STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of Mediation/Arbitration

between

GREEN COUNTY, HUMAN SERVICES DEPARTMENT

and

WISCONSIN COUNCIL OF COUNTY & MUNICIPAL EMPLOYEES LOCAL 1162-A, AFSCME, AFL-CIO

CASE 78
NO. 33744
MED/ARB-2916
Decision No. 22737-A

Appearances

For the Employer: Jack D. Walker, Esq.
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For the Union: David Ahrens, Staff Representative
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BACKGROUND

The undersigned was notified by a June 27, 1985, letter from the Wisconsin Employment Relations Commission of his selection as Mediator/Arbitrator in an interest dispute between Green County (hereinafter County) and Wisconsin Council of County & Municipal Employees Local 1162-A, AFL-CIO (hereinafter Union). The dispute concerns all of the terms to be included in their initial collective bargaining agreement covering all regular full-time and regular part-time employees of the County's Human Services Department, including professional employees, but excluding confidential, supervisory, managerial, executive and craft employees.

Pursuant to statutory responsibilities, mediation was conducted on August 15, 1985. A settlement did not result. In a letter dated August 26, 1985, the County requested that the Mediator/Arbitrator sign a Subpoena Duces Tecum requiring the Union's Executive Director to appear and bring with him several internal Union records. The Subpoena was signed and served, whereupon the Union filed a Motion to Quash on September 18, 1985. An arbitration hearing was conducted on September 19, 1985, at which time both parties had full opportunity to present evidence and argument in support of their respective positions. The undersigned reserved judgment on the Union's Motion to Quash, pending the filing of Briefs and Reply Briefs on that issue alone. Both parties filed same by October 29, 1985, and the Union's Motion to Quash was granted on December 17, 1985. Post-hearing briefs on the contract issues in dispute were filed by both parties, and the record was declared closed effective January 7, 1986. Based upon a detailed consideration of the record, and relying upon the criteria

set forth in Section 111.70 (4)(cm), Wisconsin Statutes, the Arbitrator has formulated this Award.

ISSUES

After five mediation attempts by a member of the Wisconsin Employment Relations Commission Staff and one by the undersigned, the parties had not agreed on any portion of their initial collective bargaining agreement. Thus, the entire agreement remained in dispute.

BACKGROUND

The County's Human Services Department was formed from a merger of the former Social Services Department and Unified Services Department. Employees of the former had been represented for collective bargaining purposes by the Teamsters' Union. On October 19, 1983, the County filed a petition for an election in the Human Services Department, and the Union involved in the instant proceeding was ultimately certified as exclusive bargaining representative on April 30, 1984.

COMPARABLE EMPLOYMENT RELATIONSHIPS

County Position

With respect to internal comparables, the County notes that the former Social Services unit was and the current Highway Department unit is represented by the Teamsters' union. Thus, much of the language in those agreements is standard Teamsters' boilerplate and meaningless to the employment relationship in the Human Services Department. Moreover, those agreements and the ones covering the Sheriff's Department employees and nursing home employees were negotiated by local County counsel who were not labor specialists. The result was a good deal of ambiguous language, the ramifications of which those County negotiators did not fully understand. There is simply no good reason to carry over such language to the present case.

The County also argues that the language of other County collective bargaining agreements is filled with detailed language based upon the long-term experience of the parties to those agreements. In contrast, the instant dispute involves a first contract and the parties need to determine the needs of the unit by experience. It is therefore inappropriate to borrow detailed language from more mature collective bargaining relationships.

The County proposes as external comparables the counties of Iowa, Lafayette and Grant, all of which are rural and in the southwest corner of Wisconsin. It argues that the urban counties of Dane and Rock are not comparable, largely because of their urban nature, and cites the reasoning of interest arbitrators in previous Green County cases in support of its position.

Union Position

The Union believes that the contiguous counties of Iowa, Lafayette, Dane and Rock are appropriate comparables. It adds that the broad geographical range of educational backgrounds across the bargaining unit justifies comparison with State employee groups as well.

With respect to internal comparables, the Union notes that many employees in the Human Services Department were at one time covered by the provisions of the former Social Services Department/Teamsters collective bargaining agreement. That agreement was negotiated specifically for employees doing social service work; thus, it is not simply "Teamster boilerplate" as the County contends.

Analysis

Both Iowa and Lafayette Counties were included in the proposed external comparables list of each party. They are contiguous to Green County, and both employ persons for work similar to that performed by employees of the Human Services Department. Grant County is also geographically proximate to Green County and it, too, has a collective bargaining unit similar in scope to the one in the instant case. Moreover, the Union here has not presented sufficient evidence to support the conclusion that Grant County should be excluded from the comparables pool.

While it is true that Rock and Dane Counties are certainly more urban than is Green County, both of them are contiguous to it, have significant areas of farmland, and have collective bargaining units of social workers and related employees. On the other hand, both contain relatively large cities (Janesville and Madison), which undoubtedly give them a tax base different from that of a completely rural county like Green. Thus, the undersigned will rely upon Rock and Dane Counties as secondary comparables, attaching to them less influence in the outcome of this matter than that attached to Iowa, Lafayette and Grant Counties.

The Union's arguments with regard to State employees being comparable were not persuasive. There is simply not enough evidence in the record to convince me that Green County competes with the State of Wisconsin for employees such as those in the County's Human Services Unit. Thus, even less weight is attached to State employee data than there is to the secondary comparables group.

The County's arguments against the use of internal comparables were not sufficiently persuasive to justify their exclusion. Certainly, the collective bargaining agreement negotiated for the previous Social Services Unit is useful for comparison purposes, since it was bilaterally designed to cover much of the work now performed by employees of the Human Services Unit. And the fact that the County chose not to use a labor law specialist as a spokesperson during that bargaining does not nullify the comparability impact of the resulting contract, nor does it convince the undersigned that the Union's proposed internal comparables are wrought with "Teamster boilerplate."

Moreover, the County has negotiated three other contracts (Nursing Home; Highway Department; Sheriff's Department) and nothing in the record has convinced me that the language therein is not appropriate for comparison purposes. Only in cases where the County has demonstrated that a particular clause or phrase has been troublesome

would the undersigned be inclined to exclude it. An exception to this conclusion would be considered if the County were able to demonstrate that a particular phrase or clause was the result of several rounds of negotiation, and that it would not be appropriate for the Union in the instant matter to reap the benefit for the first contract of someone else's long-term bargaining table efforts. Still, it must be remembered that many of the employees in the Human Services Department were formerly covered by the Social Services Department contract, and the County bears the burden of demonstrating why language which might be less beneficial to them is appropriate now.

Finally, the undersigned is keenly aware that it is inappropriate for employees or employers to gain something in a first contract by arbitration that might have taken them years to gain through free collective bargaining. Alas, that is one of the weaknesses of interest arbitration and one of the best reasons for the parties to settle their own bargaining table disputes. Interest arbitrators can only attempt to approximate the results of free collective bargaining. Thus, whenever the parties choose the interest arbitration option rather than negotiations between themselves, they get an estimate of what they might otherwise have hammered out themselves at the bargaining table.

CONTRACT ISSUES

The following discussion considers the contract issues individually in an attempt to evaluate each of the parties' positions vis-a-vis the statutory criteria. Only after all of the issues have been analyzed can the more reasonable of the two final offers be selected. It is important to recognize that while the undersigned has carefully evaluated each and every argument presented by both parties, the following paragraphs reflect only a summary of that evaluation. The sheer volume of evidence and argument submitted in this case (e.g., one party's Posthearing Brief alone was 159 pages, not including a 107-page Appendix) makes complete discussion of my entire analysis both impractical and cost-prohibitive. Accordingly, summary comments are made where appropriate.

Wages and Classifications

The parties have each offered a different wage and classification scheme.

County Position. The County's final offer includes a wage schedule containing 11 classifications in three general groups:

TABLE 1

COUNTY'S WAGE/CLASSIFICATION SCHEDULE

General Group	No. of Ees.	Hourly Wage
Human Servoup/Aides		
HSA I	6	$4.52
HSA II	5	$4.80
HSA III	5	$5.40
Program Support Specialists		
PSS I	9	$5.65
PSS II	5	$5.91
PSS III	3	$6.25
PSS IV	1	$7.10
Human Services Specialists		
HSS I	8	$7.60
HSS II	3	$8.21
HSS III	7	$9.01
HSS IV	2	$9.45* $9.01*

* For employee Shorrock the County's final offer lists a wage rate of $9.45; for employee Howick it lists a wage rate of $9.01; both are classified as HSS IV's.

The County notes that its classification scheme follows the current structure, with psychiatric social workers, rehabilitation counselors, occupational therapists and Youth Alcohol and Other Drug Abuse (AODA) Specialists each divided into two classifications (levels I & II from Table 1) based upon education, experience and performance. In contrast, the County argues, the Union's offer places all of the aforementioned job titles in the top wage bracket. The County also points out that the classification scheme proposed by the Union compresses the current eleven classifications into nine, and that it creates certain internal inequities. For example, the present Nutrition Site Manager position is at the bottom of the wage schedule, below that of Clerk/Typist. The Union's offer would put it at the same level.

The County is also concerned about placement of employees within classifications, and notes that the Union's offer places two employees in a lower paid classification than does its own, and ten employees in a higher one. It feels that several employees are misclassified in the Union's offer, based upon their qualifications and job duties.

With respect to the origin of its classification system, the County notes that it was set up by the Director of the Human Services Department, Bruce Willett; the Deputy Director, and departmental supervisors. The Union's

classification schedule was designed by a committee of ten unit members, none of whom have any training in job evaluation. Moreover, the County does not believe the Union committee relied upon the study of outside consultant Lorand in designing its system because of discrepancies between that study and the Union's classification schedule.

With respect to wage increments within classifications, the County's offer includes two increments: a starting rate 5% lower than a regular rate, which is reached after six months. It notes that the 35 formerly unrepresented Human Service employees had a starting rate which was 5% lower than the six-month rate, and the former Social Service unit employees had a contractual wage rate with no step increases. The County argues that the Union's seven-step salary schedule produces an automatic "roll-up" increase which averages 2.7% in 1986 and 1.6% in 1987. Thus, unit employees' earnings would be 4.4% over the 1985 contract amounts. In other words, even after the agreement has expired the Union is guaranteed a 4.4% increase without even submitting a proposal.

On the matter of wage increases, the County has offered each former Social Service unit employee a lump sum payment of $350 for 1984. Formerly non-represented Human Service employees received a 1984 increase of 2% plus $.10 per hour. Overall, these increases reflect a 3.5% average increase across the new unit for 1984. For 1985 the County has offered a 9.6% average increase over 1984 wages received. It believes the Union's offer equates to an average of 6.7% for 1984 and of 11.2% for 1985. Thus, under the Union's offer the 1985 annualized earnings are 18.7% higher than the 1983 earnings.

The County also asserts that its wage package compares very favorably with those provided to similarly situated employees in Lafayette, Iowa and Grant Counties. Under the Union's offer Green County employees would be thrust ahead of their counterparts in comparable counties. The County notes that any increase in the Human Services Department budget would have to be covered by an increase in client charges or in County tax revenue. And Green County is presently facing a growing tax delinquency problem as a result of the depressed farm economy. Thus, the County argues, its wage offer is the more reasonable.

Union Position. The Union's proposed salary schedule consists of nine different pay grade classifications and six graduated rates within each classification. In addition, it staggers the effective date of the full rate in four steps.

TABLE 2 - UNION'S WAGE/CLASSIFICATION SCHEDULE

Grade	Probation	6 Mos.	1 yr	3 yrs	5 yrs	7 yrs
18	9.16	9.43	9.71	10.00	10.31	10.62
14	7.56	7.79	8.02	8.26	8.50	8.76
12	6.86	7.07	7.28	7.50	7.73	7.96
10	6.24	6.43	6.62	6.82	7.03	7.24
9	5.95	6.13	6.31	6.50	6.70	6.90
8	5.66	5.82	6.00	6.18	6.36	6.55
7	5.40	5.56	5.73	5.91	6.08	6.27
6	5.16	5.31	5.47	5.64	5.80	5.98
4	4.91	5.05	5.21	5.37	5.52	5.69

Effective:

5/1/84: 25% of difference btn. current and scheduled rate.
9/1/84: 50% of difference btn. current and scheduled rate.
1/1/85: 75% of difference btn. current and scheduled rate.
7/1/85:100% of difference btn. current and scheduled rate.

