EDWARD B. KRINSKY, INC.
Edward B. Krinsky, Arbitrator
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In the Matter of Mediation-Arbitration Between	
DANE COUNTY	
and	Case 100 No. 34671 MED/ARB-3212
DISTRICT 1199W/UNITED PROFESSIONALS FOR QUALITY HEALTH CARE	**Decision No. 22700-A**

Appearances:
Mulcahy & Wherry, by Mr. John T. Coughlin, for the County.
Mr. Laurence S. Rodenstein, Organizer, for the Union.

On June 17, 1985, the undersigned was appointed as Mediator-Arbitrator by the Wisconsin Employment Relations Commission in the above-captioned matter. On August 13 and 27 1985, the undersigned met with the parties. After a brief and unsuccessful attempt to mediate the outstanding issues, an arbitration hearing was conducted. A transcript of the proceedings was made. At the hearing the parties had the opportunity to present evidence, testimony and arguments. The record was completed with the exchange by the arbitrator of the parties' post-hearing reply briefs on November 13, 1985.

The parties' final offers are as follows:

DANE COUNTY FINAL OFFER

1. The salary schedule be adjusted upward by 4% effective December 23, 1984.

2. Add the following language as a new paragraph to Section 1.04 Subcontracting: The employer agrees to bargain the demonstrable financial impact (i.e., reduction in hours or lay-off) experienced by a collective bargaining unit member(s) covered by this contract (excluding LTE's), only when said impact is a result of

the discontinuation of County services or subcontracting of work previously and customarily performed by a member(s) of this particular bargaining unit.

3. Add to Article XIV, Section 14.01 Health and Dental Insurance a new subsection (d) as follows:

(d) Effective January 1, 1986, for permanent employes working less than full time, the County shall pay the health and dental premium contributions as provided in (a) above on a pro rata basis to the closest 10% incremental equivalent, as determined by the percentage of time compensated the employe. Time worked shall be initially established by the number of hours budgeted for the position, based upon a full time equivalency of 2,080 hours in a payroll year. When a department head determines that an employe's work time will increase or decrease by more than 10% during a three (3) month period of time or more, the County's health and dental premium contribution shall be adjusted accordingly, effective with the next premium contribution payment by the County. Permanent part time employes and job sharers who are currently receiving the full County health and dental premium contribution as of March 16, 1985 shall be grandfathered (i.e., continue to receive the full contribution until such time as the employe resigns, retires or assumes permanent full time employment).

DISTRICT 1199W/UNITED PROFESSIONALS
FOR QUALITY HEALTH CARE

FINAL OFFER

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(1) Modify Hourly Rates and Range Steps as follows:

(a) Effective December 24, 1984, increase each rate by 4%.

(b) Any wage adjustment in the second year will be subject to the terms of the wage reopener set forth in Article XXVII Duration.

(2) Add the following language as a new paragraph in Section 1.04, Subcontracting:

The Employer agrees to bargain the demonstrable financial impact (i.e., reduction in hours or layoff) experienced by a collective bargaining unit member(s) covered by this contract (excluding LTE's), only when said impact is a result of the discontinuation of County services or subcontracting of work previously and customarily performed by a member of this particular bargaining unit. If the parties bargain to impasse over any matter covered by this Section, the Union or the Employer shall have the right to petition for mediation-arbitration pursuant to Section 111.70 Wis. Stats.

(3) Modify Article XIV, Section 14.01(a) Health, Accident and Dental Insurance --

so that the County will pay any increased costs of the premiums for health and dental insurance in 1986.

(4) Modify Article XIV, Section 14.03 Retirement as follows:

The Employer shall pay the employee's share of the contributions, but not to exceed ~~5~~ 6% of his/her base salary, effective January 1, 1986.

(5) Modify Article XXVIII Duration as follows:

This Agreement shall become effective December 23, 1984 and continue in full force and effect through December 21, 1986, and shall continue from year to year thereafter, unless terminated in accordance with the terms of the Municipal Employment Relations Act.

