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In the Matter of Mediation/Arbitration between

MONROE COUNTY HUMAN SERVICES, LOCAL 2470-A, WCCME, AFSCME, AFL-CIO

and

MONROE COUNTY

* *

Case 66 No. 36260 MED/ARB 3748
Decision No. 23808-A

and

Case 65 No. 36259 MED/ARB 3437
Decision No. 23807-A

Appearances:

Mr. Edward G. Staats, Personnel Director, Monroe County; representing the County.

Mr. Daniel R. Pfeifer, District Representative, Wisconsin Council 40, AFSCME, AFL-CIO; representing the Union.

Before:

Mr. Neil M. Gundermann, Mediator/Arbitrator.

ARBITRATION AWARD

Monroe County, Wisconsin, hereinafter referred to as the County or Employer, and Monroe County Human Services, Local 2470-A, WCCME, AFSCME, AFL-CIO, were unable to reach agreement as to the terms of the collective bargaining agreement. The parties selected the undersigned through the appointment procedures of the Wisconsin Employment Relations Commission to serve as mediator-arbitrator pursuant to Sec. 111.70(4)(cm)6.b. of the Municipal Employment Relations Act, and, if necessary, to issue a final and binding award pursuant to Sec. 111.70(4)(cm)6.c. through 7.h. of the Act.

On September 4, 1986 at the Monroe County Courthouse, Sparta, Wisconsin, mediation failed to result in agreement as to the terms and conditions of the collective bargaining agreement, and an arbitration hearing was then held on the same date. The parties filed post-hearing briefs on November 17, 1986.

COMPARABLES

The parties are in basic agreement as to several of the comparable counties they use for comparison purposes in the instant dispute. The parties agree that the following counties are comparable: Crawford, Jackson, Juneau, La Crosse, Richland, Sauk, Trempealeau, Vernon, and Wood. The County has included Buffalo County in its comparables. The Union has included Adams, Clark, and Eau Claire counties as comparables.

County's Position:

It is the County's position that the Union has apparently extended its choice of comparables by simply selecting those counties which are "contiguous" to the contiguous counties. According to the County, this method of selection is founded solely on geographic boundaries without regard to similar population, tax valuations or departmental size. In contrast to the comparables selected by the Union, the County contends its comparables were selected based not only on geographic location, but also on size of the department, total property tax, full-value tax, and population.

Based on economic worth comparisons, this County is less than the average of the comparables, however the size of the department is larger than the average by five full-time positions. The County asserts that its comparables

were determined on more comprehensive criteria and represent a more valid method of selection; therefore, its comparables should be accepted by the arbitrator in making his comparisons.

Union's Position:

It is the Union's position that it selected the contiguous counties and the counties adjacent to the contiguous counties as comparables. The Employer has used Crawford, Richland, Sauk, Trempealeau and Wood counties which are geographically two counties from this County, but it has not utilized Adams, Clark and Eau Claire counties which are also two counties from this County. The Employer, however, has used Buffalo County as a comparable, which is three counties from this County. The Union is at a loss to explain why the County utilized five second-tier counties and one third-tier county, but failed to utilize Adams, Clark and Eau Claire counties which are all second-tier counties. It is further noted by the Union that the County has utilized La Crosse county with a population of 91,056, but has omitted Eau Claire county with a population of 78,805.

The Union believes that its comparables are more appropriate than those used by the County.

Discussion:

The parties are in substantial agreement as to those counties they deem to be comparable. The parties agree on the following counties as being comparable:

Crawford	Sauk
Jackson*	Trempealeau
Juneau*	Vernon*
La Crosse*	Wood
Richland	

The parties are in disagreement regarding the comparability of the following counties: Adams, Clark, Eau Claire and Buffalo. The Union contends that Adams, Clark and Eau Claire are in sufficient geographic proximity to the County to serve as comparables. The County argues they are too far removed geographically to be considered comparable, and, Eau Claire is not comparable on any basis. The County argues that while not in immediate geographic proximity to the County, Buffalo is sufficiently similar to be considered a comparable. The Union takes the position that Buffalo is not in geographic proximity to the County and that is sufficient justification, standing alone, to exclude Buffalo.

