

FEB 04 1986

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

BEFORE THE MEDIATOR/ARBITRATOR

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In the Matter of the Petition of :
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WASHINGTON COUNTY SOCIAL :
SERVICES DEPARTMENT EMPLOYEES :
LOCAL 1199, AFSCME, AFL-CIO : Case 62
: No. 34638 Med/Arb-3201
To Initiate Mediation-Arbitration : Decision No. 22732-A
Between Said Petitioner and :
:
WASHINGTON COUNTY (DEPARTMENT :
OF SOCIAL SERVICES) :
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APPEARANCES: RICHARD W. ABELSON, Representative, Wisconsin Council of County and Municipal Employees, appearing on behalf of the Union.

Lindner & Marsack, S.C., Attorneys at Law, by ROGER E. WALSH, appearing on behalf of the County.

ARBITRATION AWARD

Washington County, Wisconsin, hereinafter referred to as the County or Employer, and Washington County Social Services Department Employees Local 1199, AFSCME, AFL-CIO, hereinafter referred to as the Union, were unable to voluntarily resolve certain issues in dispute in their negotiations on behalf of employees in the County's Department of Social Services, relating to provisions to be included in a new Collective Bargaining Agreement to replace the parties' 1983-1984 Collective Bargaining Agreement, which expired on December 31, 1984. The Union, on February 15, 1985, petitioned the Wisconsin Employment Relations Commission (WERC) for the purpose of initiating mediation/arbitration pursuant to the provisions of Section 111.70(4)(cm)6. of the Wisconsin Statutes. The WERC investigated the dispute and, upon determination that there was an impasse which could not be resolved through mediation, certified the matter to mediation/arbitration by order dated June 6, 1985. The parties selected the undersigned from a panel of mediator/arbitrators submitted to them by the WERC and the WERC issued an order dated June 25, 1985, appointing the undersigned as mediator/arbitrator. A meeting was scheduled for October 8, 1985 for the purpose of mediating and, if mediation was unsuccessful, conducting an arbitration hearing in the dispute. At the outset of the meeting, the undersigned endeavored to mediate, but mediation proved unsuccessful in resolving any of the issues in dispute. Both parties indicated that they did not desire to withdraw their final offer and agreed that the arbitration hearing should proceed. The parties completed the presentation of their evidence at the hearing and post-hearing briefs were filed and exchanged on December 9, 1985. Full consideration has been given to the evidence and arguments presented in rendering the award which follows.

## ISSUES IN DISPUTE

There are six issues in dispute. They deal with eligibility for floating holidays, the limit on compensatory time which may be earned, the rate of compensation for overtime, the Employer's contribution toward the employees' share of retirement contributions, the term of the agreement, and wages.

### FLOATING HOLIDAYS

Under the terms of the expired agreement, all employees were permitted to take two floating holidays per year at a time mutually agreed upon by the employee and the director of the employee's department. In practice, employees have been permitted to take two floating holidays during their first year regardless of their date of hire, assuming that it is possible to schedule them. In its final offer, the County proposes to add the following language to the provision dealing with floating holidays:

"Employees hired prior to June 1 in a year will be eligible for the two (2) floating holidays that year; employees hired on and after June 1 but prior to October 1 in a year will be eligible for one (1) floating holiday that year; employees hired on and after October 1 in a year will not be eligible for any floating holiday that year."

In its final offer, the Union has no separate proposal with regard to floating holidays. Instead, it relies upon the general requirement of its final offer that most provisions of the 1983-1984 agreement be continued for the term of the new agreement. Thus, it would continue the existing practice of granting new employees two floating holidays during the year in which they are hired, regardless of their date of hire.

### COMPENSATORY TIME

Under the terms of the expired agreement, the maximum number of compensatory overtime hours which an employee could accumulate at any time was 40 hours. Once the 40-hour limit was reached the Employer was required to pay the employee at his straight time rate for all hours over 40. In addition, the agreement contained a separate provision stating that the maximum number of compensatory overtime hours that an employee could accumulate during the calendar year was 120 hours. All hours accumulated in excess of 120 were to be paid at the agreed to rate, i.e., "the employee's appropriate straight time rate."

In its final offer, the Union proposes to leave the 40-hour limitation alone, but modify the 120 hour limitation so that it no longer applies to juvenile custody intake employees. There are two such employees and they currently work a considerable amount of overtime.

In its final offer, the County makes no proposed change in the provisions dealing with limits on the accumulation of compensatory time. Instead, it relies on its general proposal that all of the provisions of the 1983-1984 agreement, other than those affected by the other provisions of its final offer, be continued for the term of the new agreement. Thus, under the County's final offer, the two juvenile custody intake employees would continue to be subject to the 120 hour annual limitation on the accumulation of compensatory time off, along

with other employees, as well as the general 40-hour limitation.

#### OVERTIME

Under the terms of the expired agreement, all employees, both professional and non-professional, worked a normal work week of 40 hours, consisting of 5 consecutive 8-hour days, Monday through Friday. Non-professional employees were compensated for all hours worked in excess of 40 per week or 8 per day at a rate one and one-half times their regular rate of pay. Professional employees did not. Instead, they were entitled to receive compensation for all hours worked in excess of 40 per week or 8 per day, in the form of compensatory time off or pay, at their option, on the basis of one hour of compensatory time for each hour of overtime worked or one hour of pay at their appropriate straight time rate for each hour of overtime worked. As noted above, the accumulation of compensatory time off was subject to a general 40-hour limitation at any one time and a 120 hour annual limitation. Hours accumulated in excess of those limitations were paid at straight time rates. In addition, each employee was paid in January for all accumulated compensatory time off which remained unused as of December 31 of the prior year. The agreement specifies that these latter payments were to be at the rate in effect on the prior December 31.

In its final offer, the Union proposes to amend the provisions of the agreement dealing with overtime for professional employees to provide that compensatory time and overtime pay are to accumulate at one and one-half times the number of such hours worked in the case of compensatory time off and one and one-half times the employee's regular rate of pay in the case of overtime pay.

In its final offer, the Employer proposes to make no change in any of the overtime provisions. Thus, under its general continuation proposal, professional employees covered by the agreement will continue to accumulate compensatory time and earn overtime pay on the basis of one hour for each hour of overtime worked.

#### RETIREMENT CONTRIBUTION

Under the terms of the expired agreement the County was obligated to pay, on behalf of each employee, "all of the employee's required contribution" to the Wisconsin Retirement Fund. Said agreement was entered into on November 30, 1983 and was in effect on March 9, 1984, when 1983 Wisconsin Act 141, modifying the provisions of the laws governing the Wisconsin Retirement Fund, took effect. Section 19 (4) of that Act read in relevant part as follows:

"No municipal employer, as defined under Section 111.70(1)(a) of the statutes, is required to increase the benefit contribution under this act for any employee who is covered by a collective bargaining agreement in effect on the effective date of this subsection. The level of contribution by any municipal employer for any employee shall be determined by the successor collective bargaining agreement to the collective bargaining agreement in effect on the effective date of this subsection."

As noted below, the County's final offer is for a one-year agreement effective from January 1, 1985 through December 31, 1985. As part of its final offer, the County would add the words "up to a maximum of five percent (5%) of such employee's earnings" after the phrase "all of the employee's required contribution upon his earnings." The effect of this proposal, according to the Employer, will be to insure that any increase in the contribution rate from the 1985 rate of 5%, will be the subject of collective bargaining, along with other economic issues, for 1986. It contends that if the change in wording is not made, the County will be required to pick up the 6% contribution level for 1986 without having had the opportunity to bargain on the matter and that the Union will be in a position to argue that the increased cost to the Employer should be disregarded for purposes of negotiations in 1986.

The Union's final offer is for a two-year agreement with a reopener in the second year, limited to wages. The Union does not propose any change in the wording of the provision requiring the County to pay "all of the employee's required contribution upon his earnings." Thus, under the general continuation provision contained in the Union's final offer, the County would be required to pick up the full 6% otherwise payable by the employee in 1986. The Union acknowledges that such is the intent of its offer and contends that the Employer will not be deprived of the opportunity to argue that the cost of this increased benefit should be considered along with the cost of other benefits continued under the term of the two-year agreement, which it proposes.