The Union contends that its offer is based upon the recommendations of Mik Lorand, an outside consultant hired by the County to study its wage and classification system in 1984. As evidence of the high credibility placed upon Lorand by the County, numerous non-represented employee classifications and salaries were altered to conform to his recommendations. Lorand conducted extensive interviews with all affected employees, and his analysis was impartial. In contrast, the County's method of wage classification was conducted by the agency director and his deputy, neither of whom are objective observers or professional job analysts.

The Union argues that the County has placed both of the two levels of social workers it employs in improper pay grades, and that it provides no rationale for doing so. First, Psychiatric Social Workers (Master's Degree and specialty in clinical social work) are positioned by the Union in pay grade 18; the County places them in grades 10 and 11. And Case Workers (Bachelor's Degree) are in grade 14 under the Union's offer and in grades 8 and 9 under the County's offer. According to County exhibits 53 and 54, the higher of the two grades it proposes for each of these classifications can be achieved with two years of "above expected" employee evaluations. Yet, the Union notes, employees in such classifications have no project goals nor is there an evaluation instrument. The Union therefore concludes that the County's classification system would lead to enormous controversy and litigation.

The Union also asserts that Income Maintenance Workers in Green County have workloads higher than similarly employed persons in most counties across the state. Moreover, the County has lost state aid in 1984 ($17,623) and in 1985 ($25,207) due to its refusal to pay decent wages. Over the two years of the agreement in dispute, this lost money would fund the majority of difference between the two offers.

The Union acknowledges that its 7-year longevity pay plan is unusual, but adds that the County's single step six-month plan is also unique. The Union plan discourages turnover, while the County plan does not. Moreover, the average seniority across the bargaining unit was only 2.7 years as of January 1, 1985, so the actual current cost of the Union's plan is far below that indicated by the 7-yr. wage column. And the internal comparables support the Union's position. The Sheriff's contract has steps up to five years that total the same amount as does the Union's 7-year plan. In addition, the County Nursing Home salary plan rewards longevity for up to 25 years' service.

With regard to the County's tax base, the Union points out that it budgeted expenditures of more than $14,000,000 for 1985 but taxed only $3,613,000, with the difference being made up in federal and state aid. Moreover, the Green County tax rate is below that of both Iowa and Rock Counties (UX-14), and adjusted gross income per capita in 1981 was higher in Green County than those in Iowa and Lafayette Counties and slightly below that in Rock County (UX-13).

Analysis. One of the most difficult tasks associated with selection of a wage/classification scheme in final offer arbitration stems from the comparability factor. It is a rare case indeed where the arbitration record contains complete information on the duties and qualifications associated with each position. Similarly, complete information for comparable jobs is rarely provided either. In the instant case, however, the record contains the recommended salary schedule from consultant Mik Lorand. The Lorand Study is significant for several reasons. First, Lorand himself is an independent consultant, experienced in the design of wage/classification systems. Second, the County has already adopted his recommendations for numerous non-represented positions, attesting to his professional competence. And finally, Lorand's professional competence and objective, unbiased perspective carries greater weight in this proceeding than the opinions of the parties, who are obvious stakeholders in its outcome and who are untrained in job analysis and evaluation.

While neither of the parties' offers exactly duplicates Lorand's recommendation, the Union's offer more closely approximates it than does the County's. Union Exhibits 11 and 12 compare the pay grades recommended by Lorand with the rates proposed by the parties. In 17 of 29 job categories, the County's offer is below the minimum of the range recommended by the County's own consultant; in 11 categories the County's offer is below the median of the range; and in the remaining class it is above the maximum recommended. There is also one class where the Union's offer advances beyond the maximum recommended by Lorand, but only by $.04 per hour. Most of the remaining rates proposed by the Union are well within the consultant's recommended rate range. Moreover, they do not appear skewed toward the higher end of the range, leaving in most instances ample room for within-range longevity increases. And in eight of the 29 job classes, even the Union's offer is slightly below the recommended minimum.

Reliance upon the Lorand study is further justified by the diversity of tasks associated with each of the job categories proposed by the parties. It is difficult for the undersigned to make meaningful comparisons between those categories and similar ones among comparable employment relationships due to information gaps in the record. And the parties seem to have conflicting opinions about the

duties and qualifications of various levels of Social Workers and Income Maintenance Workers across the comparables. Moreover, there is some dispute as to the hours per week worked by similarly situated employees in comparable counties.

With these comparability obstacles in mind, the undersigned waded carefully through the voluminous wage data in the record and concluded that the Union's wage offer appears to be the more reasonable on the comparability criterion. For the Social Worker I category, the Union's offer for 1985 is comparable to or less than the rates in Iowa and Dane (a secondary comparable) Counties. It is higher than the rates in Lafayette and Grant Counties. With respect to Grant County, however, the undersigned notes that the Union recently received a favorable wage award from interest arbitrator Gil Vernon. Vernon notes in his discussion:

> ...the wage levels in Grant County are so far behind the pack (which includes Green and Iowa Counties, but not Dane and Rock Counties) that it is not reasonable to say the employees should be held to the same wage increases as other employees doing similar work in comparable employers...
>
> ... Under the Union's offer (which was adopted by the Arbitrator), the maximum wage rate for a Social Worker II will be ... nearly 11 percent lower than the average (among the comparables)...((parenthetical explanations added))

Thus, though the Union's offer in the instant case is higher than the rate in effect in Grant County, the undersigned is cognizant of the fact that Grant County has historically paid lower wages to social workers generally than have comparable employers.

For the Social Worker II category, the Union's offer is lower than what appear to be the comparable figures in Iowa and Dane Counties. It is generally comparable to the appropriate rates in Lafayette and Grant Counties as well, though the top end of the range under the Union's offer is higher. Still, it must be recognized that Green County employees under the Union's offer will not realize the top rate until they have been in the category for seven years. The time required to achieve the maximum rate in all of the comparable employment relationships, both primary and secondary, is significantly less.

With respect to Income Maintenance Workers, the undersigned notes that some catch-up is in order. In a 1983 arbitration award, Arbitrator Kerkman selected the employer's wage offer, but noted that it was so low as to be defective. And the undersigned understands that employees in the Human Services Department have not received a wage increase since 1983.

Generally speaking, the County's offer of $5.38/hr for 1984 and $5.91/hr. for 1985 does not provide enough catch-up and is not as closely aligned to the comparables as is the Union's offer. In Iowa County, for example, Income Maintenance Workers received $6.72/hr. in 1984 and $6.96/hr. in 1985 (Employer Exhibit A-107). In Lafayette County they received $5.77/hr. in 1984 and $6.08/hr. in 1985. (EX A-107). Grant County Income Maintenance Workers are unrepresented. The secondary comparables are also well above the County's offer. Rock County Income Maintenance Workers earned $6.27-$6.79 in 1984 and $.75 more in 1985; Dane County IMW's earned $7.56-$8.83 (I's and II's) and $8.62-$9.49 (III's) in 1984.

Both parties discussed the percentage increases associated with the offers, but the Arbitrator is less concerned with that aspect of the wage offers than with their relationship to the Lorand recommendations and the comparables. This is largely because the employees covered have not received a wage increase since 1983, and because they are in many cases far behind their counterparts in comparable employment arenas.

Moreover, though Green County farmers may indeed be facing tough economic times, the undersigned is not persuaded from the record that they are worse off than the farmers in Iowa or Lafayette Counties. Of some influence additionally were the Union's arguments about the County having lost certain outside aid due to its Social Services Department wage rates being too low. Moreover, it appears from the record that the bulk of the County's budgetary burden is carried by state and federal aid, not by County taxpayers.

On balance, the Union's offer on wages appears to be the more reasonable.

Recognition

County Position. The County's offer is quoted below:

> Green County recognizes Wisconsin Council 40, AFSCME, AFL-CIO, as the exclusive collective bargaining representative of all regular full-time and regular part-time employees of the Green County Human Services Department, including professional employees, but excluding confidential, supervisory, managerial, executive and craft employees. This Article is descriptive, only, and does not confer any contractual right.

The County notes that its recognition clause mirrors the WERC unit description, and that the Union's fails to specify the inclusion of professional employees and the exclusion of executive employees.

Union Position. Here is the Union's offer:

> The employer recognizes the Union, Wisconsin Council 40, AFSCME, AFL-CIO, as the exclusive collective bargaining agent for all regular full-time and regular part-time employees of the Green County Human Services Department, excluding supervisory, managerial, confidential and craft employees on all matters relating to wages, hours and conditions of employment (Decision No. 21453, ME-2287). This provision describes the bargaining representative and the bargaining unit covered by the terms of this collective bargaining agreement and is not to be interpreted for any other purpose.

Analysis. The fact that the Union's offer does not specifically exclude executive employees is not significant. It does exclude confidential and managerial employees, and executive employees fall well within the meaning of either category. Moreover, the Union's offer does include all regular full-time employees of the Department (excluding the noted exceptions), so professional employees would not be left out. Moreover, the offer references the WERC unit determination decision.

On the whole, there does not seem to be any significant difference between the parties' offers on this issue.

Management Rights

County Position. The County's offer on this issue is as follows:

> 2.01 It is agreed that the management of the County and the direction of employees are vested exclusively in the County, and that this includes, but is not limited to the following: to direct and supervise the work of employees; to hire, promote, transfer or lay off employees or demote, suspend, discipline or discharge employees; to plan, direct and control operations; to determine the amount and quality of work needed, by whom it shall be performed and the location where such work shall be performed; to determine to what extent any process, service or activities of any nature whatsoever shall be added, or modified; to change any existing service practices, methods and facilities; to schedule the hours of work and assignment of duties; and to make and enforce rules.
>
> 2.02 The County's exercise of the foregoing functions shall be limited only by the express provisions of this contract, and the County has all the rights which it had at law except those expressly bargained away in this Agreement.
>
> 2.03 The Employer may contract out for goods or services. The Employer agrees to bargain the effects of the decision to subcontract if employees are laid off as a result thereof.

The County notes that the Union's offer on this issue is silent on subcontracting, and adds that the County currently subcontracts many Human Services Department functions. Moreover, all but one of the comparable contracts proposed by the Union contain subcontracting language.

Union Position. The Union's offer on this issue is quoted below:

> 3.01 It is agreed that the management of the County and the direction of employees are vested exclusively in the County, and that this includes the right to direct and supervise the work of employees; to hire, promote, demote, transfer or layoff employees; to suspend, discharge or otherwise discipline employees for just cause; to plan, direct and control operations; to determine the amount and quality of work needed, by whom it shall be performed and the location where such work shall be performed; to determine to what extent any process, service or activities of any nature whatsoever shall be added or modified; to change any existing service, practices, methods and facilities; to schedule the hours and assignment of duties, and to establish reasonable work rules. The provisions of this Article shall not be used for the purpose of undermining the Union or discriminating against any of its members.
>
> 3.01 The County and the Union have all the rights which they had at law except those expressly bargained away in this Agreement.

The Union argues that there is no need for specific subcontracting language, and that comparable labor agreements support adoption of its postion.

Analysis. While the Union's proposal does not specifically indicate that management rights are not limited to those listed, it does state that "the management of the County and the direction of employees are vested exclusively in the County." The proposal goes on to indicate that these general rights "include" the items listed specifically. It does not state that the list is exhaustive. Thus, in the opinion of the undersigned, the Union's proposal would not restrict the County to exercising only those rights specifically listed.

With respect to subcontracting, the internal comparables are supportive of the Union's offer. That is, examination of the labor agreements negotiated for the four units (the former Social Services Unit, which covered much of the same work at issue; the Pleasant View Nursing Home unit; the Highway Department unit; and the Deputy Sheriffs' unit) reveals no specific subcontracting language.

The external comparables are also generally supportive of the Union's offer. Two of them (Lafayette & Grant Counties) are silent on subcontracting. The remaining primary comparable, Iowa County, has language limiting the employer's right to transfer work out of the bargaining unit. And both of the secondary comparables contain language placing certain limitations on subcontracting. In contrast, the County's offer in the instant case merely states, "The Employer may contract out for goods and services," and adds that the Employer will bargain the effects thereof.

Finally, the undersigned notes that the Union's Section 3.02 would preserve the legal rights of both parties with respect to subcontracting and other elements of management rights generally.

On balance, therefore, the Union's management rights clause appears to be the more reasonable.

