In The Matter Of The Mediation Arbitration Between:

SAUK COUNTY

and

Decision No. 22524-C

SAUK COUNTY EMPLOYEES
LOCAL 3148, AFSCME, AFL-CIO

Appearances: David Ahrens, Staff Representative, for the Union
Robert Hesslink, Attorney at Law, for the Employer

Sauk County Employees Local 3148, AFSCME, AFL-CIO, hereinafter referred to as the Union, filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, alleging that an impasse existed between it and Sauk County, hereinafter referred to as the Employer, in their collective bargaining. It requested the Commission to initiate mediation arbitration pursuant to Section 11170(4)(cm)6. A member of the Commission staff conducted an investigation in the matter.

The Union has been and is the exclusive collective bargaining representative of certain employees of the Employer in a collective bargaining unit consisting of all employees in the Health Care Center, but excluding supervisory, managerial, professional, confidential, craft and seasonal employees and residents. The Employer and the Union have been parties to a collective bargaining agreement covering wages, hours, and working conditions of the employees, and that agreement expired on December 31, 1984.

On July 3, 1984, the Employer and the Union exchanged their initial proposals on matters to be included in a new collective bargaining agreement. They met on two occasions in efforts to reach an accord.

The Commission concluded that the parties have substantially complied with the procedures required prior to the initiation of mediation/arbitration and an impasse existed between the parties with respect to negotiations leading toward a new collective bargaining agreement covering wages, hours, and conditions of employment. At the request of the parties the Commission appointed Zel S. Rice II as the mediator/arbitrator to mediate the issues in dispute and should such endeavor not result in a resolution of the impasse between the parties, issue a final and binding award to resolve the impasse by selecting either the total final offer of the Union or the total final offer of the Employer.

The Union's final offer, attached hereto and marked Exhibit "A", proposed that the insurance language of the collective bargaining agreement be amended to provide that the Employer pay 93% of the premiums for group health insurance coverage effective January 1, 1985. It proposed that the salaries be increased 18¢ per hour across the board, effective January 1, 1985. The Union proposed that the Beauty Shop Assistant be reclassified from pay range III to pay range IV. It proposed that the overtime language be amended to provide that the 7th consecutive day of work and every consecutive day thereafter be considered as overtime and compensable at time and one-half. The Union proposed that all disciplinary notices be removed from an employee's personnel folder if a similiar infraction or incident does not occur in the next 18 months. The Union proposes that the Activity Therapy Aid be scheduled Tuesday through Saturday as well as Monday through Friday. The final offer of the Union contained the following proposal: "All provisions of the labor agreement of 1983-84 except as modified above."

The Employer's final offer, attached hereto and marked Exhibit "B", proposed that it pay 90% of the premiums for group health insurance beginning June 1, 1985. During the period from January 1, 1985, to June 1, 1985, the employees would pay the costs of the major medical feature of the insurance plan and the Employer would pay the balance of the premium. The Employer proposed to increase the employees wages 16¢ per hour across the board effective January 1, 1985, and it proposed to change the title of the Night Medical Assistant to Medical Assistant. The full time Activity Therapy Aid could be scheduled on Saturday or Sunday but not more than one day per weekend. It proposed to amend all dates to reflect a one year agreement for the calendar year 1985. The Employer would not change any other provisions of the collective bargaining agreement except those that the parties have agreed to change.

The Arbitrator met with the Union and Employer at Baraboo, Wisconsin on August 14, 1985. After a period of mediation the Employer and the Union remained at impasse. Neither party would modify its position sufficiently to bring about an agreement. The Arbitrator declared the mediation phase of the proceeding at an end, and the parties were given an opportunity to present evidence supporting their positions on the issues in dispute. Subsequently both parties submitted briefs and the Employer submitted a reply brief.

The county that has been used as a comparable by arbitrators in other mediation/arbitration proceedings involving the Employer is Columbia County. In 1982 Columbia County ranked 28th in the state by population which was estimated to be 43,513. The Employer ranked 26th in population which was estimated to be 44,791. Columbia County had a 1981 assesed valuation of $1,224,954,850.00 and its total general property tax was $20,607,715.00. The Employer had an assesed valuation of $1,177,626,800.00 in 1981 and its total general property tax that year was $23,220,292.00. Columbia County had 18,900 people employed in January of 1985 and 3,100 people were unemployed. The Employer had 16,500 people employed in January of 1985 and 2,800 were unemployed.

The urban wage earners and clerical workers consumer price index for 1984 increased from 302.7 in January of 1984 to 312.2 in December of that year. That was a 3.4% increase in eleven months. The urban consumers price index increased from 305.2 in January of 1984 to 315.5 in December of 1984. That was an increase of 3.4% in eleven months.

The average hourly rate of the employees at the Employers Health Care Center at the end of 1984 was $5.53 an hour. The Employer proposes a 16¢ an hour increase across the board and payment of 90% of the insurance premiums. The average hourly rate of the employees under the Employer's proposal would be $5.69 per hour. The regular pay of the average employee working 2,080 hours would be $11,835.20. Employees receive $15 longevity pay for each year of service and the average employee has 6 years of service. The average longevity pay is $90 per year. The shift differential is 10¢ an hour and the average number of hours per employee during which shift differential is paid is 381.89 and the average employee receives $38.19 in shift differential pay. The average number of overtime hours per employee is 33.28 and the average annual overtime pay per employee is $284.04. The average total annual wage that the Employer would pay under its proposal would be $12,247.43. The average retirement contribution per employee would be $1,408.45 and the average FICA payment per employee would be $863.44. The average health insurance cost for a full time equivalent employee under the Employers proposal would be $1,755.24 and the life insurance cost would be $6.91. The Employer's total cost for the average full time equivalent employee under its proposal would be $16,281.48.