This Agreement shall be reopened only for the purpose of negotiating wages for the second year of this contract. Except for wages, no other matter will be reopened or subject to negotiation. In the event that the parties have been unable to agree, then either party may petition for mediation-arbitration pursuant to Section 111.70 Wis. Stats.

Preliminary Issues:

The first issue with which the arbitrator must deal is the Union's contention that the County's final offer is fatally flawed and therefore should be rejected regardless of the merits of the offer.

The Union points to the fact that the County's final offer contains no reference to duration. The offer contains an effective date for salary increase (December 23, 1984) and an effective date for a modification of Health and Dental Insurance language (January 1, 1986), but no termination date. The Union argues that there is ambiguity concerning whether the County's final offer is for a one-year or a multi-year contract. It regards the County's verbal statement of its intended termination date as a unilateral modification by the County of its certified final offer.

It is apparently the case that the Union is raising this alleged fatal flaw for the first time in this proceeding before the mediator-arbitrator. There is no indication that the Union requested the Wisconsin Employment Relations Commission to determine the legality of the County's offer prior to the certification of final offers. The Union did not ask the Commission to make a Declaratory Ruling on the matter, nor apparently did it raise the issue with the Commission's staff during the investigation of the petition for mediation-arbitration.

The Union argues that if the County's offer is construed by the mediator-arbitrator as having the December 21, 1985 termination date as the County asserts, the offer is still flawed because it then contains an insurance provision which takes effect after the termination date. The Union asserts that the County has an obligation under the statutes to maintain the status quo after the expiration date of the contract while a successor agreement is being negotiated, and the Union asserts that implementation of a modified insurance provision by the County would be a unilateral change which would not maintain the status quo.

With respect to the duration issue, County Chief Negotiator Coughlin testified that it was his recollection that the County had communicated to the Union across the table that it was negotiating a one-year agreement. Coughlin testified that he never intended to communicate anything to the contrary, since the County negotiating team had no authority to negotiate a multi-year contract. Coughlin did not have bargaining notes with him at the arbitration hearing, nor did he produce any subsequently which would show

that a proposal was made which specified a one-year duration. County Employee Relations Manager Wirig also testified that he is sure that one year was mentioned at the bargaining table by the County as the proposed duration of the contract. He, too, did not produce bargaining notes which would substantiate his recollection in this regard.

Wirig testified that each of the three Agreements voluntarily negotiated with AFSCME for 1985 were one-year agreements, and each had a beginning date of December 23, 1984, and a termination date of December 21, 1985. Each of those Agreements includes provision for a modification of the Health Insurance language to be effective January 1, 1986. Wirig testified also that the January 1, 1986 implementation date was chosen because that is the first date on which the modified provisions could be implemented by the health insurance carrier.

Both parties cited Wisconsin Employment Relations Commission decisions and decisions of arbitrators in support of their arguments concerning the effect of an unclear final offer, and concerning the legality of a contract change effective after the termination date of an Agreement.

Discussion:

The County's final offer is ambiguous with respect to the proposed duration of Agreement because it does not have a stated termination date, and it has proposals with effective dates in December 1984, and in January 1986. That fact notwithstanding, the arbitrator views the County's final offer as a one-year proposal, for several reasons described below. Even if the arbitrator were less sure of its intended duration, it would be his opinion that the ambiguity would not make the final offer illegal and would not require automatically that the Union's offer would have to be selected, although the ambiguity might affect his decision.

The arbitrator is not aware of any Commission case law mandating that a mediator-arbitrator reject an ambiguous final offer. The Commission was not asked to consider any issue with regard to the legality of the County's final offer when it certified the offer. If the Union viewed the final offer as illegal or prohibited because of the absence of a stated termination date, it could have raised the issue with the Commission's investigator, or with the Commission.