Grievance Procedure

County Position. The County's final offer with regard to the grievance procedure is quoted below:

> 3.01 Grievance. A grievance is defined to be a controversy between any employee, or the union, and the County as to a matter involving the interpretation or application of this Agreement.
>
> 3.02 Procedure. Grievances shall be processed in the following manner: All times set forth in this Article, unless otherwise specified, are working days and are exclusive of Saturdays, Sundays and any Holiday recognized by this Agreement. All time requirements set forth in this Article may be waived or extended by mutual written agreement of the parties.
>
> Step 1. The grievance shall be reduced to writing and submitted to the employee's immediate supervisory (sic) within ten (10) days of the date of the event giving rise to the grievance or the date the employee should have known of the event giving rise to the grievance.

Step 2. If the grievance is not satisfied, the grievance may be presented to the Department Head, within ten (10) days of the Step 1 submission.

Step 3 - Arbitration Process. Within twenty (20) days of the completion of Step 2, the Union may request arbitration from the Wisconsin Employment Relations Commission.

The written request shall ask the Wisconsin Employment Relations Commission to submit a panel of five (5) arbitrators to the parties. Each party shall alternately strike names. The first strike shall be determined by coin flip, with the loser striking first. The last remaining name shall be the arbitrator. The award of the arbitrator shall be final and binding. The costs of the arbitrator shall be split between the parties. Each party shall bear its own attorney's fees.

The arbitrator shall have no authority to grant wage increases or wage decreases.

The arbitrator shall expressly confine himself to the precise issues submitted to arbitration and shall have no authority to determine any other issue not so submitted to him or to submit observations or declarations of opinion which are not directly essential in reaching a determination.

The arbitrator shall take such evidence as in his judgment is appropriate for the disposition of the dispute. Statements of position may be made by the parties, and witnesses may be called. The arbitrator shall have initial authority to determine whether or not the dispute is arbitrable. Once it is determined that a dispute is arbitrable, the arbitrator shall proceed in accordance with this Article to determine the merits of the dispute submitted to arbitration.

Expenses relating to the calling of witnesses, transcripts, or for the obtaining of depositions or any other similar expense associated with such proceeding shall be borne by the party at whose request such expenses are required. In the event one party obtains a transcript, the other party shall not have a copy, unless the other party pays one-half the cost of the court reporter and transcripts.

A grievant may initiate, present and process his grievance, not including arbitration, with or without Union representative(s).

A grievance affecting a group or class of employees may be submitted in writing by the Union to the Department Head directly and the processing of such grievance shall commence at Level Two, provided Step 1 timeliness requirements are met.

Should any of the time limits imposed on the employee or the Union pass without action, the grievance will be barred unless the time is extended by mutual agreement in writing.

The County believes its offer is more appropriate than the Union's because it specifies the parties to the procedure. It also notes that the contracts in Grant and Dane Counties do so.

Moreover, the County argues, its proposal gives the parties the right to choose an arbitrator from a list, and makes it somewhat costly to proceed to arbitration. Such language would prevent the processing of frivolous grievances. The County also argues that the comparables support its position on arbitrator selection.

Finally, the County maintains that its offer is the more reasonable because it includes specific limitations on the arbitrator's authority and license to include unnecessary observations in arbitral opinions. The County also believes its limitations on arbitral authority are supported by the comparables.

Union Position. The Union's proposed grievance procedure is as follows:

> 5.01 In case any dispute or misunderstanding relative to the meaning or application of the provisions of this Agreement arise, it shall be handled in the following manner. A work week for purposes of interpreting this Article is from Monday through Friday.
>
> (A) The employee, Union steward, officer or representative, shall present a written grievance to the most immediate supervisor within two (2) work weeks of the alleged grievance or knowledge thereof. The supervisor shall prepare a response within one (1) week of receipt of the grievance.
>
> (B) If the initial response is unsatisfactory, the grievance shall be submitted to the department head within two (2) weeks of the date of response or expected response. The department head will respond to the grievance within one (1) week of its submittal.
>
> (C) If the Union does not find the department head's response to be satisfactory, it shall request that the Wisconsin Employment Relations Commission (WERC) appoint a member of its staff as an arbitrator of the dispute. The parties shall share the expense of the arbitrator so appointed. The parties shall also share the expense of the statutory filing fee. The decision of the arbitrator shall be final and binding, on both parties.

The Union notes that with the exception of Dane County, all internal and external comparables provide for use of a WERC staff or Commission member as grievance arbitrator. It also notes that under the County's offer, one arbitration per year could exhaust the local's small treasury.

Analysis. For several reasons, the Union's offer is the more reasonable on this issue. First, there is little need for the County's extensive language limiting the arbitrator's authority and license to offer commentary unrelated to the issue before him. Arbitral authority is limited by well-established case law (e.g., the principles outlined in the Steelworkers' Trilogy), and much of the County's proposed language is therefore redundant. Second, while there is some merit to the County's wish to prevent arbitrators from offering superfluous written comments, the County has not demonstrated that such a problem has plagued them in the past. And third, the comparables are almost wholly supportive of the Union's position. All of the internal ones contain arbitrator selection language similar

to that proposed by the Union, and none of them contain language directed toward arbitral authority and discretion.

Fourth, the undersigned is not convinced that because the Union's proposal does not specify the parties to the grievance procedure it might permit a grievance over a dispute between two employees or between the Union and an employee. The Union's proposal contemplates disputes "relative to the meaning or application of the provisions" of the Agreement, and there are two parties to the Agreement: the Union and the County.

Finally, The steps and time limits in the parties' respective grievance procedure language are not critically different from each other, and each appears to be reasonable.

Employee Discipline

County Position. The County position on this issue is quoted as follows:

> 4.01 Probationary Employees. Nonprofessional employees shall be probationary for a period of six (6) months.
>
> Professional employees shall be probationary for a period of six (6) months, except the employer may extend a professional employees (sic) probationary period by an additional six (6) months, in its discretion, on written notice to the employee and the Union.
>
> It is agreed that students as temporary help are not unit employees. Students are defined as persons currently enrolled or on vacation from any educational institution and hired for seasonal or part-time work.
>
> Probationary employees may be disciplined or discharged without recourse. The Union will be given a copy of any written discipline of a probationary employee.
>
> 4.02 Nonprobationary employees may be disciplined, demoted, suspended or discharged for cause. Discharge without a warning is authorized in cases of:
>
> (1) Dishonesty
> (2) Working under the influence of liquor or drugs
> (3) Willful destruction of property
> (4) Physical or verbal abuse of clients
> (5) Theft from employer or other employees, or clients
>
> 4.03 Inability to work because of proven illness or injury shall not be cause for discharge or suspension, and such employee shall be reinstated to their former position at such time as they are physically capable of doing same. Any employee who is unable to perform her or his job for a period of one (1) year is terminated except in case of a workers compensation injury or illness. In case of a workers compensation injury an employee is terminated if the employee has a permanent injury which makes the employee unable to perform her or his job.

The County argues that its proposal is consistent with all four internal comparables, and notes that the Union's does not list offenses for which an employee may be discharged without warning. Moreover, none of the internal comparables require two warning notices for offenses which do not involve immediate discharge; the Union's proposal does. Thus, under the Union's language, if an employee were to get a warning for something so serious as patient abuse, he could not be discharged for a second offense - - - the County would be forced to offer a mere second warning.

The County maintains that the external comparables do not support the Union's offer either, nor does the statutory criterion of the public interest.

Union Position. The Union proposes the following language on this issue:

> 6.01 The Employer may discharge or discipline any employee for just cause. An employee charged with an offense justifying immediate discharge, will be informed of such offense in writing at the time of his/her discharge, and a copy thereof shall be sent to the Union. All discharges shall be made in the presence of employee's stewards, if possible. The Employer shall give at least two (2) warning notices in writing of a complaint for other offenses (those not involving immediate discharge) against such employee to the employee and the Union.
>
> 6.02 Objection to any discharge must be made within ten (10) working days of said discharge. The matter shall then be discussed by the Employer and the Union as to the merits of the case. The employee may be reinstated under other conditions agreed upon by the Employer and the Union. Failure to agree shall be cause for the matter to be submitted to arbitration, as provided in Article IV, Grievance Procedure. The arbitrator shall have the authority to order full, partial, or no compensation for the time lost. Inability to work because of proven illness or injury shall not be cause for discharge or suspension, and such employee shall be reinstated to their former position at such time as they are physically capable of doing same.
>
> Any employee who is unable to perform his or her job for a period of one (1) year is terminated except in case of a Worker's Compensation injury or illness. In case of a Worker's Compensation injury an employee is terminated if the employee has a permanent injury which makes the employee unable to perform his or her job.

The Union's position on probationary periods is included in its union security language:

> 2.01 Probationary Employees. A new employee shall work under the provisions of this Agreement, but shall be employed only on a six (6) month trial basis, during which period he/she may be discharged without further recourse; provided, however, that the Employer may not discharge or discipline for the purpose of evading this Agreement or discriminating against Union members. After said probationary period, the employee shall be placed on the regular seniority list. It is agreed that students as temporary help are not considered as probationary employees. Students are defined as employees currently enrolled or on vacation from any

educational institution and hired for seasonal or part-time work.

In case discipline is necessary within said probationary period, the Employer shall notify the local union in writing concerning the details of the problem causing said discipline.

The Union notes that the County's right to extend a professional employee's probationary period to twelve months is totally inappropriate and wholly unsupported across the comparables. It did not address the matter of employe discipline in its Posthearing Brief.

Analysis. There are aspects of both parties' positions on the matter of employee discipline/probationary period which appear reasonable. On balance, however, the County's proposal is preferable.

With respect to the probationary period, the Union's proposal is more closely aligned with both the internal and external comparables. And a six-month period seems adequate to determine if an employee is just not fit for a position. Moreover, if a work-related problem were to occur during the second six months of a professional employee's County service, it could be addressed through the disciplinary system in most instances.

The County correctly argues that the internal comparables support its position on offenses justifying immediate discharge. All four of them contain language almost identical to the County's proposal. Moreover, the Arbitrator is convinced from the County's arguments that it should have well-defined authority to discharge employees without warning for the offenses listed. This is especially true due to the nature of the work at hand. For example, the County explains that it would be inappropriate to give first and second warnings to an employee responsible for counselling alcoholics if indeed he/she reported for work under the influence of liquor. Furthermore, the undersigned notes that all of the internal comparables call for one warning notice, not two.

Union Security

County Position. Here is the County's position on the matter of union security:

5.01 The Employer agrees to provide and allow the Union use of bulletin board space in the Human Services Department.

5.02 The Union shall keep the Employer informed in writing of its selection of officers who are elected to represent the Union.

5.03 Business agents or representatives of the Union having business with the officers or unit employees may confer with such persons during the course of the workday, at reasonable times for reasonable periods of time, provided the director's approval is obtained and provided such time will not be paid time.

5.04 The Union agrees to conduct its business off the job as much as is practical. This article shall not operate in any manner that would prevent a steward from the proper investigation and processing of any grievance in accordance with the

procedures outlined in this Agreement, or to prevent certain routine business such as the posting of Union notices and bulletine.

5.05 Dues Deduction. The Employer agrees to deduct Union dues from the wages of employees within the collective bargaining unit upon written authorization to the Employer by said employees. Any deductions made pursuant to said written authorization shall be made once each month and the total such deductions paid to the Union treasurer within ten (10) days of such deductions.

The County argues that it would be inappropriate to include a fair share provision in this, the first contract, and cites the former Social Services unit and the Nursing Home unit as examples, among others.

The County also believes that the Union does not have a constitutionally adequate mechanism for determining and collecting the fair share amount from nonmembers. Moreover, both the 7th Circuit Court of Appeals and the U.S. Supreme Court have ruled that an employer is responsible for establishing workable procedures to ensure that dissenting employees' fair share payments are not used to support union political objectives not germane to the collective bargaining process. The County thus reasons that the statutory criteria of (1) the employer's lawful authority and (2) the public interest, render its union security offer the more reasonable.

The County also notes that the Union's fair share proposal includes no indemnification clause, thereby producing serious risk of liability for the County. The fair share proposal also includes no referendum language and provides not for a fair share amount, but for the deduction of full union dues. In contrast, the County advises, the Union offered fair share language in Grant County which did include a referendum provision and an indemnification clause, and provided for a fair share amount rather than full dues.

The County asserts that support for its position is found in comparable collective bargaining agreements as well.