#### TERM OF AGREEMENT

The last two Collective Bargaining Agreements between the parties have each been of two years' duration. Each agreement was voluntarily entered into and provided for a wage reopener in the second year. The wage increases granted in the second year of each agreement, i.e., 1982 and 1984, were established through arbitration awards. Both parties refer to the history of their negotiations and those two arbitration proceedings in support of their position on the appropriate term of this agreement. (The Union also relies on that same history in connection with its position on wages.)

Consistent with its position on the term of the agreement, the County proposes to amend the duration clause to reflect a one-year agreement in effect from January 1, 1985 through December 31, 1985, and to delete the provision dealing with a wage reopener. Consistent with its position, the Union proposes to amend all dates in the agreement to reflect a duration from January 1, 1985 through December 31, 1986 and to provide for a wage reopener for 1986.

#### WAGES

The agreement covers both professional and non-professional employees working in the Department of Social Services. There are 28 non-professional employees working in 5 classifications, as follows: 5 clerk typists, 6 senior clerk typists, 2 terminal operators, 1 homemaker and 14 income maintenance workers. The 5 classifications are assigned to 4 rate ranges under the terms of the agreement, with senior clerk typists and terminal operators being assigned to the same rate range. (See Appendix "A" attached to this award.)

There are also 28 professional employees assigned to 2 classifications, as follows: 11 social workers and 17 senior social workers. Their ending 1984 wage rates are likewise reflected in Appendix "A" attached to this award.

In its final offer, the Union proposes split percentage increases for all non-professional employees as a group, consisting of a 5% across the board adjustment for all rates, effective January 1, 1985, and a 3% across the board adjustment for all rates, effective July 1, 1985. It proposes a different split increase for employees working in the social worker classification, consisting of a 5% across the board adjustment, effective January 1, 1985, and a 1% across the board adjustment, effective July 1, 1985. In the case of senior social workers, the Union proposes an across the board adjustment of 5% effective January 1, 1985, with no additional adjustment on July 1, 1985.

In its final offer, the County likewise proposes split increases for all non-professional employees and social workers. However, the County would distinguish between income maintenance workers and other non-professionals, giving the income maintenance workers an additional one-half percent increase. Also, in all cases, the percentage increases offered are smaller, in total, than those proposed by the Union. Specifically, the County would grant income maintenance workers a 4.5 adjustment to all rates, effective January 1, 1985, and an additional 1.5% adjustment to all rates, effective July 1, 1985. The adjustments for other non-professionals would be 4.5% on January 1, 1985 and 1% on July 1, 1985. In the case of social workers, they would receive an adjustment of 4.5%, effective January 1, 1985, and one-half percent, effective July 1, 1985. Senior social workers would receive a single adjustment of 4.5% on January 1, 1985.

In its brief the County sets out a chart which summarizes the content of the two offers on wages as follows:

<u>County Offer:</u>	<u>1/1/85</u>	<u>7/1/85</u>
Income Maint. Workers	4.5%	1.5%
Other Non-Professionals	4.5%	1.0%
Social Workers	4.5%	.5%
Senior Social Workers	4.5%	----
 <u>Union Offer:</u>	 <u>1/1/85</u>	 <u>7/1/85</u>
Non-Professionals	5%	3%
Social Workers	5%	1%
Senior Social Workers	5%	----

#### PARTIES' POSITIONS AND DISCUSSION

The parties' positions in relation to each of the six issues will be discussed and evaluated separately. After having done so, it will be possible to draw overall conclusions with regard to the relative reasonableness of the two final offers in relation to the statutory criteria.

#### FLOATING HOLIDAYS

This is a County proposal and the Union correctly argues that the burden of justifying the proposed change is properly

placed on the County. According to the County, the current provision is unfair in that it permits an employee hired in December to receive two floating holidays, just as an employee hired in January would receive. It points out that, in the case of all specified holidays, an employee is required to be on the payroll on the day that the holiday occurs, thus preventing an employee from receiving a disproportionate amount of time off immediately after beginning their employment. It is for these reasons that the three comparable counties which grant floating holidays all provide for some form of proration; according to the County. In Fond du Lac and Sheboygan Counties new employees do not receive floating holidays until after completion of their six-month probationary period. There employees must begin their employment by June 25 in order to qualify for floating holidays. In Waukesha County employees hired after January 1 are eligible for only one of the two floating holidays provided and, if they are hired after July 1, they are ineligible for any floating holidays. The County contends that its proposal is less restrictive than any of these agreements. With regard to internal comparisons, the County points out that employees covered by the Samaritan Agreement are ineligible for any of the four quarterly floating holidays during their six-month probationary period and therefore receive no floating holidays if they are hired after June 1. Under the agreement covering deputy sheriffs, new employees are not covered by the agreement and floating holidays are granted on a prorata basis, depending upon the time of year when the employee is hired. Non represented employees are already covered by a prorata provision identical to that proposed for this bargaining unit. Based upon these arguments, the County contends that the current application of the floating holiday provision is patently unfair and contrary to the practice in other comparable counties and among other County employees. It contends that it has made a strong argument in favor of its proposal and asks that it be adopted.

The Union argues that the County has failed to justify the proposed change in the floating holiday provision. According to the Union, there is no evidence to demonstrate that the County has been harmed by the language that is in the current agreement. The Union alleges that the provision has been in effect for a long time and that, to its knowledge, has not caused any problems. On the other hand, since the County controls the hiring process, the Union argues that it could intentionally delay the hiring of a new employee until after June 1 or October 1 for the sole purpose of depriving the new employee of floating holiday benefits. According to the Union, the current language encourages the County to hire employees when they are needed and not when it is less expensive to do so, because it contains no "artificial hiring barriers." Citing a number of arbitrators who have so stated, the Union contends that the burden of establishing justification for such a proposed change is on the County, and it argues that the County has failed to meet that burden. Therefore, the Union's proposal to retain the status quo with regard to this benefit should be adopted, it argues.

In the view of the undersigned, the County has met its burden of justifying its proposed change. While the existing provision is actually silent on the question of whether there should be a proration of floating holidays in the case of new employees, it is undisputed that the practice has been not to do so, apparently based upon the lack of any stated restriction. As the County argues, this creates a potential for patently unfair results, based upon the happenstance of an employee's date of hire. Contrary to the Union's

contention, the establishment of the two cut-off dates would serve to help reduce the incentive for the Employer to "manipulate" dates of hire in order to avoid the granting of new employees a disproportionate amount of time off during their initial employment.<sup>1</sup> It is not surprising that the three external comparables which have floating holiday provisions provide for proration or some mechanism to avoid the problem identified by the County. Internal comparables also support the proposal, which is not deemed to be particularly restrictive compared to the alternatives found in both internal and external comparables.

#### COMPENSATORY TIME

This is a Union proposal. The Union contends that the evidence introduced at the hearing, along with certain provisions of the expired agreement, establish that the two juvenile custody intake employees receive frequent off-duty calls requiring telephone contacts and face-to-face meetings at irregular and undesirable times. A separate provision deals with telephone contacts. In the case of face-to-face meetings, the two juvenile custody intake workers earn compensatory time off (or overtime pay), unless the overtime hours are "flexed" under the provision of the agreement permitting the taking of compensatory time off during the same week to avoid the overtime hours being reflected on time sheets. Pointing to the County exhibit dealing with overtime hours recorded for the two employees in question, the Union argues that the current cap of 120 hours per year has already become a problem for them. If the Union's proposed change in the formula for overtime compensation is adopted, it is clear from that same exhibit that the two employees will greatly exceed the 120 hour annual limit, it argues. Pointing to one of its own exhibits, the Union contends that juvenile custody intake workers receive additional compensation for such work in nearly every county in the state, including all of the counties surrounding Washington County, other than Waukesha. In Washington County the two employees in question only receive additional compensation if they are involved in actual face-to-face or telephone contact. The Union points out that its proposal does not call for additional compensation. It would merely lift the limit on the accumulation of compensatory time off during any one year. While the County argues that the voluntary nature of the work in Washington County supports a continuation of the limit, the Union argues that the voluntary nature of the assignment is not relevant to the appropriateness of the limit. Because of the unique nature of the work performed by the two individuals in question, the Union argues that its proposal has been justified by the evidence.