The Union's final offer of 18¢ an hour would provide an average hourly rate

of $5.71 per hour. The average regular pay of an employee who works 2,080 hours would be $11,876.80 and the longevity pay of the average employee would be $90 per year. The average shift differential pay for an employee is $38.19 and the average overtime pay for an employee would be $285.04. The average annual pay received by a full time employee under the Union's proposal would be $12,290.03. The average retirement contribution under the Union's proposal would be $1,413.35 per year and the average FICA payment would be $866.45. The average cost of the health insurance program proposed by the Union for a full time equivalent employee would be $1,774.08 and the life insurance would have a cost of $6.91 per employee. The total cost for the average full time equivalent employee under the Union's final offer would be $16,350.83. That is $69.35 more per year for the average full time equivalent employees than the Employers final offer.

As of July 1, 1984, the Employer had a general fringe benefit ratio reflecting the adjusted fringe benefit expenses divided by the adjusted total salaries of .3248. Columbia County had an adjusted fringe benefit ratio at that time of .2726. The wages and benefits of non-bargaining unit personnel are included in computing the Employer's general fringe benefit ratio. The non-bargaining unit personnel whose wages and fringe benefits are included in determining the Employer's general fringe benefit ratio include 9 supervisors, 14 or 15 licensed practical nurses, 20 registered nurses, 10 department heads, and 5 or 6 administrative personnel. The licensed practical nurses are not included in the bargaining unit of the Employer, but they are included in the bargaining unit of Columbia County. Columbia County has 12 or 13 licensed practical nurses.

In 1982, the Employer made an appropriation of $82,630.00 for its Health Care Center. That figure rose to $145,100.00 in 1983. By 1984, the Employer's appropriation for the Health Care Center was $176,660.00. In 1985, the Employer has appropriated $192,069.00 for the operation of its Health Care Center and that amount is reflected in a mill rate of $4.58 per thousand. Columbia County Health Care Center appropriation reflects a mill rate of $2.12 per thousand. The Employers Health Care Center total occupancy and occupancy rate declined steadily in 1980 through 1983. In 1980, it had over 110,000 patients days and an occupancy rate of 95.1%. In 1981, the number of patient days had declined to

just over 107,000 and the occupancy rate was 92.5%. In 1982, the Employer decertified four beds in the institution and the number of patient days declined to 104,500 and the occupancy rate was 90.8%. In 1983, the number of patient days declined to 99,000 and the occupancy rate was 86.4%. In 1984, the number of patient days increased to a little over 100,000 and the occupancy rate was 87.3%. The Employer could decertify more beds and increase its occupancy rate which would result in an increase of its Medicad payments. A decertification of beds might be permanent.

Columbia County had an average wage per hour from July 1, 1984 to July 1, 1985, of $5.63 per hour. The Employer had a 1984 average wage rate of $5.53 per hour. Its proposal would increase the average rate to $5.69 per hour and the Unions proposal would increase the average wage to $5.71 per hour.

In 1983 and 1984, the Employer paid $170.68 per month toward the health insurance premium for employees in the bargaining units of Health Care Center employees, Highway Department employees, and Sheriff's Department employees. Those employees paid $9.03 per month toward the premium which was the amount of the major medical premium. As a result, the Employer paid 94.9% of the family premium for employees in those bargaining units. The Employer paid 90% of the premium for family coverage in the bargaining units consisting of social workers, nurses and courthouse employees, and for the unrepresented employees. In 1985, the major medical premium increased, but the total premium remained the same. The Employer agreed to pay 93% of the premium for employees in the Highway Department and Sheriff's Department and 90% of the premium for the social workers, nurses, courthouse employees and unrepresented employees. Its final offer to employees in the Health Care Center proposes to pay 90% of the premium for family coverage beginning June 1, 1985. The Highway Department bargaining unit and Sheriff's Department bargaining unit have no part time employees but there are part time employees in the bargaining units for the Health Care Center, courthouse, social workers and nurses, and among the unrepresented employees. Part time employees make the cost per hour of health insurance increase. The Health Care Center has 90 part time employees and that is more than there are in any of the other bargaining units or among the unrepresented employees.

The Wisconsin Administrative Code requires the Employer to not allow

periods of unscheduled activity for mentally retarded patients to extend longer than 3 hours. That requirment makes it necessary for the Employer to have an Activity Therapy Aid on duty on Saturdays and Sundays. The Employer would like to be able to consider having a full time Activity Therapy Aid work on Sundays. Under the current language of the collective bargaining agreement and the current practice the full time Activity Therapy Aids do not work on Sundays and the Employer uses part time Activity Therapy Aids then. The Employer is reluctant to hire another full time Activity Therapy Aid unless the current language is changed so that a full time Activity Therapy Aid can work on Sunday. If the Employer has more mentally retarded patients, it will need more staff; and it would consider adding a full time Activity Therapy Aid.