Eau Claire is not comparable to the County under any test of comparability, including geographic proximity. In contrast, La Crosse, which is more comparable to Eau Claire in most areas of comparability, is accepted as a comparable by both parties as it is contiguous to the County. Adams, Clark and Buffalo are relatively comparable to the County, but all three counties are beyond the geographic boundaries the parties appeared to have recognized as being the basis for comparability.

The parties have agreed on nine counties being comparable for purposes of this case. That appears to be a sufficient universe from which to determine comparability. Therefore, the comparables used in this case will be those counties which the parties have agreed are comparable.

1. WAGES

County's Offer:	Union's Offer:
3.8% Effective 7/1/86 -- A 20¢ Adjustment for Support Worker Position	2.5% Effective 7/1/86 -- A 20¢ Adjustment for Support Worker Position

*Contiguous Counties

County's Position:

It is noted by the County that it is a unique, if not a very unusual situation, when an employer's final offer is higher than that of the union. This is the situation in the instant dispute.

The County contends that not only is its position higher than that of the Union, but the County's pattern of settlements for all other 1986 agreements in the County is similar to that offered in this case. It is important to note that the County bargaining units have received relatively equivalent wage and benefit settlements historically for many years. The County submits this trend of consistent internal wage settlements should not be broken as a result of the mediation/arbitration award.

Arbitrators have recognized that internal patterns of settlements are a significant element in weighing the reasonableness of the party's final offer. See Waukesha County (Department of Public Health), Dec. No. 19515-A. See also City of Madison, Dec. No. 21345-A 11/84; Milwaukee Area Vocational Technical Education, District No. 9, Dec. No. 19183-A 6/82.

It is further argued by the County that its offer is closer to the trend in settlements in comparable counties than that of the Union. In fact, the County's offer slightly exceeds the average wage settlements. In contrast, the Union's proposal is significantly less than the average comparable settlements, and furthermore, less than any settlements denoted in the evidence.

The Union is attempting to focus on the wage issue in order to obtain other benefits that differ significantly and would upset internal comparisons within the County. The County, on the other hand, is making a concerted effort to maintain a relatively similar wage settlement and fringe benefit level which follow the intent as well as the spirit of the mediation/arbitration statute.

Another factor that must be considered in determining the appropriate wage proposal is the Consumer Price Index progression. It is significant to recognize that the month of the past year usually weighted the most for determining settlements for the subsequent year is December. Using this rationale, the County's offer of 3.8% compared to the CPI increase of 3.6% is essentially "right on the money." The Union's offer, 2.5%, by itself is significantly less than the December CPI figure.

Acceptance of the Union's offer could very well set the stage for future wage disparity based on the above information. One should focus not only on the wage issue, but on the overall settlement, and the possible repercussions that could be detrimental to bargaining not only within this bargaining unit but on a County-wide basis.

For all the above reasons the County submits that its final offer regarding wages is the most appropriate and should be adopted by the mediator/arbitrator.

Union's Position:

It is the Union's position that the mediator/arbitrator must consider both parties' total package, not just an isolated issue. It is further noted by the Union that the other bargaining units within the County have had two-year contracts with a reopener for 1986. That reopener limited the scope of subjects which could be bargained during 1986, and precluded the units from bargaining most fringe benefits for that year. Additionally, these bargaining units have been certified by the State as autonomous locals and have negotiations separate from the other County unions. Therefore, this bargaining unit cannot be restrained in what it is seeking in negotiations by what the other bargaining units in the County have previously accepted.

In weighing the entire package of the Union, the Union contends that its wage offer, in combination with the other fringes it is seeking, is the most appropriate of the final offers regarding wages.

Discussion:

As noted by the County, this is a somewhat unusual situation in that the County has offered more in wages than is being sought by the Union. Additionally, the cost of the parties' respective final offers is similar. The issue in this case is not the cost of the final offers, but rather where those costs are allocated--to wages or fringe benefits. The County has emphasized wages, while the Union has emphasized fringe benefits.

