STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of

DISTRICT 1199W/UNITED PROFESSIONALS FOR QUALITY HEALTH CARE

For Final and Binding Arbitration Involving Public Health Nurses in the Employ of

ROCK COUNTY

Case No. 36343
MED/ARB-3780
Decision No. 23663-A

Appearances:

Mr. Phillip A. Moss, Organizer, District 1199W/UP, National Union of Hospital and Health Care Employees, AFL-CIO, appearing on behalf of Union.

Mr. Bruce K. Patterson, Employee Relations Consultant, appearing on behalf of the Employer.

ARBITRATION AWARD:

On June 17, 1986, the undersigned was appointed Mediator-Arbitrator by the Wisconsin Employment Relations Commission to resolve a dispute existing between District 1199W/United Professionals, NUHHCE, AFL-CIO, referred to herein as the Union, and Rock County, referred to herein as the Employer, with respect to certain issues as set forth below. The undersigned's appointment was made pursuant to 111.70 (4) (cm) 6.b. of the Municipal Employment Relations Act. Pursuant to the statutory responsibilities, the undersigned conducted mediation proceedings between the Union and the Employer on September 4, 1986, at Janesville, Wisconsin. Mediation efforts failed to result in voluntary settlement between the parties. After the parties had waived the statutory requirements found at 111.70 (4) (cm) 6.c. which require the Mediator-Arbitrator to provide written notice of his intent to arbitrate, and that the Arbitrator provide the opportunity for each party to withdraw its final offer, arbitration proceedings were convened on September 3, 1986. The parties were present and given full opportunity to present oral and written evidence, and to make relevant argument at the arbitration proceedings. No transcript of the proceedings was made, however, briefs were filed in the matter, which were exchanged by the Arbitrator on November 5, 1986.

THE ISSUES:

The issues joined by the final offers of the parties are as follows:

UNION FINAL OFFER:

1. Increase each cell of the salary schedule by 3.66% effective January 1, 1986.
2. Increase each cell of the PHN II salary schedule by 3.34% effective December 31, 1986.
3. Increase each cell of the salary schedule by 2.1% effective January 1, 1987.
4. Increase each cell of the PHN II salary schedule by 3.9% effective December 31, 1987.
5. The term of the Agreement shall be from January 1, 1986, to December 31, 1987.

EMPLOYER FINAL OFFER:

1. All provisions of the 1985 Agreement between the parties, not modified by a stipulation of agreed upon items, if any, or this final offer, shall be included in the successor Agreement between the parties for the term of said Agreement.

2. Term of Agreement - one year beginning January 1, 1986, through December 31, 1986. The dates of the Agreement setting forth the terms shall be changed to reflect the above cited terms.

3. Article XI, Hours of Work, Classification & Salary. Delete Section J - Appointments in its entirety and amend Article X - Sick Leave by adding the following subsection "G": Section G. Up to two hours of accumulated sick leave will be permitted for use during working hours, when necessary, for each medical and dental appointment when scheduling of said appointment cannot be arranged on off-duty time.

4. Wages: Increase all 1985 hourly rates set forth in Appendix A of the 1985 Agreement by 4%.

DISCUSSION:

The statute directs that the Mediator-Arbitrator, in considering which party's final offer to adopt, give weight to the factors found at 111.70 (4) (cm), 7, a through h, of the Wisconsin Statutes. The undersigned, in evaluating the parties' final offers, will consider the offers in light of the foregoing statutory criteria, based on the evidence adduced at hearing, and the arguments advanced by the parties in their briefs.

Three issues are involved in the instant dispute. They are: 1) the term of the Agreement; 2) the wage rate; 3) the Employer proposal with respect to modification of Appointments for Medical Purposes on paid time. The undersigned will consider each of the issues serially.

