, 1,040 hours per year receive health insurance equal to that of full-time employees, and receive all other fringe benefits on a pro-rata basis.

c. Discussion. The effect of the proposals is essentially the same. It appears that the intent of both offers is to preserve the status quo and grant benefits to full-time employees on a pro-rata basis (except health insurance) only to part-time employees working at least 20 hours per week, or 1,040 hours per year. The Union's offer is marginally preferable because it does clarify exactly that no benefits except retirement accrue to those working less than half-time. The County's offer on this point, when read in conjunction with the vacation clause, does raise some ambiguity whether less than half-timers might be eligible for vacation.

4. Management Rights

a. The Union. The Union proposes the following:

Article 2 - Management Rights

"2.01 It is agreed that the management of the County and the direction of employees are vested exclusively in the County, and that this includes, but is not limited to the following: to direct and supervise the work of employees; to hire, promote, demote, transfer or lay-off employees; to suspend, discharge or otherwise discipline employees for just cause; to plan, direct and control operations; to determine the amount and quality of work needed, by whom it shall be performed and the location where such work shall be performed; to determine to what extent any process, service or activities of any nature whatsoever shall be added or modified; to change any existing service practices, methods and facilities; to schedule the hours of work and assignment of duties; and to make and enforce reasonable rules.

"2.02 The County's exercise of the foregoing functions shall be limited only by the express provisions of this contract, and the County and the Union have all the rights which they had at law except those expressly bargained away in this Agreement."

The Union notes that the proposals are similar. One of the biggest differences relates to subcontracting. The Union argues that by not mentioning subcontracting, they are not meant to "hamstring" the County, but they are meant to retain the Union's statutory right to bargain not only the effects of any subcontract but the right to bargain regarding the decision when legally permitted. Moreover, they note that services traditionally contracted for by the County could not be disrupted by their proposal. Additionally, they believe their approach is typical among the comparables. LaCrosse prohibits the subcontracting of unit work; Lafayette, Richland and Sauk are silent on the issue. Green's current contract is silent, but the effect of a maintenance of standards clause probably severely restricts the County's right to subcontract work. Iowa County requires that the decision be bargained. Thus, it is clear that the Union's approach is more acceptable than the County's.

b. The Employer. The Employer proposes the following:

Article II

Management Rights

"2.01 It is agreed that the management of the County and the direction of employees are vested exclusively in the County, and that this includes, but is not limited to the following: to direct and supervise the work of deputies and employees; to hire, promote, transfer or lay off employees or demote, suspend, discipline or discharge employees; to plan, direct and control operations; to determine the amount and quality of work needed, by whom it shall be performed and the location where such work shall be performed; to determine to what extent any process, service or activities of any nature whatsoever shall be added, or modified or obtained by subcontract; to change any existing service practices, methods and facilities; to schedule the hours of work and assignment of duties; and to make and enforce rules.

"2.02 The County's exercise of the foregoing functions shall be limited only by the express provisions of this contract, and the County, and the Labor Organization, have all the rights which they had at law except those expressly bargained away in this Agreement."

On the issue of subcontracting, the Employer offers the following. First, they note that two of the Union's comparables --the Sheriff's Department and the City of Lancaster -- have language similar to their proposal. They believe the County's proposed language is preferable because it avoids the possible uncertainty of the law regarding its right to subcontract while implicitly stating the Employer's duty to bargain over the effects of such subcontracting.

c. Discussion. There are differences other than subcontracting. The Union's language makes reference to the Employer's right to make reasonable rules and the right to discipline for just cause. The Employer's management rights clause does not contain such references. However, the Employer covers these items in another proposal on discipline so their discussion will be deferred until then.

Regarding subcontracting, neither proposal necessarily restricts Management's rights to subcontract. Additionally, both offers find support in the comparables. Both offers implicitly recognize the Employer's obligation to bargain the effect of subcontracting. The main difference is that by explicitly stating that the Employer has the right to subcontract as opposed to silence, it could be argued that the Employer might not be required in cases, where they might have such duty, to bargain the decision to subcontract. It could be argued that the inclusion of such language constituted and fulfilled their duty to bargain applicable decisions. On the other hand, silence would retain that right.

It is the opinion of the Arbitrator that the more equitable proposal is the Union's as it preserves all rights of both Parties at law.

Last, it is noted that there is no difference in Section 2.02 in either contract.

5. Union Activity/Bulletin Boards

a. The Union. The Union proposes the following:

Article 3-Union Activity

"3.01 Union Notices: The County shall provide easily accessible bulletin board space at each principle worksite in which unit employees regularly work for the posting of Union notices and bulletins."

b. The Employer. The Employer proposes the following:

Article VI

"The County will allow the Union use of bulletin board space in each principal building of the County in which unit employees regularly work."

c. Discussion. The differences here are not material enough to have any substantive influence on the overall reasonableness of the Final Offers.

6. Fair Share - Dues Check Off

a. The Union. The Union offers the following:

Article 4 - Fair Share/Dues Check Off

"4.01 The Union, as the exclusive representative of all of the employees in the bargaining unit, shall represent all such employees, both Union and non-Union, fairly and equally, and all employees in the bargaining unit shall be required to pay their proportionate share of the costs of such representation as set forth in this article.

"4.02 No employee shall be required to join the Union, but membership in the Union shall be made available to all employees who apply consistent with the Constitution and By-Laws of the Union. No employee shall be denied Union membership on the basis of age, sex, race, religion, handicap, national origin, marital status, or sexual orientation.

"4.03 The Employer shall deduct each month an amount, certified by the Union, as the uniform dues required of all Union members or a fair share service fee as established and certified by the Union, consistent with Section 111.70 of the Wisconsin Statutes. With respect to newly hired employees, such deductions shall commence on the month following the completion of the probationary period.

"4.04 The aggregate amount so deducted, along with an itemized list of the employees from whom such deductions were made, shall be forwarded to the Union within the month in which such deductions were made. Any changes in the amount to be deducted shall be certified to the Employer by the Union at least thirty (30) days prior to the effective date of such change. The Employer shall not be required to submit any amount to the Union under the provisions of this Agreement on behalf of employees otherwise covered who are on layoff, leave of absence, or other status in which they receive no pay for the pay period normally used by the Employer to make such deductions.

"4.05 The provisions of 4.01, 4.02, 4.03 and 4.04 shall become effective the month following certification by the Wisconsin Employment Relations Commission (WERC) that a majority of employees eligible to vote have voted affirmatively in support of the fair share agreement.

"4.06 During periods when the fair share agreement is not certified pursuant to Section 4.05, or should the fair share agreement become null and void for any reason, the Employer agrees to deduct Union dues each month from those employees who individually authorized in writing that such deductions be made. The amounts to be deducted shall be certified to the Employer by the Union and the aggregate deductions from all employees shall be forwarded to the Union along with an itemized statement of the employees from whom such deductions were made. Any changes in the amount to be deducted shall be certified to the Employer by the Union at least thirty (30) days prior to the effective date of such change.

"4.07 The Union shall indemnify and save the Employer harmless against any and all claims, demands, suits and other forms of liability which may arise out of any action taken by the Employer under this article for the purpose of complying with the provisions of this article."

The Union notes, in support of their proposal, that all but one of their comparables has fair share, and several of the Employer's comparables have fair share. Even the Sheriff's Department has a fair share provision which did not provide for a referendum as their proposal does. In addition, they cite Arbitrator Bellman in Twin Lakes Elementary Joint School District No. 4, Decision 16302-B, January 17, 1979, who noted such provisions are common. They also note that the identical language proposed by the Union was chosen by Arbitrator Joseph Kerkman involving the initial agreement in the City of Lancaster and has remained in effect.

b. The Employer. The Employer proposes the following:

Article III

"On receipt of a request signed by the affected employee, the County will deduct an amount equal to current monthly dues of the Labor Organization monthly, from pay due the employee."

The Employer has no proposal on fair share. The Arbitrator first notes the arguments the County made in their brief filed in support of their subpoena regard the constitutionality of fair share. They are reviewed and expanded here. They suggest that the Union's refusal to open its records only deepens the concern that the system AFSCME has proposed will violate the constitutional rights of Grant County employees. The Employer also maintains that the Union's security is provided in part by seniority clauses and discharge standards, because both provisions work to preserve the composition of the unit which elected the Union, and which therefore can be expected to support the Union. In addition to these devices, there are two others providing Union secuirty (fair share and check-off). Thus, the County has offered three of the four. They also note that first time contracts do not often include all four Union security devices, which is what the Union is demanding in its proposal. In fact, Vernon County -- proposed as a comparable by the Union -- has been engaged in collective bargaining with AFSCME for ten years. There has never been a fair share agreement covering the Vernon County Social Services and Courthouse employees.

c. Discussion. A review of the comparables shows overwhelming support for a fair share provision. Moreover, a referendum is appropriate for first time contracts.

7. Grievance Procedure

a. The Union. The Union proposes the following:

Article 5 - Grievance Procedure

"5.01 Grievance. A grievance is defined to be a controversy between any employee, or the Union and the Employer, as to a matter involving the interpretation or application of this Agreement.

"5.02 Procedure. Grievances shall be processed in the following manner: All times set forth in this article, unless otherwise specified, are working days and are exclusive of Saturdays, Sundays and any holiday recognized by this Agreement. All time requirements set forth in this article may be waived or extended by mutual written agreement of the parties.

"A grievance affecting a group or class of employees may be submitted in writing by the Union to the department head directly and the processing of such grievance

shall commence at Step Two, within ten (10) days of the incident or within ten (10) days of securing knowledge thereof."

The Union believes their grievance procedure to be a more typical procedure and one which is more streamlined. On the other hand, they believe the Employer's procedure to be a cumbersome, costly and confusing procedure that will result in greater conflict -- not less. The confusion involves dual time lines and does not give the Union enough time (five days versus fifteen days) to appeal a decision to Arbitration. Also, they believe the fact that under the County's proposal all settlements at Step 1 and 2 must be approved by the County Employee Relations Committee is cumbersome, and makes a mockery of filing a grievance at the first or second step.

The other difference is the type of Arbitrators. The County proposes private Arbitrators; the Union public Arbitrators. They suggest that the County's approach, especially to a small bargaining unit like this, will have a significant chilling effect on the ability of the Union to challenge County actions, and moreover, the County's approach is neither cost effective for the Union nor the taxpayers of Grant County. In addition, they submit that most of the comparables use the approach proposed by the Union, and that in fact, most of the municipal comparables offered by the County contain this approach.

Last, the Union suggests that the County puts unnecessary restrictions on the Arbitrator, and in doing so, their proposal lays the groundwork for their inevitable appeal of an Arbitrator's decision. For instance, if an Arbitrator offers a comment or opinion which they believe is not directly on point -- they propose this as a basis to appeal the decision. In addition, they question the intent of the County's proposal that "the Arbitrator shall have no authority to grant wage increases or decreases." They ask that since the Parties agree that the definition of a grievance is "the interpretation or application of the agreement", what if such a dispute involved wages -- an employee receiving an improper wage rate according to the terms of the contract?

b. The Employer. The Employer proposes the following:

Article IV - Grievance Procedure

"4.01 Grievance. A grievance is defined to be a controversy between any employee, or the Labor Organization, and the County as to a matter involving the interpretation or application of this Agreement.

"4.02 Procedure. Grievances shall be processed in the following manner: All times set forth in this Article, unless otherwise specified, are working days and are recognized by this Agreement. All time requirements set forth in this Article may be waived or extended by mutual written agreement of the parties."

The basic position of the Employer in support of their proposal for a grievance procedure is that when an Employer has more than one unit of employees, all of the employees in all of the units should be covered by common procedural language. In this regard, they note that the Grant County Sheriff's Department contract contains a grievance procedure with language which is nearly identical to that which the County has proposed in the Professional Unit. In their opinion, another reason theirs is preferrable, is because the use of private Arbitrators and the nominal expense involved in taking a grievance to arbitration is some limitation on processing frivolous (or "let off steam") grievances through the Arbitration step. In addition, they contend that their proposal on this point is supported by the comparables of both Parties.

In terms of the steps and WERC approval, they note that this is the same as the Sheriff's Department and is also justified by the fact a municipal employer may not have the same degree of control over its supervisors and department heads as a private employer.

With respect to their restrictions on the Arbitrator, they explain that their purpose is not intended to allow either Party to appeal an Arbitrator's award on a ground which is not related to the merits of the issue arbitrated. Instead, the purpose is to control and avoid dicta in Arbitrators decisions interpreting the contract.

c. Discussion. First, it is noted that there are a number of similarities in the proposals for a grievance procedure. With respect to the differences, the Employer argues that the strongest reason for adoption of their proposal is the fact that it is identical to the other internal bargaining units. However, the Arbitrator disagrees. Internal comparables deserve the most weight in wage and benefit matters where there is a history of treating employees identically and where the offers are within a reasonable range of the external comparables. Here, the matters are purely procedural and there is no compelling internal equity or fairness consideration present. The Sheriff's Department on this issue deserves no more weight than other comparables.

Apart from the issue of Arbitrator selection, the Union's proposal is more consistent with the type of grievance procedure found in contracts generally, and with the comparables in specific. Most notable here is the unusual restrictions the Employer seeks to place on the Arbitrator's jurisdiction, in combination with the statement that decisions in this respect are subject to de novo appeal. This simply is atypical, and contrary to the good intentions of the County, has substantial potential for abuse by either Party. Considering the breadth of the litigation of this dispute by both Parties, the likelihood of the Employer's grievance procedure creating disputes, rather than solving them, is not wholly improbable.

Accordingly, the Union's proposal for a grievance procedure is more reasonable.

8. Discipline

a. The Union. The Union proposes the following:

> "6.01 The Employer shall not suspend, discharge or otherwise discipline any employee without just cause. When such action is taken against an employee, the employee will receive written notice of such action at the time it is taken, and a copy will be mailed to the Union within two (2) calendar days, except that written notice of oral discipline shall be given to the employee and the Union as soon as possible after the action is taken. Such notice shall include the reasons on which the Employer's action is based."

The Union supports its proposal by drawing attention to the contracts in its comparable group. In each case, the Employer may discipline, but it must be for "just cause" or "cause". They argue that the mixed standard and method of establishing rules under the Employer's offer is unworkable and begs for litigation. Under the County's procedure, the Union would be forced to Arbitration over the establishment of penalties and rules on even minor objections, since failure to arbitrate means acceptance of the rule and the penalty. Moreover, they note the absence of a standard, and suggest that under the County's proposal an Arbitrator could not consider whether the County has arbitrarily upheld the rules and their penalties.

b. The Employer. The Employer proposes the following discipline language:

Article V

"5.01 The County has the right to create reasonable rules and regulations including penalties for violation thereof. If the County contemplates promulgating such a rule(s), it shall provide the Labor Organization written notice at least thirty days prior to the intended date for implementation. At the Labor Organization's request the parties shall meet within the 30 day period, if not before, to discuss the rule(s). If the parties are unable to agree, the Labor Organization may challenge the rule through the grievance procedure as to the reasonableness of substance and penalty. When the County disciplines consistent with the rules, which rules have either not been grieved within the time limits of the grievance procedure after the date of adoption of the rule, or the grievance dropped, or whose reasonableness has been sustained by an arbitrator as provided herein, then in any grievance arbitration action to review such discipline arising from the rule the arbitrator has no jurisdiction to make ruling on the reasonableness of the rule or the penalty.

"5.02 In case of other discipline and in cases of discipline where the rules themselves do not provide a stated penalty, a just cause standard of review shall apply. When disciplinary action is taken against an employee, the employee will receive written notice of such action at the time it is taken, and a copy will be mailed to the Labor Organization within two (2) calendar days, except that written notice of oral discipline shall be given to the employee and the Union as soon as possible after the action is taken. Such notice shall include the primary reasons on which the Employer's action is based.

"5.03 This Article supersedes the Grant County Personnel System Policies, section titled, Disciplinary Actions, as to this unit; such section does not apply to this unit."

In support of their proposal the County indicates that once the Union has grieved or waived its right to grieve the rule, an Arbitrator would not be able to consider the reasonableness of the rule or penalty in any subsequent grievance, but could review whether the infraction occurred. Beyond specifically promulgated rules and penalties, the standard is just cause. In addition to being similar to the discipline procedure at the Unified Board and the City of Lancaster, they submit there are three other reasons their proposal is preferrable. First, they suggest it will result in more certainty and less litigation, and it also reduces the risk the Employer must face if back pay is accumulating while a grievance is pending. Second, the Employer's proposal is fair to the employee. Under the Employer's work rule system, the employee will know in advance the standard of behavior to which he or she must comply, and the consequences of noncompliance. Third, the Employers' system of agreement on the rules themselves, or arbitration of the rules without waiting for a grievance to arise under such a rule, results in a more objective evaluation of that rule.