It is suggested by the County that in determining the more appropriate wage increase in mediation/arbitration, arbitrators frequently rely upon the pattern of settlements an employer has established with its other bargaining units. In this case, the County notes that its final offer is similar to the settlements arrived at with other County bargaining units. While, as a general principle, arbitrators are frequently guided by the pattern of settlements arrived at with other bargaining units, such pattern is more meaningful if it is established under similar circumstances. In this case, the other units entered into two-year agreements with limited reopeners in the second year, 1986. This precluded the other units from seeking the changes in fringe benefits sought by these bargaining units. Under these circumstances, there is no precedent for imposing the same settlement on these units that has been agreed to by the other units. Under the conditions which exist in this case, the pattern of settlements arrived at with the other units is less significant than it might otherwise be.

It must be further noted that where arbitrators have relied upon a pattern of settlements arrived at between an employer and a number of its bargaining units, in most instances the unit in the arbitration process has been attempting to secure a larger wage or fringe benefit increase than dictated by the pattern of settlements. This is not the situation in the instant case regarding wages.

There is no doubt that the County's offer regarding wages is more closely related to the cost of living than is the Union's wage offer. The County's offer is within .2% of the preceding twelve-month increase in the CPI of 3.6%. The Union's final offer is 1.1% below the CPI. It is indeed an unusual situation where the Employer is arguing that the Union should receive an increase comparable to the increase in the CPI, and the Union is arguing for a lesser increase.

While recognizing the Union's desire to improve a number of the fringe benefits, there is one troubling aspect to this approach when so many improvements are sought at one time. By allocating a substantial amount of the available monies to fringe benefits, there is a possibility that the County will fall behind other comparable counties in the area of wages, and then, after having improved the fringes, be compelled to increase the wages at a subsequent time to catch up with the comparable counties. Alternatively, if the fringes are below those provided by comparable counties, it is appropriate to bring the fringe benefits up to a competitive level.

Neither parties' final offer is unreasonable. In order to determine the more reasonable of the final offers regarding wages, it is necessary to review the remainder of the issues.

2. HOLIDAYS

County's Offer:

Retain current contract language providing nine (9) paid holidays.

Union's Offer:

Add an additional ½ day, (the last four (4) hours of Christmas Eve Day), for a total of nine and one-half (9½) paid holidays.

County's Position:

It is the County's position that internal comparisons should receive predominant consideration as has been denoted by past arbitration decisions addressing fringe benefit levels and the issue of holidays. Arbitrator Rice, in City of Brookfield Employee Local 20, Dec. No. 19573-A 9/82, stated the following:

> "In ordinary times the comparison of the number of holidays with other employers might justify an increase of one-half day but that would create a disparity between the number of holidays received by members of this collective bargaining unit and the other two collective bargaining units with which the Employer has reached agreement. The interest and welfare of the public would not be well served by creating a disparity between the number of holidays given to members of this collective bargaining unit and the other employees of the Employer. The Employer must try to maintain parity between all of its employees with respect to fringe benefits such as the number of holidays unless there is substantial evidence of some sort of an inequity that deserves to be corrected. There is no evidence that would justify destroying the parity with respect to holidays that exists between all of the employees of the Employer."

The County contends that the impact of consistent treatment of bargaining unit employes within the County is of paramount importance in assuring parity and maintaining the status quo with other units that have reached agreements. It is noted by the County that it already has agreed with the Union to exchange Veterans Day holiday for the day after Thanksgiving in an effort to resolve the issue.

The only internal comparison that may be favorable to the Union would be that with the non-represented employes who were granted nine and one-half holidays during 1986; however, they do not enjoy such benefits as overtime, longevity or other Union security benefits including seniority and job protection that most bargaining unit members enjoy. An even more notable factor is, of course, that non-represented employes are not subject to the statute under which this dispute is covered.