Union Position. The Union's final offer on the general question of union security is quoted here:

2.02 The Union shall keep the Employer informed in writing of its selection of officers who are elected to represent the Union.

2.03 The Union agrees to conduct its business off the job as much as is practical. This Article shall not operate in any manner that would prevent a steward from the proper investigation and processing of any grievance in accordance with the procedures outlined in this Agreement, or to prevent certain routine business such as the posting of Union notices and bulletins.

2.04 The Employer hereby agrees that reasonable time spent in the investigation, processing and presentation of grievances and negotiations during regular working hours shall not be deducted from the pay of no more than two (2) officers of the Union.

2.05 A member of the Union who is called upon to serve as a delegate or representative of the

Union for conventions or conferences, shall be granted leave time. Such leave time shall be granted to no more than three (3) members. Such leave time shall be without pay. Members shall be allowed to use vacation, personal or holiday compensatory time for such conventions or conferences.

2.06 Business agents or representatives of the Union having business with the officers or individual members of the Union or members of the bargaining unit of the Union may confer with such officers or members during the course of the work day for reasonable periods of time, provided that notice is first given to the office of the director. These conferences will pertain to matters concerning primarily wages, hours and conditions of employment. Such conferences shall in all cases be entirely confidential.

2.07 The Employer agrees to provide and allow the Union use of bulletin board space in designated areas in the work locations of the Agency.

2.08 Membership in the Union is not compulsory. An employee may join the Union and maintain membership therein consistent with its constitution and by-laws. No employee will be denied membership because of race, color, creed or sex.

The Union will represent all of the employees in the bargaining unit, members and non-members, fairly and equally and, therefore, all employees shall pay their proportionate share of the costs of the collective bargaining process and contract administration, on and after the 31st day following the beginning of their employment, by paying an amount to the Union equivalent to the uniform dues required of members and the Union.

The Employer agrees to deduct dues or fair share equivalent from the pay for all employees covered by this Agreement, and agrees to remit to said local Union all such deductions. All deductions will be made and remitted to the Union prior to the end of the month for which the deduction is made.

The Union shall certify to the County in writing each month a list of its members for the County who have furnished to the County the requried authorization. The Employer shall add to the list submitted by the Union, the names of all new employees hired since the last list was submitted and delete the names of employees who are no longer employed.

The Union argues that its proposal is the more appropriate, especially since all Green County labor agreements have a fair share provision. Moreover, all of the external comparables have fair share provisions as well.

The Union also asserts that fair share agreements are the rule rather than the exception in the public sector generally, and the fact that this is the first contract should not be influential.

Analysis. The fair share issue is of overwhelming importance compared to the remainder of the union security elements, and it shall be controlling over them. That is, it would be counterproductive for the undersigned to discuss matters such as Union use of

bulletin boards and leave for union conventions because the fair share question so strongly dominates the union security issue.

After careful consideration of the parties' arguments, the undersigned has concluded that the County's position is the more reasonable on the matter of fair share. Generally speaking, the Union is correct in its assessment of the prevalence of fair share clauses; however, the County has correctly identified the significance of the Union's failure to include an indemnification clause. The AFSCME contract at the County Nursing Home contains such a clause, as do AFSCME's proposal (which was adopted) in Grant County, the AFSCME contract in Lafayette County, the Teamster Social Services contract in Iowa County, and the AFSCME Social Services/Courthouse contract in Iowa County. Thus, there is considerable support across the comparables for the inclusion of an indemnification clause.

There has been considerable publicity of late about the rights of fair share dissenters, particularly in view of the U.S. Supreme Court's decision in Chicago Teachers Union, Local No. 1, AFT, AFL-CIO et al. v. Annie Hudson et al., (54 U.S.L.W. 4231, Mar. 4, 1986). Essentially, the Court held in Hudson that a nonunion member of an agency shop is "entitled to have his objections addressed in an expeditious, fair and objective manner." The complaint procedure under review by the High Court was declared constitutionally inadequate because it was under the complete control of the union and was not expeditious, among other things.

In the instant case the Union's proposal says nothing of the mechanism to be used in the case of fair share protests. Thus, there is a possibility that it might indeed be held constitutionally inadequate under Hudson. The mere possibility of such an outcome raises questions in the arbitrator's mind as to the reasonableness of the Union's fair share language. These questions, in and of themselves, however, are not sufficient to cause me to reject the Union's position. Coupled with the lack of an indemnification clause, however, they lead to the conclusion that the County's position on fair share specifically, and on union security generally, is the more reasonable.

Seniority

The County offer on this issue is quoted below in its entirety:

> 6.01 Seniority will be considered to the extent provided in this Agreement.
>
> 6.02 Upon completion of probation, employees will accrue seniority from date of employment by the Employer. Employment is continuous for seniority purposes, but is terminated if the employee quits, or is terminated.
>
> 6.03 Layoff and recall will be by seniority within each of the following groups, provided the employee seeking to be retained or recalled is qualified for the available position.
>
> > (1) Degreed professional employees, provided that in the reasonable judgment of the employer the degree is appropriate to the available position.

(2) Nonprofessional alcohol and drug abuse counselors.

(3) Nonprofessional administrative employees, and children, youth and family aides.

(4) Other nonprofessional employees.

Provided, no employee may bump or be recalled to a higher paid classification than the classification held at time of layoff.

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

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

6.06 An employee retains the above recall rights after a layoff for a period of two years.

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

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

6.09 The Employer may reduce hours, instead of laying off employees, or in combination with layoffs. Employees whose hours are reduced are full-time employees for the purposes of seniority rights.

The County maintains that its offer specifically denotes that seniority will apply to layoff, recall and promotional opportunities defined elsewhere in the agreement, while the Union's offer fails to define the circumstances where seniority shall prevail. Furthermore, the Union's offer is not taken verbatim from the old Social Services contract; rather, it removes the relative "skill and ability" language. And the other two Green County contracts which contain the phrase "seniority shall prevail" also contain the "skill and ability" limitation. The Sheriff's Department contract does not include the "seniority shall prevail" language. The County also believes that the external comparables are more supportive of its position than they are of the Union's.

The County's offer with regard to layoff and recall divides employees into four seniority groups. Such division is necessary to protect the County against having to run its operation with people not educated or skilled in appropriate areas. The County also notes that the Human Services Unit is more diverse than the externally comparable units, thereby justifying the four classifications for layoff/recall purposes.

The County also notes that the Union's offer, with its unlimited bumping rights, might allow an employee with minimum qualifications to be recalled into a job he/she has never performed, and perhaps into one which would represent a promotion for that employee.

The County maintains that other aspects of its seniority proposal are reasonable as well, and should be adopted.

Union Position. Here is the Union's seniority proposal:

> 4.01 Seniority rights shall prevail at all times during the life of this Agreement.
>
> 4.02 Employees' seniority shall date as the first date of employment by the Employer, and all employment shall be considered to be continuous unless terminated by discharge, resignation, or if an employee is laid off and not re-employed within two (2) years from the date of layoff.
>
> 4.03 The County has the right to layoff employees in any classification. Those employees so affected by a layoff shall have the right to bump junior employees in the same pay range or pay ranges below provided they can meet the minimal qualifications of the junior employee's job. Junior employees so affected shall exercise their seniority rights in a similar manner. In re-employing, those employees with the greatest length of service shall be called back first provided they meet the minimum qualifications of the available job.
>
> 4.04 A seniority roster shall be made of employees in the bargaining unit showing their names, classifications, date of hire, months of service, and number of sick leave and vacation days; and this list shall be posted on bulletin boards and brought up-to-date as of the last pay period in June and December of each year.
>
> 4.05 (This section was deleted from the Union's final offer on August 15, 1985).
>
> 4.06 Part-time employees shall attain seniority in relationship to time worked. For the purpose of computing seniority, 173 hours shall be considered one (1) month.

The Union argues that its offer comes directly from Green County "boiler plate" language, and that the County's offer is all new. The County's Sections 6.05 through 6.09 are not found in any of the comparable labor agreements.

Analysis. Generally speaking, the Union's final offer parallels the old Social Services contract and the County's is radically different from it. Moreover, the County has not demonstrated that any significant problems arose under the old language. And again, since the County agreed to that language once already, it seems appropriate to presume that the Union's proposal is more reflective of the outcome of free collective bargaining than is the County's.

In addition, the undersigned is not convinced that the Union's offer would ultimately force the County to place employees into positions for which they are not qualified, either through the bumping or recall process. The Union's "minimal qualification" standard is subject to

interpretation on a case-by-case basis, and the County has the authority to determine whether, indeed, a particular employee possesses the appropriate qualifications.

Finally, the County's offer on seniority seeks too much too soon, without enough support from the comparables. This is especially true of its Sections 6.05 through 6.09.

Job Posting

County Position. The County's final offer on this issue is as follows:

> 19.01 Unit vacancies will be posted. Nonprobationary professional employees who possess the required qualifications established by the Employer may sign postings for professional jobs. Nonprobationary nonprofessional employees who possess the required qualifications established by the Employer may sign postings for nonprofessional jobs. Part-time employees may not sign full-time postings.
>
> 19.02 The Employer will consider unit employees who were eligible to sign the posting, and have done so, and nonunit applicants, for the vacancy. Equal consideration will be given to seniority and nonrequired qualifications in filling the vacancy.
>
> 19.03 An employee awarded a job shall be given a fair trial for a period not to exceed ninety (90) days, but if it shall, at the end of ninety (90) days, be decided by the Employer that such employee is not qualified or adapted to the new position, he or she shall be returned to his or her old position without loss of seniority. If, at the end of the ninety (90) day trial period, the employee desires, he or she shall be returned to his or her old job without loss of seniority.
>
> 19.04 There shall be not more than one (1) postable vacancy created by each job opening.
>
> 19.05 Employees who are appointed to a higher job classification under this Article shall be paid their existing rate, or the probationary rate for the higher classification, whichever is higher, during the trial period. Employees who are appointed to a lower job classification shall be paid the lower rate immediately.

The County contends that the unit's diversity calls for safeguards to prevent the employer from being forced to select an unqualified or minimally qualified candidate for a vacant position. It argues that all of the comparables provide such safeguards and that the Union's final offer provides none.

The County feels its separation of nonprofessional and professional employees for job bidding purposes is reasonable because it uses two different sets of standards for their initial employment. For example, the County evaluates the grades, term papers and theses of professional applicants. It does not do so for non-professional applicants. Under the Union's proposal, however, nonprofessional employees could bid on professional vacancies on a seniority basis and the County could not consider the subjective factors it normally does

when it initially hires professional employees from the external labor market.

With regard to the external comparables, the County notes that three of those selected by the Union are units consisting exclusively of professional employees. And in Lafayette County the contract makes employee qualifications the deciding factor, with seniority considered only if the former are relatively equal. The internal comparables also support the County's position because none of them have both professional and nonprofessional employees in the same unit.

The County also maintains that its proposal on this issue more closely reflects the old Social Service contract than does the Union's. It also asserts that the Union's sole reliance on seniority as a criterion for awarding vacancies is not supported by either the internal or external comparables.

Union Position. Here is the Union offer on the issue of job posting:

> 7.01 All unit vacancies on existing or new job openings shall be posted for at least seven (7) working days and employees will be permitted to bid on such vacancies. Until posted and bid, the County will fill these jobs at its discretion. The Employer shall select from among signatories an employee to fill the new or vacated job; provided, however, promotions and transfers within the professional unit and between the non-professional and professional unit shall be determined by seniority provided the employees' qualifications meet minimum standards and are relatively equal. Promotions and transfers for positions within the nonprofessional unit shall be made on the basis of seniority, provided the employee meets the minimum qualifications for the position.
>
> 7.02 An employee awarded a job shall be given a fair trial for a period not to exceed thirty (30) days, but if it shall, at the end of thirty (30) days, be decided by the Employer that such employee is not qualified or adapted to the new position, he/she shall be returned to his/her old position without loss of seniority. If, at the end of the thirty (30) day trial period, the employee desires, he/she shall be returned to his/her old job without loss of seniority.
>
> 7.03 If, after sixty (60) days, the County has not filled the position vacated by such job bidding, the vacated position will be open for bidding and the County shall not fill this vacancy at its discretion.
>
> 7.04 If an employee bids into a higher job classification, he/she shall be paid at the current rate for the new classification according to his/her seniority.
>
> If an employee bids down into a lower classification, he/she shall then be paid at the current rate immediately for the job classification according to his/her seniority.