After the Wisconsin Administrative Code required the Employer to limit unscheduled activity to no more than three continuous hours, it tried to change the schedule of employees in the Activity Department by having the full time Activity Therapy Aids work Saturday and Sunday. After some discussion between it and the Union, it was agreed that one Activity Therapy Aid would work Monday through Friday and the other would work Tuesday through Saturday. Two part time Activity Therapy Aids work on Sundays.

If an employee works seven consecutive days the Employer can schedule an employee off on the 8th day. Employees rarely work 7 or more consecutive days, but it could happen during bad weather. If an employee works 8 or more consecutive days, patient care suffers because it is hard on the employee.

There are two employees in the beauty shop and one is the Beauty Shop Assistant. A Beauty Shop Assistant must be licensed by the state and this requires the payment of an annual fee. In order to become a Beauty Shop Assistant, one must attend school for a year and be certified for the position. The other employees of the Employer who are required to be certified and have licenses are in pay range IV.

The Employer reached agreement with the employees in the bargaining unit consisting of employees of the Sheriff's Department that gave an average hourly rate increase of 3.68% and increasing productive hourly cost by 3.2% and raising the total payroll cost by 3.1%. It has agreed to pay 93% of the family health insurance premium for employees in the Sheriff's Department bargaining unit. The Employer reached agreement with the bargaining unit consisting of employees

in the courthouse that will increase the average hourly rate by 3.18% and productive hourly rate by 2.8% and the total payroll cost by 2.79%. The Employer has agreed to pay 90% of the health insurance premium for employees in that bargaining unit. The Employers reached agreement with the nurse and social services bargaining unit calling for an average hourly rate increase of 3% and increasing the productive hourly cost by 3.94% and raising the total payroll cost by 3.93%. It has agreed to pay 90% of the family health insurance premium for employees in that bargaining unit. The Employer agreed to pay 93% of the health insurance premium for employees in the Highway Department in 1985. There are 47 full time employees in the Sheriff's Department and 70 full time employees in the Highway Department. The Health Care Center has 226 employees and 90 of them are part time employees and the remainder are full time employees. The courthouse bargaining unit has about 20 employees and the nurse and social services bargaining unit has 20 employees. The Highway Department is 100% male and the Sheriff's Department is 75% male. The courthouse unit is about 75% female and the nurse and social service unit is about 50% female.

Columbia County employees received a 7.4% increase in wages as of July 1, 1984. There was an agreement that the Columbia County Health Care Center employees would receive an increase in the same percentage amount of the Employers increase in Medicaid payments. No agreement has been reached on a wage increase for the fiscal year beginning July 1, 1985, but Columbia County has agreed to pay 90% of the family health insurance premium. Columbia County has a pay plan with steps and the part time employees get increases through the steps on the anniversary date of their employment. Columbia County pays a prorated share of 90% of the family health insurance premium based on the number of hours that the part time employee works. The average part time employee in Columbia County works 4 days.

UNIONS POSITION

The Union argues that the two issues of primary significance are wages and health insurance payments. It contends that all other issues in dispute have less importance or no significance. The Union points out that the Employer has attempted to change the amount it contributes to the health insurance premium in the past and the proposal was rejected by Arbitrator Joseph Kerkman in

an award dated January 18, 1984. Kerkman stated that when two bargaining units had agreed to one level of contribution toward insurance and two bargaining units agreed to another level there is no persuasive internal comparable because there is no consistency of approach for health insurance premium sharing among employees. The Union refers to the award of Arbitrator Krinsky dated November 7, 1983 involving the Employer's Highway Department employees bargaining unit. Krinsky stated that in the absence of some compelling reason, any change in the way that health insurance costs are allocated should be made through bargaining and not by an arbitrator. The Union points out that the awards of Kerkman and Krinsky involved situations where there had been substantial increases in the cost of the insurance and in this case the Employer seeks to change the amount of the premium paid by it and by the employees when there has been no increase in the total cost of the premium. It asserts that the Employer is proposing to shift a 3¢ an hour cost to the employees, thereby reducing the value of its wage proposal by 3¢ and making the actual percentage wage increase 2.35%. The Union contends that the Employer proposes to reduce the amount it contributes toward health insurance for the employees in this bargaining unit while offering them the lowest cents per hour increase and the lowest percentage increase when they are the Employer's lowest paid bargaining unit. It argues that the Employer seeks to have a two tier system of benefits that would provide bargaining units consisting primarily of male employees with 93% of their insurance and bargaining units consisting primarily of females with 90% of their insurance premiums.

The Union takes the position that the Employer attempts to use the year old data from Columbia County to justify its wage proposal at the same time that Columbia County is negotiating a new wage schedule for its employees. It points out that Columbia County employees received a 3% increase in October of 1984 and an additional 4.4% in January of 1985 and both increases were retroactive to July of 1984. The Union argues that the Beauty Shop Assistant should be reclassified to a higher pay range because she is licensed, must renew the license yearly and had to go to school for a year to learn her trade. It points out that the Beauty Shop Assistant earns a profit for the Employer. The Union takes the position that it is an unsafe practice for the Employer to require employees to work 7 or more consecutive days and the Employer should be

discouraged from doing this by requiring a premium payment. It argues that the Employer's 1983 final offer proposed to have disciplinary notices removed from an employees personnel file provided there had not been a similiar incident for a period of three years. The Union contends that the concept of progressive discipline requires that prior discipline should be waived if behavior is corrected.