Even though external comparables may not lend as much support to the County's position as do the internal comparables, it has been demonstrated through settlements and arbitrators' decisions that the internal comparisons are the more predominant in resolving the holiday issues.

Union's Position:

The Union recognizes that the parties have agreed to the deletion of Veterans Day and the addition of the day after Thanksgiving as a holiday. In addition, the Union is seeking an additional four hours on Christmas Eve. The Union argues that its final offer is the more reasonable in this regard. The evidence establishes that the average of the twelve counties compared is 9.42 holidays per year. The Union is seeking 9.5 holidays per year, which is closer to the average than is the Employer's offer of nine days per year.

According to the Union, the evidence supports its position for the additional one-half day of holiday, and therefore the arbitrator should award in favor of the Union.

Discussion:

The evidence establishes the following number of holidays granted by the comparable counties:

Crawford	8
Jackson	10
Juneau	11½
La Crosse	9½
Richland	9
Sauk	8½
Trempealeau	9½
Vernon	8
Wood	10

Of the nine comparable counties, five give 9½ holidays or more, and four give less than 9½ holidays. The average holidays given, arrived at by dividing the number of counties by the total number of holidays given by the nine counties (84), is 9.33 holidays. This figure marginally supports the Union's position.

The County emphasizes the fact that if the arbitrator were to award 9½ holidays as requested by the Union, it would have an adverse effect on the other bargaining units which have nine days. As previously noted, two of the County's bargaining units had multi-year agreements which precluded negotiating certain fringes in the second year. Thus, the argument for internal consistency is not as persuasive as it might otherwise be.

Additionally, the County already gives the unorganized courthouse employes 9½ holidays, thus an award of 9½ holidays would not represent a total departure from what the County is doing for at least a segment of its employes.

Regarding holidays, the Union's final offer is more reasonable than the County's final offer.

3. VACATIONS

County's Offer:

Retain current language providing for four weeks of vacation after eighteen years.

Union's Offer:

Modify language to provide for four weeks of vacation after fifteen years.

County's Position:

According to the County, its proposal to maintain the present vacation schedule which is equal to or better than other County bargaining units is based on internal comparisions and continuation of the status quo. Numerous arbitrators previously mentioned have expressed the rationale for the importance of equivalent fringe benefit considerations within the local bargaining units. There should be no less significance applied to the issue of vacation benefits than to other fringes.

While the Union may point to somewhat more favorable external comparables, the weight usually given by arbitrators points to the fact that internal comparisons are overriding factors used in awarding fringe benefits.

The County submits that because of the internal consistency between its final offer and the existing collective bargaining agreements, its proposal is the more reasonable.

Union's Position:

The Union notes that the County is seeking to maintain the status quo in the area of vacation, while the Union is seeking to make an adjustment in only one area of the vacation schedule. The Union is proposing to have four weeks of vacation effective after 15 years, rather than the current 18 years.

The evidence establishes that the average time of service needed in the 12 comparable counties before employes obtain the fourth week of vacation is 14.42 years. Furthermore, the provision for employes to receive four weeks of vacation after 15 years is a more prevalent position among the comparable counties.

The Union takes the position that its offer of four weeks of vacation after 15 years of service is more reasonable than the County's offer of four weeks of vacation after 18 years of service when comparabilities are considered.

Discussion:

A review of nine comparable counties establishes the following regarding the granting of the fourth week of vacation.

Crawford	Over 10 years
Jackson	Over 15 years
Juneau	Over 15 years
La Crosse	Over 15 years
Richland	Over 12 years
Sauk	Over 13 years
Trempealeau	Over 12 years
Vernon	Over 20 years
Wood	Over 14 years

Of the comparable counties only one, Vernon, requires more than 15 years of service to qualify for the fourth week of vacation. The County, which requires 18 years of service to qualify for the fourth week of vacation, is clearly behind the vacation schedules in the comparable counties.

While the County continues to advance its argument regarding the pattern established for other bargaining units in the County, the undersigned again notes that two of the other bargaining units had limited reopeners which did not include the issue of vacation.