TERM OF THE AGREEMENT

Union proposes a two year Agreement, and Employer proposes a one year Agreement. Union argues that a proposal for a two year contract is more reasonable by reason of its need to catch up. The Union suggests that its proposal would guarantee some measure of continuing catch up, whereas, the Employer proposal would stifle progress toward any catch up by not even addressing the problem. The Union further argues that it is attempting to gradually equalize the Rock County PHN position through long term planning, and that a two year contract accomodates such planning. Finally, the Union argues that the County has already agreed to two year contracts with almost all other Rock County bargaining units, and because of the need for catch up that pattern should be followed in the instant matter.

The Employer makes no specific argument with respect to its proposal for a one year Agreement, or with respect to the Union's proposal for a two year Agreement.

The undersigned considers all of the evidence and argument, and determines that with respect to the term of Agreement, a two year contract is preferred. The Employer, here, argues, with respect to the wage dispute, that the internal comparables should be followed. At the same time the Employer makes that argument with respect to wages, it deviates from the internal patterns that have been established with respect to duration of contract. Employer Exhibit No. 3 establishes that 7 of the Employer's units have settled for a two year Agreement; 2 have settled for a one year Agreement; and 1 unit is in med/arb over a two year proposal. Thus, the internal patterns of settlements which the Employer urges favor a two year contract as proposed by the Union.

The foregoing conclusion is not controlling, however. The most persuasive reason that a two year contract should be adopted is the time at which this Award issues. If a one year contract were adopted, the contract being arbitrated would already have expired. The undersigned believes that it is in the best interest of the parties that a two year contract be awarded, because they will have almost one full year of the contract remaining and, therefore, they need not return immediately to the bargaining table.

Therefore, for all of the reasons cited above, the undersigned prefers the two year proposal of the Union.

DELETION OF LANGUAGE

The Employer has proposed the deletion of language found at Article XI of the predecessor Contract at Section J, which reads: "Appointments. Up to two hours will be permitted during working time, when necessary, for each medical and dental appointments (sic) when unable to schedule them on off-duty time." In its place, the Employer proposes a new Section G at Article X as set forth in the final offer. The Employer, in support of its position, relies on the internal comparables, arguing that this is the only unit with the type of appointment language that exists here, and that all of its other contracts with other bargaining units charge medical appointments to sick leave time. At hearing, the Employer introduced Exhibit No. 6 consisting of two pages, which provides the controlling language in other bargaining units with which the Employer bargains. A review of the language satisfies the undersigned that in the other bargaining units with which the Employer bargains medical and dental appointments are chargeable to sick leave time as the Employer now proposes. The Employer, however, in its proposal for this bargaining unit, proposes to limit the amount of sick leave time for medical appointments to two hours. The undersigned, in a careful review of all of the other language with respect to sick leave, can find no such limitation in any other bargaining unit. While some of the other language in the other bargaining units provides for circumstances such as advance notice before sick leave may be used for these types of appointments, none of them restrict the amount of usage to two hours time as the Employer now proposes. The undersigned is persuaded that the restriction to two hours time chargeable to sick leave distinguishes the Employer proposal in this matter from all of the other sick leave provisions for medical appointments among the other units, and, therefore, the internal comparables fail to support the Employer's proposal here. The undersigned, therefore, concludes that the language of the predecessor contract for appointments, which is found at Article XI, Section J, is preferred, and should remain intact, and that the proposed Section G of Article X in the Employer's final offer should be rejected.

WAGES

The parties' approaches in this wage dispute are significantly contrasted. The Employer relies exclusively on internal comparables in support of its proposal of a 4% wage increase to this collective bargaining unit. By way of contrast, the Union relies exclusively on comparables among the ten most populous counties of the state, and the three contiguous counties to Rock County. The comparable counties proposed by the Union are Brown, Dane, Kenosha, Marathon, Outagamie, Racine, Sheboygan, Waukesha, Winnebago, Green, Jefferson and Walworth. The Union has omitted from its proposed comparables the most populous county in the state, i.e., Milwaukee County.

Turning first to the Employer argument that the internal comparables support its offer, it is undisputed that the one year offer of the Employer to this bargaining unit (4%) compares favorably to the internal pattern of settlements for 1986. Employer here proposes 4% for 1986, and the other units with which the Employer settles have settled in a range of 3 to 3.9%. Thus, it is unequivocally established that the internal comparables favor the adoption of the Employer offer.