As noted above, the arbitrator views the County's offer as a one-year offer. No one has offered any proof of what was communicated across the table by the bargainers. There are only uncorroborated recollections. The parties' previous

Agreement was a one-year agreement. The arbitrator views it as most likely that a party seeking to change the duration of an agreement would so specify, as in fact the Union has done in its final offer in seeking a two-year Agreement with a wage reopener in the second year. Moreover, the arbitrator believes that an employer making a 4% wage offer in 1985 would not intend that offer to be for a period greater than one year without so specifying, nor would a Union normally view such an offer as intended for more than a year's duration. The transcript and exhibits in this case make it clear that the Union is very cognizant of Agreements being reached between the County and its other bargaining units, and also what offers have been made by the parties to that bargaining. The Union would not have had any basis in the information obtained about those bargains to have any doubts about the duration of the County's final offer.

Having determined that in his opinion the County's offer is for a one-year Agreement, the arbitrator must turn to the more difficult question raised by the Union. What is the effect on a final offer which has a termination date in December 1985, of a provision which is effective in January 1986?

The arbitrator is not aware of Commission case law which makes it a prohibited practice to have an agreement between parties which is of fixed duration but which provides for the implementation of a condition or benefit at a date after that. Thus, the arbitrator believes that the parties to this case could have legally done what was done between the County and its AFSCME units, that is, have a one-year agreement expiring in December 1985, with an insurance modification effective in January 1986. What makes the present case different is that there is no voluntary agreement to that effect. The arbitrator does not believe that he is precluded from choosing a final offer that would produce an agreement of that kind. Moreover, if he does select the County's offer, there would still be the opportunity for the parties to negotiate a further change in the insurance benefit as part of the 1986 negotiations, whether or not such an outcome would likely occur.

The Union argues that if the arbitrator selects the County's offer, and thus gives approval to what is to be construed as a one-year agreement, the County would then be unilaterally changing the status quo for 1986 negotiations by changing the insurance benefit on January 1, 1986, assuming that there was no contract in effect at that time. It is not

clear to the arbitrator that such a change would be a prohibited alteration of the status quo, since the change would result from a mediation-arbitration award. 1/

In summary, the arbitrator does not agree with the Union that the County's offer is flawed and must be rejected. Of course the Union is free to pursue these questions in proceedings before the Commission should it disagree.

Health and Dental Insurance for Part-Time Employees:

The County final offer alters the health and dental insurance provisions for permanent employes working part time. It has a grandfather provision for those permanent part-time employes (all who have appointments of 50% or more) who are currently receiving the full County health and dental premium contribution as of March 16, 1985. As the Union points out in its brief, current employees who will potentially lose the grandfather status and suffer the loss of existing full County health and dental benefits are those who are now full-time employees who subsequently become part time, those who are not now enrolled in the insurance program but who do so subsequently, and those part-time employees who become permanent full-time employees and then revert to part-time status subsequently.

1/ In support of its position the Union cites City of Brookfield, Case 46, No. 29977, MP-1349, Decision No. 19822, and Green County, Case 69, No. 31044, MP-1433, Decision No. 20308, both issued by the Commission on November 21, 1984. The arbitrator has read these decisions and does not view them as being in conflict with his issuing a decision in favor of either party's final offer. These decisions by the Commission do not make it clear, in the arbitrator's opinion, that the change in an insurance benefit pursuant to an expired contract would be a prohibited unilateral change in the status quo if it were implemented on its effective date which is after the expiration of the contract. Whether or not this interpretation is correct, the arbitrator reads the Brookfield decision as stating that it is the Commission, not the arbitrator, which has the responsibility for determining the legality of a party's conduct. It states, at page 12, "The Sec. 111.70(4)(cm) final offer selection process determined which of the two offers was more reasonable as a whole when considered in light of the statutory criteria. The mediator-arbitrator was not responsible for remedying the City's unlawful conduct. That was and is the function of the Commission pursuant to Secs. 111.70(4)(a) and 111.07(4), Stats."