According to the County, it is important to note that the juvenile custody intake employees volunteer to perform the work in question. In the County's view, the Union's evidence relating to additional compensation or time off granted to employees who perform such work in other counties is largely irrelevant for this reason. It points out that, at the hearing, the Union agreed to supply the arbitrator and the County with a designation of which of the other counties listed in its exhibit utilized volunteers to perform this work. Because the Union has failed to supply such information, it should be assumed that none of the other counties ask employees to perform this work on a voluntary basis and that the County's situation is unique in this regard. Because employees volunteer for the work, the Union's reliance upon data relating to the two employees who currently perform the work is misleading. Because the Union's proposal

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<sup>1</sup> For example, an employee hired in December would be eligible for 4.5 holidays, or approximately 20% of the scheduled workdays.

would not restrict the application of the provision to those two employees, any number of employees could volunteer to perform the work in question and thereby render the limit effectively meaningless. Further, according to the County, the Union has failed to establish that this is an important issue. Reviewing the data in its own exhibit with regard to the hours of overtime recorded for the two employees who currently perform this work, the County contends that juvenile custody intake work only represented a small portion of their overall overtime work and that neither employee worked the most number of overtime hours in the department. In fact, during the first 19 pay periods in 1985, several employees worked more overtime than one or both of the two juvenile custody intake workers. While the Union contends that the work is performed at undesirable hours, there is no showing that overtime worked by other County employees is worked during more desirable hours. Turning to internal comparisons, the County points out that deputy sheriffs have a 90-hour limitation and that non-represented employees have a 120 hour limitation. While two of the external comparables have no specific limit, the County argues that overtime there must be taken within a short time after it is worked. In two other counties there are lower accumulation limits than that currently in existence in Washington County. In summary, the County alleges that the Union has failed to meet its burden of justifying this proposal. Therefore, the limitation which was voluntarily agreed to and has not caused a particular problem for juvenile custody intake workers in the past and is similar to (and in some cases more generous than) other comparable limitations, should be retained.

Based upon the evidence of record, it is quite clear that the Union has failed to provide the necessary justification for this proposed change, if the overtime provisions of the agreement remain otherwise unchanged. In the last three years, the highest number of compensatory hours earned by one of the two juvenile custody intake workers (Smith) was 113.25 hours in 1983. If in fact Smith also scheduled some flex time hours to avoid overtime, that time was, in effect, additional compensatory time not affected by the limitation. Such utilization of compensatory time is perfectly consistent with the other provisions of the expired agreement. Such scheduling helps the County balance out the utilization of compensatory time and helps the employee, who may prefer the use of compensatory time off over overtime pay, avoid the 40-hour and 120-hour limitations.

If, on the other hand, the Union's proposed change in the rate at which compensatory time and overtime pay is earned is adopted, and all else remains the same, it is clear that the two juvenile custody intake workers could easily exceed the 120 hour limit, as the Union contends. However, there are at least two ways that this result could be avoided. First, they could attempt to "flex time" more hours. Secondly, they could stop volunteering for some juvenile custody intake work. As an alternative to this latter course of action, they could attempt to work fewer overtime hours which are unrelated to juvenile custody intake work. If none of these actions is taken, and the amount of overtime work made available remains the same, the result of leaving this provision in the agreement unchanged would be to require that the two juvenile custody intake workers be paid for the hours earned in excess of 120. This is not a particularly unreasonable

outcome.

Even if it is assumed that the Union's new overtime formula proposal is included in the agreement, the undersigned does not believe that the Union's compensatory time proposal has been justified. Other County employees, who already receive compensatory time and overtime pay at the rate of one and one-half times the number of hours worked, are subject to similar or lower limits. In the case of deputy sheriffs, they have a maximum accumulation limit of 25.5 hours at any one time and 90 hours per year. Also, other employees in the bargaining unit could easily be in a similar situation, but, unlike the juvenile custody intake workers, would not be covered by the proposed exception. As of September 24, 1985, three employees had accumulated more compensatory hours than Smith and one of those three employees had accumulated more compensatory hours than the other juvenile custody intake worker, Kolata.

#### OVERTIME

The Union contends that its offer to change the accumulation rate of overtime hours and pay for professional employees is reasonable and supported by both the external and internal comparables. The Union asserts that four of the five counties relied upon by both parties for external comparisons provide for compensation or compensatory time off at the rate of time and one-half. Only Ozaukee County which was unrepresented until recently, fails to so provide, according to the Union. In Dodge County, Sheboygan County and Waukesha County overtime is compensated at the rate of time and one-half for all hours over 40 in a week. In Fond du Lac County overtime is compensated at that rate for all hours over 80 in a two week period. The Union acknowledges that Sheboygan County and Fond du Lac County have a normal 37.5 hour work week and that the Collective Bargaining Agreement in Sheboygan County does not require that overtime be compensated at the rate of time and one-half. However, the Union points out that the normal work week in Washington County is 40 hours and argues that Sheboygan County's actual practice is of greater comparative importance than the provisions of its Collective Bargaining Agreement. The fact that Sheboygan County may be basing its action upon an alleged misreading or misapplication of the Fair Labor Standards Act, as alleged by the Employer, is irrelevant, according to the Union. The Union contends that internal comparables also support its position on this issue. Thus, the non-professional employees in the Social Services Department, deputy sheriffs, and all non-represented employees who would not be treated as exempt if the Fair Labor Standards Act were applied to them, all receive time and one-half for overtime. Based upon these external and internal comparables, the Union asserts that it has met its burden of proof supporting the change proposed in its final offer. Overtime premium payment is not a "bonus", according to the Union. Instead, it constitutes recognition that employees only have certain normal obligations to their employers and that the employer should pay a penalty if they are required to work during hours that are normally considered their own. The fact that the employees in question are professional employees does not provide a basis for making a distinction in this regard, in the Union's view. Even though they are professional employees, they have no less of a right to "outside private lives" than non-professional employees. Also, the Union argues that a memorandum issued by the Employer on August 5, 1985 constituted an effort to

"crack down" on the scheduling of overtime and the evidence supports a finding that the memo has been effective in that regard. The Union acknowledges in its brief that "management controls overtime" and contends that this fact supports the Union's position as well.

The County acknowledges that non-professional employees employed in the County earn overtime at time and one-half rates. However, it points out that, by agreement and by practice, professional employees in the bargaining unit and among the non-represented employees are compensated for overtime at straight time rates. Among the external comparables only two grant overtime at time and one-half rates, according to the County. Those counties are Dodge and Waukesha Counties. According to the Employer, the negotiated provision in Sheboygan County provides for compensation at straight time rates. The County does acknowledge that it is the County's understanding that Sheboygan County was compensating its social workers at time and one-half rates at the time of the hearing, but contends that it was doing so under the probably erroneous belief that its social workers did not qualify as exempt employees under the Fair Labor Standards Act which was then applicable. According to the County, the negotiated contract language should be utilized for comparison purposes rather than the "questionable practice" in question. Further, the County argues that said practice is now moot in light of recent federal legislation which delayed the implementation of the Fair Labor Standards Act to the public sector until April 15, 1986. In Fond du Lac County the overtime rate of time and one-half does not apply to the first five hours of overtime worked during a two-week period. Ozaukee County has no formal overtime compensation provisions but has a practice of providing employees with time off at the rate of one hour for each hour worked outside normal work hours. It is also significant, in itself, that the Fair Labor Standards Act exempts professional employees, such as social workers, from its application. Citing a number of arbitrators' decisions, the County argues that interest arbitration should not be used as a procedure for initiating changes in basic working conditions. Instead, such changes in the status quo should be brought about through collective bargaining, it argues. Switching from straight time to time and one-half compensation will result in a substantial increase in overtime costs to the County. Based upon actual overtime worked during the first 19 pay periods in 1985, the County estimates that its overtime costs in wages alone for all of 1985 will exceed \$22,800, if the Union's offer is selected. Because 1985 has passed most of this will be paid in the form of cash under the provisions of the agreement which require the payment of all compensatory time not used, in cash at the end of the calendar year. Anticipating that the Union would argue that the memorandum of the director of the department has caused a substantial reduction in the amount of overtime being utilized, the County takes issue with such contention, arguing that it is "too early to tell" whether the effort to reduce overtime will be successful. On the other hand, the County argues that the issuance of such a memorandum was necessary when it became clear that the Union was going to proceed to arbitration on this issue which could have a substantial financial impact on the County. Even if the additional overtime compensation is taken in the form of compensatory time off, the department will have great difficulty in absorbing the additional 750 to 850 compensatory hours off without hiring additional personnel. For these reasons as well, the County argues that this substantial and costly benefit should not be imposed through arbitration and that the County's offer on this issue should be preferred.