In rebuttal to the Union's arguments, they contend it is not reasonable to assume that under the County's proposed disciplinary system the Parties will litigate every rule. To reach that conclusion, one must assume that either the County, the Union, or both, will refuse to agree to reasonable work rules. If the County does not propose reasonable work rules,

it will pay the price of litigating the rules. The County has an incentive under its own system to make reasonable proposals to avoid litigation. If the Union is predicting it will not agree to reasonable work rules, the prediction establishes that the Union's objective is to leave each situation open to ambiguity and more litigation, not to have a fair discipline system.

c. Discussion. It is the opinion of the Arbitrator that the Union's proposal is preferrable because it is more standardized and more consistent with a majority of the comparables. In terms of which system is more workable, the fact that a large majority of comparables have employed a procedure more similar to the Union's, rather than the Employer's, answers this point.

9. Seniority (Definition)

a. The Union. The Union proposes the following:

Article 7 - Seniority

"7.01 Definition. Seniority shall be defined as an employee's length of service in the bargaining unit dating from the employee's most recent date of hire. For purposes of fringe benefit calculations only, an employee's seniority shall be calculated from the employee's most recent date of hire with Grant County. Seniority shall not be prorated for regular part-time employees. Seniority shall be deemed to have been terminated when an employee:

A) Quits or retires; or
B) Is discharged for cause or terminated during the probationary period; or
C) Is laid off for a period of more than twelve (12) months.

"7.02 The Employer shall furnish the Union a seniority list upon request, twice a year, showing each unit employee's name, classification, date of hire, and months of service."

The differences in the Union's opinion relate to part-time versus full-time employees. The Union is proposing for rights' purposes that whether full-time or part-time, seniority be defined as length of service in the bargaining unit from the most recent date of hire. For the purpose of calculating fringe benefits, seniority is defined (whether full-time or part-time) as length of service in the employ of Grant County (whether in the bargaining unit or not). This is supported in their opinion by the fact that it is consistent with current practices. For the County's part, they propose to prorate seniority for part-time employees, and it is unclear to the Union if this proration is to be applied for both rights and benefit purposes. As such, this would clearly be a takeaway. Moreover, it is unclear to the Union whether the County proposes to count "County" time for fringe benefit purposes. If not, this too, would be a takeaway.

b. The Employer. With respect to the definition of seniority, the Employer offers the following:

Article VII - Seniority

"7.01 Seniority will be considered to the extent provided in this Agreement.

"7.02 Upon completion of probation, employees will accrue seniority from the most recent date of hire as a unit employee. Employment is continuous for seniority purposes, but is terminated if the employee quits, or is terminated.

"7.04 The Employer shall furnish the Union a seniority list, upon request, twice a year, showing each unit employee's name, classification, date of hire, and months of service.

"7.05 Regular part-time employees shall attain seniority at the rate of one (1) month for each 173 hours worked. If only full-time work is available, as the result of a layoff, regular part-time employees do not have the right to obtain or the duty to accept full-time work, but may be laid off before less senior full-time employees. Part-time Home Health nurses are a separate classification, for layoff purposes.

"7.08 Unit employees who take supervisory jobs with the Employer may be returned to the unit, in the Employer's discretion, with unit seniority frozen during time as a supervisor."

Much of the Employer's seniority provision (Article VII) relates to layoffs and recall, whereas the Union's Article VII is strictly limited to the definition of seniority. Consideration of the Employer's Article VII here is limited to the pure definition of seniority. In this regard, the County suggests its offer is based on common sense: an employee that puts in half as much time as another employee should have half the seniority. In support of this they note that Columbia, Crawford, Iowa and Sauk Counties prorate seniority for part-time employees. Also in Green County, AFSCME has offered seniority prorated for part-time employees.

c. Discussion. Apart from the rights of part-time versus full-time workers in layoffs, the definition of seniority here only relates to entitlements of part-time workers for the purposes of fringe benefits. Under the Union's offer, part-timers would qualify for fringe benefits (if such entitlement was keyed on length of service) based on their date of hire. In other words, credit would be given for each day worked -- even if it was part-time. Under the Employer's offer, they would be qualified for a month of seniority for every 173 hours worked. This would be relevant in terms of the amount of vacation an employee is entitled since it is keyed in years of employment.

It is the Arbitrator's opinion that for the purpose of such fringe benefits, the Union's offer is more reasonable because it is most consistent with past practice of the Employer. This demonstrates that seniority defined in these terms for purposes of benefits is not unreasonable.

10. Probationary Period

a. The Union. The Union proposes the following:

Article 8 - Probationary Period

"8.01 All newly hired employees shall serve a six (6) calendar month probationary period. During said period, employees shall be subject to dismissal without cause or recourse to the grievance procedure. However, such employee shall be entitled to a written reason for the termination. If still employed after such probationary period, their seniority shall date from the first day of hire."

In support of their proposal the Union indicates that their proposal is consistent with the current probationary period. In addition, it is their opinion that the comparables strongly support the Union's position on this issue as no similarly employed employees are faced with an initial probationary period of one year. It is their position a one year period is unreasonable.

b. The Employer. As part of their discipline clause the Employer proposes the following language concerning a probationary period.

> "5.04 Probationary employees may be disciplined and discharged without recourse. An employee is probationary for one (1) calendar year. The Labor Organization will be given a copy of any written discipline of a probationary employee."

In support of this, the Employer argues that Grant County needs a one-year probationary period in order to evaluate the performance of new employees in this unit. These professional positions, Public and Home Health Nurse, Assistant District Attorney, and Social Worker, are complex, detailed and procedure-filled positions. Accordingly, employees in these positions frequently require six months or more just to become familiar with all of the aspects of their job duties. In addition, it is misleading, in their opinion, to say that the present probationary period is six months, since in an employment at will situation (such as existed in Grant County at the time these probationary periods were used) an employee could be discharged at any point at which the County discovered the reason and need to discharge, or for no reason. Additionally, the Employer notes that many comparables provided for longer than six months.

The Employer highlights another difference. This is that the County's proposal provides that probationary employees may be disciplined and discharged without recourse, while the Union's proposal provides that employees shall be subject to dismissal without cause or recourse to the grievance procedure. Since the Union's probationary period language does not cover discipline short of discharge, the County could be required to process grievances through arbitration for probationary employees under the Union's language. This would defeat a major objective of the clause.

The Employer's last concern is that the fact the Union's language requires the Employer to be given a written reason could under Walker v. United States, 744 F.2d 67 (10th Cir. 1984) subject the County to suit on constitutional grounds for violation of the probationary employee's liberty interest in his reputation because the County would be required to give the Union a copy of those reasons under Section 6.01 of the Union's offer. Also, requiring the County to give a written reason opens the County to the risk of a lawsuit based on a claim of pretext. If the County gives reason for discharge, such as excessive absence, a discharged employee who is also a member of any EEO protected class, such as handicap, could bring suit claiming a pretext, comparing his or her absences with everyone else's absences.

c. Discussion. It is the opinion of the Arbitrator that the Union's offer is preferrable since it is most consistent with the comparables. All of the valid comparables involve professional classifications, and only one provides for more than six months -- and that is by mutual agreement only. Thus, it appears, based on the comparables, that six months is a sufficient period to judge the performance of a new employee.

With respect to the notice of termination required under the Union's proposal, the Arbitrator is not convinced of any valid constitutional considerations which would compel rejection of their proposal.

11. Job Posting

a. The Union. The Union proposes the following in terms of a job posting procedure:

> "9.01 Job vacancies in the bargaining unit due to retirement, quits, new positions, transfers or whatever reason, that the Employer intends to fill, shall be posted in each department for a period of seven (7) working days. The posting shall provide information concerning the qualifications needed for the positions, a brief description of the job duties, the salary range, starting date, and the closing date for applications. A copy of each posting shall be provided to the president of the Union.
>
> "9.02 Applicants. Employees interested in the posting shall make written application.
>
> "9.03 Selection. The most qualified applicant shall be selected provided that if two (2) or more applicants are relatively equal in qualifications, seniority shall be the determining factor.
>
> "9.04 Trial Period. If within the first sixty (60) calendar days of filling a job vacancy a selected employee fails to make satisfactory progress for the position, he/she shall be returned to his/her former position and selection shall be made among the remaining qualified applicants for the position, if any, according to the criteria set forth in Section 9.03 above. An employee may also voluntarily return to his/her former position during the trial period at his/her discretion. Employees serving a trial period shall receive a written evaluation of their progress after thirty (30) calendar days."

In support of their proposal, they draw attention to the fact that the County has made no proposal in their final offer on job posting. On the other hand, they describe their offer as "typical" in that it establishes posting criteria, the time frame, type of notice requirements, the criteria for selection and a trial period procedure. They also note that the Sheriff's Department contract has a posting procedure, as does the Department of Social Services, presently.

With respect to the their "modified seniority" standard, they suggest that it is a conservative one and is typical of the standard utilized in the comparable units.

Thus, the Union suggests their offer is more reasonable than the County's offer, which gives the County unfettered control and fails to even continue the type of job posting presently made.

b. The County. As background to this issue, the County notes that during the bargaining with this unit, the County offered a job posting system which gave unit members the opportunity to apply for job openings. The offer did not provide for outside review of the County's judgement in filling a position. The Union rejected that offer, stating that the opportunity to apply for an opening was not important; what was important to the Union was outside review of the County's judgement concerning who should receive the job.

In support of their proposal not to include a posting procedure, they contend that one should not be included because it is a first time contract. Based on their review of the comparables, they suggest that many first time contracts contained no job posting procedure, and even then, several did not contain a job posting provision allowing for review of the

Employer's judgement. They also note that while the Unified Board contract and the Loudspeaker Component Corporation contract contain posting procedures with a relatively equal standard, they also indicated that the "judgement of the Employer" is a factor.

The County believes there are major problems with the Union's offer in this regard. First, they contend there is no limitation on who may post for any job opening in the unit. Moreover, they do not believe that the fact the applicant has to be "qualified" under the Union's offer solves anything, since it could be argued that the Attorneys and some of the Nurses may be ostensibly "qualified" to be Social Workers. Another problem they see, is that if there were only one applicant, the Employer would be required to select that employee, and because the Union's proposal provides no definition of "qualified", the County could find itself unable to go outside the unit without fear of litigation because of the Union's claim that a unit member was "qualified".

With respect to the portion of the proposal that requires the County to select the most senior applicant if two applicants are "relatively equal in qualifications", they argue that for a first time contract, that language is too ambiguous and will lead to litigation over the job selection process, and the risk of an Arbitrator who may think "qualified" is a very narrow term. Other contracts, they contend, give the Employer more discretion. This includes the Union's comparables.

The Employer submits as well that the Union's proposal for a trial period is another example of the ambiguous language proposed by the Union and destined for litigation. They believe there are contradictory terms, and the fact the Employer must give a written evaluation of the employee 30 days into the trial period might prevent the Employer from returning the employee later for other reasons. Thus, they argue this is another example of AFSCME's attempt to get more in terms of language than any of its comparables -- all of which are in established bargaining relationships.

Another ambiguity is the trial period which subjects the Employer in its review of an employee during a trial period, to ambiguous standards such as on selection, "qualifications" and "satisfactory progress". Moreover, under the Union's proposal, Grant County would have no control over employees who repeatedly post for jobs and then turn them down after 60 days. In this regard, they note that LaCrosse County is allowed a six month trial period and there is no evaluation. In the Lafayette AFSCME 1984-86 contract, AFSCME has agreed to a penalty provision for employees who return to their former job after a promotion. Last, the Unified Board contract contains a provision which gives the Employer the sole option of returning an employee to his former position after 30 days.

In their opinion, the better approach is, at this point in the Parties' bargaining relationship, the County's approach of leaving the contract silent with regard to employees who transfer to a new position.

c. Discussion. Given that a close comparison of the Union's proposal to the comparables shows it is substantially similar to most contracts, the Employer's lack of a posting procedure raises a significant negative preference for its offer.

First, it is irrelevant that the Employer offered a proposal in bargaining. Second, even if the Union is "reaching" beyond the norm -- assuming there is a norm for first time contracts -- the extent to which they are, is less unreasonable than proposing no posting procedure at all.

Next, it must be stated that much of the Employer's concerns about the "major problems" with the Union's proposal are largely a matter of overreacting. There is little danger in requiring that an employee be "qualified" and little danger of the problems they predict. They accuse the Union of not defining "qualified", yet this term is nearly universal in its use, and the Employer fails to offer any guidelines at all. Moreover, it is recognized that in interpreting such clauses, it is the Employer who sets the qualifications based on the objective needs and functions of the position.

The Employer also objects to the selection criteria in Section 9.03. This is not really problematic at all. In fact, on a continuum of clauses which accommodate seniority and qualifications, this is, relatively speaking, an employer biased clause. Obviously, the most restrictive clause is a strict seniority clause granting postings solely on that basis. The next most restrictive clause would be one which said seniority was controlling if fitness and ability were sufficient. At the opposite end of the spectrum would be no clause at all, or one which merely said seniority would be considered. The Union's proposal is a middle of the road clause which favors Management because they still can choose the most qualified, in their judgement, person for the job. The only restriction is that if two or more applicants are "relatively equal", seniority prevails. While this term may seem ambiguous, it has been subject to interpretation many times and it is generally accepted that Management's opinion as to whether someone is not relatively equal will be upheld if it can be demonstrated that the junior employee has appreciable superior performance which can be demonstrated based on the requirements of the job. In addition, the "relatively equal" standard is virtually identical to the large majority of the comparables, contrary to the characterization of these contracts by the Employer.

Last, the concerns expressed by the Employer concerning the trial period in terms of what is satisfactory, and that an employee could repeatedly post for jobs are not particularly bothersome. As far as repeatedly bidding for jobs, there simply are not many postings in a unit this small. In terms of satisfactory progress, the Employer has some discretion to determine what is satisfactory and what is not.

12. Layoff and Recall

a. The Union. The Union proposes the following language:

"10.01 The bargaining unit shall be divided into three groups for purposes of layoff and recall:

A) Social Workers;
B) Nurses;
C) Attorneys.

"10.02 The Employer shall have the right to reduce the number of jobs in any classifications. Employees whose jobs have been eliminated shall have the right to bump any junior employee in an equal or lower classification within their group as defined in Section 10.01, provided they are qualified to perform the junior employee's job. Such junior employees who have lost their positions as a result of a bump shall have the right to exercise their seniority in the same manner as if their job had been eliminated. Employees who have lost their position as a result of a bump or a reduction in the number of positions shall have the option to accept the layoff and may decline to exercise their bumping rights, if any. Laid off employees shall have recall rights as provided in Section 10.03 below.

"10.03 Recall Rights: In recalling, the employee(s) with the greatest seniority shall be recalled first, provided they are qualified to perform the available work. Notice of recall shall be sent by the Employer to the laid off employee's last known address, certified mail, return receipt, and the laid off employee shall be required to respond affirmatively within two (2) weeks (14 days) from the first attempted delivery date of the recall notice. A laid off employee shall have recall rights for a period of twelve (12) months from the date of the most recent layoff. Recall shall be limited to within the groups described in Section 10.01."

The Union believes their proposal follows generally accepted procedures. Both offers segregate the occupational groups for layoff and recall purposes. One difference is that the County departs from current policy and creates a separate classification for Home Health Nurses. The Union also believes that their approach is more workable since it gives the County flexibility to specifically locate the area where they must reduce the work force, and the person whose position is eliminated is given the right to exercise their seniority by bumping within their group (as defined in Section 10.01) to an equal or lower classification, provided they can do the job.

The Union believes there are several problems with the Employer's offer. First, the Employer's offer fails to define classifications. For example, whether all Social Workers as a group, or Social Worker I, II or III, is not addressed. Also, they contend that the County's proposal is not really a seniority based layoff scheme at all. In this regard, they note that under the County's proposal, seniority will be followed unless, "in the discretion of the Employer, an employee or employees has a level or variety of skills or performance which the Employer wishes to retain." It is their position that this effectively eliminates seniority as the principle criteria, especially when under their limitations on the Arbitrator's scope of review the Union could never prevail.