The County's proposal also provides an increase in benefits to permanent part-time employees insofar as it provides for the first time that health and dental benefits will be paid on a pro rata basis to those who work less than 50%, the latter percentage being the current threshold for receipt of benefits.

This is a proposal by the County to modify an insurance benefit provision that has been in effect for several years. The arbitrator agrees with the Union that such modification requires the County to meet the burden of showing why such a change is necessary.

In his testimony at the hearing, Wirig described the County's rationale for making the proposal for change. He cited the fact that the change has been accepted by three of the other County bargaining units. He cited the County's desire to reduce future costs by eliminating payment of full benefits for part-time people, since the County prorates its other benefits. He cited a wish by the County to accomplish this reduction in costs without hurting current employees. These reasons are dealt with further, below. In its brief the County also argues that the proposal will have minimal effect on current employees. It argues that changes from full to part-time, or part-time to full status are voluntary, as are changes in hours by part-time employees. It cites the fact that of the 62 employees in the unit, there were 3 who changed status in 1983, 9 in 1984 and 5 through mid-August 1985.

The County cites the fact, also, that the three other bargaining units which have accepted the proposed change encompass 984 employees, or 76% of the County's organized work force. It argues further that one of those units is comprised of professional social workers, which the County describes as "...uniquely comparable to the nurses in Local 1199W since they are professionals with a commensurate amount of education in a similarly sized bargaining unit, (97), with an ample number (15) of their membership working on a part-time basis." The bargaining unit in this dispute has 37 of 62 employees working on a part-time basis. The County argues that "...it is logical and reasonable for the County to insist on pro rata benefits for the nursing unit in order to maintain equity among the employee groups."

The County argues also that in the City of Madison and the State of Wisconsin, both major employers in Dane County, part-time nursing employees receive benefits on a pro rata basis. This benefit is given to City employees who work more than 50% time. Among State employees, those who work less than 600 hours receive no benefits, those working between 600 and 1,040 hours receive pro rata benefits, and those working 1,040 hours or more receive the same benefits as full-time employees. The County notes also that the State does not pay

dental insurance benefits and does not pay the full premium for health insurance benefits. The City pays the full cost of only the lowest available health care plan.

The County also provided information on benefits paid by nine other counties, six of which pay no dental insurance for part-time employees, and only one of which pays full premium for health insurance. It also provided data on salary and other benefits paid to County nurses in comparison to nurses in other counties. It argues that on that basis alone, the County offer is supportable.

The Union argues that the County has not demonstrated that there is a monetary necessity for the proposed change, and it has not demonstrated how the proposed change will impact the County's costs in relationship to the jurisdictions which it uses for comparisons, or that the County will not be competitive with these jurisdictions.

The Union points out that with respect to movement of part-time employees through the salary schedule, and in many other respects, there is lack of consistency between this unit and other County bargaining units. The Union argues that there is no compelling reason for consistency on this issue.

The Union argues that despite County assertions that it does not wish to harm present employees, the grandfather provisions of the County's offer are not person-specific, but rather apply to their employment status. Thus, the Union argues, a variety of possibilities exist for harm to present employees, (see the first paragraph of this subsection, above). The Union also views the County's proposal as having an adverse impact on women, since it cites changing family circumstances as important reasons for female employees making changes in their employment status. It states, "The County proposal will force many working women to choose between work and family instead of facilitating a dual role relationship, as does the status quo."

Lastly, the Union argues, the County offers no quid pro quo for the Union's acceptance of the proposal.

Discussion:

The arbitrator is not persuaded by the County's arguments that its offer should be implemented. This benefit has been in the Agreement for several years, and there is no evidence that it has imposed a particular hardship on the County. While the arbitrator is aware that the County and other units of government have an interest in reducing costs, the County has not demonstrated that this proposal is necessary for achieving substantial cost savings, nor is there even an estimate presented concerning the amounts that

might be saved by implementation of the County's proposal. Assuming, however, that there will be a savings, does it outweigh the harm or potential harm to current employees? The Union is correct in arguing that the grandfather provision of the County's proposal is not all-encompassing for current employees if they make a variety of changes in their employment status with the County. If the cost savings does outweigh the negative effects, that has not been demonstrated here.