The Employer seeks to change the scheduling of Activity Therapy Aid. The Union points out that it agreed to change the prior labor agreement in mid-term to accomodate a state requirement. As a result part timers work on Sundays and full timers alternate on Saturdays. The Union contends that it is neither necessary nor even desirable to require full time Activity Therapy Aids to work on Sunday. It suggests the purpose of the Employer's proposal is to penalize senior workers and diminish the value of seniority. It is the contention of the Union that its final offer is closer to the cost of living than that of the Employer. The Union contends that at no time had the Union or the Employer negotiated anything but a one year contract. It asserts that there is nothing vague or ambiguous in its proposal and there is no ambiguity in it.

EMPLOYERS POSITION

The Employer argues that it is legally required to conduct activities on a 7 day per week basis and it needs flexibility to schedule activities with full time employees. It argues that the Union's proposal does not allow it to fully meet its responsibilities under the rules of the Wisconsin Department of Health and Social Services. It asserts that its proposal is more reasonable than that of the Union when its ability to pay additional labor costs relative to other units of government with whom its work force is being compared is considered. The Employer takes the position that the ability to pay concept is relative and the arbitrator should consider the ability of the Employer to pay increases as compared to the comparable Columbia County. The Employer asserts that because of the significant differences in economic criteria between it and Columbia County, it should not be required to maintain substantial wage and fringe benefit leadership. It asserts that Columbia County is more wealthy in terms of real property than the Employer and suffers less from unemployment; but it does not contribute any significant funding toward the operation of its Health Care

Center while the Employer subsidizes the operation of its Health Care Center with a substantial amount of tax dollars. The Employer points out that Medicaid rates received by Columbia County exceed those received by it by more than 4% and the increase in wages proposed by it requires an additional property tax levy. The Employer concedes that there is no evidence to establish that it lacks the absolute capability of paying the additional cost of the Union's proposal, but it contends that it has less ability to pay wage increases than Columbia County. It points out that the total compensation provided by its offer is significantly higher than that of Columbia County.

The Employer asserts that public policy favors employee contribution toward their health insurance as a mechanism for holding down ever increasing medical costs. It contends that the usual free market constraints on utilization and rate increases are not present without some form of significant consumer cost sharing of health care services by employees. The Employer asserts that a higher percentage contribution to the premium provides a consistent and general incentive to the bargaining unit to use health care services more prudently.

The Employer contends that the parties have always considered it and Columbia County to be comparable. It asserts that in analyzing comparisons of wages, hours, and conditions of employment the most logical comparison is with other municipal employees performing similiar services and the best comparison is with other employees performing similiar functions. It argues that because it is comparable to Columbia County the wages of its employees should be close to the wages paid to employees performing similiar services for Columbia County. It asserts that since the evidence establishes that the wages paid to its employees are greater than those paid to Columbia County employees, its offer is clearly more reasonable than that of the Union. The Employer takes the position that its wage offer exceeds the comparable wage of Columbia County at the present time. While the Employer recognizes that Columbia County employees are now negotiating new wage rates to be effective on July 1, 1985 and a comparison of its proposal with their existing rates might not be considered appropriate, it contends that fact alone does not render its comparison to be less than meaningful. It takes the position that Columbia County has made no proposal to increase wages for the employees in its health care center and there may

actually be a decrease; thus the most relevant comparison would be with its present wage levels.

The Employer points out that the full time employees of Columbia County currently pay $45 per month toward their family health insurance premium and Columbia County has just now offered to pay 90% of the premium for full time employees only. It contends that its contribution to its employee's health insurance plan and the take home pay of its average employees would be substantially greater than that of comparable employees in Columbia County. It asserts that the Union's proposal would increase the already existing difference between the wages received by employees in its Health Care Center and the employees in the Columbia County Health Care Center. It takes the position that its offer on health insurance is closer to the proposal offered by Columbia County to its Health Care Center employees and identical to the plan provided for the majority of its employees. The Employer points out that Columbia County can schedule all regular full time employees on alternate weekends and the Activity Therapy Aids are available for work on Saturdays and Sundays. It points out that the language in the old collective bargaining agreement prohibits the Employer from adjusting an employee's work schedule to avoid the payment of overtime. The Union's proposal that employees be paid time and one-half for all time worked on the 7th consecutive day as well as all time worked on each consecutive day thereafter would mean that an employee working on the 7th consecutive day would be entitled to receive overtime for each consecutive day thereafter even if those consecutive days were the employees normal work days. The Employer argues that the Columbia County collective bargaining agreement provides that it only has to pay employees time and one-half for overtime for all hours in excess of 8 hours per day or in excess of 40 hours per week. Under that language an employee is only paid for overtime for those hours that actually exceed 8 hours per day or 40 hours per week and not for regular work days that happen to be contiguous to such hours. It contends that no other labor agreement provides that an employee who has worked overtime would automatically generate payment at the rate of time and one-half for regular work hours. The Employer argues that the rate of increase in the consumer price index was about 3% in the year immediately preceeding the effective date of the new agreement and that percentage closely approximates the wage offer of both the Employer and the Union. Based