The Union objects as well to the County's proposal to not only prorate seniority for part-time employees, but limit them from bumping a full-time employee, even if the full-time employee is senior to them. The last argument offered by the Union relates to reductions in hours. To them it appears that they can cut hours without regard to seniority; they can also cut hours under the guise of preventing a layoff. This, they opine, is unacceptable.

b. The Employer. The Employer's proposal for layoff language is intertwined with their seniority clause (Article VII). The portions relating to layoff/recall are as follows:

"7.03 Layoff will be by seniority within classification, provided that if, in the discretion of the employer, an employee or employees has a level or variety of skills or performance which the Employer wishes to retain, seniority may be deviated from in order to retain such employees, and provided employees may not bump to a higher paying job within a classification. Such Employer exercise of discretion shall be subject to review by arbitration, and the Arbitrator may reverse the Employer's decision if the Arbitrator finds that there is no evidence that the retained employee has a level or variety of skills or performance which the Employer could reasonably have wished to retain in preference to the laid off employee. Recall shall be by seniority within classification, provided the employee is qualified to perform the available work, at the time of recall, and provided employees need not be recalled to a higher paying job.

"7.05 Regular part-time employees shall attain seniority at the rate of one (1) month for each 173 hours worked. If only full-time work is available, as the result of a layoff, regular part-time employees do not have the right to obtain or the duty to accept full-time work, but may be laid off before less senior full-time employees. Part-time Home Health nurses are a separate classification, for layoff purposes.

"7.06 An employee retains the above recall rights after layoff for a period equal to the employee's accumulated seniority, or one year, whichever is less.

"7.07 Employees must accept any recall, within ten (10) days of the date a recall notice is mailed to the employee's home address shown on the Employer's records, or the employee is terminated.

"7.08 Unit employees who take supervisory jobs with the Employer may be returned to the unit, in the Employer's discretion, with unit seniority frozen during time as a supervisor.

"7.09 The Employer may reduce hours, instead of laying off employees, or in combination with layoffs. Full-time employees whose hours are reduced are full-time employees for the purpose of seniority rights."

The County first notes that in addition to layoff classifications for Social Workers, Assistant District Attorneys, Public Health Nurses, Home Health Nurses who work over half-time, they would set up a classification for Home Health Nurses who work less than half-time. The purpose of placing less than half-time Home Health Nurses in a separate classification for layoff purposes only is to allow the County to carry out the promise it made to these employees when they were hired. That is, these people were specifically hired to work the limited hours that are available to part-time Home Health Nurses. It is a position which meets the needs, and fits the schedules of the present employees.

With respect to their proposal regarding reduced hours, they are making clear their right to reduce hours as opposed to leaving it ambiguous, as the Union has. Regarding their Section 7.08, they note that supervisors are people too, with valuable skills. They should not be discouraged from taking promotions.

Regarding the portions of the proposals relating directly to layoffs, they offer the following. They believe their proposal accomplishes the two things a layoff proposal should accomplish, to wit: (1) it should give the senior people in the unit some job security; and (2) it should protect an employer who must layoff from having to run its operation with people who are not qualified, or do not have the level of skills to allow the employer to operate at an optimum level.

They suggest this is similar to the layoff provisions in the Sheriff's Department contract. In addition, based on their analysis of the comparables, their proposal achieves the same purpose as similar proposals in other contracts. In this regard, they argue a requirement that employees be "qualified" for the job they bump to, as in the Union's offer, is not enough, and they note as well that only the Richland contract and the Green County offers contain only that undefined term.

c. Discussion. First of all, the Employer's proposal, insofar as 7.06, 7.07 and 7.08 are concerned, is limited in its impact relative to the operation of a layoff clause. In addition, there is no strong preference for either offer with respect to the rights of part-time employees. Thus, attention will focus on the operation of seniority.

The Arbitrator agrees with the Employer that it is not unreasonable to expect that in special situations an employee, for special reasons, should be exempted from the strict observation of seniority rules. However, the Employer's language goes way beyond this, while the Union's language still allows enough latitude -- in that it requires an employee to be "qualified before bumping ..." for the Employer to make a case for retaining an employee with special skills. The Employer's language is so broad that it goes beyond that which is usually observed in a contract. For instance, the Sheriff's Department contract allows an exemption when a person has a "special skill which in the reasonable judgement of the County or the Sheriff's Department should be retained." Other contracts also speak of special skills. However, the County's proposal speaks not only of special skills but of a level of performance which, if they wished to retain, they could. This goes one step further and not only allows an exemption based on necessary skills, but allows an exemption based on a much more subjective matter of performance. Moreover, the other clauses which provide for exemptions imply that an exemption applies when reasonably necessary, not merely desirable. In addition, it is believed their proposal makes such decisions much less reviewable than they are under other contracts.

In short, while an employer's exemption from seniority in layoffs is not unusual, the Employer's methodology to achieve this is not only unorthodox but goes far beyond any reasonable balance between seniority and Management rights. Their proposal basically guts seniority. A more balanced result is more likely under the Union's offer because there is no severe limitation on an Arbitrator's review, and because the Employer could reasonably argue that a special skill is legitimately related to the requirement of a job. Therefore, with respect to layoffs, the Union's offer is more reasonable.

13. Definition of Work Day/Work Week

a. The Union. With regard to the workweek and workday of the employees, the Union offers the following:

> "11.01 Work Day. The normal work day shall consist of eight (8) consecutive hours, excluding a one-half (1/2) hour lunch period, between the hours of 8:00 a.m. and 4:30 p.m.
>
> "11.02 Work Week. The normal work week shall consist of forty (40) hours, Monday through Friday.
>
> "11.12 This article shall not be construed to prevent the Employer from assigning hours in addition to the normal work day and work week."

In support of their offer, the Union first draws attention to the fact that the County makes no proposal, and that their proposal seeks to continue the status quo within this unit and the County in general. Next, they believe there is wide support for their offer in comparables. Additionally, they believe there is more reason to include a proposal since, under the County's offer which is silent, they could schedule workers on alternating shifts, days, weekends, etc.

b. The Employer. The Employer makes no proposal on hours of work. They have not because the nature of the work, in their opinion, requires that they have flexibility. For instance, Nurses hours are based on patient needs and Social Workers sometimes must meet with families in the evenings or when the need arises.

The Union's proposal takes away their authority and is too restrictive to allow them to meet the needs of the public. Moreover, they do not believe the Union's own comparables support their proposal, since the language in other contracts is less restrictive.

c. Discussion. There is no doubt occasions when the professional in the unit may be required, by the nature of their work, to perform duties outside the hours which would be established under the Union's offer. To that end, several of the comparables, while establishing normal and regular hours, provide for exceptions in certain cases. Thus, it is not unreasonable for the Employer to desire some flexibility in this area. However, the Employer goes too far in not making any proposal. They seek to strike no balance at all between the employee's need for regularity in hours and the Employer's need for flexibility. The Union's offer is more typical of the comparables since all set forth the normal workweek and workday. Moreover, although the Union's proposal does not provide for exceptions, it is implied that exceptions may be made by mutual agreement. It is noted that this is all that is provided for in some of the comparables.

14. Breaks

a. The Union. The Union proposes the following:

> "11.03 Breaks. Employees shall be entitled to thirty minutes of paid rest time during each work day (15 minutes per four (4) hour work period), which shall normally be used in fifteen minute increments unless otherwise arranged with an employee's supervisor."

The Union submits that their offer is consistent with the current procedures while the County's offer is not. Obviously, Management has the ability to control breaks, but the County creates burdensome and ambiguous conditions. Furthermore, their offer may be unworkable for the Attorneys who currently combine both breaks with lunch to accommodate the court schedule.

b. The Employer. The Employer proposes the following:

> "8.02 Employee receive paid breaks of 15 minutes per four hour work period, with specific time and place assignable by the supervisor, when work load permits. No carryover of breaks."

The Employer offers no specific argument on the issue of breaks.

c. Discussion. There is no disagreement over the fact that employee's should have breaks. Nor, is there disagreement over the amount of time. The major difference is that under the Employer's offer, an employee is not guaranteed a break and will only receive one when the work load permits. While there may be a need to be flexible in breaks, such a broad and ambiguous exception is unwarranted. Nor, is it necessarily warranted that the supervisor be able to designate the specific place for the break.

15. Flexible Schedules, Job Sharing

a. The Union. The Union proposes the following:

> "11.04 Flexible Schedule. A work schedule other than that set forth in Section 11.01 above may be arranged, subject to approval by the supervisor.

"11.05 Job Sharing. Job sharing arrangements may be arranged with the approval of the Employer."

The Union suggests its proposal is current practice.

b. The Employer. The Employer does not have a proposal on these items. They point out that there is no job sharing in the County presently, and that none of the contracts introduced by the Union contain any type of job sharing provisions.

c. Discussion. Since under the proposals by the Union a flexible schedule or job share is subject to mutual agreement, there is nothing at issue in terms of impact.

16. Overtime

a. The Union. The Union proposes the following in terms of overtime:

"11.06 Overtime. Employees shall be compensated by compensatory time off for all time assigned and worked in excess of eight (8) hours per day or forty (40) hours per week. Said compensation shall be at the rate of one hour compensatory time off for each hour worked.

"11.11 Time Paid. All paid time shall be considered time worked for the purpose of computing overtime."

b. The Employer. The Employer proposes the following:

"8.01 Employees assigned to work more than eight (8) hours in a day or forty (40) hours in a week are eligible for compensatory time, hour for hour. "Assigned" includes time required by courts before which assistant district attorneys appear, or before which Social Workers appear as witnesses."

c. Discussion. The offers are virtually identical.

17. Call Outs

a. The Union. The Union proposes the following:

"11.07 Call-out. An employee called out to work at a time other than his/her regular schedule of hours, except where such hours are consecutively prior to or subsequent to the employee's regular schedule of hours, shall receive a minimum of two (2) hours compensation pursuant to the terms of this agreement."

They believe their proposal to be more reasonable because an employee will receive a minimal amount for the disruption and inconvenience of being called out, and under the Employer's offer an employee who could be called out in some circumstances, would not be paid less than 1/2 hour.

b. The Employer. The Employer proposes the following:

"8.03 An employee called out to work at a time other than his or her regular schedule of hours shall receive straight time compensatory time, if time spent exceeds one-half (1/2) hour."

The Employer contends that the Employer's proposal embodies the current practice in Grant County as neither Nurses nor Social Workers are compensated for call outs of less than one-half hour. In addition, they note that four of the counties cited by the Union as comparables do not provide for a minimum of two hours of call outs. For instance, the LaCrosse County

contract provides for hour for hour compensation provided the time spent is more that 15 minutes, and Crawford County contract provides for hour for hour comp time. Last, they believe this provision provides a windfall for Nurses since they are often called out.

c. Discussion. The Employer's argument concerning the present practice, for example, that no one is compensated for call outs of less than one-half hour, is somewhat misleading since the direct and cross-examination of the Union's witnesses shows that employees are not generally called out for less than one-half hour. Thus, in this respect, little weight can be given to practice. However, the practice is worthy of consideration on the basis that there is no minimum pay. Moreover, the comparables tend to support the Employer on the idea of actual time, since a two hour minimum is not necessarily the norm. There is also one comparable which supports the Employer's less-than-one-half-hour provision. LaCrosse County pays for call outs over 15 minutes.

The offers are close. The main objection to the Employer's offer is the less-than-one-half-hour provision. However, since even by the testimony of Union witnesses, this is a rare occasion its practical impact is limited. Thus, the Employer's offer is marginally preferred on this issue.

18. Beeper Duty Pay

a. The Union. The Union proposes the following:

> "11.08 On Call Beeper Duties. Employees assigned to on call beeper duties shall receive $130 per week in addition to their regular pay and shall be entitled to compensation pursuant to Section 11.06 for associated call-outs. Section 11.07 shall not be applicable for associated call-outs. Additionally, full-time employees assigned such duties on a holiday shall earn eight (8) hours of compensatory time; part-time employees earn compensatory time on a pro-rated basis according to the percentage of full-time they regularly work."

The Union believes that the proposals are similar relating to this issue. Both, in essence, maintain the current procedures. The only difference appears to be the treatment of part-time employees assigned "beeper" duty on holidays. The Union proposes to maintain the status quo. The County's proposal is silent. Thus, they question whether the County intends to continue the practices.

b. The Employer. The Employer proposes the following:

> "8.04 Employees assigned to on call beeper duties shall receive $130 per week in addition to their regular pay and shall be entitled to compensatory time pursuant to section 8.03 for call-outs. Additionally, full-time employees assigned such duties on a holiday shall receive a different day off for the holiday."

The Employer states that there is no "take away" in the County's beeper pay proposal with respect to part-time employees.

c. Discussion. There are no material differences in the proposals on beeper duty pay.

19. Pay for Telephone Calls

a. The Union. The Union proposes the following:

"11.09 Telephone Calls. Telephone calls engaged in by employees outside their working hours shall be considered time worked and shall be compensated by compensatory time off as currently practiced."

In support of their proposal, the Union asserts that the employees currently receive compensatory time when they engage in certain after hours telephone calls. The Union proposes to continue this practice. The County does not propose to continue the current practice. Thus, they suggest it is possible that this could be a take away.

b. The Employer. The Employer proposes the following:

"8.06 Telephone calls are considered as work time, in the discretion of the supervisor."

The Employer offers no particular argument on this proposal.

c. Discussion. Both proposals have elements of unreasonableness. Under the Union's offer, even the shortest of phone calls could be subject to comp time. On the other hand, under the Employer's offer the only time an employee would get comp time is at the supervisor's discretion. Indeed, there should be some balance between compensating an employee for telephone time and protecting the Employer from the administrative burden of compensating for calls which are purely de minimus. The Union's offer strikes moderately more balance since the de minimus doctrine could be applied in grievance arbitration if the employee was making unreasonable claims. However, under the Employer's language, there is less opportunity for abuses to be corrected since wide latitude is granted under discretionary standards and such decisions would be difficult to disturb.

20. Use of Compensatory Time

a. The Union. The Union proposes the following:

"11.10 Use of Compensatory Time. Compensatory time may be taken at the employee's discretion, subject to approval by the supervisor."

The Union contends that their proposal will continue current procedures, whereas the County contends that they now will be able to assign when comp time is taken. In this regard, the Union states that their offer does not mean that the County cannot establish reasonable rules relating to comp time utilization and notes the County retains ultimate control over such time as the Union's proposal makes usage subject to County approval.

b. The Employer. The Employer proposes the following:

"8.07 Specific times for taking compensatory time may be assigned by the supervisor."

The County notes that the Union's offer is silent on whether a supervisor can assign comp time. This ambiguity should be avoided in their opinion. In addition, they note that none of the eight comparables proposed by the Union, which currently have a contract, have the provision proposed by the Union here.

c. Discussion. The Employer's offer is preferred here since the Union's language constitutes an indirect restraint on the Employer's right to schedule work, in spite of the Union's statement that it is not. The fact is that under the Union's language, comp time is at the employee's discretion. Thus, the Employer could be limited in scheduling.

21. Vacations

a. The Union. The Union proposes the following:

"12.01 Vacation. Each regular full-time employee and regular part-time employee shall accrue paid vacation as follows:

"A) Employees shall earn vacation time in the current year for the use in the following year, based on his/her anniversary date of employment. (Employees who currently receive vacation on a calendar year basis shall be grandfathered.)

"B) For each regular 80 hours paid, vacation is earned as follows:

Year 0 to 5 earns 3.076 hours vacation;
Year 5 to 8 earns 3.538 hours vacation;
Year 8 to 10 earns 4.000 hours vacation;
Year 10 to 15 earns 4.615 hours vacation;
Year 15 to 20 earns 5.230 hours vacation;
Year 20 and beyond earns 6.150 hours vacation.

"12.02 Accrual. Vacation time must be taken in the anniversary year following that in which it was earned, except in an emergency where it is mutually agreed by the Employer and employee that special circumstances warrant an exception.

"12.03 Holidays during Vacation. Holidays falling in a vacation period will not be considered as counting against vacation time.

"12.04 Scheduling. Specific vacation periods shall be requested by an employee and approved by his/her immediate supervisor. However, said approval shall not be unreasonably withheld. Any one vacation period may not exceed the annual earned vacation time.

"12.05 Termination. In case of termination, retirement or death of an employee, the employee or the employee's estate or designated beneficiary shall receive pay for all vacation time accrued and all vacation earned in the current year."