The most compelling argument offered by the County for the change is its desire to have internal consistency of benefits with its various bargaining units. It points to the acceptance of this change by units covering a majority of County employees. This acceptance was just accomplished in the 1985 round of bargaining, however. It is not a situation in which over time all bargaining units have accepted a change, and one unit continues to be a holdout. As the Union points out, this is a proposal which it sees as potentially very harmful to its membership, and there is no quid pro quo offered for the acceptance. It may be that through future bargaining or arbitration the County's sought-after consistency can be achieved, but the arbitrator does not view the change as necessary at this time for reasons of consistency.

Thus, on this issue the arbitrator favors the Union's final offer.

Subcontracting:

Both final offers propose a change in the status quo with respect to subcontracting. The County's offer is contained word for word in the Union's offer. However, the Union's offer adds the following language: "If the parties bargain to impasse over any matter covered by this Section, the Union or the Employer shall have the right to petition for mediation-arbitration pursuant to Section 111.70, Wis. Stats."

The Union argues that without the disputed language, it is not clear from the County's offer that the Union has the right to go to mediation-arbitration over a mid-contract impasse dealing with the impact of the County's decision to subcontract.

The Union argues that its offer gives employees greater protection than does the County's offer. It argues that the County's offer is more restrictive than the existing language because it specifies the conditions under which the parties will bargain the impact of employer action, whereas the existing language does not provide such narrow definition of

the parties' bargaining obligations. The County disagrees, and argues that its offer provides greater rights for employees than does the existing language.

The County argues that its final offer is identical to language proposed by the Joint Council of Unions, as well as the Highway and Social Services bargaining units, and subsequently agreed upon as part of those collective bargaining agreements, covering 69% of the County's bargaining unit employees. This language, it argues, gives more protection to these employees than to employees covered by other County collective bargaining agreements and to employees in the City of Madison and the State of Wisconsin. The County argues that the language in the Union's final offer goes even further than the County's language which has been accepted by the above-named units, and it argues that the Union has provided no justification for having different and more far-reaching language.

The Union argues that it already has similar language in the 1984 Agreement between it and the County at Section 15.02, which reads:

ARTICLE XV - PROFESSIONAL DEVELOPMENT

. . .

Section 15.02 Job Required Training. Should an employe be required to achieve further credit to maintain licensure, certification or registration, it is agreed by and between the County and UP that this Agreement will, on a timely basis, be reopened for the purpose of negotiations on the terms and conditions relating to such requirements and their impact on the employe(s). Final offer resolution shall be available via Wis. Stat. 111.70.

The Union argues that the County has also agreed to similar language with the Joint Council of Unions in the section dealing with Transfer of Functions. That language states:

ARTICLE II - MANAGEMENT RIGHTS

. . .

2.03 Transfer of County Functions. The Employer agrees that in the event that another unit of government shall take over the operation of a department or function being performed by employes covered by the terms of this Agreement, and if said takeover negatively affects unit employes, the County hereby agrees to bargain collectively with the Union relative to the aforesaid affects. If

> the parties bargain to impasse over any matter covered by this Section, the Union or the Employer shall have the right to petition for mediation/ arbitration pursuant to the procedures contained in Section 111.70 of the Wisconsin Statutes as determined by the Wisconsin Employment Relations Commission.

The County argues that there is a difference between the language proposed by the Union: "...to petition for mediation-arbitration pursuant to Section 111.70, Wis. Stats...." and the Transfer of Functions language existing in the Joint Council collective bargaining agreement: "...petition for mediation/arbitration pursuant to the procedures contained in Section 111.70 of the Wisconsin Statutes as determined by the Wisconsin Employment Relations Commission..." The County argues at pp. 25 - 26 of its Reply Brief:

> It is obvious that there is a crucial difference between the language proposed by the Union and that contained in the Joint Council of Unions Agreement. The Joint Council of Unions language links the right to proceed to mediation/arbitration to the case law determined by the Wisconsin Employment Relations Commission. The Union proposal herein mandates access to the mediation/arbitration procedure.