The undersigned concludes that the Union has not met its burden of justifying this proposal, as worded. In support of its overtime proposal, the Union makes two basic arguments -- that the proposal is supported by the comparables and that it is reasonable.

The external comparables do, on balance, reflect that the payment of a premium in the form of time and one-half credit or pay under certain circumstances is more common than not. However, the evidence among the comparables is not uniform in this regard and, as is discussed below, the circumstances under which the premium may be earned can be quite important. Both parties agree on the identity of the comparables for other purposes and it therefore would appear to be inappropriate to exclude Ozaukee County from consideration. Apparently, Ozaukee County does not offer a premium for overtime work performed by professional social workers under any circumstances. While the fact that Sheboygan County and Fond du Lac County have 37.5 hour work weeks helps explain the origin of their unique provisions, that fact does not diminish the fact that both of those counties enjoy considerable flexibility in scheduling overtime as a result. Under the Union's proposal, overtime would be payable after 40 hours in a week or 8 hours in a day. Only Dodge County has a similar provision and that provision requires employees to take compensatory time off, except in the case of emergencies. In Waukesha County there is a specific exception for "daily overtime" in the case of professional employees. In the case of Sheboygan County, there is a serious question as to whether that situation actually supports the Union's position. To the extent that Sheboygan County's practice is based upon the conclusion, correct or incorrect, that the social workers in question are not professional employees (and therefore not "exempt" under the Fair Labor Standards Act), the validity of a comparison to professional employees under the Collective Bargaining Agreement with Washington County would appear to be somewhat questionable. In addition, as the County points out, the Collective Bargaining Agreement in Sheboygan County calls for straight time compensation.

On the other hand, internal comparisons provide little support for the Union's position. The negotiated distinction between the professional and non-professional employees found in the expired agreement is consistent with the distinction between "exempt" and "non-exempt" employees under the Fair Labor Standards Act and the ordinances of the County dealing with non-represented employees. While deputy sheriffs do receive time and one-half for all hours they are asked to work outside of their regular work schedule, such employees are not deemed to be professional (or "exempt" employees within the meaning of the Fair Labor Standards Act).

With regard to the Union's arguments as to the reasonableness of its proposal, it is undoubtedly true that professional employees, no less than other employees, have reason to place a high value on their unscheduled<sup>2</sup> hours. On the other hand, professional employees generally<sup>2</sup> receive greater straight time compensation than do non-professionals and the nature of their work is usually<sup>3</sup> such that they are in a position to exercise some discretion as to the amount of time required

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<sup>2</sup> The undersigned is aware that deputy sheriffs generally earn an hourly rate equal to or greater than that earned by social workers. However, overtime hours worked by such employees are generally based upon predictable manpower needs derived from minimum manning schedules.

<sup>3</sup> Here, for example, the overtime worked by the juvenile custody intake workers is apparently non-discretionary in the sense that, by law, it must be performed at the times in question.

to properly perform various aspects of the job.

The imposition of a one and one-half time premium incentive requirement for overtime worked by professional employees constitutes a major change in working conditions which will undoubtedly have a significant impact upon the way in which such work is performed in the department in the future. Unlike a wage proposal, which can be adjusted in the next round of negotiations if it is found to be a little on the high side or a little on the low side, such a change will also have a prospective impact on labor costs which will continue for the foreseeable future. For these reasons as well, the undersigned is reluctant to sanction its imposition through arbitration, without clear evidence that the proposal in question contains significant flexibility with regard to daily overtime and significant limitations and regulations with regard to its daily application, comparable to that found in other agreements.

#### RETIREMENT CONTRIBUTION

The County acknowledges that the wording of the expired agreement, on its face, will require the Employer to pick up the additional one percent of the employee's share of contributions toward the Wisconsin Retirement Fund, if it remains unchanged. However, it notes that one of the provisions of the law which increased employee pension benefits and increased the employee contribution rate by one percentage point, specifically provided that the additional employee contribution should not be automatically passed on to the Employer, but should be the subject of subsequent collective bargaining. According to the County, only two of the comparable counties have voluntarily bargained for all wages, hours and working conditions for 1986. In Dodge County the agreement contains a change from "full" to "six percent" in 1986. Sheboygan County simply continued the provision calling for "full" payment for 1986. According to the Employer, it is still unclear whether the other three comparable counties will do so. Thus, in Waukesha, Ozaukee and Fond du Lac Counties the level of contribution on behalf of employees for 1986 will be open for discussion along with other 1986 wage and economic issues. With regard to other Washington County bargaining units, the County points out that its agreements covering the Parks Department and Samaritan Health Center each provide for "5%" payments for 1985 and are open for negotiations for 1986. While the deputy sheriffs' contract for 1985 provides for payment of the "full" amount, that agreement is open for negotiations in 1986. Similarly, the question of the contribution level on behalf of unrepresented employees for 1986 is still open for County Board action. Only in the Highway Department has the Employer agreed to pick up 6% as of January 1, 1986, as part of a fiscal year contract which runs from July 1, 1985 through June 30, 1986. Thus, since this arbitration award will result in a successor agreement which is the first one since the new pension law was enacted, the County argues that the wording of the provision should be changed, less it lose its statutory right to negotiate with regard to the question under the statute. The matter was subject to negotiations in the other external and internal comparisons referred to and will be the subject of negotiations with other County groups, it points out. Consequently, it would place the Union in a unique and unjustified position if it were allowed to impose the increased pension contribution upon the County, apart from the discussion of wages for 1986.

In its arguments, the Union focuses upon differences between the Employer's share and the employee's share of Wisconsin Retirement Fund contribution. According to the Union, the 5% employee contribution was and continues to be a vested contribution under the law. However, it contends that the additional 1% contribution required under the changes in the law will never be vested in the sense that it may be withdrawn by the employee upon resignation of his or her employment. Instead, the additional 1% will become a part of the fund and help reduce the Employer's share to be contributed to the fund in the future, upon termination prior to eligibility for an annuity. Thus, although the increase in contribution level as of January 1, 1986 will be an expense to the Employer under its proposal, such contribution will also decrease the Employer component of the contributions that needs to be made in the future. Also, the Union points out that the County has "always" paid the full employee share of Wisconsin Retirement Fund contributions. According to the Union it now proposes to cap the contribution in the year that the County knows that there will be an increase. This is so even though the contribution by the Employer is deemed to be an important fringe benefit, particularly in light of the tax consequences that attach. Further, if the Employer's proposal is adopted, the deduction and net loss of pay would begin to occur even before the Union has an opportunity to negotiate the impact, since the award in this case will not be rendered until 1986. According to the Union, the County would not be disadvantaged by leaving the Wisconsin Retirement Fund contribution language alone, under its two-year proposal. This is so because all increases in economics are part of the total wage package and the Union has proposed a wage reopener for 1986. Thus, according to the Union, the County could consider the increase in the contribution level to the Wisconsin Retirement Fund in making its wage offer to the Union. Turning to the evidence concerning internal and external comparables, the Union argues that the County's proposal is unsupported by that evidence. It notes that both Dodge and Sheboygan County have settled for 1986, with an agreement requiring the County to pay the full employee share. Language in the Waukesha County agreement and Ozaukee County ordinance would require both of those counties to continue paying the full amount for 1986. Only the Fond du Lac County agreement limits the County's contribution. In the case of internal comparables, the Union acknowledges that the agreements covering the Parks Department and Samaritan Nursing Home contain a 5% cap. However, it points out that the Highway Department agreement requires a 6% contribution and the deputy sheriff's contract contains language requiring "full" payment. Thus, according to the Union, both external and internal comparables support the Union's position. Since the cost of the increase can be charged against the 1986 wage reopener and the timing of the negotiations makes it impossible to negotiate the impact of the change prior to January 1, 1986, the Union contends that it has demonstrated that its proposal is more reasonable than the Employer's.