The Union again asserts that their proposal is consistent with present practice and that the County proposes a take away in terms of what time is considered for eligibility purposes. For instance, under the County's proposal, paid time for holidays, discretionary days, bereavement leave and military leave are not counted for the purpose of earning vacation. This is contrary to present practice and represents a substantial reduction in the current vacation benefit. They do note that the Parties agree on the vacation eligibility, amounts and levels.

They also note that there are differences in the scheduling procedures. They believe their offer is more reasonable since the Union proposes to continue the current scheduling procedures and the County's proposal is vague, and potentially a dramatic change from current standards and could mean that the County can unilaterally schedule vacation periods without the employee's consent. They also note differences in the event of termination.

b. The Employer. The Employer proposes the following:

"9.01 Each full-time and regular part-time employee shall accrue paid vacation as follows:

"a. Employees shall earn vacation time in the current year for the use in the following year, based upon anniversary date of employment.

"b. For each regular 80 hours worked, vacation is earned as follows:

Year 0 to 5 earns 3.076 hours vacation;
Year 5 to 8 earns 3.538 hours vacation;
Year 8 to 10 earns 4.000 hours vacation;
Year 10 to 15 earns 4.615 hours vacation;
Year 15 to 20 earns 5.230 hours vacation;
Year 20 and beyond earns 6.150 hours vacation.

"2. No vacation may be taken until the employee has completed one year of employment.

"3. Holidays falling in a vacation period will not be considered as counting against vacation time.

"4. Vacation will be scheduled by the employer.

"5. Each employee shall be required to take during a succeeding year, the vacation earned in a previous year. For this purpose, a year shall be defined as a year from the anniversary day of original employment.

"6. Any one vacation period may not exceed the annual earned vacation time.

"7. An employee may not receive both vacation and regular pay for the same period of time.

"8. Employees shall earn vacation leave while on paid vacation, paid sick leave, paid funeral leave, and jury leave paid by the County under this contract.

"9. In case of termination, retirement or death of an employee, the employee or the employee's estate or designated beneficiary shall receive pay for all vacation time accrued and all vacation earned in the current year."

With respect to the fact that under their proposal, holidays, discretionary pay and military leave are exempted from counting towards vacation credit, they contend that this was an unintentional omission. Thus, there is no difference in this regard.

One point of contention is the scheduling of vacations. Under the Union's language, the employee's vacation request is subject to approval which cannot be unreasonably withheld. The Employer denies that this is current practice. They also suggest it is too ambiguous and that it is too much for a first time contract.

c. Discussion. The County claims that there was a mere omission of holidays, discretionary days and military leave in their Section 9. Assuming this correction is binding, the substantive differences relate to scheduling. There is simply nothing unreasonable about the Union's proposal to schedule vacation by having requests subject to supervisory approval. It is reasonable as well to put a limit on the discretion of the supervisor to disapprove of vacation time. Moreover, there

is nothing fatally ambiguous about the standard utilized. It is quite common to schedule vacations in this cooperative way, as opposed to having the employer control the process completely.

22. Sick Leave

a. The Union. The Union proposes the following:

"13.01 Intent. Sick leave is intended to protect the employee from financial hardship due to illness or injury. There is no limit set for a maximum number of sick leave days one may accumulate. Sick leave may also be used for illness or injury of the employee's spouse or child.

"13.02 Accrual.

"A) Sick leave shall accrue at the rate of one (1) day per month for full-time employees.

"B) Regular part-time shall accrue sick leave at a rate proportionate to the percent of full-time worked; for example, half-time status would accrue one-half (1/2) day monthly.

"13.03 Pay Back.

"A) Employees will be paid for all scheduled days off for illness or injury provided they have successfully completed their initial probationary period, but not to exceed the amount accrued. When and if an employee maintains at least 24 days for a 12 month period, beginning January 1, the employee at the end of the 12 month period may be paid for half of the sick leave not used but accrued during that 12 month period. The maximum number of days paid at the end of a 12 month period will not exceed six (6) days. The remaining days shall be retained in the employee's sick leave account.

"B) One-half (1/2) of the accumulated sick leave shall be paid to the employee upon retirement at age 62 or older.

"13.04 Sick leave is accrued but may not be used during the initial probationary period except if the employee passes said probation, it shall then be applied retroactively.

"13.05 Holidays. Holidays falling in paid sick leave period will not be considered as counting against sick leave time.

"13.06 Sick Leave Excuse. Any person who is sick for three (3) consecutive working days may be asked to provide a doctor's excuse."

The Union describes the County's proposal as a "takeaway" in two major areas. The first is that they propose a cap of 120 days, whereas the current policy is unlimited accrual. The second is that under Section 4, the County can require payback. The Union maintains that this too is a significant departure from the current practice, since payback is currently only an employee option. In their opinion, this is neither fair nor reasonable. Last, they note the difference in sick leave verification. The Employer's proposal makes a doctor's excuse mandatory after five days, whereas the Union's offer also would still permit the reasonable investigation of sick leave abuse.

Also, the Union's proposal on medical certification is identical to that contained in the Sheriff's Department contract, and the Sheriff's Department contract also does not contain a cap on sick leave accumulation.

b. The Employer. The Employer proposes the following:

Article X

"1. Sick leave may only be used for illness or injury to the employee, or the employee's child or spouse.

"2. Sick leave shall accrue at the rate of one (1) day per month for full-time employees and may accumulate to 120 days.

"3. The department head may require a medical report for absences of sick leave at his or her discretion where there is a basis for suspicion of abuse, however, a medical report is required for absences in excess of five (5) consecutive working days.

"4. Employees will be paid for all scheduled days off for illness or injury provided they have successfully completed their initial probationary period but not to exceed the amount accrued. When and if an employee maintains at least 24 days for a 12 month period, beginning January 1, the employee at the end of the 12 month period may (the County and the employee may require such payment) be paid for half of the sick leave not used but accrued during that 12 month period. The maximum number of days paid at the end of a 12 month period will not exceed six (6) days. The remaining days continue to be accrued.

"5. One-half (1/2) of the accumulated sick leave shall be paid to the employee at age 62 or older, if the employee in fact retires and begins to collect Social Security.

"6. Employees shall earn sick leave while on paid vacation, paid sick leave, paid funeral leave, paid holidays, paid military leave, paid discretionary days, and jury leave paid by the County under this contract.

"7. Holidays falling in paid sick leave period will not be considered as counting against sick leave time."

The County believes the Union's proposal is an example of them trying to get the best of both worlds by picking and choosing from present policy/internals or the externals comparables, whichever is more favorable. For instance, present policy and the Sheriff's contract have no cap on sick leave, while the County asserts that all the Union's comparables have a cap, and only one of those has a cap which is greater than

The other issue relates to medical excuses. This is from present policy and its purpose is to prevent abuse of sick leave. They also believe other contracts contain similar control measures, while without any language in the Union's sick leave proposal which would allow the County to prevent sick leave abuse, the County is unable to control this problem under the Union's offer.

c. Discussion. The major difference here relates to accumulation. Under the Union's offer, there is no cap, whereas the Employer proposes a 120 day cap. Under both offers, one-half of the accumulated leave is paid back at retirement. The other difference relates to the Employer's proposal that they, as well as the employee, can make an interim payback under certain conditions.

With respect to the cap, the comparables clearly support the Employer. It is rare to find both unlimited accumulation and a payback system. The Union's proposal for both is excessive and unsupported.

The fact that under the Employer's offer they can invoke the interim payback is not particularly unreasonable. Nor, is their proposal to require a doctor's excuse after five days unreasonable, since they could do so in any event.

23. Holidays

a. The Union. The Union proposes the following:

"14.01 Holidays. All employees shall be entitled to the following holidays with pay: New Year's Day, Good Friday afternoon, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day preceding Christmas Day and Christmas Day. September primary election and November general election days shall be holidays when such elections are held.

"14.02 Part-time Employees. Regular part-time employees are eligible for holiday pay on a pro-rated basis according to the percentage of full-time they regularly work.

"14.03 Holidays Falling During Vacation or Sick Leave. If any of the above-listed holidays falls during time taken as paid vacation or paid sick leave, such holiday shall not be charged against accumulated vacation or sick leave.

"14.04 Holidays Falling on Weekends. Should any of the above-listed holidays fall on a Saturday, the previous Friday shall be observed as the holiday; and should any holiday fall on a Sunday, the following Monday shall be observed as the holiday. When Christmas Day falls on a Saturday, the preceding Thursday shall be observed as the Christmas Eve holiday. When Christmas Day falls on a Sunday or Monday, the preceding Friday shall be observed as the Christmas Eve holiday.

"14.05 Requirements. Employees must work their scheduled work day before and after the holiday, or the day scheduled as the holiday, unless on an authorized paid leave, to receive holiday pay."

The Union states that their holiday proposal is adopted from current policy. For instance, the Union proposes how holidays falling on weekends will be observed. However, the County's offer is silent.

Also, the Union proposes a holiday eligibility requirement that is consistent with the current practice. For example, the Union's proposal is that an employee will be required to work their scheduled day preceding and following same. This would cover part-time employees. The County's offer simply states that they have to work the day before. They also note that the County would deny holiday pay to employees who may be serving on jury duty or on a bereavement leave. They suggest this to be unfair and unreasonable. Thus, the Union maintains that their approach is consistent with the comparables. In fact, some of the comparable units do not impose any eligibility requirement.

b. The Employer. The Employer proposes the following:

Article XVI

"14.01 New Year's Day, Good Friday afternoon, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day preceding Christmas day, and Christmas Day are paid holidays for working employees. September primary election and November general election days are holidays, when such elections are held.

"14.02 Employees must work the day before and the day after the holiday, or the day scheduled as the holiday, to receive holiday pay, unless on a previously approved vacation or previously approved paid sick leave."

The County's proposes that employees must work the day before and the day after the holiday, or the day scheduled as the holiday, to receive holiday pay, unless on a previously approved vacation or previously approved paid sick leave. This is to prevent employees from extending their holiday by abusing sick leave. The Union's proposal does not accomplish this purpose. Its exception "unless on an authorized paid leave", leaves unresolved the scenario of an employee who calls in sick on the morning of the day before the holiday. There is no restriction in the Union's offer which would allow the Employer to deny sick leave to that employee. Thus, that leave would be "authorized". The Employer would have no ground for denying holiday pay. Moreover, the County submits that there is no danger that the County's language could be interpreted to prevent an employee, who is not scheduled to work on the day before or after the holiday, such as part-time employees, from receiving holiday pay since that interpretation is contrary to Article 18 of the County's offer, which provides that part-time employees shall receive holiday pay on a prorated basis.

In addition, they assert that AFSCME has agreed to language in both the LaCrosse and Vernon County contracts which accomplish the same objective as that sought by Grant County. Both contracts contain a provision which requires the employee to work before and after the holiday unless excused by illness, paid vacation, death in the immediate family, or other approved paid absences and in order to close the loophole of "approved sick leave" the parties have inserted this sentence, "The County may require proof of illness."

The remaining issue relates to holidays falling on weekends. They assert that it is not current practice, as the Union claims. Currently, under Grant County's personnel system policies, holidays falling on weekends are normally observed on either the preceding Friday or following Monday. However, as stated in the policies, the County Board chairperson has the authority to vary that procedure. Thus, under the Union's proposal the County would be forced to give up this discretion with regard to one group of its employees.

c. Discussion. The main difference here relates to eligibility in terms of having to work the day before a holiday or merely having to receive pay pursuant to authorized leave.

On this score, the comparables firmly support the Union's proposal.

24. Discretionary Days

a. The Union. The Union proposes the following:

"15.01 Policy. All regular full-time employees shall be entitled to two (2) discretionary days with pay each calendar year. Regular part-time employees working at least half-time shall be entitled to one (1) discretionary day with pay each calendar year.

"15.02 Use. Discretionary days may not accumulate year to year. Employees shall notify their supervisor of their intent to use such time, subject to their supervisor's approval.

"15.03 Discretionary days accrue from January 1 to January 1. Employees hired prior to June 30 are allowed two (2) days or, if at least half-time, one (1) day. Employees hired after June 30 receive one (1) day if they are full-time and no days if they are at least half-time, but not full-time.

"15.04 Time Off Without Pay. A request for a day off without pay may be submitted to the appropriate supervisor. The Employer may approve if the efficiency of the unit will not be substantially impaired, the employee's work is up-to-date and clients/services will not be adversely affected. A request for more than five (5) consecutive workdays requires the approval of the department head as well as the supervisor."

In support of their proposal, the Union again claims that their offer is consistent with current practice. The County instead requires one day advance notice. This would prevent employees, as they are currently doing, from maintaining pay when they cannot come to work due to inclement weather or due to other emergencies. The Union also submits this does not harm the Employer.

b. The Employer. The Employer proposes the following:

Article XVII

"1. All staff working full-time receive two (2) discretionary days. Staff who are regularly scheduled to work half-time or more, but less than full-time receive one (1) discretionary day. Employees who work less than half-time are not entitled to any discretionary days.

"2. Staff must have approval of their supervisor at least one day in advance to use discretionary time. Unused discretionary days cannot be carried into the following year and cannot be taken in conjunction with vacation.

"3. Discretionary days accrue from January 1 to January 1. Staff hired prior to June 30 are allowed two (2) days or if at least half-time one (1) day. Staff hired after June 30 receive one (1) day if they are full-time and no days if they are at least half-time, but not full time.

"No reason need be given for taking of a discretionary day, except that the employer must be told that it is to be considered as such, otherwise the employee will not receive pay."

The Employer states that presently an employee must have approval in advance, and their proposal is designed to state the minimum amount of pre-approval. This is supported by the Unified Board contract and the two Union comparables which grant discretionary days.

The other difference is whether discretionary days can be taken in conjunction with vacations. This is current policy, and to allow them to be taken with vacation would be contrary to the purpose of discretionary days. They submit that discretionary days are not vacation days, but that the purpose of a discretionary day is to allow employees to conduct personal business which they cannot accomplish while they are working. In this regard, they note the contract covering the Unified Board of Grant and Iowa Counties prohibits the use of discretionary days in conjunction with vacation.

c. Discussion. The comparables support the Employer here on the issue of prior approval. In addition, there is nothing unreasonable about not allowing such days to become extra vacation days. They are clearly intended for other purposes.

25. Bereavement

a. The Union. The Union proposes the following:

Article 16

"16.01 Leave Defined. Each employee shall be entitled to three (3) days of paid bereavement leave for the death of a spouse, child, parent, brother or sister. A one (1) day leave shall be granted for the death of an in-law, grandparent, grandchild, nieces or nephews.

"16.02 Additional Time. An employee may use earned sick leave days, earned vacation days, discretionary days or compensatory time for up to two (2) weeks during the period of grief, subject to approval by the supervisor."

The Union notes that the main difference here is that under the Employer's offer, time off is granted to attend the funeral only. They suggest that the impact of this can mean that an employee who loses a spouse or child may be only granted several hours off, and only on the day of the funeral. This is unreasonable in their view.

b. The Employer. The Employer proposes the following:

The Employer notes that the Grant County Sheriff's Department contract contains a funeral leave provision which is identical to the provision proposed by Grant County in the Professional Unit, and the Unified Board contract provides for "up to three (3) calendar days" to attend the funeral of immediate family, and leave on the day of the funeral to attend the funeral of an in-law, grandparent or grandchild. Moreover, such a limitation is not meant to be harsh since, if the purpose of bereavement leave is to allow grief, three days is not much more than one. Instead, they see the purpose of bereavement leave as to allow the employee to make arrangements for, and attend the funeral of, a relative without the additional hardship of loss of pay for the time necessary to make the arrangements and attend the funeral. Bereavement leave is not an attempt to ease the grief of the employee. They contend that this view is supported by the Union's own comparables, specifically LaCrosse County, Vernon County, Richland County, Lafayette and Green County.

c. Discussion. The difference here is slight. However, the Employer's offer has more support in the comparables.

26. Military Leave

a. The Union. The Union proposes the following:

Article 17 - Military Leave

"17.01 All regular employees shall be allowed to take time off from work to fulfill active duty military requirements annually if such orders are given by the military unit. The employee shall be given the choice of accepting either the regular salary paid by the County or the military duty pay, whichever is to the employee's advantage. If the option is to accept the County's pay, then the military pay shall be refunded to the County. If the option selected is to accept military pay, then the County's pay shall return to the County."