The Employer has cited twelve cases in support of its argument that the internal comparables militate for the adoption of its offer. The undersigned has already concluded that the internal comparables militate for the adoption of the Employer offer. That conclusion, however, does not end this matter. The question that is raised here is one of whether the internal patterns of settlement should be applied, or whether the Union's argument that catch up militates for an award in excess of the patterns of settlement by reason of the wage positions of the employees in the instant collective bargaining unit compared to employees doing comparable work in comparable surrounding counties. The same question was addressed by Arbitrator Fleischli with these same parties when arbitrating the wage rate for 1985. (Fleischli, Case 194, No. 34424, MED/ARB-3151, Decision No. 22588-A) This

is the second successive contract that the employees have resorted to through the process of mediation-arbitration in order to settle their dispute. The Fleischli Award has been placed in evidence, and the undersigned has carefully studied Arbitrator Fleischli's holdings therein. The Employer cites the Fleischli Award at page 15 as follows:

> The Union's offer would generate permanent cost increases greatly in excess of the rate of inflation during 1984 and the current rate of inflation. It would do so at a time when the County is endeavoring to hold costs down for a significant portion of its property taxpayers who, in general, are suffering from considerable economic hardships. Considerations of wage equity are not necessarily limited to labor market considerations such as turnover and recruiting problems. However, in the view of the undersigned, the evidence that the Employer is not suffering from any such problems based upon its current wage levels, significantly detracts from the Union's offer, which would provide very dramatic catch up increases *in a short period of time.*

From the foregoing citation, the Employer argues that these comments are directly applicable to the present dispute and, therefore, urges the Arbitrator to give them strong consideration in reaching a finding for the Employer.

Immediately following the citation relied on by the Employer in the Fleischli Award at page 15 of the same Award, Fleischli has opined:

> This would have been a much easier case to decide if the Employer's offer was slightly higher and/or included a modest element of "catch up". It doesn't. Nevertheless, given the statutory mandated choice between the two offers, the undersigned must conclude that the Employer's offer is the more reasonable offer under the statutory criteria. In reaching this conclusion, the fact that the Employer's offer is for one year only is of considerable significance. Even under the Union's offer, the 1985 wage increase would have been only slightly higher as a percentage (and slightly lower in terms of dollars in the pocket) for all but the last day of the agreement. Based upon the outcome here, the Union can still seek to achieve improvement in its relative wage rate standing in 1986 and thereafter.

From the foregoing, it is obvious to the undersigned that it was within Arbitrator Fleischli's contemplation that the parties, in negotiating for a 1986 contract, would address the catch up question and move in that direction. The foregoing is based on Fleischli's earlier conclusions at page 13 of his Award, which reads as follows:

> When wages are viewed as a separate issue under the comparability criterion, several findings emerge. First of all, there is no question but that the Union has presented a strong case in terms of the need for catch up under the comparability criterion. There are some weaknesses in the comparables selected by the Union, primarily relating to the relative lack of geographic proximity of some (Brown, Marathon, Outagamie, Sheboygan and Winnebago Counties) and the size and degree of urbanization of others (Dane, Kenosha, Racine and Waukesha). However, there are also some co-relative weaknesses in the comparables relied upon by the County, primarily relating to relative smaller size and lack of urbanization. *It is not possible to avoid each of these weaknesses without substantial sacrifice to the number of comparisons drawn.* Further, it might be expected that, notwithstanding these weaknesses, the wage rates paid by the Employer would be closer to the mid point, rather than at or near the bottom of the range.