There was apparently no agreement between the County and its AFSCME units, when they agreed on the subcontracting language (the identical language to what is presented as the final offer by the County in the present case), about whether they can resort to mediation-arbitration if an impasse is reached over the impact of County subcontracting decisions. This is evident from the testimony of AFSCME Staff Representative Lowe who was called as a witness by the Union (Tr. 115 - 116)

> Q. Does this document represent the terms of the agreement...?
> A. ...this is a copy...of a resolution of the Joint Council contract that went to the County Board...
> Q. And was that agreement made with the County Board finalized?
> A. It was finalized by the Dane County Board of supervisors.
> Q. ...there is a proposal or an agreement on subcontracting. Could you explain what's your understanding of that proposal and its impact?
> A. The Union had proposed in a number of negotiations to provide impact bargaining on subcontracting of county work. The former

contract required that the County would just notify us and then set about doing it. We had proposed this language in negotiations and the end result of that negotiations was this agreement.

Q. Let me ask you this. This states that you have an agreement to bargain the impact of certain aspects of subcontracting. What happens, in your understanding, if the parties reach impasse during that bargaining?

A. If the parties reach impasse during that impact bargaining, the Union would move to mediation arbitration.

(Tr. 124 - 125)

Q. Did Mr. Coughlin (County negotiator) in his public or private capacity ever tell you that...the Union would not have the right to go to Med/Arb if an impasse was reached in midterm bargaining over subcontracting?

A. I'm not aware of any such statement by Mr. Coughlin.

(Tr. 125) - Cross Examination by Mr. Coughlin

Q. Darold, isn't it true, as to the duty to bargain during the term of a contract as to the subcontracting clause was never discussed by us in bargaining or in private, it never came up one way or the other between the two of us?

A. I don't know that it ever came up.

Discussion:

The crucial difference between the parties as they see it with regard to this issue is whether or not mediation-arbitration shall be available during the life of the Agreement if the parties reach impasse in bargaining over the impact of subcontracting by the County. Under the Union's final offer, there is a clear statement of agreement that the parties have the right to invoke mediation-arbitration. The County's offer is silent in that regard, and presumably if there were such a petition submitted during the life of the Agreement and the other party objected, it would be up to the Wisconsin Employment Relations Commission to determine whether to allow mediation-arbitration to be invoked.

The arbitrator does not need to make a determination of whether or not the language agreed to by the County and the Joint Council (that is, the County's final offer in this dispute) enables them to take such disputes to mediation-arbitration during the term of the Agreement. The County has not made persuasive arguments concerning why the Union should not be permitted to take a dispute over impact of subcontracting to mediation-arbitration. By the same token, the

Union's position is not any more persuasive in arguing that it should be able to do so. Moreover, it is not clear to the arbitrator that there is a material difference between the language in the final offers. That is, AFSCME Representative Lowe may be correct that the County's language allows a Union to go to mediation-arbitration. It is not clear to the arbitrator that where the parties have a contractual agreement to bargain impact, the Wisconsin Employment Relations Commission case law precludes use of mediation-arbitration if they reach impasse. In any event, that is an issue for the Commission to decide. Even if the Union were precluded from mid-term mediation-arbitration, it could attempt to negotiate changes in a subsequent round of bargaining.

The County argues that its offer is favored when measured against comparable jurisdictions. Neither offer is favored based on external comparables because, as the County points out, the offers of both parties provide more protection for employees than the subcontracting language in comparable agreements. In terms of the internal comparables, it is true that no other unit has the language that the Union proposes. It is not the case, though, that all of the other units have the language proposed by the County which has been accepted by the three AFSCME units specified above. There is no uniformity within the County. Moreover, the County's offer was accepted by the three units in the current round of bargaining and at this time there is not a compelling reason, in the arbitrator's opinion, for the Union to have identical language in its Agreement.