Because of the fact that the two offers are for agreements of differing duration, the analysis of their respective proposals on this issue leads the undersigned to the somewhat anomalous conclusion that both offers are quite reasonable and that neither should be preferred over the other. Under the wording of the statute in question, the County would be placed in an arguably disadvantageous position if it failed to make

a proposal with regard to this issue. Thus, unless the Union entered into a stipulation or side letter providing otherwise, an inference could be that in formulating its 1985 proposal, the County took into account the continuing cost of the existing provisions of the agreement, including the provision calling for the payment of the "full" employee share of Wisconsin Retirement Fund contributions. This is so because the statute provides that the County shall not be obligated to make such a contribution as a result of the agreement which was in effect on March 9, 1984 but shall be governed by the "successor Collective Bargaining Agreement to the Collective Bargaining Agreement in effect" on that date.

The Union points out that the result of the proposal, as a practical matter, will be to allow the Employer to begin to deduct the 1% unless and until agreement is reached for wages, hours and working conditions for 1986. However, that fact is attributable to the length of time that it has taken to establish an agreement for 1985 and not the reasonableness of the County's proposal per se. Both parties, the WERC and the undersigned, have obviously contributed to that delay and it would be unfair to fault the Employer's offer, which is otherwise reasonable, on that basis. Also, once an agreement has been established for 1986, the increased contributions can be implemented retroactively, if they are required by its terms.

On the other hand, the Union's proposal to leave the wording of the provision as is, is also quite reasonable. This proposal meets the Union's obligation to bargain with regard to the matter under the terms of the successor agreement and the Union has acknowledged that it expects the Employer to take credit for the increased cost of this improvement in fringe benefits under the terms of the Union's proposed wage reopener. While the Union could have proposed a reopener which extended to this issue as well, the emerging pattern of settlements suggests that its proposal that this improved benefit be included in the terms of any 1986 agreement would appear to be quite reasonable. Although the proposal is somewhat inconsistent with the Union's argument with regard to the need for an accelerated rate of "catch-up," the tax consequences of the other position would obviously be contrary to the best interests of the employees. Put simply, 1% of wages after taxes is worth more than 1% of wages prior to taxes.

For these reasons the undersigned concludes that the proposals contained in each of the parties' final offers with regard to this issue are equally reasonable, for different reasons, and ought not affect the ultimate selection between the two final offers in any significant way.

#### TERM OF AGREEMENT

The County notes that some arbitrators have favored multi-year agreements on the basis that they give the parties "respite" from "continuous bargaining." According to the County, such is not the case here. The parties have successfully negotiated two, two-year contracts with wage reopeners in the second year. Thus, the parties were able to resolve all issues voluntarily when the contracts were totally open for renegotiation. On the other hand, both of the wage reopeners were resolved through mediation/arbitration. Here, the first year terms could not be resolved voluntarily and, regardless of which final offer is selected, the parties will immediately

return to the bargaining table. Since, in its view, multi-year contracts with a wage reopener have not contributed to bargaining stability, the County contends that a one-year contract, with all items open for discussion, may be more productive of a voluntary settlement. On the other hand, from its point of view, a two-year agreement with a wage reopener will insure arbitration, based upon past history. Although Dodge and Sheboygan County both entered into two-year agreements covering 1985 and 1986, the Employer points out that those agreements are complete and contain no reopeners. On the other hand, Waukesha and Fond du Lac County have one-year agreements for 1985 and Ozaukee County is just beginning its negotiations for a first agreement. The County also acknowledges that it is possible to conclude, at first glance, that there is little practical difference between the two final offers (because of the wage reopener and past history) but argues that such conclusion would be erroneous because of the Union's proposal to continue the language requiring "full" retirement fund contributions. It is the County's position that such proposal would result in a significant economic gain which would be taken out of the 1986 negotiations. Potential increases in health insurance costs also constitute another "hidden" difference between the two offers, according to the County. Under the Union's offer 1986 increases in health insurance costs would be automatically picked up by the County and the Union could merely argue that the payment of the 1986 health insurance costs was a part of the 1985 settlement and should not be costed against the 1986 settlement. For these reasons, the County contends that the Union's two-year offer is likely to spur "confrontation" over 1986 wages, at least in the absence of a letter of understanding to the effect that the additional 1% pension contribution and increased health insurance costs would be chargeable to the 1986 package. For these reasons, the County argues that its proposed term of agreement is more reasonable and appropriate and should be considered a significant determinate of the outcome in this proceeding.

The Union offers basically two reasons in support of its contention that a two-year agreement is more reasonable. First, it alleges that the parties have an established history of two-year agreements with wage reopeners. Secondly, the Union contends that a two-year agreement is more reasonable, considering the length of time it has taken for the parties to bargain in this case. The Union correctly anticipates that the award in this case will not issue until after the expiration date of the agreement proposed by the Employer and points out that the employees covered by the agreement are therefore already one year behind in the receipt of a wage increase. It is harmful to the collective bargaining process for employees to be forced to wait for long periods of time for wage increases. In addition, purchasing power is lost to the employee and the County is in a position to profit from the investment of the money that would otherwise go to pay employee wage increases. According to the Union, a multiple year contract constitutes a way to stabilize the bargaining relationship. The Union's final offer, which is limited to wages, serves to narrow the scope of possible issues and help bring about a quick 1986 wage settlement. On the other hand, the County's one-year proposal will only serve to perpetuate the same delays which have occurred in establishing its terms, according to the Union. Therefore, specifically referring to the criterion dealing with the interests and welfare of the public, the Union asserts that its proposed two-year agreement with a limited wage reopener should be strongly preferred in this case.

Putting aside for the moment the question of the relative reasonableness of the other aspects of their final offers, the undersigned believes that the Union's proposed term of agreement is preferable to the Employer's proposed term. The last two agreements have been of two-years' duration and there is no evidence in the record to establish that the duration of those two agreements gave rise to any problems. It is the Employer's contention that the parties have been more successful in reaching voluntary agreements where all items are open for negotiations. However, the negotiations leading up to this proceeding contradict that claim. More importantly, there are far too many potential variables which may have given rise to the parties' failure to reach voluntary agreement on the three occasions in question, to permit such an inference. A more appropriate inference to draw, based upon the parties' recent bargaining history, is that the scope of negotiations is apparently not the cause of their failure to reach voluntary agreement, approximately half the time.

In reaching the conclusion that a two-year agreement with a wage reopener is to be preferred over a one-year agreement, the undersigned has given some consideration to the comparables. However, as the Employer points out, that evidence is inconclusive. More significant, in the view of the undersigned, is the fact that the parties have negotiated two, two-year agreements, with no untoward results directly attributable to their length. The undersigned realizes that a two-year agreement contains certain "hidden" costs, as alleged by the Employer. However, the Union has acknowledged in this case that it is appropriate to give consideration to such "hidden" costs when evaluating the reasonableness of a proposal under a wage reopener. The undersigned believes that such an approach is appropriate, even absent a letter of understanding. Unlike a proposed agreement of one year's duration which would continue "full" retirement contributions, there is no statutory or other specific reason for negating this inference which is customarily made in collective bargaining and interest arbitration.

#### WAGES

As noted above, the Union relies upon recent bargaining history in support of its position on wages. That bargaining history reflects that the Union has been successful in convincing the County of the need for "catch-up." The parties negotiated split wage increases in the first year of each of the two-year agreements and their proposals in arbitration called for split increases. While the split increases which resulted from the 1984 arbitration award departed from the prior practice of implementing the second increase on December 31, the Union alleges that the change was attributable to the County's opposition to split increases in that year.