The Union asserts that there is no support for the County's proposal that part-time employees be prohibited from bidding on full-time vancancies, while, at the same time, someone outside the bargaining unit would be considered for

them. And what does the County's consideration of nonrequired qualifications mean in its Section 19.02?

Moreover, the County's offer does not list a job posting period. Presumably, it could post a vacancy for a few hours and remove it. In contrast, the Union's offer includes a five-day posting period.

Finally, the Union asserts that there is no support among the comparables for the County's Section 19.05. That Section would pay an employee the old, lower rate while he worked the first 90 days of a new, higher paid job.

Analysis. Both parties' offers on this issue are somewhat different from the old Social Services contract. The Union's offer, however, is a closer approximation of it than is the County's. First, the old contract required that equal consideration be given to seniority and qualifications. The Union's offer slightly modifies that balance of standards, but it seems to place lesser emphasis on seniority. With regard to professional employees for example, it would allow the County to award a vacancy on the basis of qualifications alone if two candidates' qualifications were not relatively equal. If they were relatively equal, then and only then would seniority be the determining factor. Thus, the County would not be forced to award professional vacancies strictly on the basis of seniority.

It should also be noted that the County's use of the term "nonrequired" qualifications as a standard equal to seniority for awarding job vacancies is troublesome indeed. The term could mean anything. A candidate's golf prowess or ability to spit through his (or her?) teeth could presumably be considered. In the opinion of the undersigned, permitting the County to consider "nonrequired" qualifications would open the flood gate entirely too wide.

Both parties amended the probationary period from the former 15 days, but the County amended it a great deal more (90 days) than did the Union (30) days.

With regard to posting period, the range across the internal comparables is 5-7 days. Thus, the Union's 5-day posting period does not seem to be more than the County can tolerate. And the fact that the County's offer does not even contain a posting period might well cause a good deal of time-consuming controversy if postings were removed before a reasonable period had elapsed.

Finally, the Arbitrator is not convinced from the County's arguments that the Union's language would force it to award vacancies to unqualified persons on a strict seniority basis. The main focus of the County's concern appears to be the professional employee vacancy, and as noted earlier, the Union's language would allow the County to first consider the relative qualifications of the applicants for such positions and would require the County to embrace the seniority concept only if their qualifications were relatively equal.

Overall, the position of the Union on this issue appears to be the more reasonable.

Dangerous Conditions

Union Position. The Union's final offer contains the following language:

> 8.01 Under no circumstances will an employee be required or assigned to engage in any activity involving dangerous conditions of work or danger to person or property or in violation of any applicable statute or court order, or in violation of a government regulation relating to safety of person or equipment.

The Union feels that general working conditions in the unit can involve working with the chronically mentally ill, and that such individuals can be violent. Thus, unit employees should have some degree of contractual protection against being forced into unsafe situations. Moreover, the Union asserts, all County contracts with the justifiable exception of the Sheriff's Department contract have such a provision.

County Position. The County proposes no language of its own on this issue, and acknowledges that the identical language appears in the old Social Services agreement and in the Pleasant View (Nursing Home) agreement. However, the County feels there is no reason to carry over such broad language into a new unit's first contract. It also argues that early labor agreements in the County were negotiated by local, nonspecialist attorneys representing a rural County Board.

Analysis. The undersigned is not influenced by the County's argument that its early agreements were not negotiated by sophisticated labor law specialists. One could also argue that in those early years of public sector labor relations infancy, union representatives were still learning as well. In any event, there is nothing in the record to convince me that the County negotiators in those years just fell off the turnip truck and happened to land at the bargaining table. Even if they did, the County must live with the impact of the negotiated language.

The language proposed by the Union was once operative for social service type employees, and the County presented no evidence that it unreasonably limited the Social Services Department's ability to deliver services to its constituents. The Arbitrator does note, however, that those employees did not serve the chronically mentally ill.

Overall, the Union's clause does not appear overly restrictive. Even without such language employees would have a limited right to refuse dangerous assignments. For example, arbitrators commonly uphold employee refusal to perform a direct order if it is shown that compliance would have created an immediate threat to the employee's personal safety. Under such conditions, employers can be reasonably expected to provide safeguards to minimize the risk of physical harm to the employee. In the interpretation of the undersigned, the Union's proposal does not place more restrictions on the County than those which would exist without such language.

With regard to the external comparables, no such clause is apparent. Again, however, several employees in the Human Services unit (i.e., those who were in the old Social Services unit) have lived under such a provision, and the County has not demonstrated that such language was overly restrictive in the past.

Surety Bonds

Union Position. The Union has presented the following proposal on the posting of employee bonds:

> 9.01 Should the County require a surety bond, the same shall be obtained by the County and the County to pay the premium.

The Union simply notes that the same provision was included in the old Social Services contract.

County Position. The County argues that it does not require employees to be bonded. Thus, the Union's proposal reflects just another meaningless holdover from a contract covering a different unit (i.e., the Social Services unit).

Analysis. Such a provision exists in the Pleasant View and Highway Department contracts. And it did indeed appear in the old Social Services contract. It is also true, however, that the County requires no bonding at present. Still, that fact does not render the Union's proposal meaningless. Apparently employees in Green County have been concerned historically that bonding might be thrust upon them at their own expense. The record does not persuade me that such a concern is baseless or that it is now somehow nonexistent. And it is not uncommon for employees to negotiate contingency clauses into labor agreements, even if the operative factor has not yet occurred. Thus, it does not seem unreasonable that the Union here would include such a clause in its final offer.

The undersigned notes also that the language will not affect the County unless it chooses to require surety bonds. This acknowledgement should not be taken to mean that the clause is taken lightly by the undersigned. It simply means that the extension of such coverage from the internal comparables to the Human Services contract does not appear to be unreasonable in light of what the County has already agreed to and apparently endured with no problems in those comparable contracts.

Sick Leave

County Position. The County's final offer on sick leave is quoted below:

> 8.01 Each full-time employee shall earn and accumulate when not used, one (1) sick leave day with pay at his or her regular rate of pay for each month of employment until a total of seventy-two (72) days are accumulated.
>
> 8.02 After each full-time employee has accumulated his or her seventy-two (72) days of sick leave and uses all or any portion of it, it shall be built back up at the rate of one (1) day of sick leave a month, until he or she has again accumulated seventy-two (72) days.
>
> 8.03 No sick leave shall be paid for absence due to illness, unless the employee has accumulated 12 or more sick days or unless the employee presents a proper doctor's certificate attesting to the illness. In any event, after an employee has used 3 days of sick leave he shall furnish a proper doctor's certificate attesting to

the illness. If the employee leaves work because of illness, that day shall be counted as the first day of illness.

8.04 Fifty (50) percent of the employees accumulated sick leave at the time of an employee's termination due to normal retirement, death or permanent disability will be paid to the employee or his or her heirs. The term "normal retirement" as used in this Section regarding sick leave shall be defined to be a voluntary termination of employment on the part of the employee occurring after an employee has attained the age of sixty-two (62) years and having completed ten (10) years of continuous employment for Green County or occurring after an employee of any age has completed twenty (20) years of continuous employment for the County.

The County feels its requirement that employees under certain conditions submit medical verification of their illness is reasonable, and notes that the Union's proposal contains no such requirement.

Moreover, the County's proposal is identical to the sick leave language in the Highway Department and Pleasant view contracts. And, while the Sheriff's Department does not contain the identical language, it does require a doctor's certificate after three consecutive days off. The Union's proposal contains no such limitation on possible sick leave abuse.

And the external comparables support the County's position as well.

With regard to the sick leave payout provision, the definition included in the County's offer is identical to that adopted by the County Board in a County-Wide policy on May 2, 1981. The Union's proposal would expand that definition.

Union Position. The Union's offer is quoted as follows:

10.01 Each full-time employee shall earn and accumulate when not used, one (1) sick leave day with pay at his/her regular rate of pay for each month of employment until a total of seventy-two days are accumulated.

10.02 After each full-time employee has accumulated his/her seventy-two (72) days of sick leave and uses all or any portion of it, it shall be built back up at the rate of one (1) day of sick leave a month, until he/she has again accumulated seventy-two (72) days.

seeks to deviate slightly from the internal comparables with its proposal.

Analysis. The medical verification issue appears to be the most important aspect of the parties' views on sick leave, and the undersigned has concluded that the County's position on that element of sick leave is the more reasonable. First, it is very much supported by the internal and external comparables. And second, the Union presented no specific evidence that the identical language in other Green County contracts had created unreasonable obstacles for employees. Finally, it just does not seem unreasonable for an employer to require medical verification of an illness lasting longer than three days.

Having reached the above conclusion, and having noted that medical verification is the most important factor with regard to the parties' respective final offers on the sick leave issue, there is little need to evaluate their positions on sick leave payout.

Funeral Leave

County Position. Here is the County's final offer on funeral leave:

> 9.01 For the purpose of attending the funeral of a mother, mother-in-law, father, father-in-law, brothers, sisters, children or spouse, a full-time employee will be allowed three (3) days off. These days are not to be deducted from his or her accumulated sick leave.

The Union's offer differs from the above, in that it adds grandparents, and there is no support for same among the internal comparables, with the exception of the Sheriff's Department contract. Moreover, the Union did not include grandparents in its initial proposals at the bargaining table.

Union Position. The Union's proposal on funeral leave is quoted here:

> 11.01 For the purpose of attending the funeral of a mother, mother-in-law, father, father-in-law, grandparents, brothers, sisters, children or spouse, an employee will be allowed three (3) days off with pay. These days are not to be deducted from his/her accumulated sick leave.

The Union feels that the inclusion of grandparents in the funeral leave clause does not represent much liability to the County. Moreover, it notes the existence of such coverage in the Sheriff's Department contract and in the Pleasant View contract.

Analysis. The Pleasant View contract does not provide funeral leave coverage for the death of grandparents, nor does the Highway Department contract or the old Social Services unit agreement. The Sheriff's Department contract does. With regard to the external comparables, such coverage is provided in Iowa County (both units) and in Grant County. It is also provided in Rock County, a secondary comparable. Thus, there is mixed support among the comparables for the inclusion of grandparents under this provision.

With regard to the Union's having added grandparents to its position sometime after face-to-face bargaining with the

County, the undersigned is not inclined to view that as a flaw in the Union's offer. Indeed, to do so would exert pressure on advocates to throw everything but the kitchen sink into their original proposals just to preserve a future final offer arbitration position. Such a trend would clutter the bargaining table. And perhaps more importantly, it is not the job of a final offer arbitrator to evaluate the parties pre-final offer positions; rather, he/she is charged with evaluating the final offers themselves against the statutory criteria.

On balance, the Union's final offer on funeral leave appears to be just slightly more appropriate than does the County's.

Personal Leave

County Position. The County's personal leave language is quoted as follows:

> 10.01 Each full-time employee shall be allowed three (3) personal days per year to be taken with mutual agreement of the employee and his or her supervisor. These personal days are to be taken from acquired sick leave. Probationary employees may not take personal days.

The County admits that the old Social Services contract provided five personal leave days, but notes that only thirteen of the 49 employees in the Human Services unit were covered by that contract. Also, neither the Sheriff's Department nor the Nursing Home employees receive five days' personal leave.

Moreover, the County argues that the external comparables are supportive of its position on this issue.

Union Position. The Union's personal leave proposal is as follows:

> 12.01 Each full-time employee shall be allowed five (5) personal days per year to be taken with mutual agreement of the employee and his/her supervisor. These personal days are to be taken from acquired sick leave.

The Union admits there is mixed support among the internal comparables for its position, but adds that such support for the County's offer is also mixed. Thus, the Union argues, the existing practice of five days (i.e., the Social Services agreement) should prevail.

Analysis. There is indeed mixed support for the parties positions among the internal comparables. However, the external comparables lend more support to the reasonableness of the County's position than they do for the Union's. Iowa County employees receive no personal days; Lafayette County employees receive only three, and Grant County employees enjoy only two, though there is no evidence that they are deducted from accumulated sick leave. Moreover, the undersigned found no evidence in the record to indicate that employees in the secondary comparables of Dane and Rock Counties enjoy any personal days.

On balance, then, the County's position on personal days appears to be slightly more reasonable than does the Union's.

Jury Duty

County Position. The County's final offer on jury duty is as follows:

> 11.01 Any employee covered by this Agreement who serves on a jury shall be paid by the Employer the difference between the earnings for such jury duty and his or her regular earnings, except in the case of employees who report for daily duty but who are dismissed from serving on the jury on any day. Such employees shall return to their job to complete the regular scheduled workday. The Employer reserves the right to ask that any employee be excused from jury duty.