In support of their proposal, the Union states that they simply intend to retain current practice. On the other hand, the Employer alters this by placing a cap on military leave.

b. The Employer. The Employer proposes the following:

Article XI

"All regular employees shall be allowed to take time off from work to fulfill active duty military requirements annually if such orders are given by the military unit. The employee shall be given the choice of accepting either the regular salary paid by the County or the military duty pay, whichever is to the employees' advantage. If the option is to accept the agency's pay, then

c. Discussion. The only difference here is whether there should be a cap on paid military leave. The comparables firmly support the County. Where a military provision exists, there is also a cap.

27. Jury Duty

a. The Union. The Union proposes the following:

Article 18

"18.01 An employee selected to serve on a trial jury will be excused from employment for the time necessary to fulfill the obligation. The employee shall be given the choice of accepting either his/her regular salary paid by the County or the jury duty pay. If the option is to accept the County's pay, then the jury pay shall be refunded to the County and the employee is to return to work to complete the remainder of the work day. If the option is to keep the jury pay, then the County's pay shall return to the Employer and the employee is not expected to return to complete the work day. With the approval of the supervisor, it is permissible to use discretionary days, vacation days or accumulated compensatory time for jury duty."

b. The Employer: The Employer proposes the following:

Article XII

"An employee selected to serve on a trial jury will be excused from employment for the time necessary to fulfill the obligation. The employee shall be given the choice of accepting either his or her regular salary paid by the agency or the jury duty pay. If the option is to accept the County's pay, then the jury pay shall be refunded to the employing unit and the employee is to return to work to complete the remainder of the work day. If the option is to keep the jury pay, then the agency's pay shall return to the employer and the employee is not expected to return to complete the work day. With the approval of the supervisor it is permissible to use personal days, vacation days or accumulated comp time for jury duty. The maximum pay in any year is 2 weeks' pay and the maximum pay in any life is 8 weeks' pay."

c. Discussion. The difference here is the County's proposal to place an annual cap of two weeks and a lifetime cap of eight weeks on jury duty pay. Where comparable contracts provide jury duty, they do so without a cap. Therefore, the Union's offer is preferred.

28. Leaves of Absence

The Union's proposal for leaves of absence is contained in Article 19; the County's is contained in Article 20. They are identical.

29. Wisconsin Retirement Fund

a. The Union. The Union proposes the following:

"20.01 The County shall participate in the Wisconsin Retirement Fund. The County shall pay on behalf of each eligible employee, all of the employee's required contribution in addition to any contribution required of the County."

The Union notes that while the current County policy is to pay the entire cost of the employee's share, the County proposes to cap that contribution. Thus, the one percent increase in the employees' share in 1986 would not be covered. They also draw attention to the fact that the County has agreed to pay the entire employee contribution for the employees of the Sheriff's Department in 1986.

b. The Employer. The Employer proposes the following:

> "Each employee will come under the Wisconsin Retirement Fund, if they are eligible under the terms of the fund. The County will pay the employee's share up to the statutory percentage in effect January 1, 1984."

The Employer notes that the effect of the Union's language is to provide an automatic increase in the cost to the County in 1986. Without any bargaining over this provision, the Union would receive a built-in increase of the additional one percent of the employees' compensation. This should not be favored. In addition, they note that only two of the Union's comparables support an uncapped contribution.

c. Discussion. While the Sheriff's contract does pay the employee's contribution in effect on January 1, 1986, it does not do so by virtue of uncapped/open-ended contribution language. This favors the County's position. In addition, the external comparables favor the Employer's position. Therefore, the Union's proposal is less reasonable.

30. Insurance

a. The Union. The Union proposes the following:

> "21.01 The County agrees to provide health insurance coverage to all eligible employees covered by this agreement at least equal to the plan in effect on January 1, 1984. The County may change insurance carriers and/or plans if it elects to do so, provided that the coverage and benefits remain the same or are better than the existing coverage and benefits. If the County is contemplating changing carriers and/or plans, it will notify the Union of that fact, provide the Union with a copy of the proposed new plan and will discuss the terms, conditions and coverage of the proposed new plan with the Union prior to any change.
>
> "The County shall pay the full cost of said insurance for the single plan or the following amounts toward the total cost of the family plan:
>
> "A) 55% effective 1/1/84
> "B) 60% effective 7/1/84
> "C) 65% effective 1/1/85
> "D) 70% effective 7/1/85.
>
> "21.02 Effective January 1, 1985, the County shall offer to all eligible employees the option of participating in an HMO as an alternative to the standard insurance plan as cited in Section 21.01. As options, the County shall offer a plan with benefits and coverage equal to or better than the HMO of Wisconsin plan offered to other County employees effective January 1, 1985, and a plan with benefits and coverage equal to or better than the HMO Medical Associates (Dubuque) plan offered to other County employees effective January 1, 1985. Changes in carriers and/or plans shall be made consistent with the requirements set forth in Section 21.01 above. Participation in one of these HMO's shall be made available to

employees as soon as possible as allowed by the carrier. The County shall contribute an amount equal to the County's share towards the standard health insurance plan premium cited in Section 21.01 for either the single or family plans, provided that the County's contribution shall not exceed the applicable HMO premium.

"21.03 The County agrees to provide each eligible employee insurance for life, accidental death and dismemberment and disability at least equal to the plan(s) in effect on January 1, 1984. Changes in carriers and/or plans shall be made consistent with Section 21.01. The County shall pay the full cost of the premiums for said insurance.

"21.04 The County shall continue to pay for the cost of liability insurance for the professional employees in the Nurses Department as currently practiced."

The Union claims that their proposal seeks to modestly improve the present insurance benefit while the County seeks to make an already inadequate plan worse.

Presently, the County contributes the full cost of the premiums for the single plan; currently $67.97. If an employee chooses the family plan -- the County contributes the same $67.97 towards the total premium -- currently $145.13, for a plan from Equitable Insurance. Under the County's proposal, the employees would still be limited to the Equitable plan. This is contrary to the choice the County offers other employees. In 1985, all non-represented employees, as well as represented employees in the Sheriff's Department, were offered the choice of three different insurance plans. The County continued to offer the Equitable, as a standard plan, but also offered a choice of two HMO programs. They note that their proposal offers the employees the same choice and querries why the Employer refused to do the same, since they have offered the same to other employees and since under its offer, there would not be any cost to the County.

Another difference in the offers is the criteria for changing carriers. The Union's offer provides that they may change carriers if the new plan is at least the same, and that they discuss the change with the Union first. They believe this is reasonable since negotiated levels of benefits should not be changed. The Union also questions the County's use of "comparables" suggesting this is too broad. They believe their approach is consistent with all the comparables since all the comparables either allow change only by mutual agreement, or if change can be made, require the new plan to be at least equal; not simply comparable to the former plan.

The remaining insurance issue is the level of contributions. They note with respect to single coverage that the County has traditionally paid 100 percent, but under the County's proposal they call for a cap at the 1985 level of contribution. Thus, if the premium should rise during 1986, but prior to reaching a successor labor agreement, the employees for the first time, will be required to contribute toward the single plan.

With respect to the family level they note that in 1985 the County contribution was $67.97 per month, or only 47 percent of the Equitable family plan. Based on this, they suggest that this is the lowest contribution level in this region, and perhaps the lowest level among County governments in the entire state. As an alternative, the Union proposes to gradually increase the contribution level for a family plan over the course of 1984 and 1985 until it is equal to the next lowest comparable -- Vernon County -- at 70 percent for the standard (Equitable) plan only -- not the other two plans.

They also, based on detailed analysis, argue that the Employer's calculations of the cost impact of the Employer's proposal is incorrect. They contend that the annual impact on the entire bargaining unit is $19.53 per employee and is more than offset by the reduction the Employer enjoyed in the 1985 single premium.

b. The Employer. The Employer proposes the following:

> "The County will make available an employee health insurance plan, life and AD&D plan, and disability plan comparable to that in effect January 1, 1984. The County may select carriers, or self-insure in its discretion. The County will pay up to the amount charged by Equitable during 1985* for its Grant County coverage, per month toward employee coverage. Employees pay for dependent coverage.
>
> "* Higher amounts paid before 1985 are not to be recovered by the County."

The County first notes that Sheriff's Department employees pay for the premium in excess of $85 in 1985, and that the Unified Board has cut its level of family health insurance premium contributions by 38 percent for employees hired after January 1, 1983. Thus, employees hired after that date receive a total of $85 towards either the single or the family insurance premium.

They also explain why they did not propose to offer a choice of plans during the bargaining with this unit. Grant County offered the HMO health insurance option if the Union would agree to maintain the present health insurance premium sharing arrangements. The Union rejected the offer. With respect to premium contributions, they note that in its final offer, the County has offered to pay 100 percent of the premium for the single Equitable Standard Plan, which is the same amount of money the County pays toward the non-represented employee's insurance.

With respect to the Union's proposal they argue they are asking for an increase of $33.62 per employee which is a contribution of 44 percent more than the non-represented employees receive, 29 percent more than what the Sheriff's Department employees receive, and 20 percent more than Unified employees receive. This is too much in their opinion. When it is considered that the Union is asking for $33.62 toward family insurance, a 15.1 percent wage increase, and language on every issue. In contrast, in 1985 when the Sheriff's Department settled for $9.18 more toward family insurance, they also accepted a 3.3 percent increase, which made their increase over 1984 and 1985 -- 7.3 percent, plus no onerous language provisions were forced on the County by the Sheriff's Department employees in that settlement.

On the right to self insure, they direct attention to the fact that the Union's final offer is silent as to the County's right to self insure, and that two other counties have express language permitting self funding. They argue such a right is an important alternative to keeping health care costs down.

Last, with respect to Nurses liability insurance, they contend that the fact that their offer is silent is not a take-away. This is so since, in any event the County, is liable for the Nurse's actions, and liability insurance thus is for the County's protection -- not for the benefit of the employee.

c. Discussion. First, it should be noted that there is no dispute as it relates to insurance for life, accidental death, dismemberment and disability. Nor, does the Arbitrator believe the difference on Nurses liability insurance significant.

However, there is a major difference with respect to health insurance, and the bulk of the disagreement relates to the premium contribution levels by the Employer.

While the internal comparables tend to support the Employer more than the Union, and while internals deserve significant weight, the proposal of the Employer is simply too far out of step with the external comparables for the internals to control.

The Employer's contribution levels in the external comparables, especially in terms of the family premium -- both in terms of percentage and actual dollars -- is generally so much higher that the County's proposal is wholly unreasonable. For example, as the Union notes, Vernon County has the lowest contribution of the counties in the appropriate comparables group at 70 percent, or $138.82. The highest employer contribution in terms of percent is 100, and the highest in terms of dollars is $240.80. In fact, the average percentage among the Union's comparables for 1985 is slightly over 90 percent, and the average dollar contribution per employer is slightly less than $190. This is a far cry from the 70 percent of the $145 total premium, or $101.59, that the Union is asking the Employer to pay.

31. Training and Development

a. The Union. The Union proposes the following:

> "22.01 If the County continues to provide opportunities for job related training and employee development, reimbursement for expenses related to such activities shall be made consistent with the current practices."

The Union is simply proposing that if the County continues to offer opportunities for job-related training and employee development programs, that it will reimburse employees for the expenses relating to such activity as it does now. The County does not propose to continue its practice and thus, they suggest this is another takeaway.

b. The Employer. The Employer objects to the Union's use of the phrase "current practice". In their opinion, it is ambiguous. Moreover, they suggest that if the County is locked into a "current practice" with regard to training expenses, employees may miss out on training opportunities for which they would have voluntarily picked up part of the expenses.

c. Discussion. This is an issue which does not have any meaningful impact on the offers as a whole.

32. Travel and Expense Allowances; Physical

a. The Union. The Union proposes the following:

> "23.01 Employees who in the course of their duties are authorized to attend conferences, seminars or conduct business for the Employer, shall receive allowances and expenses as provided in this Article, consistent with the current practices. Should the County increase the level of reimbursement, above those established herein, for other County employees, said increase shall also apply to this bargaining unit.
>
> "A) Mileage. Twenty-two cents (0.22$) per mile;
> "B) Meals:
> 1. Supper -- up to $10.00 per receipt;
> 2. Lunch -- up to $4.50 per receipt;
> 3. Breakfast -- up to $3.50 per receipt;
> 4. Banquets -- per receipt.

"Note: Social Workers shall also be reimbursed for the cost of meals taken in Grant County while on County business pursuant to the policy in effect prior to May, 1983.

"C) Reasonable hotel or motel expenses per receipt.
"D) Other employment expenses, related to authorized conferences, seminars and business for the Employer, such as registration or parking fees shall be reimbursed to the employee pursuant to the current practices. Where possible, all such fees shall be paid in advance by the County."

Article 24

"24.01 Physicals. The County shall pay up to $25 toward the cost of physicals required by the County or statute. The examination may be taken at the facility of the employee's choice."

The Union argues that their proposal, in this regard, merely seeks to continue present practice with respect to expenses and physicals. They believe the County's proposal is more limited and could result in unilateral benefit cuts. In fact, one such benefit was changed during the organizing campaign. Prior to May, 1983, Social Workers were reimbursed for meals eaten in Grant County outside of Lancaster during the course of conducting County business.

b. The Employer. The Employer proposes the following:

"Travel, meals, and physical exams, shall be paid as provided by County-wide policy, as it exists as of June 1, 1984, or as it may be changed after June 1, 1984 by County board action, provided such change is county-wide."

Without using these exact words, the County suggests the Union's proposal in general is a one-way street. Their level of expenses can only go down. With respect to mileage, they argue that 0.22$ per mile is excessive and supported by only one comparable.

Regarding meals and the change in the meal policy, the County directs attention to the fact that the WERC found that there was no violation of law when they changed their meal policy. Instead, it was a matter of economics. They also contend that the comparables support their proposal. The Vernon and Sauk County contracts contain no provision for meal reimbursement. The Lafayette and Columbia County contracts, and both of the Green County final offers, provide that employees will only be reimbursed for meals taken outside of the County. The Crawford contract requires that the meals be outside of Prairie du Chien and be work related. The Iowa, LaCrosse, and Richland contracts do not state the meal reimbursement policy for those counties.

c. Discussion. It is the opinion of the Arbitrator that the offers on this subject are in relative equilibrium -- both have equally unreasonable aspects. It is unreasonable to have all the negotiated benefits subject to unilateral decreases. This weighs against the Employer. On the other hand, the Union's proposal for meal reimbursement is not justified in the comparables. Thus, the competing differences on this issue will not have a significant impact on the offers as a whole.

33. Base Wages and Classifications

a. The Union. The Union proposes the following:

"25.01 The classification and compensation schedule shall be made a part of this Agreement and attached hereto as Appendix "A".

"25.02 Reclassifications.

1. An employee classified as a Social Worker I shall be reclassified to a Social Worker II on completion of state requirements unless said requirements are waived, and at least one (1) year's service as a Social Worker I with Grant County.

2. Employees so reclassified and employees who are promoted to a higher classification pursuant to the terms of this Agreement, shall be placed on that step in the wage schedule set forth in Appendix A that results in a pay increase and shall progress through the schedule consistent with the time between the incremental steps.

3. Employees demoted to a lower classification, pursuant to the terms of this agreement shall be placed at the step in the wage schedule set forth in Appendix "A", commensurate with their seniority and shall progress through the schedule consistent with the time between the incremental steps.

4. Employees transferred to another position in the same classification, pursuant to the terms of this Agreement, shall continue to progress through the schedule for their classification."

APPENDIX A

Hourly Rates of Pay Effective January 1, 1984

A.

Position	Start	After 6 Mos.	After 12 Mos.	After 24 Mos.
Social Worker I	5.88	6.17	6.48	6.80
Social Worker II	6.82	7.07	7.32	7.57
Social Worker III	9.18	9.43	9.68	9.93
Social Worker IV	9.18	9.43	9.68	9.93
Asst. Dist. Atty.	7.96	8.21	8.46	8.71
Home Health Nurse	7.31	7.56	7.81	8.06
Public Health Nurse I	7.31	7.56	7.81	8.06
Public Health Nurse II	7.71	7.96	8.21	8.46

"B. Employees shall be placed on the wage schedule in their proper classification, consistent with their length of service and Section 25.02, if applicable, effective January 1, 1984. Employees shall progress through the wage schedule during the term of this Agreement consistent with its provisions. However, employees whose pre-contract wage rate on January 1, 1984, was equal to or greater than the "After 24 Months" step for their classification, as cited in Appendix A, effective January 1, 1984, shall receive a five percent (5%) wage increase effective January 1, 1984, and an additional five percent (5%) increase effective January 1, 1985, unless such an employee was promoted or demoted during 1984/1985, in which case the employee shall then be placed on the wage schedule consistent with the terms of this Agreement effective when the action was taken.