Fleischli, in his overall analysis, then concluded that because of the 18.12% total wage lift of the Union's proposal; and because of the substantial cost increase, which would increase costs 28% in 1987 as compared to 1984; "the Union's offer is simply too ambitious notwithstanding the existence of the above described problems with the Employer's 1985 wage offer." From all of the foregoing, the undersigned concludes that the Employer finds itself in the same posture before the instant Arbitrator as it found itself before Arbitrator Fleischli. The

evidence in the instant record persuades the undersigned that the Union continues to make a strong case for catch up. Furthermore, the undersigned concludes that the Union's case for catch up is sufficiently persuasive so as to depart from the internal patterns of settlements which the Employer has established among its other units. The evidence which ranks the Union at the bottom or near the bottom of all the 11 comparables, including the smaller counties to its west, satisfies the undersigned that catch up should be awarded to the Union. As Arbitrator Fleischli opined in his Award, one might expect that the wage rates of the instant Employer would be nearer to the mid-point among the comparables relied upon by the Union, and the undersigned agrees with that observation. Here, the Union's proposal would not reach that level and, therefore, strictly on the basis of comparisons of where wage rates should be placed for the instant unit, the Union proposal is not excessive.

The Employer was put on notice by Arbitrator Fleischli that the question of catch up should be addressed in the instant round of bargaining, when Arbitrator Fleischli, in his opinion as quoted above, stated that based upon the selection of the Employer offer, and the fact that the wages received in 1985 by bargaining unit members would not be significantly different than that sought by the Union; the Union could still seek to achieve improvements in its relative wage rate standing in 1986 and thereafter. The Employer simply failed to address the catch up question at the bargaining table and, consequently, the undersigned concludes that catch up should be awarded as set forth in the Union final offer, unless it is shown that the excessive cost which caused Fleischli to select the Employer's final offer continues to exist.

In passing, the undersigned notes Fleischli's findings with respect to the uniformity of settlement patterns at page 14 of his Award, where Fleischli found that in 1983 and 1984 the employees in this unit received percentage increases of 2.25% and 2.27% while other bargaining units within this County received increases ranging up to 4% in 1983 and up to 5% in 1984. The Arbitrator further notes Fleischli's finding at page 14 of the Award that further erosion of the nurses' standing resulted in his selection of the Employer's offer, because while he selected a 3% increase the Counties considered comparable by the Union were settling in a range of 3 to 5% with 4% being the most prevalent. From the foregoing findings of Fleischli, the undersigned concludes that by reason of the 1983 and 1984 settlements, the employees in this unit suffered with respect to the settlements which were arrived at among other units of this same Employer, and for that reason, internal patterns of settlement would entitle them to some catch up with respect to those units. Externally, not only do the wage rates among comparable employers support the conclusion that catch up be awarded, the fact that the Union lost its arbitration with this Employer resulted in their further eroding their relationship among the comparables by 1 to 2%.

All of the foregoing erosion, which took place in 1983, 1984 and 1985, in the opinion of the undersigned, bears upon the question of the amount of catch up to which the Union is reasonably entitled.

The Union argues that its cost for the first year is less than that of the County. The evidence supports the Union argument because of the severely deferred date for the second wage increase proposed by the Union, i.e., the last day of the first year of the contract. While the first year cost is thereby reduced, the increase proposed on the last day of the contract by the Union does not evaporate when the calendar advances one page. Immediately on January 1, 1987, if the Union offer is adopted, the full cost of the deferred increase for PHN II impacts the Employer for the entire year. Similarly, the 2.1% proposed by the Union effective January 1,1987, is experienced for the entire year 1987, and the 3.9% proposed for PHN II effective December 31, 1987, immediately upon turning the calendar to January 1, 1988, has full impact for the entire year of 1988. Thus, the undersigned looks to not only the annual cost impact of the proposals but to the wage lift which is being proposed here.

Employer Exhibit 2, page 8, establishes that at the end of the two year period, if the Union's proposal is adopted, the County's increased cost for this bargaining unit effective January 1, 1988, becomes 17.84%. This compares to the

increased cost of 28% considered excessive by Fleischli. Obviously, the Union has reduced its cost in the final offer proposals before this Arbitrator by in excess of 10% compared with the costs generated by their proposal in front of Arbitrator Fleischli.

The percentage wage lift proposed by the Union over the two year period totals 13%. The Employer offer among its other units, in comparing wage lift for two year settlements, range from a total of 5.1% to a high of 5.83%. The question then becomes whether the wage comparisons among public health nurses in the employ of this Employer warrant an increase which would generate a wage lift of 7.17% higher than any other two year settlement into which the Employer has entered with other bargaining units.