The Union notes that Arbitrator Wiesberger selected the County's proposal in 1982 and points to language in her award wherein she expressed the view that a "substantial moving up" would occur under the County's offer. According to the Union, subsequent events established that Arbitrator Wiesberger was wrong. According to the Union, it was largely for that reason that Arbitrator Vernon selected the Union's offer in 1984.

According to the Union, another significant reason for Arbitrator Wiesberger's selection of the County's offer in 1982 was the state of the economy in Washington County in that year. Reviewing the details of those economic conditions in 1982, 1984 and presently, the Union argues that economic circumstances in Washington County have improved greatly. According to the Union, they create an even more favorable backdrop for negotiations than existed in 1984, when the Union prevailed, despite the County's argument with regard to economic conditions at that time.

The Union reviews the details of its final offer, both in terms of "lift" and actual cost, in relation to the County's final offer. The lift provided under its offer ranges from a high of 8% for non-professional employees, including income maintenance workers, to a low of 5% for senior social workers. The one-year cost of its proposal, in wages alone, ranges from a high of 6.5% to a low of 5%. The County's offer provides a similar difference in lift and cost, but at a lower range. It is the Union's position that the lift proposed and costs associated with its proposal are justified, and to be preferred over the County's, based largely on external comparisons. In this connection it reviews, in considerable detail, its exhibits introduced into evidence comparing the top wage rates for clerk-typists, senior clerk-typists, income maintenance workers, social workers, and senior social workers employed by the County with the top rates paid by the five counties deemed comparable by the parties in the case of allegedly similar or identical classifications. Some of the points made in the course of this comparison are as follows:

1. Clerk-typists and their predecessors were substantially behind their counterparts in each of the five counties relied upon by the parties for comparison purposes in 1981 and they have only managed to reduce that difference by a small amount during the last three years of "catch-up" increases.

2. Income maintenance workers were likewise substantially behind each of their counterparts in each of the five counties in question in 1981 and failed to make significant progress in reducing the differential during three years of "catch-up" increases. In some cases and in certain years the gap actually increased, according to the Union's data.

3. In the case of non-professional employees, the evidence discloses that three years of "catch-up" did not provide any significant catch-up and were nothing more than a "sham." It was in this context that Arbitrator Vernon issued his decision in 1984, accelerating the catch-up schedule. Nevertheless, the data indicates that the wage rates in question are far from being caught up. The Union's proposed increase will reduce the differential in most, but not all cases; whereas, the County's proposal fails to provide for any significant catch-up and will leave clerk-typists over \$1.00 behind their corresponding classification in two of the five counties. Income maintenance workers will likewise gain on their counterparts under the Union's offer, but they would fair even worse under the County's offer, remaining more than \$1.00 to \$2.16 behind. Thus, the data shows that the County's offer fails to accomplish any additional catch-up for non-professional employees and that the Union's final offer will help bring the parties toward the goal of parity with their counterparts. Even so, the three classifications in question will remain last among the comparables.

4. An inherent flaw in the County's offer is the distinction it draws between income maintenance workers and other non-professional employees, since the data suggests that all non-professional employees are equally in need of "catch-up" increases.

5. Social workers, and their predecessors (social worker I and social worker II) have, according to the Union's data, just about attained a position of parity with their counterparts in the other five counties and therefore require only slight (catch-up) increases. Senior social workers, and their predecessors (social workers IV and V) have attained a position of parity and require no increase beyond that necessary to keep them in parity with their counterparts.

The overall thrust of this evidence, according to the Union, is that the non-professional employees are badly in need of catch-up increases and that the social workers and senior social workers have made some significant progress in that regard. The County's proposal constitutes a continuation of its practice of offering insignificant catch-up increases which will require a considerable period of time to eliminate the gap in wages. For these reasons, the criterion of external comparability lends strong support to the Union's proposal on wages, it argues.

Turning to the question of internal comparisons, the Union points to differences between the clerk-typist position under the agreement and the clerk-typists and senior clerks employed elsewhere by the County. While the clerk-typists and senior clerks who work elsewhere begin at a rate which is lower than that which would result from the Union's final offer, they are able to progress, after 42 months, to a maximum rate which exceeds that attainable by clerk-typists under the Union's offer. It is apparently for that reason that the County also made a proposal, as part of its final offer, that the starting rate for clerk-typists be frozen at the 1984 level of \$4.95 per hour, except in the case of clerk-typists hired prior to January 1, 1985. This aspect of the Employer's offer is unjustified and should be rejected, according to the Union, since the offer reflects concern about the starting rate without regard to the maximum rate. Further, according to the Union, the most important determinate for the appropriate range of pay for clerk-typists is external comparability and the Employer's offer ignores that criterion.

Other evidence with regard to internal comparisons also supports the Union's position, it contends. Thus, the range of settlements for 1985 was from a low of 3.1% to a high of 4.5%, except in the case of parks employees who received a 6% increase at a 4% cost. Although the Union admits that its final offer would grant increases in excess of these figures, it asserts that circumstances justify its proposal. Citing language in the award issued by Arbitrator Vernon for 1984, the Union contends that external comparisons must be held to override internal comparisons when there is a substantial disparity between the rates earned by bargaining unit employees and external comparables.

In summary, the Union argues that the crux of this case turns on the demonstrated need for an accelerated rate of

"catch-up" and that the Union's offer recognizes the greater need for such catch-up in the case of all non-professional employees and provides for meaningful progress in that regard, which is not unreasonable given the appropriate comparisons, economic considerations, the cost of living, and the County's excellent fiscal state.

According to the County, its offer on wages should be preferred because it is consistent with increases in the cost of living, increases granted private sector employees for 1985, increases granted other employees of Washington County for 1985, and increases granted similar employees in comparable counties. In addition, it argues that its offer should be favored as part of an overall analysis based upon an evaluation of the two offers as an economic package.

In connection with its cost of living argument, the County notes that some arbitrators have stated that the pattern of settlements among comparable municipal employers should be treated as an indicator of increases which are justified in relation to the increase in the cost of living. The Employer argues that such an approach is inappropriate and, in effect, gives double weight to the comparability criterion and effectively ignores the cost of living criterion. Reviewing the data in the record dealing with cost of living increases as measured by various consumer price indexes, the County argues that the average of the annualized increases reflected in the various monthly figures ranged from a low of 3.2% to a high of 4.1% and averaged 3.63%. Using this amalgamated "average" figure of 3.63%, the County compares the percentage increases which would result under each offer on both an average wage cost and a year-end rate basis. According to the County's analysis, the average wage cost and year-end rate under both offers would exceed the average increase in the cost of living relied upon in its analysis in the case of each classification of employees. However, the increases would exceed the increase in the cost of living by a much more substantial percentage under the Union's offer. Under the County's offer, the difference would range from a low of .87%, in the case of senior social workers, to a high of 2.37% in the case of the year-end rate for income maintenance workers. Under the Union's final offer, the difference would be 2.57% in the case of senior social workers (including an additional 1.2% for the estimated cost of the overtime proposal), to a high of 4.37% in the case of the year-end rate for non-professional employees.

The County relies upon a bi-weekly survey conducted by the Bureau of National Affairs shortly prior to the hearing herein, in support of its arguments with regard to private sector comparisons. That data reflects that the median first-year wage increase for all industries covered, during the first 38 weeks of 1985, was 3.9% or 37.1¢ per hour. Similar figures are reflected in the case of manufacturers as a group and non-manufacturing industries. Other data from the Wisconsin Department of Industry, Labor and Human Relations reflect that the increases granted production workers in manufacturing in the United States, Wisconsin and the Milwaukee area, were much more comparable to the County's offer in terms of percentage increase or cents per hour increase than to the Union's offer.