on that fact the Employer takes the position that the cost of living changes should not be a determining factor in deciding which of the two offers is more reasonable. The Employer argues that the over all compensation level of the employees in its Health Care Center is relatively high. It points out that its fringe benefits equal about 32.5% of the base wage and that the slightly lower offer of the Employer for its contribution to health insurance premiums and wages meets the objective with respect to over all compensation. It argues that given the slight difference between the two economic offers, it would be difficult to base a findings solely on that criteria. The Employer contends that since the Union's language proposals seek to change existing language the burden is on it to establish the reasonableness of a need for contractual change and the burden has not been met. It asserts that the Union's offer would lead to potential further litigation to determine the proper duration of the resulting contract and a potential loss by the bargaining unit members of the ability to negotiate an Employer's payment of the recently increased employee contribution to the state retirement fund. The Employer points out that the Union seeks to change the language on the classification of the Beauty Shop Assistant, the payment of overtime on the 7th consecutive day, and the removal of disciplinary materials from the personnel file while it has only sought to change the title of one position from Night Medical Assistant to Medical Assistant. It contends that the Medical assistants are not limited to working on the night shift and the title of the position should be descriptive of the actual job. The Employer points out that some people in pay range III attend classes and the other classifications in pay range IV who are required to receive formal training are required to attend such training for a longer period of time than Beauty Shop Assistant. It takes the position that there was no evidence to establish similarity of duties and responsibilities between the Beauty Shop Assistant and any of the classifications in pay range IV. It argues that employees in the classifications of X-ray and EKG technicians actually participate in the diagnostic and treatment process and have greater responsibilities than the Beauty Shop Assistant. The Employer argues that the Union has failed to establish that it has in any way abused the assignment of overtime so as to warrant the sanction of payment at time and one-half. It contends that on those rare occasions when a full time employee has been required to work on the 7th day the Employer has

taken the necessary steps to find a replacement on the next day to avoid hardships. It asserts that under the present language it is free to reschedule other employees to cover for those employees who might have to work on a 7th day while the Union's proposal would eliminate that flexibility because the Employer would not be able to reschedule hours to avoid the payment of overtime. The Employer alleges that the Union has failed to show that its proposal would have affected the results of any disciplinary proceeding. It concedes that it did propose in a prior mediation/arbitration proceeding that disciplinary warnings be removed after three years but the Union did not accept it and made no proposal on the subject at that time. It takes the position that there is no real need for a change in the contractual language.

The Employer acknowledges that it has reached agreement on slightly higher figures with some of its bargaining units than it offered the Union. It contends that the Health Care Center is funded in a manner that is totally unique among its bargaining units and that employees of this unit benefit in a disproportionate manner from the language extending full health insurance coverage to part time employees. The Employer points out that its Health Care Center and the Columbia County Health Care Center are funded primarily by state Medicaid dollars and the rate of increase received by the Employer from the state was so minuscule as to be virtually non-existent while Columbia Columbia received a substantially larger increase. It argues that it has already shouldered a substantial operational deficit. The Employer takes the position that the virtual rate freeze by the State of Wisconsin, the declining patient population at the Health Care Center and the escalating operational deficit justify the offer that it made to the Union. It contends that it pays for more health insurance plans for this unit than there are full time equivalent bargaining unit positions because significant numbers of part time employees receive full health insurance benefits. It points out that it pays 90% of the health insurance premium for the other units with part time employees while it pays 93% of the health insurance premium for those bargaining units without part time employees. The Employer asserts that this establishes that its offer on health insurance to this bargaining unit is consistent with its offer to other bargaining units.

The Employer points out that the Union's final offer recites a number of specific changes to the agreement and then closes by indicating that all other

provisions of the 1983-84 agreement are "except as specifically modified" to remain the same. It takes the position that no specific change was proposed by the Union to the duration clause which previously provided for a two year agreement with the wage re-opener in the second year. It contends that if the Union has intended a one year agreement it could have accepted the Employer's offer on the duration but it did not. It asserts that the Union's offer as drafted is a proposal for two year contract and acceptance of that offer would result in the employees in this unit having waived their right to bargain on the retirement fund rate increases to take effect in the calendar year 1986.

DISCUSSION

The Employer contends that the Union's final offer is a two year proposal and urges the Arbitrator to consider it as such in determining the most appropriate final offer. The Union points out that in its negotiations it never proposed anything other than a one year agreement and there was never any discussion between it and the Employer of anything but the one year agreement. The Arbitrator is of the opinion that the written final offer submitted by the Union to the Commission's investigator was prepared in a rather casual manner. A final offer may determine the wages, hours and conditions of employment for a substantial period of time and every effort should be made to prepare it in a manner that is definite and certain. In this case the parties had been negotiating a one year agreement and there was no discussion of a two year agreement. Apparently, the Union assumed that both parties clearly understood that they were both proposing one year agreements and its written final offer does not specifically spell that out. The Arbitrator is satisfied that the Employer, the Union and the Commission's investigator understood that the proposal of the Union was for a one year period and it will be considered as such. The Employer argues that the Commission has determined that if one of the parties final offers is vague and uncertain, an arbitration award that incorporates such an offer may not be proper. That is not quite what the Commission determined. In Ithaca School District, Decision #17461-B (WERC 12/14/79) the Commission did find that the final offer of the association was too indefinite and uncertain to be considered a proper final offer for consideration by the Arbitrator. It directed that the investigation be reopened to obtain a final

offer that left no doubt as to its meaning. This Arbitrator has no authority to reopen the investigation and have the final offer of the Union made more definite and certain. However, the Union took the position at the hearing in this matter that its proposal was for a one year agreement and it presented testimony that all of the discussions and negotiations contemplated a one year agreement and neither of the parties ever considered a two year agreement. The purpose of the final offer is to have a party present a proposal that is as close as possible to the position of the other party and be acceptable to the other party. It is unrealistic to believe that the final offer of the Union contemplated a two year proposal after it had spent two negotiating sessions with the Employer and gone through an investigation by a member of the Commission's staff during which both parties made offers for one year and there was no discussion of a two year proposal.