Clearly, the Union's position is the more reasonable of the positions regarding the time required to take a fourth week of vacation.

4. HEALTH INSURANCE

County's Offer:

Retain current employe contribution of $25.00 per month for family coverage and $10.00 per month for single coverage.

Union's Offer:

That the employe's contribution to the health insurance program be reduced from $25.00 per month for family coverage to $15.00 per month and from $10.00 per month for single coverage to $0 per month.

County's Position:

It is the County's position that the internal comparisons strongly support the County's position in regard to this issue. Arbitrators have recognized that internal patterns of settlements are significant in considering the reasonableness of final offers. There is additional weight given by a number of arbitrators to the issue of health insurance. Arbitrator Kerkman in City of Madison (Police), Dec. No. 16034-A 7/78, provided the following rationale:

> ". . . the undersigned concludes that the most appropriate comparison for hospital insurance contribution purposes is the method of contribution used for other employees of the same employer.
>
> . . . As stated above, the undersigned is of the opinion that comparisons with other employees of the Employer should control in the matter of fringe benefits, unless it is shown that the employees are entitled to a wage increase by reason of a disadvantageous position when compared to other police officers in comparable communities."

See also City of Manitowoc Waste Water Treatment Employees, Dec. No. 17643-A 1/81.

The external comparables, although not as heavily weighted in this issue, also show that the County is competitive with comparable counties. The family plan is the predominant factor in comparing health insurance premiums as well as employe contributions. The County is closest to the average contribution for family coverage, and notably closer to the average than the Union. The only statistic that prevents a more competitive County position is the fact that a few counties still provide 100% employer contribution, a luxury that has become less prevalent in the last few years due to spiraling increases in health insurance premiums.

The County concedes its position on employe contribution to the single premium plan is somewhat less competitive than it is for family plans; however, again the statistics are somewhat skewed by those counties which pay 100% of the premium. The difference in the County's and the Union's position relative to the average percent of contributions for single coverage is only 1%, and therefore not significant.

When taking all factors into consideration, including the impact and weight warranted for internal comparisons, relatively competitive comparisons with the external comparables, the cost impact, and the fact that local industry is taking concessions in health and welfare insurance, the County's position is the more reasonable and therefore should prevail.

Union's Position:

The Union notes that nine of the twelve compared counties pay 100% of the single plan, and the average payment is 97%. The Union's offer is 100% and the County's offer is 86%. The average percentage paid by the comparable counties for the family premium is 90.1%, whereas the Union's offer is 91% and the County's offer is 85%.

In reviewing the final offers in terms of real dollars, the average monthly payment for comparable counties for the single premium is $69.80. The Union's offer is $69.40, and the County's offer is $59.76. The average monthly payment for the comparable counties for the family premium is $166.39. The Union's offer is $155.39, and the County's is $144.48. The Union takes the position that comparables clearly favor its final offer in relation to health insurance.

It is also noted by the Union that there are benefits to both parties by employes receiving compensation in terms of health insurance rather than wages. For the employes, health insurance is not a taxable item. For the Employer, monies paid for health insurance rather than wages are not subject to social security or retirement deductions.

Discussion:

The evidence establishes that the comparable counties pay the following toward health insurance:

County	Single	Family	Single	Family
Crawford	100%	100%	Union 100%	Union 91%
Jackson	100%	100%	County 86%	County 85%
Juneau	100%	80%	Average 96%	Average 87.4%
La Crosse*	$55.53	$145.32		
Richland	92%	92%		
Sauk	93%	93%		
Trempealeau	100%	82.5%		
Vernon	100%	70%		
Wood	82%	82%		

Eight of the nine counties pay a percentage of the single and family premium. The average payment toward the single premium of the eight counties is 95.9%. The average payment toward the family premium is 87.44%. The Union's request for 100% payment of the single health insurance premium is closer to what is being paid by the comparable counties than is the County's offer of 86%. The County's position to retain the current payment of the family health insurance premium less $25, or approximately 85% payment, is closer to what is being paid by the comparable counties than is the Union's proposal to reduce the current employe contribution from $25 to $15 which would represent the County paying 91.2% of the family premium.