Union Position. The Union's position on this issue is nearly identical to the County's:

> 13.01 Any employee covered by this Agreement who serves on a jury shall be paid by the Employer the difference between the earnings for such jury duty and his/her regular earnings, except in the case of employees who report for daily duty but who are dismissed from serving on the jury on any day. Such employees shall return to their job to complete the regular scheduled work day. The Employer reserves the right to ask that any employee be excused from jury duty.

Analysis. The parties' positions on this issue are nearly identical. Accordingly, there is no need to evaluate them.

Vacations

County Position. The County's final on vacations is as follows:

> 12.01 Every full-time employee, after having completed one (1) year's service shall be entitled to one (1) week's vacation with pay; after two (2) years service shall be entitled to two (2) weeks vacation with pay; after ten (10) years of service shall be entitled to three (3) weeks vacation with pay; and after twenty (20) years of service shall be entitled to four (4) weeks vacation with pay.
>
> 12.02 A years service means fifty-two (52) weeks of accumulated employment for each week of which the employee has received any wages including vacation pay, or is absent on account of injuries

12.06 Any employee who has qualified for vacation with pay and who is laid off, or discharged, quits, or retires shall receive vacation wages for the period worked at the time of said interruption of employment.

12.07 If a holiday occurs during the vacation period of any employee, such employee shall receive an extra day off with pay at his or her discretion.

12.08 Vacations shall be scheduled by the County. Employees shall be given written approval or denial of vacation requests no more than one week following their written request.

12.09 Employees who have earned more than one (1) week of vacation shall be permitted to take all such vacation at once, or to split the vacation in weekly intervals. Vacation in excess of one week may be taken in daily intervals.

12.10 Vacations may be exchanged by mutual agreement of the employees and with the approval of the department supervisor.

12.11 All time lost because of on-the-job injury or illness shall count as time worked for vacation purposes, to a maximum of six (6) months of such time lost.

12.12 All vacations earned must be taken by employees, and no employee shall be entitled to vacation pay in lieu of vacation.

12.13 In the event of death of an employee who is entitled to vacation pay under the provisions hereof, such vacation pay and earnings due such employee shall be paid to his or her lawful heirs, in accordance with the law.

The County argues that its offer on vacations is the more reasonable because it duplicates the vacation plan offered to all other Green County employees. In contrast, the County notes, the Union's proposal substantially increases vacation benefits to three weeks after seven years and four weeks after fifteen years.

Moreover, the County argues that its proposal is more closely aligned to the external comparables than is the Union's.

Union Position. Here is the Union's proposal on vacations:

14.01 Every employee, after having completed one (1) years service shall be entitled to one (1) week's vacation with pay; after two (2) years service shall be entitled to two (2) weeks vacation with pay; and after seven (7) years of service shall be entitled to three (3) weeks vacation with pay; and after fifteen (15) years of service shall be entitled to four (4) weeks vacation with pay.

14.02 A years service means fifty-two (52) weeks of accumulated employment for each week of which the employee has received any wages including vacation pay, or is absent on account of injuries while performing County Service.

14.03 It is understood that the required length of service for each vacation shall terminate on the employee's anniversary date. Anniversary date is when an employee has accumulated each fifty-two (52) weeks of service.

14.04 An employee's accumulation of time worked will be terminated if the employee is discharged or if he/she quits, or if he/she is laid off one (1) year without being re-employed.

14.05 Vacation pay will be paid on the basis of the hourly salary in effect at the time of vacation.

14.06 Any employee who has qualified for vacation with pay and who is laid off or discharged or who resigns, shall receive vacation wages for the period worked at the time of said interruption or termination of employment.

14.07 If a holiday occurs during the vacation period of any employee, such employee shall receive an extra day off with pay at his/her discretion.

14.08 The following vacation procedure will be followed in the selection of vacations:

1. The present schedule for taking vacations shall remain in effect. Vacations may be taken any time from January 1 through December 31.

2. The employees will select their vacations on the basis of their seniority.

3. Employees who have earned more than one (1) week of vacation shall be permitted to take all such vacation at once, or to split the vacation in daily intervals.

4. Vacations may be exchanged by mutual agreement of the employees and with the approval of the department supervisor.

5. All time lost because of on-the-job injury or illness shall count as time worked for vacation purposes.

6. All vacations earned must be taken by employees, and no employee shall be entitled to vacation pay in lieu of vacation.

7. In the event of the death of an employee who is entitled to vacation pay under the provisions hereof, such vacation pay and earnings due such employee shall be paid to his/her lawful heirs, in accordance with the law.

8. Employees shall be given written approval or denial no more than one (1) week following their request.

The Union feels its proposed change in the vacation plan is justified so that employees with more than seven years of employment can get three weeks vacation. It cites Dane and Rock Counties, where professional employees enjoy such benefits. Finally, the Union notes that the changes

reflected in its proposal initially affect only three employees in the unit.

Analysis. Both the internal and external comparables overwhelmingly support the County's position and the Union has not presented any argument sufficient to justify breaking away from those two groups. The undersigned also notes that the only two comparables cited by the Union in support of its position are secondary (Dane and Rock Counties).

Holidays

County Position. The County's offer on holidays is quoted below:

> 13.01 The following named nine (9) holidays shall be paid holidays for working full-time employees, paid for at the straight time hourly rate in effect at the time of the holiday. In addition, when an employee works on any of the following named holidays, he or she shall be given the choice of another day off with pay, or shall be entitled to pay at the rate of time and one half for all hours worked on said holiday.
>
> | | |
> |---|---|
> | New Year's Day | Thanksgiving Day |
> | Good Friday | December 24th |
> | Memorial Day | Christmas Day |
> | July Fourth | December 31st |
> | Labor Day | |
>
> 13.02 In order to qualify for holiday pay the employee must work their regularly scheduled workday preceding and following the holiday.
>
> 13.03 Employees who are serving their probationary period are not entitled to holiday pay for holidays falling within the first ninety (90) days of the probationary period. Full-time employees are entitled to holiday pay if the holiday falls within the first thirty (30) days of absence due to illness or non-occupational injury, or within the first six (6) months of absence due to occupational injury, if such absence began more than one scheduled workday before the holiday.
>
> 13.04 If any holiday falls within the thirty (30) day period following an employee's layoff due to lack of work and such employee is also recalled to work during the same thirty (30) day period but did not receive any holiday pay, then in such case, he shall receive an extra day's pay. Any employee who is laid off because of lack of work and is not recalled to work within the aforementioned thirty (30) day period is not entitled to the extra pay upon his return. Under no circumstances shall the extra pay referred to herein be construed to be holiday pay, nor shall it be considered as hours worked for weekly overtime.
>
> For the purposes of computing overtime, holidays shall be counted as days worked, if the employee qualifies for holiday pay and does not work on the holiday.
>
> 13.05 The Employer may designate a day to be designated as the holiday, in the case of weekend

holidays; the day designated shall be within three days of the weekend holiday.

With regard to pay for working on a holiday, the County offer would allow the employee the choice of another day off or time and one-half for the hours worked on the holiday. The Union's offer would give the employee another day off, to be taken at his discretion, and time and one-half pay for the hours worked. No employee in any other Green County unit receives the additional holiday pay the Union demands here. Moreover, the external comparables do not support the Union's position on this element of holiday pay either.

The Union also demands holiday pay for probationary employees. The County notes that probationary employees in the Pleasant View unit do not receive pay for holidays falling within the first 90 days of probation.

Union Position. Here is the Union's final offer on holidays:

> 15.01 The following named nine (9) holidays shall be paid for at the straight time hourly rate for all hours worked in effect at the time of the holiday. In addition, when an employee works on any of the following named holidays, he/she shall be given the choice of another day off with pay, and shall be entitled to pay the the (sic) time and one-half (1-1/2) rate for all hours worked on said holiday. If any of the following named holidays fall on an employee's scheduled day off, the employee so affected shall receive another day off with pay at a mutually agreeable time.
>
> | | |
> |---|---|
> | New Year's Day | Thanksgiving Day |
> | Good Friday | December 24th |
> | Memorial Day | Christmas Day |
> | July Fourth | December 31st |
> | Labor Day | |
>
> 15.02 Regular employees are entitled to holiday pay if the holiday falls within the first thirty (30) days of absence due to illness or non-occupational injury, or within the first six (6) months of absence due to occupational injury, or during periods of permissable absence under the Article 2.05.
>
> 15.03 If any holiday falls within the thirty (30) day period following an employee's layoff due to lack of work and such employee is also recalled to work during the same thirty (30) day period but did not receive any holiday pay, then in such case, he/she shall receive an extra day's pay. Any employee who is laid off because of lack of work and is not recalled to work within the aforementioned thirty (30) day period is not entitled to the extra pay upon his/her return. Under no circumstances shall the extra pay referred to herein be construed to be holiday pay, nor shall it be considered as hours worked for weekly overtime.
>
> For purposes of computing overtime, holidays shall be counted as days worked.
>
> 15.04 If a holiday falls on a Saturday, Friday will be the day off. If Friday is also a holiday, then Thursday will be the day off. If a holiday falls on a Sunday, then Monday will be the

day off. If Monday is also a holiday, then Tuesday will be the day off.

The Union argues that the County's offer is overly restrictive. That is, even if an employee had an excused absence the day before or after a holiday, he would lose holiday pay.

Analysis. There are aspects of each party's offer which appear unreasonable. For example, the Union's demand for what amounts to three and one-half times pay if an employee works on a holiday (1x for the holiday pay, 1x for taking another day off at his discretion, and 1 1/2x for hours worked on the holiday) is not supported by either the internal or external comparables.

The employer's proposal requiring that employees work both the day before and the day after the holiday in order to receive holiday pay also appears unreasonable, since an employee might indeed have an excused absence on one of those days and would still lose holiday pay. The language proposed by the County has no exceptions for being ill or on vacation; the language in other County units does make exceptions for illness or mutually agreeable absences.

Also troublesome in the County's offer is the last paragraph allowing the County to designate the days on which holidays will be observed when the actual holiday falls on a weekend. There is no support among the internal comparables for such language, and it seems to the undersigned that the Union's proposal is more reasonable anyway. It would allow employees to plan family activities because they could predict the days upon which holidays would be observed. The County's offer includes no proviso about when the designated dates would be announced and would even allow the County to specify that a holiday falling on a Sunday will be observed on Tuesday or Wednesday, thus preventing employees from enjoying a long weekend.

All things considered, the Union's proposal on holidays seems just slightly more reasonable than the County's.

Pay Periods and Breaks

County Position. Here is the County's offer:

> 14.01 During the term of this Agreement, and when it is feasible and agreed to between the parties, the employees shall be paid on an every other week basis and the County shall withhold only one (1) week's pay at any one time.
>
> Each employee shall be provided with a statement of gross earnings which shall set forth hours worked and an itemized statement of all deductions made for any purpose.
>
> 14.02 All employees shall be permitted to take a ten (10) minute break period in the fore part of their shift and a ten (10) minute break period in the latter part of their shift without loss of pay. Time and place of breaks may be designated by the County.

The Union's proposal that paychecks be ready by 8:00 a.m. on payday is not supported by the majority of the comparables, and none of the external comparables contain such language. Moreover, the County's demand to designate

the time and places of breaks is generally supported by the comparables.

Union Position. The Union's position on pay periods and breaks is quoted below:

> 16.01 It is agreed to between the parties that the employees shall be paid on an every other week basis on Friday, and the County shall withhold only one (1) week's pay at any one time. Employees' paychecks will be available by 8 a.m. on payday.
>
> 16.01 All employees shall be permitted to take a ten (10) minute break period in the forepart of their shift and a ten (10) minute break period in the latter part of their shift without loss of pay.

The Union feels its position is the more reasonable, noting that the Pleasant View contract specifies that paychecks will be ready by 8:00 a.m.

Analysis. Among the internal comparables, only the Deputy Sheriffs' contract provides that management will determine the locus of employee breaks. The other three are silent on the matter. Thus, the Union's offer on that dimension does not seem inappropriate. Moreover, since the County did not demonstrate that it would be a hardship to have paychecks ready by 8:00 a.m., and since it has already agreed to do so in another unit (Pleasant View Nursing Home), the Union's demand seems reasonable.