The Employer seeks to change the language in the collective bargaining agreement to permit it to have the flexibility to have full time Activity Therapy Aids employed on weekends as well as during the week. The law requires it to conduct activities on a seven day per week basis and under those circumstances there is no reason why it should not be able to schedule full time employees on both days of a weekend. The Union voluntarily agreed to modify the old agreement to permit the Employer to schedule a full time Activity Therapy Aid on Saturday but it refuses to agree to a provision permitting them to work on Sunday. Apparently, the Employer and the Union have worked out an arrangement whereby part time Activity Therapy Aids work on Sundays and it seems to be working out. However, the Employer should have the right to schedule its employees to cover all of the hours that they are needed. If it chooses to use full time employees on Sundays as opposed to part time employees, that is a determination that it should make without any restrictions imposed upon it by the collective bargaining agreement. It may be that the Union might possibly need language in the agreement that will protect the seniority of full time Activity Therapy Aids. If that is the case it should direct its proposals toward language of that type rather than restricting the ability of the Employer to use full time employees whenever it deems them necessary. The Employer's proposal with regards to Activity Therapy Aids is preferable to that of the Union when it is measured against any of the applicable statutory criteria.

The Union seeks to have disciplinary notices removed from an employees personnel file if there has not been a similiar incident for a period of 18 months. It argues that the concept of progressive discipline requires that prior discipline should be waived if behavior is corrected. Its proposal is not unique in collective bargaining agreements and the Employer included a similiar proposal in its own final offer in a prior mediation/arbitration. The Employer concedes that it made such a proposal but points out that the Union did not accept it and made no proposal on the subject at the time. It alleges that the Union has failed to show that its proposal would have affected the results of any disciplinary proceedings and contends that there is no real need for a change in the contractual language. The Union did not present any evidence that its proposal would have effected the results of any disciplinary proceedings and it did not demonstrate a real need for such a change in the contractual language. Such a provision is not unique in collective bargaining agreements and does offer a degree of protection to employees that is compatible with the concept of collective bargaining. When measured against the statutory criteria there is no basis for preferring the position of either the Union or the Employer over that of the other and the Arbitrator does not consider it to be an issue of any significance in these proceedings.

The Union seeks to have the 7th consecutive day of work considered as over time and all subsequent consecutive days considered as over time. It argues that it is an unsafe practice for the Employer to require employees to work 7 or more consecutive days and it should be discouraged by requiring a premium payment. The Arbitrator agrees that the Employer should be discouraged from requiring employees to work 7 or more consecutive days on a regular basis. However, there is no evidence that the Employer has done this or that there is any need for a premium payment. The normal practice is to pay employees over time for all work in excess of 8 hours a day or 40 hours per week. That is the policy followed by Columbia County and the Arbitrator is not familiar with any other labor agreement that generates payment at the rate of time and one-half for regularly scheduled work hours. There is no evidence that the Employer has abused the assignment of over time. On those rare occasions when an employee has been required to work on a 7th day the Employer has taken steps to find a replacement on the following day to avoid hardships. The Unions proposal would

place limitations upon the Employer's flexibility, thereby causing problems for both it and the employees. None of the criteria set forth in the statutes would support the Union's position on this issue. The Employer's current practice is the normal practice and is more reasonable than the Unions proposal. The Arbitrator flatly rejects the position of the Union on this issue.

The Union points out that the Beauty Shop Assistant is licensed and must renew the license yearly and had to attend school for a year to learn her trade. It presented no evidence that the Beauty Shop Assistant was under paid when compared to other Beauty Shop Assistants in either the public or private sector. The employees in pay range IV with which the Union seeks to compare the Beauty Shop Assistant are required to have training for a longer period of time and there is no similarity between their duties and responsibilities and those of the Beauty Shop Assistant. None of the statutory criteria supports the position of the Union. Its argument that the Employer makes a profit on work of the Beauty Shop Assistant is a mere assertion and was not supported by any factual evidence. It may be true that when only the salary of the Beauty Shop Assistant is considered, her work may generate a profit. In determining whether or not there is a profit one must consider the materials and facilities that the Employer provides as well as the employees wages. In any event, there is no evidence that the Beauty Shop Assistant is paid a salary that is out of line when compared to that of other Beauty Shop Assistants in either the public or the private sector. The arbitrator rejects the Union's position on the issue.

The Employer seeks to have the title of the Night Medical Assistant changed to Medical Assistant. It points out that Medical Assistants are not limited to working on the night shift and the title of the position should be descriptive of the actual job. The Union presented no evidence on the issue and in fact conceded that it was not truly an issue. Accordingly, the Arbitrator finds the Employer's position on the issue to be acceptable to both parties.