"Steven Obershaw shall be placed at the "After 24 Mos." step for Social Worker II upon his entry into the bargaining unit on or about February 11, 1985."

Hourly Rates of Pay Effective July 1, 1984

A. Position	Start	After 6 Mos.	After 12 Mos.	After 24 Mos.
Social Worker I	6.12	6.42	6.74	7.09
Social Worker II	7.09	7.35	7.61	7.87
Social Worker III	9.18	9.43	9.68	9.93
Social Worker IV	9.18	9.43	9.68	9.93
Asst. Dist. Atty.	8.28	8.54	8.80	9.06
Home Health Nurse	7.31	7.56	7.81	8.06
Public Health Nurse I	7.31	7.56	7.81	8.06
Public Health Nurse II	7.71	7.96	8.21	8.46

Hourly Rates of Pay Effective January 1, 1985

A. Position	Start	After 6 Mos.	After 12 Mos.	After 24 Mos.
Social Worker I	6.30	6.61	6.94	7.30
Social Worker II	7.30	7.57	7.84	8.11
Social Worker III	9.64	9.90	10.16	10.43
Asst. Dist. Atty.	8.53	8.80	9.06	9.33
Home Health Nurse	7.68	7.94	8.20	8.46
Public Health Nurse I	7.68	7.94	8.20	8.46
Public Health Nurse II	8.10	8.36	8.62	8.88

Hourly Rates of Pay Effective July 1, 1985

A. Position	Start	After 6 Mos.	After 12 Mos.	After 24 Mos.
Social Worker I	6.55	6.87	7.22	7.59
Social Worker II	7.59	7.87	8.15	8.43
Social Worker III	9.64	9.90	10.16	10.43
Asst. Dist. Atty.	8.87	9.15	9.42	9.70
Home Health Nurse	7.68	7.94	8.20	8.46
Public Health Nurse I	7.68	7.94	8.20	8.46
Public Health Nurse II	8.10	8.36	8.62	8.88

The Union's arguments on wages and classification is extensive. The first difference which they highlight is that the Employer's wage schedule indicates that the wage rates are "minimum rates of pay". Based on this, the Union suggests that this has the effect of proposing no wage schedule at all since the Employer could continue, as they have been, paying different rates for identical classifications. Thus, there would be no standardization in rates or no rationale and equitable compensation structure. They believe this a serious flaw in the Employer's offer.

With respect to the Union's wage schedule, they believe it brings a workable system to the "chaotic" state of the County's pay policy. For instance, they believe their four step pay plan is more reasonable than the County's two step plan since: (1) it compensates employees for the refinement and knowledge gained through two years of service as a professional employee, and (2) it is much more consistent with other professional employee's pay schedules than the County's offer. In this regard, they note that no comparables pay schedule requires a one year period for the first increase like the County's.

Another difference in offers relates to movement through the schedule. In this respect, the Union's offer establishes a uniform set of rules for movement within the pay schedule. It outlines how placement on the wage schedule will be made in transfers, promotions or demotions and how movement will be achieved between steps, whereas the County's offer, at Appendix A, provides a cryptic reference to such change.

In developing their wage offer the Union indicates it tried to address four problems: (a) lack of a coherent structure; (b) a wage disparity among employees in the same classification; (c) inequitable relationships between classifications; and (d) inequitable relationships between classifications in Grant County compared to other counties. In addition, they had to address a need for "catch-up". The impact of catch-up was phased in as well through split increases, and internal and external equity was accomplished by giving some employees raises at some stages and not others.

With respect to the County's offer, they note that in 1984, the County's offer does not provide a general wage increase, thus, more than half the bargaining unit will suffer from a pay freeze. Some adjustments are proposed to the remaining employees. The approximate cost for the entire year of these adjustments is 2.7 percent. The rates in the Sheriff's Department were increased ranging from 3.6 to 4.8 percent in 1984. Accordingly, they argue that the County is proposing that the employees pay to correct the wage inequities of their co-workers. These are inequities created by the County. In addition, they contend the County's efforts at equity are minimal since instead of ten different Social Worker II rates, their proposal contains seven.

Last, in terms of intra-unit comparisons, they assert there is disparate treatment of Home Health Nurses. Under the County's proposal, the County proposes that those working less than half-time earn more than those working more than half-time or full-time. They suggest this is a rather unusual approach to compensation. The difference is 0.26$ per hour or 3.1 percent higher (1984). On the other hand, the Union has proposed equal pay -- since they are performing equal work. The duties do not differ at all between these two groups. In surveying other counties, it was found that most pay uniform wage rates regardless of the number of hours worked. In the two instances where there is a difference, such casual employees are paid less than employees working more hours.

The Union believes the most significant evidence relates to the relationship between this unit and the comparables. First, they believe these comparisons to be valid since there is specific uniformity among the comparables relating to the job title and work performed -- among Social Workers and Attorneys -- an Assistant District Attorney in Grant County performs the same type of work as an Assistant District Attorney in any of the comparables. As for Nurses, this is more difficult, but nonetheless, they believe they have put forth reliable evidence.

Based on these comparisons, the Union argues the evidence demonstrates that the classifications in this unit rank last or nearly last in compensation. This, in spite of the fact that Grant County ranks high in all the demographic considerations, and that it employs more employees in each of the respective classifications than almost all other comparables. Also, there has been a pattern of wage increases over the last three years, and that no comparable classification faced a freeze in 1984, as proposed by Grant County.

They also make some comparisons for specific classifications. Among Social Worker I's, Grant County's compensation level is the lowest. The Union's offer will narrow the difference by the end of the contract. However, although only La-

Crosse County employs more Social Worker I's than Grant, the 1985 rate will still be last and about one dollar less than the average wage; the County's offer is even lower. The result is similar for Social Worker II. Grant County employs more employees in this classification than any other comparable. It ranks at the bottom when 1983 is viewed. It ranked last in 1983 by the end of the contract term, the ranking remains virtually the same with only Lafayette County paying less. The 1985 County offer is nearly two dollars less than the average wage -- the Union's about one dollar. The County's offer would place Social Worker II's nearly 0.60$ less than Lafayette, with whom in 1983 they were nearly equivalent. Thus, under the County's offer, their position would significantly deteriorate. With respect to Social Worker III's, they note that not many counties employ them. Nonetheless, Grant County has historically been close to the average. The Union would maintain that relationship. The 1985 Union offer of $10.43 is 0.22$ below the average rate of $10.65. The County's offer would cause the Social Worker III classification to be compensated at nearly $1.50 less than the average.

With respect to the Assistant District Attorney, the Union asserts that the current level of compensation for these Attorneys is "absurd." In fact there are no Assistant District Attorney's paid less than those in Grant. Under either offer, they still would be last by far. The $8.74 maximum rate proposed by the County in 1985 is $2.00 less than the average start rate for the comparables. The Union's offer would place this to within a dollar. The County's maximum rate offer is more than $3.50 less than the maximum rate average.

A similar situation, in their opinion, exists with respect to Nurses. While their standing among the comparables was not as disparate as other classifications, their ranking among the comparables is still inferior and improper. Although not ranked last in 1983, the County's offer would place Home Health Nurses squarely in last place in 1985. Under the Union's offer, their ranking would be sixth out of nine comparables. The County's offer is more than a dollar less than the average maximum rate; the Union's offer is somewhat closer. Public Health Nurse II's fare no better under the County's proposal. The 1983 (and current) rate of $8.06 was eighth out of ten counties. By 1985, the County would have that ranking drop to ninth place. The Union's offer on the other hand, retains the eighth place ranking while narrowing the gap between it and seventh ranked Crawford County.

b. The Employer. The Employer proposes the following with respect to wages:

Article XXIV

"The minimum rates of pay by classification shall be as shown in Appendix A."

Appendix A

January 1, 1984

Classifications	Hire	End of Probation
1. Social Workers *		
I	6.63	6.96
II	6.96	7.31
III	8.46	8.89

* Social Workers advance from I to II on completion of state requirements, and at least one year's service with the County. Advancement to III is discretionary with the County.

2.	Asst. District Attorneys	8.06	8.46
3.	Public Health Nurse *		
	I	7.31	7.80
	II	7.68	8.06
4.	Home Health Nurse		
	Over 1/2 time	7.06	7.80
	Less than 1/2 time	7.31	8.06

* Public Health Nurses advance from I to II in the County's discretion.

Persons above scale will be red-circled at their present regular rates.

Persons transferred to a different pay grade receive credit for pay purposes for time spent in former pay grade.

January 1, 1985

Classifications	Hire	End of Probation
1. Social Workers *		
I	6.91	7.24
II	7.24	7.59
III	8.74	9.17
2. Asst. District Attorneys	8.34	8.74
3. Public Health Nurse *		
I	7.58	8.08
II	7.96	8.34
4. Home Health Nurse		
Over 1/2 time	7.34	8.08
Less than 1/2 time	7.59	8.34

* Social Workers advance from I to II on completion of state requirements, and at least one year's service with the County. Advancement to III is discretionary with the County.

* Public Health Nurses advance from I to II in the County's discretion.

Persons above scale on January 1, 1985 will receive a 0.28$ per hour increase.

Persons transferred to a different pay grade receive credit for pay purposes for time spent in former pay grade.

In support of their economic package the County makes extensive arguments. As background, they estimate the cost of the Union's two year wage package at 15.1 percent. On the other hand, the County's offer contains a wage "freeze" in 1984 and a 0.28$ raise in 1985. However, because of the various rates of pay among the employees in each department, the actual percentage increases to the employees for 1984 and 1985 is 8.8 percent. The wage freeze under the County's offer is consistent for all of its employees, represented and nonrepresented -- except the Sheriff's Department. It is their contention that that wage freeze was necessary and justified by the economic conditions of Grant County and the Iowa counties to which many Grant County residents commute.

These economic conditions include an increasingly severe problem of delinquent real estate property taxes. Property tax delinquencies in Grant County have nearly doubled from 1982 to 1984. This is one of the most severe in the state, while only one of the Union's comparables was within the top ten counties in terms of increases. Another factor is declining land prices. There was a 22 percent drop between 1982 and 1984. Moreover, none of the nine comparable counties proposed by the Union shows a drop which is greater than that in Grant County. LaCrosse, Lafayette and Iowa counties showed increases of 21, 18 and 13 percent, respectively; Green, Richland and Sauk dropped less than five percent; Columbia and Crawford dropped less than ten percent.

Also part of the economic picture is the increasing number of business closures and bankruptcies. The economic downturn affecting Grant County is also reflected in the wages and benefits paid by private sector employers in Grant County. They cite wage reductions at Loudspeaker Component Corporation as well as wage figures from the Department of Administration. Based on this, they note that in 1982 there was a pattern of local government wages being slightly higher than private industry. However, by the second quarter of 1984, the average weekly wage for private industry in Grant County had dropped to $181.05, from $204.98, while the average weekly wage for local government employees had increased from $235 to $270.12. Moreover, they contend that pattern is not followed in the remaining seven counties in the nearby area for which there is data. In all of the remaining counties shown, the gap between private coverage and local government coverage remains quite small. Thus, a 1984 wage freeze, in their opinion, is prudent.

They also note that the Unified Board of Grant and Iowa Counties also implemented a wage freeze in 1984 for all of its employees, and in 1985, the Unified Board increased the wages of its unit employees by 0.28$ per hour, and its other employees by 0.38$ per hour. This is significant in their mind since the Unified Board is subject to the same economic conditions as Grant County. In this same vein, they note that even the AFSCME Professional Unit at the state employee level agreed to a wage freeze for 1985, and that AFSCME further agreed to a 3.84 percent increase for the period of June 1984 to June 1985. Likewise, the AFSCME employees in Dane County agreed to a 1985 contract in which they gave up full health insurance benefits for part-time employees and accepted a four percent pay increase for the year. Additionally, in Clayton County, Iowa, the Union in one county unit bargained for a one year wage freeze. In another unit in Clayton County, the Union agreed to an increase of 0.28$ over a three year period.

Specifically, with respect to wages, they review again the increase in Clayton County, Iowa and the Loudspeaker Component Corporation. With respect to the Sheriff's Department settlement, they note that the employees received an increase ranging from 0.20$ to 0.28$ per hour in 1984. The average percentage increase was 3.9 percent. In 1985, the Sheriff's Department increases ranged from 0.16$ to 0.23$ per hour for an average increase of 3.3 percent. The average percentage increase for the Sheriff's Department employees for both years is 7.3 percent, or 1.5 percent less than the average increase under the County's wage proposal to its professional employees and much lower than the Union's proposal.

They also point out that the Union is seeking more of an increase than was granted in the Union's own comparables. For instance in Iowa County, there was no increase in the starting or six month Social Worker rates in either 1984 or 1985. The Social Workers received a 0.10$ per hour increase in 1984 and a 0.20$ per hour increase in 1985. This amounts to an average increase over both years of 3.2 percent, using the maximum

rates shown in the contract. Using the actual wage rates of Iowa County Social Workers, the actual average increase is 4.1 percent over the two years. Also with respect to Iowa County, the Social Workers annual income increased due to an increase in hours from 35 to 40. They also note, based on an annualized basis, that there is not as big of a difference between the wages paid by Grant County and the counties relied on by the Union. For example, in Vernon County, Social Worker's at the top of the rate earn $7.93 per hour. At 37 1/2 hours per week, this is an annual income of $15,463. A Grant County Social Worker I at the top of the scale in 1985 will earn $7.24 per hour or $15,059 annually. While the difference in hourly rates between Vernon and Grant County's is 9.5 percent, the annual income of Vernon County Social Worker is only 2.7 percent greater than their counterparts in Grant County.

Also noted is that the Columbia County Social Workers received an average increase of 5.8 percent over 1984 and 1985; Sauk County Social Workers and Nurses received an average increase of 6.5 percent for 1984 and 1985; the Crawford County Social Workers received an average increase of 6.8 percent. The remaining four counties granted the following average increases for the two year period: LaCrosse Social Workers -- 8.3 percent; Vernon Social Workers -- 8.6 percent; Richland Social Workers -- 8.7 percent; Lafayette Social Workers and Nurses -- 11 percent. Accordingly, the average increase among the Union's comparables is 7.5 percent. Thus, the Union's increase is more than double this average. Even the largest percentage increase in hourly wages for the two year period given by one of the Union's comparables (Lafayette County -- 11 percent) does not come close to the Union's proposed 15.1 percent increase.

Regarding Nurses they propose that non-probationary Public Health Nurse I's earn $7.80 per hour in 1984, and $8.08 per hour in 1985. Public Health Nurse II's would earn $8.06 per hour in 1984, and $8.34 per hour in 1985. Home Health Nurses who work more than half time would earn $7.80 in 1984, and $8.08 in 1985. Home Health Nurses who are less than half time and therefore do not receive any fringe benefits, would receive $8.06 in 1984, and $8.34 per hour in 1985. The Union has proposed that Public Health Nurse I's at the end of 1984 earn $8.06, and by the end of 1985 earn $8.46. Public Health Nurse II's would earn $8.46 and $8.88 in the two years. Home Health Nurses would earn $8.06 and $8.46. The Union has not made a distinction between Home Health Nurses who are more or less than half time. Non-probationary nurses working for the Unified Board earned $8.06 in 1984, and earn $8.44 in 1985. Two of the nine counties on which the Union relies have represented nurses: Lafayette and Sauk Counties. In 1984, Lafayette Home Health Nurses at the top of the scale made $0.03 less than Grant County is offering its Home Health Nurses who are more than half time. Four of the seven Grant Home Health Nurses are less than half time, and would receive $8.06 per hour for 1984. They would be earning 0.29$ more than their Lafayette counterparts.

In 1985, Lafayette Home Health Nurses at the top of the scale would earn 0.10$ more than the three Grant County Home Health Nurses who are more than half time. The four Grant County Home Health Nurses working less than half time would be earning 0.16$ per hour more than their Lafayette counterparts in 1985. Lafayette Public Health Nurse II's earned 0.16$ less than Grant County is offering its Public Health Nurse II's in 1984. In 1985, Lafayette Public Health Nurse II's would earn 0.02$ less than Grant County Public Health Nurse II's under the County's offer. Lafayette has no Public Health Nurse I's.

The Sauk County Nurses are making a higher hourly wage than Grant County has offered its Nurses. However, Sauk County Nurses work 38.75 hours per week. The annualized salary of Sauk County Public Health Nurse I's and II's is 5.9 and 5.6 percent higher than Grant County Public Health Nurses, respectively.