Part-Time Employee Benefits

County Position. The County's offer on this topic falls within its Article XVII (MISCELLANEOUS):

> Section 17.05 Regular part-time employees shall be entitled to prorated benefits listed under this Agreement. Said proration (except for health benefit proration) shall be based upon the number of hours said employees regularly work applied as a percentage of one hundred seventy-three (173) work hours per month. Holidays are prorated and paid in the pay period following the holiday; vacation and sick leave days are prorated after their anniversary date.

The County notes that the parties' offers are nearly identical on this issue, except that the County's offer excludes health benefit proration. That proration is covered under a separate formula the parties have already agreed to. Moreover, the County argues that the Union's offer is confusing. The County also points out that the Union's language mentions seasonal employees, who are not part of the bargaining unit.

Union Position. Here is the Union's offer on this issue:

> 17.01 All regular part-time employees are eligible for the following benefits on a prorata basis:
>
> 1. Holidays
> 2. Sick Leave
> 3. Funeral Leave
> 4. Vacations

17.02 Regular part-time employees shall receive the rates of pay listed in Appendix A.

17.03 Regular part-time employees shall be entitled to prorated benefits listed under this Agreement. Said proration shall be based upon the number of hours said employee's (sic) work applied as a percentage of one hundred seventy-three (173) work hours per month. Holidays are prorated and paid in the pay period following the holiday; vacation and sick leave days are prorated after their anniversary date.

17.04 The County shall have the right to hire part-time and/or seasonal employees provided that they are not used to avoid the overtime provisions of the Agreement, or discriminate against Union members. Seasonal employees are defined as those employees hired for a period of time between Memorial Day and Labor Day.

Such employees shall receive the rates of pay listed in Appendix A of this Agreement, time and one-half (1-1/2) after eight (8) hours per day or forty (40) hours per week. Seasonal employees as defined shall receive no other fringe benefits under the terms of the Agreement. Should a seasonal employee be continued in employment beyond Labor Day, their (sic) total time of employment, including seasonal, shall be considered as continuous employment.

The Union feels its offer on this issue is more reasonable than is the County's.

Analysis. In the opinion of the Arbitrator the Union's proposal on this issue is flawed. That is, it includes protective language on behalf of seasonal employees, who are not members of the bargaining unit. Nothing in the record demonstrates that the Union has any right to bargain for them. On that basis alone, the County's offer on this issue appears more reasonable.

Hospital Insurance

County Position. The County's offer on hospital insurance is quoted here:

15.01 For full-time employees who elect family coverage, the County agrees to pay 90% of the monthly premium or deposit rate for the health insurance coverage which was in effect as of January 1, 1983. The County may change carriers, or methods of providing the benefit, at its discretion. For full-time employees who elect single coverage, the County agrees to pay 100% of the single premium or deposit rate for such coverage. Newly hired employees shall receive health insurance coverage the first of the month following thirty (30) days of employment. Employees scheduled to work less than eighty-five (85) hours per month are not eligible for health insurance; for those scheduled to work 24-30 hours per week, who elect family coverage, 50% of 90% of the cost of the premium will be paid by the County. For those employees scheduled to work 30-40 hours per week, who elect family coverage, 75% of 90% of the cost of the premium will be paid by the County; for those employees scheduled to work 24-30 hours per week, who elect single coverage, 50% of the cost of

the premium will be paid by the County. For those employees scheduled to work 30-40 hours per week, who elect single coverage, 75% of the cost of the premium will be paid by the County.

15.02 The County shall make the contribution for an employee who is absent because of illness or off-the-job injury for six (6) months. This pertains to employees with two (2) years continuous service only.

15.03 The County will continue contributions for a maximum of twelve (12) months when an employee is absent due to occupational illness or injury.

15.04 If an employee is granted a leave of absence and desires to have his or her insurance coverage continued, he or she must pay the County prior to the leave of absence being effective, sufficient monies to pay the required contributions into the health and welfare fund during the period of absence.

15.05 The County shall make its full share of the monthly contribution for the month in which an employee is laid off.

15.06 When an employee is discharged or voluntarily terminates his or her employment, the Employer shall only make its share of contribution for the month in which such termination occurred.

15.07 When a laid off employee is reinstated, the Employer shall make the required contribution for the month in which the employee returns to work.

15.08 When an employee who has been on a leave of absence returns, the Employer shall make the required contribution beginning with the month following the employee's return to work.

15.09 If an employee is laid off or pensioned, the Employer shall agree to accept the monthly contribution from the employee and remit such contribution to the insurance carrier. The employee must submit the sufficient monies for the required contribution to the Employer by the 15th day of the prior month in which coverage is to be effective.

With respect to health insurance contributions for part-time employees, the County notes that the difference in language between its proposal and the Union's does not reflect any difference in the level of intended contribution.

Union Position. Here is the Union's position on hospital insurance:

18.01 For full-time employees who elect family coverage, the County agrees to pay 90% of the monthly premium for the health insurance coverage which was in effect as of January 1, 1983. For full-time employees who elect single coverage, the County agrees to pay 100% of the single premium for such coverage. Newly hired employees shall receive health insurance coverage the first of the month following thirty (30) days of employment. Employees working less than eighty-five (85) hours per month

are not eligible for health insurance; for those working 24-30 hours per week, who elect family coverage, 50% of 90% of the cost of the premium will be paid by the County. For those employees working 30-40 hours per week, who elect family coverage, 75% of 90% of the cost of the premium will be paid by the County; for those employees working 24-30 hours per week, who elect single coverage, 50% of the cost of the premium will be paid by the County. For those employees working 30-40 hours per week, who elect single coverage, 75% of the cost of the premium will be paid by the County.

18.02 The County shall make the contribution for an employee who is absent because of illness or off-the-job injury for six (6) months. This pertains to employees with two (2) years continuous service only.

18.03 The County will continue contributions for a maximum of twelve (12) months when an employee is absent due to occupational illness or injury.

18.04 If an employee is granted a leave of absence and desires to have his/her insurance coverage continued, he/she must pay the County prior to the leave of absence being effective, sufficient monies to pay the required contributions into the health and welfare fund during the period of absence.

18.05 The County shall make the full monthly contributions for the month in which an employee is laid off.

18.06 It is agreed that in the event the Employer fails to meet its obligations in regard to health insurance or pension fund, the Employer shall be responsible for losses resulting therefrom.

18.07 When an employee is discharged for cause or voluntarily terminates his/her employment, the Employer shall only make contribution for the month in which such termination occurred.

18.08 When a laid off employee is reinstated, the Employer shall make the required contribution for the month in which the employee returns to work.

18.09 When an employee who has been on a leave of absence returns, the Employer shall make the required contribution beginning with the month following the employee's return to work.

18.10 If an employee is laid off or pensioned, the Employer shall agree to accept the monthly contribution from the employee and remit such contribution to the insurance carrier. The employee must submit the sufficient monies for the required contribution to the Employer by the 15th day of the prior month in which coverage is to be effective.

The Union feels there is significant difference in language between the two offers with regard to how part-time employee premium contributions are calculated. Its proposal is based upon actual hours worked; the County's is based upon scheduled hours. And the Union points to identical language in the Sheriffs' Department and Pleasant View contracts in support of its position. Moreover, the Union

argues, Sec. 17.01 of the County's proposal prorates all other part-time employee benefits on the basis of actual hours worked.

Analysis. The parties are in general agreement as to the level of employer health insurance premium contributions for full time employees. With respect to such contributions for part-time employees, however, there is more support in the record for the Union's position than for the County's. First, if there is really no material difference between the County's and Union's offer regarding part-time employee health insurance contributions, why did the County use the term "scheduled" rather than "actual" hours worked? The latter does indeed exist in two County units. The fact that the County was less than pleased with a previous arbitrator's interpretation of such language may well be the reason it wants the term "scheduled" in the Human Services contract. Purely from an equity standpoint and based upon the internal comparables, the undersigned sees no reason why the County contribution for part-time employee health insurance should not be based upon their actual hours, as the County would have its contributions for other part-time employee benefits based.

There is another aspect of the County's offer which is troublesome. Essentially, the County could change insurance carriers at will, without regard to level of benefits. Other Green County agreements provide that the County may change insurance carriers, but they also add that benefits may not be substantially altered. The County's offer for the Human Services unit contains no such proviso.

Overall, then, the Union's offer on hospital insurance seems to be the more reasonable of the two.

Wisconsin Retirement

County Position. Here is the County's offer:

> Article XVI. The Employer shall pay the Employer share of Wisconsin Retirement contributions, and the employee's share up to 5% of covered compensation.

The 1985 employees' share of contribution to the State Retirement fund is 5% of employee compensation. On January 1, 1986, it increased to 6%. Thus, the above language covers the full amount for the length of the contract. The Union's proposal would require the County to pay the employee contribution with no cap, thereby depriving the County of the opportunity to engage in collective bargaining over the increase.

Among the internal comparables, the Highway Department

Analysis. Generally speaking, automatic roll-ups do indeed obviate opportunity for the give-and-take of collective bargaining, and the undersigned is reluctant to adopt language which does so. However, in the instant case other Green County employees enjoy coverage identical to that the Union proposes here. Moreover, some employees in the Human Services unit had such coverage when they were in the old Social Services unit. Also, the 6% employer cost can be considered when the parties negotiate successive contracts and offers can be adjusted accordingly. Thus, the undersigned feels that the Union's offer on this issue is the more reasonable.

Hours of Work

Union Position. The Union proposes the following:

> 20.01 Hours of Work. The normal hours of work are eight (8) hours per day and forty (40) hours per week, one hundred seventy-three (173) hours per month. The normal hours of work are 8:30 a.m. to 5:00 p.m. It may be necessary for certain employees to have a regular schedule outside of the previously mentioned hours. A flexible schedule of hours other than that set forth above shall be mutually agreed to by the parties on the condition that it is regular and is not used to avoid payment of overtime. Hours that are given herein do not represent either minimum or maximum but rather the normal hours of work.
>
> 20.02 Overtime. All hours worked outside of the regular hours of work and that are after eight (8) hours per day or forty (40) hours per week are paid at the rate of one and one-half times their normal rate of pay.
>
> 20.03 Call-out Pay. Employees who are required to work to meet client needs outside of their regular schedule of hours shall be paid a minimum of two (2) hours wages. This rate shall also apply to those persons receiving beeper pay.
>
> 20.04 Beeper Pay. Qualified members of the bargaining unit shall be responsible for wearing and responding to the "beeper" during non-work hours over a one week interval on a rotating basis. Such employees shall be compensated at the rate of $1.00 per hour for all hours of this employment.

The Union feels a definite work schedule is essential, and notes that the County's offer has none. Moreover, it asserts that all of the internal comparable agreements contain specific hours of work.

The Union also criticizes the County's proposal that it could change employee shifts unilaterally.

County Position. The County's offer contains the following language in Article XVII (MISCELLANEOUS):

> Section 17.06 Employees will receive time and one half for hours worked in excess of eight hours per day or forty hours per week, in pay or compensatory time, in the employer's discretion. An employee, with employer approval, may waive the 8 hour overtime requirement to accomodate other work schedules.

Section 17.07 The existing normal shift hours will not be changed except on 30 days written notice to the Union.

Section 17.08 Persons assigned to beeper duty receive $128 per week during nonwork hours, but no call-out compensation, and must complete the week to receive the full compensation.

Section 17.09 Persons called out to work at a time not consecutive with their assigned shift receive the equivalent of a minimum of two hours of straight time compensatory time or pay, in the Employer's discretion.

The County argues that the Union's hours of work proposal is ambiguous, since it refers both to "regular" hours and "normal" hours. Moreover, the County asserts that its offer of 1 1/2 for purposes of overtime compensation calculation is an increase from what the formerly non-represented professional employees received. It also claims that internal and external comparables are supportive of its definition of overtime. Moreover, the County argues that it needs the flexibility to decide if overtime will be compensated in the form of pay or time off.

The County's call out offer reflects an improvement for Human Services unit employees. And the Union's proposal on call out is ambiguous, since it refers to "regular schedule of hours" and it has not been established that they are the same as "normal hours of work."

With regard to beeper pay, the County argues that the Union's proposal could apply to situations where employees on beeper duty receive work-related telephone calls. Though the Union disagrees, this dispute emphasizes the ambiguity in the Union's proposal.