There is only 2¢ an hour difference between the wage proposals of the Employer and the Union. The Unions proposal of 18¢ an hour would provide an average hourly rate of $5.71 per hour for employees in the Health Care Center. That is an increase of 3.25% which is not excessive when measured against a cost of living increase of 3.4%. The Employer has reached agreement with its other bargaining units calling for increases ranging from 3% to 3.68%. Its offer to

the Union is a 2.8% increase which is lower than that offered to any other bargaining unit and lower than the increase in the consumer price index. The percentage increases offered by the Employer to its other bargaining units are comparable to that sought by the Union. The Union's proposal on wages meets the statutory criteria of internal comparability. When the wages of Health Care Center employees in Columbia County are compared to those paid by the Employer, the proposal of the Union is realistic. During the period from July 1, 1984 to July 1, 1985 Columbia County paid its Health Care Center employees an average wage of $5.63 an hour which is 10¢ an hour more than the average wage paid by the Employer to its Health Care Center employees. The Unions proposal would pay the average wage to $5.71 per hour active to January 1, 1985 which would be 8¢ an hour higher than the average wage in Columbia County. However, Columbia County's collective bargaining agreement with its Health Care Center employees expired July 1, 1985 and those employees are seeking another increase as of that date. There is little difference between the 18¢ an hour increase sought by the Union and the Employer's offer of 16¢. Both the internal and external comparisons favor the position of the Union and it is difficult to justify the Employer's proposal to provide its lowest paid employees with the smallest increase. The Employer seems to take the position that the economic status of Columbia County is much more favorable than its own. The fact is that both counties are very close to each other in population and in assessed valuation. Columbia County receives a higher rate of Medicaid assistance than the Employer but that differential is based on the criteria of the Wisconsin Department of Health and Social Services. The purpose of the lower Medicaid payments to the Employer is not to reduce the wages of its employees and the statutory criteria does not contemplate that the reasons for providing the Employer with lower Medicaid payments justify lower pay increases. It is true that the Employer makes a greater tax effort in maintaining its Health Care Center than Columbia County does but that is the result of the criteria for establishing Medicaid payments. It does not mean that the Employer has less ability than Columbia County to provide its Health Care Center employees with pay increases. The Employer concedes that it has the capacity to pay the additional cost of the Unions proposal. It should be expected to provide increases to Health Care Center employees comparable to those received by its other bargaining units and

comparable to the increase provided by Columbia County to its employees. There is no evidence that would justify disrupting the long standing relationships between the wages of the Employer's Health Care Center employees and those of its other bargaining units. The year old wage data of Columbia County used by the Employer is not a basis for giving its Health Care Center employees smaller increases than those received by its other employees. The current data on Columbia County plus the fact that they are now negotiating another increase would indicate that the Union's wage proposal is justified by the external comparable.

The primary issue that separates the parties is the Employer's contribution towards the health insurance premium. Arbitrator Kerkman addressed this same issue in the award he issued on January 18, 1984 involving these very same parties. In that proceeding the Employer justified its proposal to reduce its contribution towards health insurance on the basis of cost containment. Kerkman pointed out in that case that the Employer had a voluntary agreement with a small unit of nurses and an arbitration award for the courthouse unit that were similiar to the Employer's proposal to this bargaining unit. Opposed to those settlements were two arbitration awards affecting the Sheriff's Department and Highway Department providing the same contribution by the Employer that the Union sought. He concluded that the internal comparisons were not persuasive since there was no consistency of approached for health insurance premium sharing among all the employees of this Employer. He pointed out that if the Employer's final offer was adopted the insurance proposal would result in a reduction of several cents per hour in wages for each employee, thereby reducing the Employers wage proposal. Kerkman concluded that the reduction of income to the employees by reason of the decrease in health insurance premium participation by the Employer was unwarranted where the Employer had already agreed to larger salary increases for its other employees. That is exactly the same situation that exists in this proceeding. The Employer has reached agreement with its Highway Department and Sheriff's Department employees on a contribution of 93% of the family health insurance premium. It has reached agreement with its courthouse and the nurse and social workers unit on a contribution of 90% of the premium. It has offered this bargaining unit a smaller percentage increase than it has offered its other employees. It seeks to reduce its contribution

toward the health insurance premium for this bargaining unit to 90%, thereby decreasing the wages of employees in this bargaining unit by 3¢ an hour as of June 1, 1985. That argument was rejected by Kerkman in January of 1984. The Employer has offered no convincing evidence or arguments that would justify this Arbitrator in reversing the Kerkman Award. The Employer should not expect to be able to raise the same issue every year and shop around for a different Arbitrator with the hope that the new one will reject well reasoned rationale of an earlier award. The amount of the health insurance premium has not increased over the preceding year and no other circumstances have arisen that would justify reversing the thrust of the Kerkman award. The Employer argues that it seeks to make its insurance contribution the same for all bargaining units that have part time employees. That same situation existed at the time of the Kerkman award. It did not justify the Employer's position then and it does not justify it now.

The issues involving the scheduling of the Activity Therapy Aid, disciplinary notices, over time, Beauty Shop Assistant and Night Medical Assistant have little significance and should not be controlling in this matter. The Union's position on over time beginning with the 7th consecutive day has no merit and weakened its overall position. However, it is an insignificant issue and the Employer can control over time in a manner that will avoid serious problems. Even the Employer's wage offer that is 2¢ per hour less than that of the Unions is not of enough significance to be controlling. However, when it is considered with the fact that its insurance proposal would result in a wage reduction of 3¢ per hour as of June 1, 1985, the differential in the wage proposals of the parties is 5¢ an hour. That is a significant amount, particularily when it involves the Employer's lowest paid employee.