They also analyze the offers with respect to Assistant District Attorneys. They offer the following, noting that the Union has claimed that the labor market for Attorneys is national, or at least statewide. They suggest that the labor market for Attorneys appears to be quite slim at present, since two of the three former Assistant District Attorneys for Grant County who have left the County within the last three years, have filed unemployment wage claims with the County after leaving. Accordingly, the job market for Attorneys leaving Grant County appears quite weak. In addition, the Assistant District Attorney position in Grant County has traditionally been a "stepping stone" position. The three District Attorneys, prior to the incumbents, each worked for approximately two years before leaving the position. The Grant County Assistant District Attorney position is typically filled by a recent law school graduate looking for some necessary experience and planning on moving on to a higher paid position. The position of Assistant District Attorney in Grant County cannot be compared with positions which are viewed as career positions.

The last argument on wages relates to the historical relationship of Grant County wages rates to those in Richland County. They believe that historical relationship should be followed in this case and their offer is closer to that relationship. In 1984, Richland County highway employees received wages which averaged 13 percent higher than those of Grant County highway employees. In 1985, Richland wages were 12.6 percent higher than those of Grant County. In the Sheriff's Department in 1984, Richland County deputies, dispatchers, jailers and secretaries received wages which averaged 16.9 percent higher than those received by Grant County deputies, dispatchers, jailers and secretaries. Under the County's and Union's final offer for Richland County Sheriff's Department employees for 1985, the average difference of both offers' wages over those of the Grant County employees is 16.95 percent in 1985.

The Richland County Social Worker I's and II's in 1984 received wages which are 16 percent higher than those offered by the County to its Social Worker I's and II's in Grant. By comparison, the Union's final offer results in a difference of only 10.7 percent between the two counties. In 1985, the Richland County Social Worker I's and II's received wages which averaged 16.2 percent higher than those offered by Grant County to Social Worker I's and II's. Under the Union's final offer for 1985, the difference between the Richland and Grant County Social Workers would only be 7.9 percent.

c. Discussion. Based on what the Arbitrator has found to be the appropriate comparables, the Unions' wage rate and classification proposal is preferred because it is most consistent with the comparables. Much of the County's case here rests on the idea that local economic conditions in Grant County are worse than elsewhere -- therefore, the wage rates should be less than elsewhere. Even assuming for the sake of argument a lower wage rate is justified for professional employees in Grant County, the wage rates under the Union's offer are in fact lower, and relatively speaking, the wage rates under the Employer's offer are so much lower that they cannot be justified. In arriving at this conclusion the Arbitrator concentrated on hourly wage rates, and not wage increases or annualized earnings. Annualized earnings are obviously a misleading and inaccurate method of comparison when there is a wide variety of hours. With respect to annual wage increases, they are most useful when comparing wage rates that are within

a reasonable range of each other in the first place. Here the wage levels in Grant County are so far behind the pack that it is not reasonable to say the employees should be held to the same wage increases as other employees doing similar work in comparable employers. Obviously if there is a need for catch-up the wage level increase will necessarily have to be large. Thus, the mere increases at the Unified Board cannot be given as much weight as information related to wages levels for similar employees in the comparables.

Thus, the question is which offer results in the most reasonable wage levels given all of the relevant circumstances. In this regard, the maximum rates are considered most important since they will be the ending rate under the contract and since employees ultimately arrive at the maximum rate.

The most indicative classification here is Social Worker II, since more people are employed in this classification than any other single unit, and since all Social Worker I's eventually advance to this classification if they satisfy certain requirements. At the end of 1985, the average rate for Social Worker II's in the Union's comparables will be $9.35 per hour -- even if the Employer wins in Green County. The high is $10.61, the low is $8.18, and the median is $9.60. Under the Union's offer, the maximum wage rate for a Social Worker II will be $8.43, or 0.92$ per hour, or nearly 11 percent lower than the average. The Employers' offer would be $1.76 per hour, or nearly 19 percent lower. If the average employee worked the same number of hours per year as the normal full-time person (2,080) this would mean a person in Grant County doing similar work would earn $3,600 less per year. Again, even assuming Grant County has economic differences with the comparables, they are not so different to justify such a great disparity in wage rates.

It is noted as well that a very similar disparity exists at the Social Worker I level. The average rate is $8.53, including the Employer's final offer in Green County with a rage from $7.60 to $9.49, a median of $8.82. The Union's offer is $7.59, 0.94$, or 11 percent less per hour than the average. The Employer's offer is $7.24, or $1.29, or 15 percent less than the average. Again while differences might be justified, an 11 percent difference is more reasonable than a 15 percent difference.

Somewhat similar disparities also exist -- but not as great for Home Health Nurses and Public Health Nurse II. Even under the Union's offer the Home Health Nurses would earn more than $1.00 less per hour than the average ($8.46 versus $9.47). The Employer, for full-time employees, would be $1.39 per hour less, or 14.6 percent less. Public Health Nurses would fare somewhat better under the Union's offer, they would only be 0.71$ below the average. Under the Employer's offer they would be $1.25 below. It should be noted as well that an even greater disparity exists for Assistant District Attorneys.

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2. Little weight can be given to the historical wage relationship analysis relative to Richland. That argument rests on the assumption that Grant County wage levels were reasonable in the first place. The evidence shows they were not.

3. The Arbitrator utilized the Iowa County rates printed in the contract and found them more reliable than proposed County Exhibit 69.

In addition to more reasonable wage levels, the Union has the more typical advancement structure and is more typical in its lack of "minimum rates."

34. Longevity

a. The Union. The Union proposes the following:

"25.03 Longevity Pay. All employees shall receive longevity pay subject to the following terms:

A) After three (3) years of service -- 0.03$/hour;
B) After five (5) years of service -- 0.06$/hour;
C) After ten (10) years of service -- 0.09$/hour;
D) After fifteen (15) years of service -- 0.12$/hour;
E) After twenty (20) years of service -- 0.15$/hour.

"The longevity pay cited herein shall be added to the base rates of each eligible employee. The hourly rates set forth in this section are total amounts and are not cumulative.

"Longevity pay shall be effective on the first day of the calendar year following completion of the required length of service."

The Union bases longevity pay on length of service with the County, thus, payment of longevity is not affected by changes in classifications or position. They believe this is typical of the operations of comparable longevity plans. The County adds an additional requirement, however. An employee must be "in their present job assignment for twelve months" to qualify for such pay. What does "job assignment" mean? Does this mean classification or job duties? In either case, it is unfair. If a Home Health Nurse with ten years of service becomes a Public Health Nurse, why should they be denied longevity pay for twelve months or longer? If a Social Worker II transfers as a Social Worker II to another work unit, why should they be denied longevity pay? What if the duties of an Assistant District Attorney change? Is this a new "job assignment", such that (s)he would be denied longevity pay? They also assert that such a proposal is not consistent with current procedures.

b. The Employer. The Employer proposes the following:

"22.01 All employees shall receive longevity pay subject to the following terms[4]:

A) After three (3) years of service -- 0.03$/hour;
B) After five (5) years of service -- 0.06$/hour;
C) After ten (10) years of service -- 0.09$/hour;
D) After fifteen (15) years of service -- 0.12$/hour;
E) After twenty (20) years of service -- 0.14$/hour.

"The longevity pay cited herein shall not be added to the base rates of each eligible employee. The amounts are not cumulative; after 20 years; the total amount is 0.14$ per hour.

"Longevity pay shall be effective on the first day of the calendar year following completion of the required length of service, provided the employee has been in their present job assignment for twelve months."

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4. The County's Section 22.01 is amended by the cover letter to the final offer dated January 25, 1985.

The County notes that only three of the Union's claimed comparables provide for any longevity pay. In Columbia County, employees with three years of service receive $45 per year (Columbia County, Section 7.1). The maximum amount of longevity pay in Columbia is $240. Sauk County also pays $45 after three years of service and $15 per year thereafter (Sauk contract, Section 13.01). Crawford County pays longevity in terms of percentage of base pay. After three years, Crawford County employees receive 1 to 1.25 percent of their base pay as longevity.

The Union's provision on longevity requires that the longevity be included as base pay. The County's offer states that the longevity shall not be added to the base pay rates. None of the three counties which have any longevity include that longevity in base pay. In each instance, the longevity is paid as a bonus or lump sum amount. Thus, they contend that the Union's proposal to include longevity as base pay makes that fringe benefit a "roll-up" amount.

c. Discussion. Both Parties agree that there should be some form of longevity. However, they disagree on its operational aspects. Both offers have non-typical aspects. The County wants the person to be in the same classification for the last twelve months and the Union wants longevity added to the base rate. Therefore, under the Union's offer, longevity pay would be subject to future increases. Both non-typical aspects are defects but the Union's is more serious. Longevity in the comparables is a bonus -- not a base wage additive. On the other hand, while the requirement to be in the same pay classification for twelve months is unusual, it is not wholly unreasonable. After all, one of the purposes of longevity pay is to give long-time employees who are, as a result, often stuck at the top rate of their classification some increase in pay. Thus, had an employee moved recently up in classification there would be less need for longevity as they would have recently enjoyed a classification increase. Thus, the Employer's longevity proposal is preferred.

35. Savings

There is no dispute as to wording of the savings clause.

36. Duration

There is no dispute as to duration.

37. Waiver Clauses

a. The Union. The Union's proposal is silent on waiver. However, they argue that they, by their silence, are prepared to live within the confines of the law. The County has made extensive proposals whose impact is untested and is certainly ambiguous. They ask that if the language is a restatement of the law, as the County will assert, why is it needed? Why clutter the contract with unnecessary and ambiguous language? In Section 1.04 and similarly in Section 1.05 what does "... present its views" mean? Is this intended to restrict the Union's right to negotiate over mandatory matters? The County's proposals are unusual and are not representative of the comparables, which overwhelmingly support the Union's approach.

b. The Employer. The Employer proposes the following:

> "1.02 Each of the parties releases and relinquishes to the other the right to request bargaining during the term of the Agreement regarding matters which the Agreement is intended to cover and matters which

might have been included in the Agreement, but were not. However, this provision does not apply to matters which were not contemplated by the parties during collective bargaining.

"1.03 No right exists to enforce any provision of this Agreement as a breach of contract after it expires; no right to breach of contract action (or arbitration) shall be deemed a term of employment surviving expiration, unless said breach occurs prior to the expiration of the contract. Furthermore, this provision shall not be operative if both parties agree in writing to extend the contract past its expiration date.

"1.04 The Labor Organization shall be informed in writing of any change affecting working conditions in order that the Labor Organization may present its views regarding any impact on working conditions of such change in policy to the County.

"1.05 The County Board or its designee will meet with representatives of the Labor Organization to hear them express the Labor Organization's views regarding the impact of any change in policy affecting the wages, hours, or conditions of employment of the unit employees."

The County argues that without such a clause in the contract, the County would not have a contract vehicle to argue that the Union has ever waived anything during bargaining, even if they in fact did waive something. They also note that the Grant County Sheriff's Department contract contains a waiver provision which is identical in intent, and nearly identical in language. Although they note the waiver clause which Grant County has bargained for in the Sheriff's Department and is offering in the Professional Union is much less broad than the waiver clauses contained in the LaCrosse and Vernon County contracts.

With respect to Section 1.03, they note that under the holding in Nolde Brothers, Inc. vs. Bakery Workers, 430 U.S. 243 (1977), it might be possible that a court would allow a party to attempt to enforce a contractual provision after the expiration of the contract. The County's provision specifically forbids this. Both the first and current Grant County Sheriff's Department contracts contain an identical provision, as does the City of Lancaster 1984 contract.

c. Discussion. The impact of the differences here are not viewed as critical in the acceptance or rejection of either offer.

III. General Contentions and Consideration of the Offers as a Whole

a. The Union. In general, the Union argues that the County's proposal is a "formula for punishment", which is also "replete with ambiguity." In addition, they believe the County's offer would result in countless reductions in the current levels of compensation and rights, whereas the Union has proposed an agreement which attempts to codify many of the existing practices and procedures, and which addresses very real deficiencies in the level of wages and certain benefits provided the employees. Additionally, they maintain the County's offer will promote discord and litigation and substantially reduce the current level of benefits or rights currently enjoyed by the unit.

The Union also offers general argument concerning the County's economic contentions. Generally, they believe that the County has failed to demonstrate that they are any different than the neighboring counties. For instance, with respect to tax delinquencies there is no demonstration that Grant County's tax delinquency rate, even though increasing, is any greater than other counties. Generally, where 67 of the 72 counties had higher delinquent taxes in 1984 than 1983. Moreover, the Union notes that the County failed to establish any significant relationship between the delinquent taxes and the state of the County's budget. They make similar statements regarding the County's other economic argument. In fact, the Union suggests that the economic data shows Grant County to be in good shape when compared to its neighbors. Of the taxes collected in 1984, Grant ranks third highest among the comparables. This is true despite of the fact that its taxing effort is comparatively low. Among the comparables, only three counties have a lower tax rate than Grant. Finally, the County's budget surplus has been increasing; it was increased by nearly one-half million dollars between 1983 and 1984.

With respect to the County's "first contract theory", they offer the following. They believe this theory is a very wrong analysis of the realities of collective bargaining, especially collective bargaining under the Municipal Employment Relations Act. The County would have the Arbitrator adopt the notion that the Union has to earn its way into a contract; that the workers must earn their way into job rights. This notion is without arbitral support (they did not offer any) and rightly so. For instance, they ask rhetorically, among other questions: How many employees have to be disciplined or discharged unfairly before they can negotiate a reasonable standard? Instead, the Union maintains that a first time contract is the most important document to be negotiated. It establishes the framework for the relationship that is rarely overhauled. To be sure, with each contract, both sides will attempt to fine tune the document to its advantage -- even mutual advantage, but major changes in the broad scope of issues does not occur.

b. The Employer. The Employer argues, in general, regarding language issues that neither the major language provisions, nor the myriad minor language provisions of the first time agreement should be written by arbitration. It is their belief that they have offered the basics of seniority, restriction on discipline, arbitration, and many less major language restrictions, and thus, if the County's offer is awarded, the Union will have its basics. On the other hand, the Union's language proposals are more restrictive than those negotiated by the other unions in Grant County such as the Teamsters negotiated contracts with the Sheriff's Department, Loudspeaker Component Corporation, and the Unified Board.

With respect to economics, the County has attempted to preserve the 1984 wage freeze, which was in place before the Union arrived on the scene. The County has, however, offered an average actual increase over the two years which exceeds the internal comparables, and the Union's external comparables, on a percentage bases. For instance, if the County's offer is awarded, Grant County's Social Workers will be paid about the same as Iowa County's Social Workers, and 0.10$ less than Social Workers for the Unified Board of Grant and Iowa Counties. They will continue to be paid less than Social Workers in other counties, but the differential is not increasing. Even so, the County's offer manages these things even though the record establishes that Grant County is in worse shape economically than the counties proposed as comparable by the Union. On the other hand, if the Union's offer is awarded, the Union will have doubled the percentage increases they negotiated in the comparables they offered, as well as increasing their boilerplate over all of those contracts.

Last, the County argues that if the Union's offer is awarded, they will have established that Mediation/Arbitration can destroy any effort by a county board to control costs because of local conditions, even in a case like this where the wage freeze pre-dated the Union.

c. Discussion. Much of the Employer's proposal rests on the argument that (1) Grant County is, economically speaking, substantially different than other counties, and (2) the proposition that first time contracts should be limited in scope. For these reasons, they believe the Union's offer to be excessive and their offer to be more appropriate.

Even if the Arbitrator accepts that Grant County is different than other counties in Southwestern Wisconsin, and that first time contracts should be more modest than established contracts, it is the opinion of the Arbitrator that the County's offer as a whole is more unreasonable than the Union's offer.

If local conditions in Grant County are different than other counties, and if the Union's offer overshoots the mark on economic issues, the County's offer falls shorter by a greater degree. Examples of this are the Employer's wage proposal and health insurance proposal. These are two very significant economic issues and the Employer is simply so far off the mark, that the Union's offer must be considered the more reasonable. The preference for the Union's offer on these two major issues weighs heavily against the Employer's offer and tends to outweigh the Arbitrator's preference for the County's offer on less significant fringe benefit provisions such as callouts, comp time, discretionary days, funeral pay, military leave, retirement/sick leave and longevity. This is especially true since the Union's offer is preferred on the issues of vacations, holidays and jury duty.