In summary, the arbitrator does not view either party's offer on this issue as more preferable than the other.

Pension:

The Union proposes that the County increase its pickup of the employees' share of the Wisconsin Retirement Fund beginning January 1, 1986. That date is the beginning of the second year of the contract under the Union's final offer. The Union argues that by granting its final offer, the County will continue the "long-term practice of full County pension contributions..." The Union argues that under the County's proposal the employees will have, in effect, a 1% decrease in wages effective January 1, 1986.

The County argues that there are no two-year agreements within or outside the County among comparable jurisdictions. The County argues that if the Union's offer is granted the Union will set the pattern for the other County units which have not settled for 1986. Those units will negotiate for 1986, as will the units of comparable employees employed by the City of Madison and the State of Wisconsin, but they have not done so yet and there is no basis for granting the

Union's offer on this issue, in the County's view. The County argues, at page 27 of its Reply Brief, "It is obvious that the bargaining unit members will not be disadvantaged if the County's one year offer is adopted, since the Union can negotiate the full pickup of the increased retirement contribution...in the subsequent round of bargaining.... If the Arbitrator were to accept the Union's offer...which would lock in fully paid...retirement benefits not generally granted to other Dane County employees at this point in time, the County would be singularly disadvantaged in approaching the next round of bargaining with the substantial majority of other County bargaining units."

Discussion:

On this issue the arbitrator favors the County's position. The employees in the bargaining unit will not be disadvantaged by waiting to negotiate the retirement pickup in 1986 bargaining in the same manner as other County employees. There is no basis in either the external or internal comparables for awarding this benefit to these employees at this time when no other employees in the County have received this benefit, effective January 1, 1986, as of the close of the hearing in this proceeding.

Health, Accident and Dental Insurance:

The Union's offer provides that the County will pay any increased costs of the premiums for health and dental insurance in 1986. The Union did not provide specific testimony or arguments in support of this portion of its final offer. The County's arguments that the Union's offer should not be granted are the same for this issue as for the pension issue in the previous section. In addition, the County argues that it has fought a long and successful struggle to contain health costs, and implementation of the Union's offer would not be compatible with that effort, given the absence of agreement with Unions representing a majority of the County's employees. For the same reasons given in his discussion of the retirement issue, above, the arbitrator favors the County's position on this item.

Duration:

The Union's final offer is for a two-year agreement, with a wage reopener in the second year. As discussed above, the arbitrator construes the County's ambiguous offer to be a one-year agreement.

The Union's main arguments relating to the duration issue focus on the flaws it believes exist in the County's final offer with respect to the lack of a clear expiration date (those arguments have been discussed above). The Union devotes very little attention to arguments with regard to the

merits of having a two-year proposal, as opposed to what the County has offered. Its argument is contained in its Reply Brief, as follows:

> (5) The Union offer proposes a wage reopener in the second year of the agreement effective December 22, 1985. The Union believes that given that the last three contracts (1983, 1984, 1985) ended in arbitration over non-wage rate issues, a wage reopener should offer a greater likelihood of voluntary settlement. The County offer for full successor negotiations in 1986 means that the risk of contract irresolution is much greater than if the parties are limited to wages alone.

The County argues that no other bargaining units in the County have a two-year agreement, and it notes that there are no two-year agreements in existence in the City of Madison or the State of Wisconsin. Thus the County views its one-year proposal as being supported by both internal and external comparisons. The County also cites decisions of arbitrators in other mediation-arbitration cases in which arbitrators have expressed a preference for one-year agreements rather than two-year agreements with only a wage reopener in the second year. The County emphasizes also that the Union can negotiate under the County's offer for retirement, health and dental contributions for 1986 and thus there is no disadvantage to these employees in having a one-year agreement.