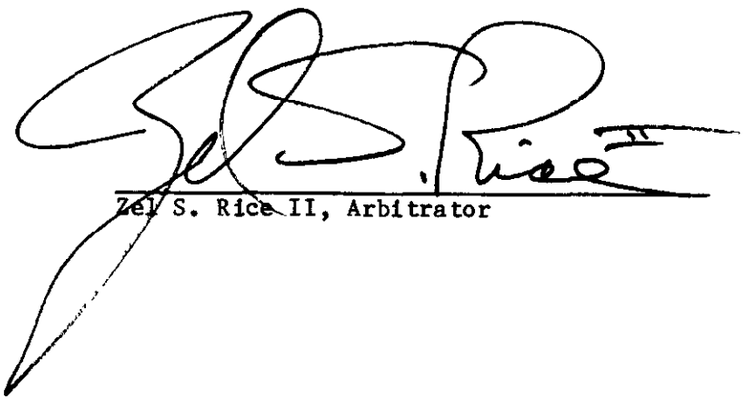
It therefore follows from the above facts and discussions thereon that the undersigned renders the following

AWARD

After full consideration of the criteria listed in the statute and after careful and extensive examination of the exhibits and briefs of the parties the Arbitrator finds that the Union's final offer more closely adheres to the statutory criteria than that of the Employer and directs that the Union's proposal

contained in Exhibit "A" be incorporated into an agreement containing the other items to which the parties have agreed.

Dated at Sparta, Wisconsin, this 15th day of October, 1985.



Zel S. Rice II, Arbitrator

~~From time to time, change~~ to-do-so:

The employer shall pay ~~90~~ 95% of the premiums for group health insurance coverage that is as good as or superior to the current coverage curently enjoyed by members of the bargaining unit. For interpretative purposes, the insurance plans proposed for 1985 by WPS-HIP and HMO of Wisconsin (which shall be offered, if at all, as dual-choice options to employees) are "as good as" the current policies. It is understood the Employer may continue to offer coverage under a standard policy or offer dual-choice options at its discretion; the Employer's financial responsibility shall be limited to ~~90~~ 95% of the least expensive of any dual-choice option offered which is as good as present coverage."

EXHIBIT A

2.50

Final Offer of Union

I. Items 1, 2, 4 and 7 of County Final Offer (11:30A) to be considered Tentative Agreement

II. Insurance language as attached w/ 90% payment by County.

III. 12.06 : 55% 50% to 2

"An employee who retires with an annuity from PERS WAS shall be allowed...

IV 17.01 : N. Hosp : 6A to 2:30P
Activity Side : ~~[illegible]~~
4 D like: 8Am - 4:30 - Tues - Sat. ~~[illegible]~~

V 17.04 : first hour : 7a consecutive day and all consecutive days thereafter.

VI 24.01 : 20½ ¢

VII. 25.01 : ~~Any~~ Disciplinary material shall be moved from the employee's personnel folder if a similar infraction or incident does not occur in the next eighteen (18) months.

~~VIII~~. Wage Appendix :
Reclassify Beauty Shop Asst to IV.

18¢ a-t-b- 1/1/85

IX. All provisions of the Labor Agreement of 1983-84 except as modified above.

EXHIBIT B

3:20 Final Offer of Monroe County & AFSCME, Local 3148

The final offer of the County (11:30) shall remain the same except that proposals #1, 2, 4, and 7 shall be considered tentative agreements; ~~and~~ the County's proposal #6, amending 5.21.01, shall be effective June 1, 1985; and the County's proposal on wages shall be increased to 16¢.

3/28/85 Eugene R. Dumas

11:30
3/28/85

Final Offer of Sauk County & AFSCME Local 3148

1) Amend 8.01 by inserting the following language after the first sentence thereof:
"The probationary period shall be for 6 calendar months but part-time employee shall receive pay increases based on actual hours worked."

2) Amend 10.02 by adding the following language at the end thereof:
"... and provided further that no employee shall be granted either Thanksgiving or Christmas ~~[illegible]~~ two years in a row."

3) Amend 13.06 by changing the figure "50%" to "55%" and by amending the first sentence thereof to read as follows:
"An employee who retires with an annuity from the Wisconsin Retirement System shall be allowed ---."

4) ~~[illegible]~~ 15.11 shall be created to read as shown in Employer's initial proposal.

5) 17.01 shall be amended as follows:
a) Change Night Medical Assistant to Medical Assistant.
b.) Add "6:00 A.M to 2:30 P.M" to hours shown for Nursing Assistant.
c) Second hours for Activity Therapy Aide would read:
"Not more than one day per weekend, no holidays,

except when special activities occur during weekend or holiday."

6) 21.01 shall be amended to read as follows:

"The employer shall pay 90% of the premiums for group health insurance coverage that is as good as or superior to the current coverage enjoyed by members of the bargaining unit. For interpretation purposes, the insurance plans proposed for 1985 by WPS-HIP and HMO of Wisconsin (which shall be offered, if at all, as dual-choice options to employees) are "as good as" the current policies. It is understood the Employer may continue to offer coverage under a standard policy or offer dual-choice options at its discretion; the Employer's financial responsibility shall be limited to 90% of the least expensive of any dual-choice option offered which is as good as present coverage."

7) 24.01 shall be amended by changing the figure "30" to "20.5".

8) Amend all dates to reflect 1 year agreement for calendar year 1985.

9) Increase all wages shown in Appendix A by 11¢ per hour.

Eugene R. Kumas