On the significant non-pecuniary items the Union's offer is preferred on virtually every issue. The Employer, in essence, is arguing that on the whole, the Union's "boilerplate" language is a matter of overreaching and because a first time contract should be more modest. They argue their proposal gives the Union the basics.

The Arbitrator must disagree. First, a strong argument can be made that the Union is not overreaching; that their proposal on the significant non-pecuniary matters (fair share, grievance procedure, job posting and layoffs) has more footing in the comparables. Second, even if the comparables are, for some reason, to be discounted because the contracts there are the result of several bargains, and thus, the Union here is overreaching, the County's proposal is still less reasonable. In contrast, the County's proposal does not provide an adequately balanced framework or foundation for the competitive interest of the Parties. If the Union puts too much "fat on the bones", the Employer's offer does not offer an adequate "skeleton". The latter is, in the Arbitrator's opinion, relatively speaking, a more serious problem.

Labor contracts in general seek to address the need for job security in promotions and layoffs, union security, adequate grievance procedure and Management flexibility. Even if first time contracts should be more modest in securing the Union's interest in such issues, the County's proposal is more inadequate than the Union's proposal is immodest. The County's proposal, in several important respects, is not merely modest -- it is atypical and abnormal in its method to address these very significant issues. Examples here include the Employer's unusual grievance procedure and disciplinary process. In addition, the Employer's offer provides for little or no balancing of interests in job posting or promotion, and little in respect to job security in layoffs.

In summary, since the Employer's offer is less reasonable than the Union's, relative to all of the most significant economic and non-economic issues, and while this outweighs the negative preference for the Union's offer on issues of more moderate significance, the Union's final offer will be adopted.

AWARD

The Union's Final Offer will be adopted as the January 1, 1984 to December 31, 1985 contract between the Parties.

Gil Vernon, Mediator/Arbitrator

Dated this 22nd day of April, 1986, at Eau Claire, Wisconsin.

RECEIVED

SEP 10 1985

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

* * * * * * * * * * * *

* In the Matter of the Arbitration *

* Between * Case 12
No. 33181 MED/ARB-2709

* Wisconsin Council of County and * Decision No. 22428-A
Municipal Employees, AFSCME, AFL-CIO

* *

and

* *

Grant County

* * * * * * * * * * * *

RULING ON MOTION
TO QUASH SUBPOENA

Background

On January 10, 1984, the parties exchanged their initial proposals on matters to be included in an initial collective bargaining agreement. Thereafter, the parties met on three occasions in efforts to reach an accord on a new collective bargaining agreement. On April 9, 1984, the Union filed the instant petition requesting that the Commission initiate Mediation/Arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. On June 5, June 30 and September 10, 1984, a member of the Commission's staff conducted an investigation, which reflected that the parties were deadlocked in their negotiations. By March 7, 1985, the parties submitted to the Investigator their final offers, and thereupon the Investigator notified the parties that the investigation was closed. The Investigator has advised the Commission that the parties remain at impasse.

The parties were ordered to select a Mediator/Arbitrator and the undersigned was selected. The Commission appointed the undersigned March 28, 1985. On April 11, the parties agreed on July 9, 1985 for Mediation. On April 29, 1985, they also agreed that if Arbitration was necessary, it would be conducted on August 9, 1985.

The parties met on July 9, 1985, and no issues were resolved. One of the outstanding issues was the Union's proposal for a fair share agreement. It read:

> "4.01 The Union, as the exclusive representative of all of the employees in the bargaining unit, shall represent all such employees, both Union and non-union, fairly and equally, and all employees in the bargaining unit shall be required to pay their proportionate share of the costs of such representation as set forth in this article.
>
> "4.02 No employee shall be required to join the union, but membership in the Union shall be available to all employees who apply consistent with the Constitution and By-Laws of the Union. No employee shall be denied Union membership on the basis of age, sex, race, religion, handicap, national origin, marital status, or sexual orientation.

"4.03 The Employer shall deduct each month an amount, certified by the Union, as the uniform dues required of all Union members or a fair share service fee as established and certified by the Union, consistent with Section 111.70 of the Wisconsin Statutes. With respect to newly hired employees, such deductions shall commence on the month following the completion of the probationary period.

"4.04 The aggregate amount so deducted, along with an itemized list of the employees from whom such deductions were made, shall be forwarded to the Union within the month in which such deductions were made. Any changes in the amount to be deducted shall be certified to the Employer by the Union at least thirty (30) days prior to the effective date of such change. The Employer shall not be required to submit any amount to the Union under the provisions of this Agreement on behalf of employees otherwise covered who are on layoff, leave of absence, or other status in which they receive no pay for the pay period normally used by the Employer to made such deductions.

"4.05 The provisions of 4.01, 4.02, 4.03, and 4.04 shall become effective the month following certification by the Wisconsin Employment Relations Commission (WERC) that a majority of employees eligible to vote have voted affirmatively in support of the fair share agreement.

"4.06 During periods when the fair share agreement is not certified pursuant to Section 4.05, or should the fair share agreement become null and void for any reason, the Employer agrees to deduct Union dues each month from those employees who individually authorized in writing that such deductions be made. The amounts to be deducted shall be certified to the Employer by the Union and the aggregate deductions from all employees shall be forwarded to the Union along with an itemized statement of the employees from whom such deductions were made. Any changes in the amount to be deducted shall be certified to the Employer by the Union at least thirty (30) days prior to the effective date of such change.

"4.07 The Union shall indemnify and save the Employer harmless against any and all claims, demands, suits and other forms of liability which may arise out of any action taken by the Employer under this article for the purpose of complying with the provisions of this article."

On August 2, 1985, the Arbitrator received a subpoena duces tecum (attached as Appendix A), from the Employer. They requested it be served on Robert Lyons, Executive Director of Council 40, AFSCME. The subpoena demanded that he appear, and bring with him, certain documents to the Arbitration hearing scheduled for August 9, 1985. The subpoena related to the issue of fair share, which was one of the issues at dispute in the proceeding before the Arbitrator. More specifically, the documents requested relate to any procedure for determining the proper amount of a fair share payment and a proper procedure for collecting a fair share payment from dissenting non-members.

The subpoena was signed and returned to the Employer on August 5, and served on August 6. On August 7, the matter was orally argued in a conference telephone call between the Arbitrator and the parties' attorneys. The parties, absent the Arbitrator, at his request, continued to discuss the matter. An understanding was reached thereafter, and the parties advised the Arbitrator of the arrangements in separate phone conversations on Thursday, August 8, 1985.

The arrangement was to conduct the Arbitration hearing, as originally scheduled on August 9, 1985. It was agreed either party was free to present testimony on fair share -- subject to objection. The Union was free to file a motion to quash the subpoena and both parties were extended the right to file briefs and reply briefs in support or opposition of the motion. The principal briefs were due August 16, and reply briefs were due August 23, 1985. It was further agreed that at the conclusion of the hearing on August 9, 1985, the record would be closed, except for that evidence under subpoena that may be compelled by the Arbitrator. In that event, the hearing will be reopened for that purpose only.

The Union filed their motion to quash with the Arbitrator on August 9, 1985. It is attached as Appendix B.

Discussion

Initially, in oral argument, the Employer indicated that the purpose of the subpoena was to challenge the constitutionality of the Union's fair share provision. In the brief, their position, as the Arbitrator originally understood it, has changed, to a certain degree. They now take the position that they are not "arguing the issue of whether the concept of fair share is constitutional". Instead, they now state that the purpose of the subpoena is to show that the Union's fair share procedure, if enacted, may require the County to collect and pay over amounts which are not lawfully collectible under a fair share agreement. Thus, their argument implies that the material they seek is relevant, because the Arbitrator is required under Statute 111.70(4)(cm)(7)(a), (c) and (h), Wisconsin Statutes, to give weight to the lawful authority of the municipal employer, in addition to the interest and welfare of the public, and any other factors which are normally taken into consideration in the determination of employment terms through collective bargaining in public or private employment.

The Employer develops their argument further. It is the County's contention that AFSCME currently does not have a constitutionally valid fair share procedure. Accordingly, they explain the purpose of the subpoena is to gather the necessary evidence to show that if AFSCME's fair share procedure were enacted pursuant to Sections 4.03 through 4.05 of its final offer, it would require the Employer to take actions which are outside the scope of its lawful authority. Specifically, it would cause them to engage in "unconstitutional conduct", and actions which are therefore against the public interest.

This concern is based in large part on the Employer's reading of the Seventh Circuit Court of Appeals decision, in Hudson v. Chicago Teachers Local 1, 743 F.2d 1187, 117 LRRM 2314 (7th Cir. 1984), cert. granted 86 L. Ed. 2d 716 (1985). They believe the court held that (1) a public employer, acting as an agent of the Union, was liable under Statute 1983 for the employees' claims of constitutional violations; (2) a public employer had several duties to its employees arising under the first and fourteenth amendments of the constitution; (3) the first amendment created a duty for the Employer to establish workable procedures to ensure that dissenting employees' fair share payments were not used to support political objectives not germane to the collective bargaining process; (4) the court held that the Employer had a duty under the fourteenth amendment to provide sufficient due process to prevent the employees from being deprived of any rights within the meaning of the fourteenth amendment.

At the heart of the Employer's case is that they may accrue liability if they are contractually required to deduct fair share amounts, as determined by an internal Union procedure, which ultimately may be determined to be unconstitutional. Thus, the liability would supposedly accrue by virtue of committing an unconstitutional act -- one beyond their lawful authority.

It is the Arbitrator's finding that whether the Employer might be required to commit an unconstitutional act by collecting fair share dues is irrelevant in this proceeding. First, the Arbitrator is not sure that this is the type of situation the Statute contemplated when it set forth that Arbitrators should consider as a factor "the lawful authority of the municipal employer". Second, the Employer's concern as to its liability, even if this matter relates in some way to their lawful authority, is ultimately moot as a contractual matter in view of Section 4.07 of the Union's proposal. Under this, the Employer is indemnified, and therefore, generally speaking, the Employer will be at no financial risk due to fair share if the Arbitrator were to award it and if the referendum passed. More specifically, they are not going to run the risk, under the indemnification clause of reimbursement by use of public funds should overpayments be found and reimbursement ordered. Accordingly, for these two reasons, the material that the Employer seeks is immaterial.

There is another reason the Employer's subpoena is irrelevant. This is because in essence the Employer is asking the Arbitrator to rule on the constitutionality of the Union's fair share procedure. Even though the Employer, in their brief, states this argument relates to the statutory criteria it still rests on a constitutional determination. The Mediation/Arbitration process is not the appropriate forum to determine these broad issues. Moreover, the constitutionality of fair share is a matter to be raised between employees and labor unions in the courts, or at the Wisconsin Employment Relations Commission.

Ruling

The Union's motion to quash the subject subpoena is granted.

Gil Vernon, Mediator/Arbitrator

Dated this 9th day of September, 1985, at Eau Claire, Wisconsin.

APPENDIX A

STATE OF WISCONSIN
BEFORE THE ARBITRATOR GIL VERNON

State of Wisconsin, to: Mr. Robert Lyons, Executive Director
AFSCME, Wisconsin Council 40,
5 Odana Court,
Madison, WI 53719

You are hereby required to appear in person before Arbitrator Gil Vernon, at the Grant County Courthouse, in Lancaster, Wisconsin, at 10:00 a.m. on August 9, 1985, to give evidence in the matter of an interest arbitration between Grant County and AFSMCE, Wisconsin Council 40, concerning the Grant County Professional Unit, then and there to be heard, on the part of Grant County. You are further required to bring with you the following papers and documents:

1. Any documents containing the names of Grant County Professional Unit employees who are members of AFSCME, Wisconsin Council 40, or any affiliated labor organizations.

2. All records of every expenditure or transfer of funds of any type by AFSCME, Wisconsin Council 40 since November 29, 1983.

3. All records or documents showing the amounts of funds transferred by Wisconsin Council 40 to AFSCME or any other labor organization and any documents which show what those funds have been used for.

4. Any documents relating to procedures for establishing the proper amount for fair share payments by nonmembers, including any documents relating to calculating amounts or percentages spent for activities for which amounts are not properly collectible under a fair share agreement.

5. Any documents relating to procedures for nonmember employees to challenge the fair share amounts and receive refunds and/or reductions of the fair share amount.

6. Any documents relating to procedures for employer involvement in determining the proper amount for fair share payments.

Given under my hand this 5th day of August, 1985.

Gil Vernon, Arbitrator

APPENDIX B

STATE OF WISCONSIN
BEFORE THE ARBITRATOR GIL VERNON

GRANT COUNTY and AFSCME,
WISCONSIN COUNCIL 40,

Interest Arbitration

MOTION TO QUASH SUBPOENA

NOW COMES AFSCME, Wisconsin Council 40, in the above entitled matter and moves the Arbitrator to quash the subpoena given under the Arbitrator's hand on the 5th day of August, 1985, to Mr. Robert Lyons, Executive Director, AFSCME, Wisconsin Council 40, directing his appearance at 10:00 A.M. on August 9, 1985, to give evidence in the above arbitration and to bring with him certain papers and documents, and in support thereof shows unto the Arbitrator as follows:

1. The subpoena is directed to evidence regarding a challenge to the permissibility of a fair share agreement, a challenge that has been waived by the County:

a. AFSCME, Wisconsin Council 40's (hereinafter Council 40), proposal for a fair share agreement has been before the parties since the middle of 1984, and such proposal together with all other issues were the subject of a declaratory ruling procedure as early as August and the fall of 1984. The County in such procedure raised no issue concerning the legality of a fair share agreement.

b. Despite the fact that the parties already have been through the declaratory ruling procedure (in which this issue should have been raised, if raised at all, nearly a year ago) and despite the fact that the hearing scheduled for August 9, 1985, has been scheduled since the 29th day of April, 1985, the

County waited until late afternoon of August 6, 1985 to issue its subpoena and such subpoena was not received by the Director of Council 40, to whom it was directed, until August 7, 1985, just two days prior to the hearing. See, Sec. 111.70(4)(b), (cm) 6.a.,g..

2. The Arbitrator is without jurisdiction to decide the constitutionality or other legality of the fair share proposal:

a. The legality of fair share agreements has been sustained for many years by the Supreme Court of the United States and of this State and by the Wisconsin Employment Relations Commission, see, for example, Abood v. Detroit Board of Education (1977), 431 U.S. 209; Browne v. Milwaukee Board of School Directors (WERC), Case XCIX, No. 2353, MP-892 and Johnson v. County of Milwaukee, Case No. 169, No. 29581, MP-1322 and cases cited and discussed therein.

b. The question of the proper administration of a fair share agreement does not arise, if at all, until after a contractual obligation is established in a collective bargaining agreement between an employer and a union containing such fair share provisions. Even if it was not premature, the Arbitrator in this proceeding is without jurisdiction to decide any such legal question.

3. The Arbitrator is without jurisdiction to entertain any legal challenge to the proposed fair share referendum or fair share proposal (Article IV, FINAL OFFER, Council 40, February 6, 1985):

a. There is no party to this proceeding and indeed no person at all who has any standing to raise such a challenge in this proceeding, since a "fair share" agreement is not in effect and there exist no objecting payors. See, for example, Abood, supra.

b. There exists no "case or controversy" under which this Arbitrator has jurisdiction to decide any legal challenges to the fair share proposal or request for a referendum.

c. The testimony of Council 40 Director, Robert Lyons, and the documents which are the subject of the subpoena which is the subject of this Motion, relate to evidence which has no relevance and no materiality to this proceeding and there are no issues in this proceeding concerning which any such evidence would be admissible material or relevant.

4. The subpoena in its entirety should be suppressed in the interest of justice to protect Council 40 and its Director from unwarranted annoyance, oppression and undue burden and expense, for all of the reasons cited above and for the further reasons that it is an attempt to inquire into matters beyond the scope of this proceeding. It is an unreasonable and unwarranted last minute effort to inquire into matters which, even if properly inquired into at all, must legally have been inquired into pursuant to procedure available to the County over a year ago, rather than two days prior to the day set for the final hearing in this matter.

WHEREFORE, Council 40, in its behalf and in behalf of its Executive Director, Robert Lyons, prays the Order of this Arbitrator quashing the subpoena in its entirety.

Dated at Madison, Wisconsin, this 8th day of August, 1985.

Respectfully Submitted,

LAWTON & CATES

JOHN H. BOWERS
Attorney For AFSCME,
Wisconsin Council 40 and
Executive Director Robert Lyons