Discussion:

On this issue the arbitrator favors the County's offer. The arbitrator agrees with the County that the comparables favor a one-year agreement, and the result will not be harmful to the employees represented by the Union. Moreover, this will avoid the possible creation through arbitration of a pattern of benefits established for other bargaining units rather than through voluntary collective bargaining between the County and those units. Although it is not always possible to achieve, the arbitrator views agreements and patterns of wages, hours and conditions of employment established through voluntary bargaining as more desirable from a public policy standpoint than agreements established through arbitration.

Summary and Conclusions:

The analysis made above has considered each issue separately. The statute requires the arbitrator to choose one final offer in its entirety. The arbitrator has

considered the statutory factors which the arbitrator must weigh. 2/ Having done so, he has selected the County's final offer for reasons explained below.

Selection of the County's offer will avoid imposing on the County through arbitration a two-year agreement with important economic benefits in a context in which the County and all of its other bargaining units, representing much larger groups of employees, have not reached similar agreements. Their bargaining covered only 1985. The County will not have its language on health and dental premiums and pension contributions, language common to all of its other Agreements, modified in this bargaining unit by an arbitrator before there has been any bargaining on these matters for 1986 with any of the other bargaining units. In the arbitrator's opinion the Union will not be disadvantaged thereby, since it will be able to negotiate for 1986 on health and dental premiums and pension contributions in the same manner as the other bargaining units.

The arbitrator regards these considerations as being of greater importance than the modifications that the County's final offer makes in the language governing health insurance benefits for part-time employees. As noted above, were that the only issue, the arbitrator would rule in the Union's favor. Some current employees may suffer benefit losses as a result of the County's modifications, although that need not be the case if the parties agree to protect them. The arbitrator has also considered the fact that changes in percent-time of employees in this bargaining unit are done on a voluntary basis, and thus the County does not compel

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2/ In the arbitrator's opinion there is no issue involving factor (b), stipulations of the parties, (e) cost of living, (f) overall compensation, or (g) changes in circumstances during the pendency of the arbitration proceedings. To the extent that factor (a) lawful authority of the municipal employer might be relevant, the arbitrator has explained above that such determinations in this case are properly made by the Wisconsin Employment Relations Commission. Factor (c) financial ability of the unit of government is not a consideration, although "the interests and welfare of the public" are best served in this dispute, in the arbitrator's opinion by implementation of the County's final offer. The other factors (d) comparison of wages, hours and conditions of employment ...(with those of)...other employees performing similar services..., and (h) other factors normally taken into consideration in the determination of wages, hours and conditions of employment through...arbitration...have been discussed above.

percent-time changes resulting in losses of benefits. Moreover, in the 1986 bargaining the parties have the opportunity to address this issue further. The Union can seek to return to the 1984 language or it can attempt to negotiate further modifications which will strengthen the protections for current employees, among other alternative courses of action. Since the effective date of the County's modifications is January 1, 1986, further modifications can be made in the 1986 bargain and be made retroactive to the beginning of the 1986 Agreement, thus not leaving any gaps in coverage.

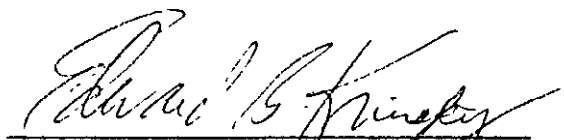
Normally, the arbitrator would not allow an Employer to modify existing benefits without persuasive justification for doing so if the modifications impact employees adversely. However, in this case the alternative is to allow the Union's offer to be implemented and thereby require that uniform benefit language in all of the County's contracts be modified where there is no justification for doing so at this time. Given a choice between two alternatives, both of which have undesirable effects, the arbitrator has selected the one that he believes is preferable under the statutory criteria.

Based on the above facts and discussion the arbitrator hereby makes the following

AWARD

The County's final offer is selected.

Dated at Madison, Wisconsin, this 19th day of December, 1985.



Edward B. Krinsky
Mediator-Arbitrator