Turning to a comparison of its offer and the Union's offer with the increases granted other Washington County employees, the Employer notes that its offer equals or exceeds the increases it granted other employees (with the exception

of the four employees in the Parks Department who received a lift of 6%) and that the Union's offer exceeds those percentage increases by a more substantial margin. A similar relationship existed between the increases granted to bargaining unit employees and other County employees in 1984 and in 1983 and in the cumulative total percentage increase granted each group. In particular, the County points to the treatment accorded clerk-typists and senior clerk-typists in this bargaining unit with the unrepresented clerk-typists in other County employment. It notes that the starting rate for such employees would be 11¢ per hour higher for the bargaining unit employees under the County's offer. The Union's offer would result in a starting rate which was 51¢ per hour higher. Analyzing the difference and the affect of the two offers, over a five year period, the County notes that the represented employee, under either offer, will be substantially ahead of the unrepresented employee and that it will take the unrepresented employee many years thereafter, at a higher earning rate, to make up the difference. The Employer notes that this is the case even though it had 64 applications for the last opening in a clerk-typist job and that there were 86 applications on file for entry level clerical positions as of the date of the hearing. The Employer also notes that it had a large number of applications pending for positions as income maintenance worker as well.

Turning to increases granted employees in similar positions in comparable counties, the County first argues that some aspects of the Union's comparisons are improper. In the case of Ozaukee County, the Employer notes that the top rates provided by that County can only be achieved through merit increases rather than automatic step increases within a fixed wage schedule. In fact, according to the Employer's evidence, there are only two job classifications in Ozaukee County where employees are actually paid at the salary range maximum. In other cases, employees who have been on the payroll for as many as ten years, still have not reached the maximum. The County also notes that Ozaukee County is now in negotiations for a first contract covering the employees in question. For these reasons, the County argues that comparisons to Ozaukee County ought to be disregarded.

In the case of Sheboygan County, the Employer contends that it is appropriate to compare the social worker II there with the social worker employed by Washington County and to compare the social worker III there with the senior social worker in Washington County. In its view, the Union improperly makes the comparison to social workers I, II and III and with social worker V, respectively. According to the County, the social worker IV and V classifications in Sheboygan County have been vacant for a number of years and Sheboygan County has no plans to fill them. In Waukesha County, the appropriate comparison to a senior social worker employed in Washington County would be a social worker II who earns an additional 55¢ per hour incentive under the agreement there. Instead, the Union uses the maximum rate for a social worker IV, even though Waukesha County has not filled any social worker III or IV vacancies for some time and has no plans to do so. The County notes that these facts are reflected in an arbitration award issued by the undersigned involving Waukesha County. Similar problems exist in the case of comparisons of clerk-typists and income maintenance workers, according to the County. Clerk-typists I and II and income maintenance workers I and II were combined into singular classifications in 1983 in Washington County. Thus, the County argues that there is no basis for comparison in many cases, because progression from one classification to the other is not automatic in other counties. The County also notes that in the case of the

"clerk-typist III" position, only three counties have such a position and that this has a significant impact on comparisons, since there are only four appropriate comparisons available.

Comparing year-end wage rate percentage and cents per hour increases for clerk-typist II's, income maintenance workers, social workers, and senior social workers, the County notes that its offer exceeds the average increases in the counties which are comparable on both a cents per hour and percentage increase basis. Based upon this comparison, as much as three-quarters of the bargaining unit will receive wage increases between 10 and 13¢ per hour in excess of increases granted similar employees in comparable counties. The only higher cents per hour increase granted was in Fond du Lac where the counterpart to the senior social worker received 55¢ per hour compared to 52¢ per hour in Washington County, under the County's offer. In addition, the County makes the following specific points, based upon its comparisons:

1. At the clerk-typist level, the County's offer of 32¢ per hour is 4¢ per hour above the average and exceeded only by Fond du Lac County's 36¢ per hour increase.

2. Otherwise, the County's offer is higher, both in percentage and cents per hour terms, than wage increases granted similar employees in comparable counties, except for the clerk-typist II and the senior social worker in Fond du Lac County. In those cases, the County's offer is only 4¢ and 3¢ below.

3. While Washington County will retain its fifth place ranking, 38¢ per hour below the fourth place rate, in the case of clerk-typist II, the difference in 1983 was 65¢ per hour and the rate is consistent with other Washington County employees doing similar work. In addition, it is a competitive wage rate in the area, as evidenced by the large number of applicants.

4. Similarly, in the case of income maintenance worker, while Washington County will retain its fifth place ranking, at 68¢ per hour below the fourth place rate, this is substantially less than the \$1.09 difference in 1983. Also, the County points out that its 1984 rate was sufficient to attract a large number of applicants in response to a recent advertisement for applicants.

5. In the case of social workers, the County's offer will retain its third place ranking, which is 85¢ per hour below the second place rate and 54¢ per hour above the fourth place rate. This represents an improvement in the cents per hour differentials which were \$1.17 per hour and 18¢ per hour respectively in 1983.

6. In the case of senior social workers, the County points out that it will likewise retain its third place ranking and be 21¢ per hour below the second place rate and 14¢ per hour above the fourth place rate. This too represents an improvement over 1983 when the County was in fourth place and 14¢ per hour below the third place rate and 97¢ per hour above the fifth place rate.

In summary, with regard to this data, the County states that its offer is competitive and will maintain comparable wage rates for similar positions in comparable counties. This is attributable, in large part, to the very significant increase which was granted as a result of the mediation/arbitration award in 1984, according to the County. Therefore, it argues,

that on a comparative basis its offer is the most appropriate.

With regard to the overall economic packages represented by the two final offers, the County notes that its offer will increase wage costs (including an 18.25% roll-up for FICA and pension contributions) by \$53,239 or 4.8%. It notes that this figure ignores the additional costs which will result from the split wage increases contained in its offer. On the other hand, the Union's offer will cause an increase of \$63,272 or 5.7% on wages alone (including roll-up). If an additional \$11,242 is added to pay for the Employer's estimated cost of the Union's overtime proposal in wages and roll-up costs, the total difference between the two offers becomes \$18,005. This represents an overall increase of 6.4%. When the additional cost resulting from the split increase is included, the cost of the Employer's offer would go up an additional .8% and the cost of the Union's offer would go up an additional .4%. Thus, based upon this data, the County argues that there is no basis for the Union to demand an increase which is one-third greater than that offered by the County. This is especially so because the County's offer is included in an economic package which exceeds increases in the cost of living, increases granted to private sector employees, increases granted to other County employees and increases granted to employees performing similar services in comparable counties.

The County makes a valid point, in the view of the undersigned, when it argues that the cost of living criterion must to be distinguished from the comparability criterion, for purposes of analysis. While it is appropriate to give consideration to what percentage increases other, comparable employers have granted similarly situated employees during a particular period of inflation, to determine whether such increases are greater than or less than the rate of inflation in question, the actual changes must be given consideration under this criterion. However, the undersigned is troubled by the mathematics of the Employer's approach to the problem of selecting an appropriate cost of living increase figure. A better approach, in the view of the undersigned, is to give consideration to changes in a particular cost of living index or indexes for calendar 1984, rather than attempting to average annualized monthly figures. Based upon the January 1985 Bureau of Labor Statistics data, the cost of living for United States' urban wage earners and clerical workers increased 3.5% in 1984. The increase for all urban consumers in the United States (which includes a larger population) was 4%. The percentage increases for Milwaukee area urban wage earners and clerical workers and all urban consumers were 4.2% and 3.8%, respectively. In general, the undersigned believes that the figure for all urban consumers in the United States is more reliable because of the larger population covered and the fact that that figure tends to be subject to fewer, short-term aberrations.

By that measure, both offers would generate wage increases for all employees in the bargaining unit which exceed the cost of living in 1984. In addition, the cost of those offers would exceed increases in the cost of living by an even greater amount. A review of arbitration awards discloses that it is not uncommon for wage increases to fall short of increases in the cost of living during particular periods when the rate of inflation is quite high or economic conditions are adverse, or both, and that it is likewise not uncommon for wage increases to exceed increases in the cost of living during periods when such conditions are the opposite. An analysis of the available comparable data here suggests that some of the increases granted

in 1985, particularly in Fond du Lac County, exceeded increases in the cost of living. On the other hand, increases in Ozaukee County and Waukesha County, at 3% each, were below the 4% figure used here. In some cases, the percentage increases granted by Dodge County were in excess of 4% and in other cases they were below. Most, but not all, increases granted by Sheboygan County were around 4%. Overall, this data suggests that the County's offer, which would generate wage increases in excess of the cost of living that were above average among the comparables, ought to be favored, on this criterion alone.