In considering the foregoing, the undersigned first recognizes that in 1983 and 1984 this unit entered into wage settlements which were 1.75% lower than the wage settlements entered into among other units of this same Employer, and in 1985 2.73% lower than the highest settlement entered into among the highest settlement with another unit of the same Employer. The two years of these settlements total 4.48% lower than the highest settlements combined for 1983 and 1984. From the foregoing, the undersigned concludes that if one were to view the five year projection, 1983 through 1987, the Union proposal here in terms of wage lift would generate 2.69% more than any other unit has experienced during that same time span. The 2.69% recognizes the 4.48% less that the Union settled for than the highest settlements in 1983, 1984, subtracted from the excess amount of wage lift of 7.17% for 1986-87 that the Union offer represents in this matter.

In view of the record evidence which establishes that the employees within this bargaining unit are among the lowest paid among the Union proposed comparables as concluded by both this Arbitrator and by Arbitrator Fleischli in 1985; the undersigned concludes that the 2.69% excess wage lift for the five year period, 1983 through 1987, is justified.

In the opinion of the undersigned, the Union has tempered its demands for catch up in such a manner that Fleischli's objections to the Union proposal are no longer present and, therefore, the Union's final offer is preferred and will be adopted.

The Employer has argued that the CPI favors adoption of its offer. The undersigned agrees that the CPI favors the Employer offer. Consequently, the statutory criteria of the average consumer prices for goods and services commonly known as cost of living favors the Employer proposal. It remains to be determined whether the cost of living criteria should cause the undersigned to adopt the Employer final offer.

The Employer has further argued that the adoption of the Union final offer will have an extremely chilling impact on future bargaining between the County and its 12 certified bargaining units. The undersigned recognizes that arbitration should not be used as a technique to hold out for a better than pattern settlements when comparing internal patterns of settlement. The undersigned disagrees, however, that an award for the Union in this matter will have a chilling effect on bargaining between the Employer and this unit and/or other units. The Union, here, has persuasively convinced the two arbitrators, the undersigned and Arbitrator Fleischli, that it has a strong case for catch up. Under such circumstances, to ignore the catch up case, particularly after the Employer has been put on notice by the prior arbitrator that catch up needed to be addressed, would be to ignore the equities of the situation in which the parties find themselves. Furthermore, in order for another bargaining unit of this Employer to achieve a settlement beyond the internal patterns of settlement, they would necessarily have to make an equally strong showing that they were entitled to similar type of catch up. Whether or not they would be able to do so is a matter which would necessarily have to be determined in another proceeding of this type.

SUMMARY AND CONCLUSIONS:

The undersigned has concluded above that the Union offer is preferred in

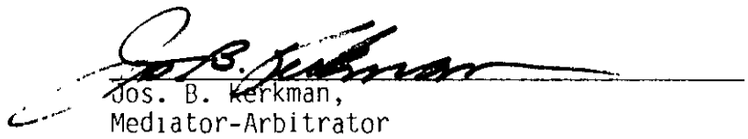
the three disputed issues in this matter. The undersigned noted in the foregoing discussion that the Employer offer is supported by the cost of living criteria. However, the weight to be afforded the cost of living criteria, in the opinion of the undersigned, does not militate for the adoption of the Employer offer here since the Union has proven a compelling case for catch up and for a two year Agreement.

Therefore, based on the record in its entirety and the discussion set forth above, after considering the arguments of the parties and the statutory criteria, the Arbitrator makes the following:

AWARD

The final offer of the Union, along with the stipulations of the parties, as well as the terms of the predecessor Collective Bargaining Agreement which remained unchanged through the bargaining process, are to be incorporated into the written Collective Bargaining Agreement of the parties for the years 1986 and 1987.

Dated at Fond du Lac, Wisconsin, this 29th day of January, 1987.



Jos. B. Kerkman,
Mediator-Arbitrator

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