Analysis. With regard to beeper pay, the Union's demand of $1.00 per hour equates to about $125 per week, slightly less than the County's offer of $128 per week. And since the Union has already argued on this record that it does not intend for the call-out pay associated with its offer to apply to telephone calls received when on beeper duty, the County should have no future liability should the Union's language become adopted.

But the most significant aspect of the overall issue in this section concerns hours of work. The County's language would allow it to change employee hours at will, with just 30 days prior "notice" to the Union. In the opinion of the undersigned such language would essentially deprive the Union of the right to construct a lasting bargain over work hours. And the record does not convince the Arbitrator that the County needs such flexibility. Three of the internal comparables parallel the Union's offer on this topic, allowing for shift change with employee approval.

Moreover, every other Green County labor agreement specifies hours of work or, in the case of the Sheriffs' Department contract, the work schedule. The undersigned recognizes that certain Human Service Department employees must work evening hours to meet client needs, but notes also that the Union's proposal provides for mutual determination of regular schedules to accomplish same. Thus, the Union's language does not prevent the delivery of services during the evening hours.

Given the significance of the sub-issue discussed immediately above, and the conclusion that the Union's

offer on it is the more reasonable, there is no need to discuss remaining sub-issues of lesser significance such as the method of calculating call out pay, etc.

Educational Leave

County Position. Here is the County's position on educational leave:

> 17.03 Education. The Department Head may approve schooling or training for a unit employee; such schooling or training approved as to an employee will be paid for by the County, and any pay lost from the employees assigned work hours as a result of such schooling or training will be paid by the County.

Union Position. Here is the Union's position:

> 21.01 Employees shall be allowed time off with pay and shall be reimbursed for all expenses for any training required of the employee by the Employer.

Analysis. There is no significant difference between the parties' proposals on this issue. Accordingly, this issue has no influence on the outcome of the instant dispute.

Leaves of Absence

County Position. The County's position on leaves of absence is quoted as follows:

> 17.01 Leave of Absence. Any employee desiring a leave of absence from his or her employment shall secure written permission from the Employer. Leaves of absence shall be for thirty (30) days but may be extended for like periods. Permission for same must be secured from the Employer.
>
> The employee must make suitable arrangements for continuation of health insurance premiums.

Union Position. The Union's final offer on leaves of absence is quoted below:

> 22.01 Leave of Absence. Any employee desiring a leave of absence from his/her employment shall secure written permission from the Employer. Leaves of absence shall be for thirty (30) days but may be extended for like periods. Permission for same must be secured from the Employer.
>
> The employee must make suitable arrangements for continuation of health insurance premiums.
>
> 22.02 Leave for Non-covered Position. The Union and the Employer shall agree on circumstances under which persons who leave the classification of work covered by this Agreement, but remain in the employ of the Employer in some other capacity, may retain seniority rights upon their return to the unit. In the absence of such express agreement, such employees shall lose all unit seniority rights.

Analysis. There is not enough difference in the parties' offers on this issue to justify much analysis. The Union's Section 22.02 does not appear in the County's offer, but it places no obligation on the County except that it must talk to the Union about the loss of seniority question. Accordingly, the leave of absence issue will not influence the outcome of the entire matter at hand.

Maintenance of Standards

Union Position. The Union has included a maintenance of standards provision in its final offer; the County has not. Here is the Union's proposal:

> 23.01 Protection of Conditions. The Employer agrees that all conditions of employment relating to mandatory subjects of bargaining shall be maintained at not less than the highest minimum standards in effect at the time of the signing of this Agreement, and conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement.
>
> It is agreed that the provisions of this section shall not apply to inadvertant or bonafide errors made by the Employer or the Union in applying the terms and conditions of this Agreement if such error is corrected within ninety (90) days from the date of error.

The Union notes that all of the internal comparables contain a maintenance of standards clause.

County Position. The County maintains that such a clause is ambiguous and overly broad. Moreover, the County notes that the Union was not able to explain the scope of its proposed language either at the bargaining table or during the arbitration hearing. Finally, the County argues that the maintenance of standards clauses in other Green County contracts are more limited in scope than the "all conditions of employment" language proposed by the Union in the instant case.

Analysis. The Arbitrator notes that none of the external comparables contains a maintenance of standards clause. However, there is overwhelming support among the internal comparables for the adoption of the Union's position. The County presented no evidence to the effect that such clauses have created problems in the past. Moreover, the Union's proposed language is not much different from that which appears in other Green County contracts. Essentially, all of them relate to mandatory subjects of bargaining, as does the Union's proposal.

Extra Contract Agreement

County Position. Here is the County's position on this issue:

> 17.02 Extra Contract Agreement. The Employer agrees not to enter into any agreement or contract with unit employees, individually or collectively, which in any conflicts (sic) with the terms and provisions of this Agreement. Any such agreement shall be null and void.

Union Position. The Union's position is essentially the same, thus obviating the need for analysis:

23.02 Extra Contract Agreement. The Employer agrees not to enter into any agreement or contract with his/her employees, individually or collectively, which in any way conflicts with the terms and provisions of this Agreement. Any such agreement shall be null and void.

Work Week Reduction

Union Position. The County did not include such a clause in its final offer. Here is the Union's proposal:

23.03 Work Week Reduction. In the event that the maximum work week is reduced by legislative act to a point below the regular work week provided herein, the contract shall be reopened for wage negotiations only.

The Union freely admits that the likelihood of legislation reducing the maximum work week to below forty hours is virtually nil. However, the Union argues, the above language appears in the old Social Services contract and it is important to maintain the status quo.

County Position. The County maintains that the Union's proposal on this issue merely clutters the contract with meaningless, outdated language.

Analysis. The undersigned agrees with the County. Retaining old language that does not apply to anything anymore does not maintain "status quo."

General Provisions

Union Position. The Union advances the following proposals in its final offer:

24.01 Employees shall be protected by the County and be free of any legal liability or damages arising from suit in carrying out duties within the scope of employment as defined in Wis. Stats. 895.46.

24.02 All employees shall be reimbursed for all expenses such as meals, lodging expenses, entrance fees and parking fees upon presentation of bonafide receipts when an employee is out of the County in the performance of assigned duties.

24.03 Employees will be paid at the rate of 21.5 cents per mile for driving their own vehicles in the performance of their assigned duties.

24.04 Anti-discrimination. Neither the Employer nor the Union shall discriminate in any manner whatsoever against any employee because of race, creed, color, national origin, or sex. The Employer and the Union agree to comply in all respects with the provision of the Age Discrimination in Employment Act of 1967.

24.05 (This Section deleted from the Union's final offer on August 15, 1985.)

24.06 If any article or section of this Agreement, or any addenda thereto, is held to be invalid by operation (sic) or by tribunal of

competent jurisdiction, or if compliance with or enforcement of any article or section should be restrained by such tribunal, the remainder of this Agreement and addenda shall not be affected and the parties shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement for such article or section.

The Union asserts that its legal liability clause (24.01) is consistent with the old Social Services contract, and is justified by the current epidemic of legal action against professionals of all types.

With regard to mileage reimbursement, the current State rate of reimbursement is 21.5 cents, and the County's rate is below that allowed by the Internal Revenue Service.

The Union feels its non-discrimination clause is advisable just to emphasize National policy.

County Position. The County includes the following related proposals in its final offer:

> 17.04 The County recognizes and will follow all applicable employment laws, including where applicable, EEO, MERA, OSHA, FLSA, and ADEA, however no arbitration or breach of contract right exists under this agreement for alleged breaches of such laws or of this section.
>
> 17.10 Person's (sic) assigned work outside the county will receive mileage, meal, or other allowances pursuant to the county-wide policy in effect from time to time.
>
> 17.11 If any article or section of this Agreement, or any addenda thereto, is held to be invalid by operation of law or by tribunal of competent jurisdiction, or if compliance with or enforcement of any article or section should be restrained by such tribunal, the remainder of this Agreement and addenda shall not be affected and the parties shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement for such article or section.

The County's offer contains no indemnification of employees language because what the Union's proposal seeks is already guaranteed by Section 895.46, Wis. Stats. Thus, all the Union's offer does is create the possibility of a breach of contract action in addition to the statutory remedy. There is simply no reason for this duplicity of forums and potential inconsistency in the resulting decisions. Moreover, the County argues, there is little support for such a clause among either the internal or external comparables.

With regard to reimbursement of lodging and meal expense when employees travel out of the County to perform assigned duties, the County argues that the Union's offer is completely open-ended, having no ceiling or limitation.

Moreover, the County argues, its current mileage reimbursement rate is 20 cents per mile, as compared to the I.R.S. approved rate of 20.5 cents per mile. Also, under the County's final offer, the rate can change with County policy; the Union's final offer fixes the rate, so that

adjustments cannot be made for fluctuations in the cost of fuel.

The County also feels its Section 17.04 is preferable to the Union's 24.04, because the former covers all applicable employment laws, not just those relating to discrimination. Moreover, the County's offer covers compliance with leave for military duty. And the County's language requires that claims under these laws be litigated in existing forums, thus preventing duplicity. Finally, the County asserts that its position is supported among the comparables.

Analysis. The Union's language in Section 24.01 is not really necessary, since unit employees are already protected against work-related lawsuits under Section 895.46, Wis. Stats.

The Union's position on reimbursement for meals and lodging seems unreasonable, since it contains absolutely no limitations. Under such language, an employee could feast on Russian caviar for lunch and be fully reimbursed. Such a potentiality is not in the public interest.

With regard to the mileage rate, however, the Union's position is the more reasonable. There is just no justification for the County offering a rate below that allowed by the Internal Revenue Service.

And the Union's position on the no-discrimination clause also appears reasonable, particularly in view of the existence of such clauses in three of the four internally comparable contracts. And the County has not shown that access to the grievance procedure under such language has been a significant problem in the past.

Waiver

County Position. The County proposes the following language under the rubric "Entire Agreement:"

> 7.01 Each of the parties releases and relinquishes to the other the right to request bargaining during the term of the Agreement regarding matters which the Agreement is intended to cover and matters which might have been included in the Agreement, but were not. However, this provision does not apply to matters which were not contemplated by the parties during collective bargaining.

The County maintains that its waiver provision is narrowly tailored, and necessary for the County to argue by contract vehicle that the Union might have waived anything during bargaining.

Analysis. The Union raised no strenuous objection in its Posthearing Brief to the above language. In any event, however, the clause is of so little significance vis-a-vis the greater contract, that analysis of its reasonableness would be of no help in deciding this case.

Contract Duration

County Position. The County proposes a one-year contract in its Article XX as follows:

> The Agreement is effective January 1, 1985, and terminates December 31, 1985.

Union Position. Article XXV of the Union's final offer includes a longer duration, in addition to some renewal language:

> 25.01 This Agreement shall go into effect May 1, 1984, and continue until December 31, 1985, and shall be considered automatically renewed from year to year thereafter, unless at least one-hundred and eighty (180) days prior to the end of the effective period, either party shall serve written notice upon the other that it desires to renegotiate, revise or modify this Agreement. In the event such notice is served, the parties shall operate temporarily under the terms and provisions of this contract until a new contract is entered into, at which time the new contract shall be retroactive as of the last date of termination of this Agreement.
>
> In witness whereof, the respective parties have hereunto set their hands and seals this ___ day of _____, 19__.
>
> FOR THE COUNTY: FOR THE UNION:

Analysis. The Arbitrator notes that the Union was certified as exclusive bargaining representative for the unit on April 30, 1984. Accordingly, a contract effective date of May 1, 1984, does not seem unreasonable. In contrast, adoption of the County's offer on duration would essentially mean that for May through December, 1984, unit employees would have no contract coverage whatsoever. Accordingly, the Union's offer seems to be the more reasonable of the two on this dimension.

THE ENTIRE CONTRACT

In the opinion of the undersigned, the issues of wages, union security, seniority, and duration are the most significant of those in dispute. The Union has prevailed on all but union security. Among the issues of lesser importance, the County's offer appears more reasonable on discipline, sick leave, personal leave, and vacation; the Union's is preferable on management rights, the grievance procedure, job posting, hospital insurance, and hours of work. The remaining issues discussed are unimportant in comparison to the foregoing.

Overall, the Arbitrator believes that the Union's final offer is more reasonable than is the County's.

AWARD

The Union's final offer is adopted as the May 1, 1984, until December 31, 1985, Agreement between the parties.

Signed by me at Milwaukee, Wisconsin this 30th day of June, 1986.

Steven Briggs
Steven Briggs