The private sector data relied upon by the Employer is quite general in nature. While some of that data deals with employment outside of heavy manufacturing, most of the data relates to workers in blue collar occupations which are not very comparable to the job classifications covered by the agreement here. Nevertheless, that data does disclose that private sector negotiated settlements are generally lower, in percentage terms and cents per hour terms than that which would result from either offer in this proceeding. However, an additional problem with that data relates to the average hourly rates earned by employees performing such work, which are not necessarily comparable to the professional or non-professional employees covered by the agreement here. There is no data in the record which would allow for a comparison on the basis of benefits as well.

Turning to internal comparisons, it would appear that the Employer is correct in its contention that its offer to this bargaining unit generally exceeds its settlements with other bargaining units and increases granted to unrepresented employees. Thus, there is no question that this aspect of the comparability criterion would favor the Employer's offer, in general, absent some justification for the higher increases sought by the Union. The answer to that question turns on the question of whether the Union is correct in its contention that the need for "catch-up" justifies the difference. However, before turning to that question it is appropriate to give consideration to the issue of whether the Employer's proposal to freeze the starting rate for clerical employees is justified on the basis of internal comparisons as well.

The undersigned must agree that it would be inequitable for the Employer to pay a starting rate for unrepresented clerk-typists which is substantially below that established under the terms of the agreement here. However, as the Union points out, it is in a position to make a similar argument with regard to the maximum rate attainable by such employees. Ultimately, this question, like the question of the relative reasonableness of the two final offers in other classifications, turns upon the question of whether the evidence of comparable County employers employing similar employees supports the County's offer or the Union's offer. Thus, if the rate range for clerk-typists ought to be adjusted upward, a more reasonable approach, and one which will not distort the difference between the rates at the various steps, would be for the County to give consideration to raising the hiring rate for unrepresented clerk-typists, rather than freezing the rate for represented clerk-typists.

There is very little difference between the two wage proposals for senior social workers (.5%) and a relatively small difference between the two wage proposals for social workers (.75% cost and 1% lift). Furthermore, the evidence discloses that both parties recognize that the focus of the wage dispute in this case is on the year-end percentage

increase which ought to be granted to the non-professional employees for "catch-up" purposes. If the County is correct in each case where it alleges that certain of the Union's comparisons for these two groups are misleading, it is nevertheless true that the resultant increases under the Union's offer will not result in wage rates which push the County's rate above the approximate midpoint of any of the comparables, using the County's own data for this purpose.

Therefore, the critical difference between the two offers relates to the rates for non-professional employees. Again, even if the County's data is used for comparison purposes, the Union's offer would appear to be reasonable under the circumstances. It is true, as the County argues, that its wage proposal will make some progress toward the goal of bringing the County's rates for income maintenance workers and other non-professional employees more in line with the comparables. However, the rates paid to such employees will still remain in last place and there will remain a substantial cents per hour differential between the rates paid by the County and the fourth place employers.

Given the evidence concerning the relatively low rate of inflation in 1984 and 1985, and the evidence indicating that the County's economic condition is relatively better off than it was in the recent past, the slight acceleration in the rate of "catch-up" in non-professional rates called for under the Union's offer would appear to be justified. Thus, based on the comparability criterion, a catch-up increase is not only justified, but an accelerated catch-up increase would also appear to be appropriate, based on the available data. Because of this, the fact that the Union's offer will generate percentage increases which are greater than the internal comparables and the rate of inflation, by a slightly higher margin than would the County's offer, is not found to be a compelling basis for favoring the County's offer over the Union's offer on wages alone. As noted above, the private sector data relied upon by the Employer does not relate to the pay received by employees performing comparable work and, likewise, fails to support a finding that the County's offer of a more modest catch-up increase should be favored, in the view of the undersigned.

#### SUMMARY AND CONCLUSIONS

On the one hand, the County's offer of a one-year contract asks for a reasonable change in the language dealing with floating holidays and offers a modest catch-up increase, with no changes in the compensatory time provision or overtime provision. It also contains a proposed wage freeze for clerk-typists that is not justified by the available evidence as to what other comparable employers pay as wage rate ranges for comparable positions. While it makes a change in the language dealing with the Employer's obligation to pay the employees' share of contributions to the Wisconsin Retirement Fund, that proposal will not have the affect of reducing the preexisting level of contributions and will allow for immediate collective bargaining with regard to the appropriate contribution rate for 1986, as contemplated by state law. On the other hand, the Union's offer calls for a two-year agreement, which would not make any change in the floating holiday language, would make a change in the compensatory time and overtime provisions which are deemed to be unjustified on the record, at least as presently worded, and would provide for an accelerated rate of catch-up increases. The Union's offer would result in an increase in the contribution rate toward the employees' share of retirement costs for 1986 but would provide for a wage reopener, where that increase

in benefits could be taken into account.

The undersigned is not in a position to "pick and choose" among the alternatives or to juggle the elements of the packages in any way. By accepting the County's one-year proposal as being more reasonable than the Union's proposal, the result will be to implement a change in the language dealing with floating holidays which is found to be reasonable along with a modest catch-up increase to be implemented retroactively for 1985. The parties will be in a position to enter into immediate negotiations over a new agreement for 1986, dealing with additional catch-up increases and any needed modification in the starting rate for clerk-typists, if justified by comparability data. Assuming that the Union pursues its request for an additional 1% contribution of the employees' share of Wisconsin Retirement Fund costs, that demand can be easily taken into account during the negotiations. On the other hand, if the Union's offer were selected, its proposals with regard to compensatory time and overtime would be implemented prospectively, notwithstanding the above-discussed concerns.

It is unfortunate that the parties will need to enter into immediate negotiations with regard to all proposed changes in the agreement. However, even if the Union's offer were selected, they would be required to enter into immediate negotiations under the Union's proposed wage reopener.

For the above and foregoing reasons the undersigned concludes that, under the statutory criteria, the County's offer should be favored over the Union's offer and enters the following

AWARD

The County's offer is selected. The parties shall enter into a Collective Bargaining Agreement incorporating that offer along with the changes agreed to during negotiations and the other provisions which are to remain unchanged.

Dated at Madison, Wisconsin this 31st day of January, 1986.

  
George R. Fleischli  
Mediator/Arbitrator

The following wage rates will be in effect as of July 1, 1984:

<u>Classification</u>	<u>Step I Hire</u>	<u>Step II 6 Mos.</u>	<u>Step III 18 Mos.</u>	<u>Step IV 30 Mos.</u>	<u>Step V 42 Mos.</u>
Clerk-Typist	4.95 396.00 857.84	5.16 412.80 894.23	5.50 440.00 953.15	5.65 452.00 979.15	5.81 Hourly 464.80 Biweekly 1006.87 Monthly
Terminal Operator Senior Clerk-Typist	5.32 425.60 921.96	5.50 440.00 953.15	5.65 452.00 979.15	5.81 464.80 1006.87	6.02 Hourly 481.60 Biweekly 1043.27 Monthly
Homemaker	5.42 433.60 939.29	5.59 447.20 968.75	5.81 464.80 1006.87	6.02 481.60 1043.27	6.20 Hourly 496.00 Biweekly 1074.46 Monthly
Income Maintenance Worker	5.47 437.60 947.95	5.64 451.20 977.41	5.89 471.20 1020.74	6.08 486.40 1053.66	6.25 Hourly 500.00 Biweekly 1083.13 Monthly
Social Worker	7.77 621.60 1346.54	8.07 645.60 1398.53	8.64 691.20 1497.31	9.03 722.40 1564.90	9.42 Hourly 753.60 Biweekly 1632.49 Monthly
Senior Social Worker	9.61 768.80 1665.41	10.02 801.60 1736.47	10.73 858.40 1859.51	11.11 888.80 1925.36	11.49 Hourly 919.20 Biweekly 1991.22 Monthly

APPENDIX "A"