Of the comparable counties, excluding La Crosse, four counties contribute a higher percentage toward the family premium and four counties contribute a lesser percentage. The County is in the middle of the range of the comparable counties. Even if La Crosse is presumed to pay 100% of the family premium, the County is still in the middle of the range.

*The total 1986 premium for La Crosse is unknown.

In the case of the insurance premiums, the comparables favor the Union's position for single premiums and the County's position for the family premium.

The County argues that especially in the area of insurance, the pattern established with the other bargaining units should be determinative of the issue. In this regard it is significant to note that the reopener for the County institution employes included the issue of insurance premiums. Thus, these employes had the opportunity to negotiate a change in insurance premium contributions by the County, however, no change in the County's contribution was negotiated. Under these circumstances, the internal comparables become more significant.

On balance, it appears that the County's final offer regarding insurance is the more reasonable of the final offers.

5. SICK LEAVE

County's Offer:

Retain current language.

Union's Offer:

Increase from sixteen (16) hours per year of sick leave use to thirty-two (32) hours when a full-time employee is required to give care and attendance to a member of his/her immediate family.

County's Position:

The rationale offered by the Union in support of its position in this issue was that full-time employes should enjoy up to 32 hours of sick leave for family use because both full-time and part-time employes are entitled to 16 hours of sick leave for family use.

The County is not concerned that the use of family sick leave is equivalent between full-time and part-time employes, as long as the accumulation is prorated. If the Union's rationale has merit, would it not be more logical to limit part-time employes to eight hours of family sick leave, since all other full-time bargaining unit members are entitled to 16 hours of family sick leave?

Once again, the internal comparisons weigh heavily on this issue and favor the status quo within the County. Arbitrators have relied on internal comparisons when addressing fringe benefits including sick leave plans. Arbitrator Krinsky in Sheboygan County (Courthouse), Dec. No. 19799-A 2/83, stated the following:

> "What is of far greater importance, in the arbitrator's opinion, is the matter of internal comparisons in the County (criteria (c) (f)). Each of the other units has a collective bargaining agreement with the County, and in each of them the County has agreed to the very same sick leave program which it seeks to eliminate in this case. The County has offered no persuasive reasons in support of a position that says, in effect, the sick leave program is acceptable for the rest of the County's employees, but not for those in the Courthouse."

See also County of Kenosha(Deputy Sheriff Association), Dec. No. 11632-A 8/73.

In both of the above cases the arbitrators have relied heavily on the internal comparisons, regardless of whether the proposed change was made by the union or the employer.

In regard to external comparables, there are none that support the Union's position. There is no contractual language which allows for a higher use of family sick leave for full-time employes over part-time employes. The potential and certain added cost factor that would evolve if the Union prevailed, based on the family sick leave language of the current collective bargaining agreement, is particularly significant.

Based on the internal comparisons and external comparables and the potential cost to the County, the County contends its final offer of maintaining the status quo is the more reasonable position.

Union's Position:

The Union notes that 5 of the 13 contracts do not address the issue of sick leave usage for family illness. Four of the 13 contracts allow such usage with no limitation, while 3 of the 13 contracts have limitations of 3 days per year and one contract allows 5 days per year for each illness or injury.

It is emphasized by the Union that its main contention herein is that the status quo does not differentiate between part-time and full-time employes. A part-time employe working 20 hours per week is entitled to the same benefits as a full-time employe working 40 hours per week. Based on a work year of 2,080 hours, a 20-hour employe can utilize 1.54% of basic work time for family illness, while a 40-hour employe can only use .77% of basic work time for said purpose.

The Union's proposal would generate a more equitable situation when comparing full-time employes to part-time employes. Therefore, the Union contends its position is the more reasonable of the two offers.

Discussion:

The Union is seeking to equalize, as a percentage of total hours worked, the number of work days that a full-time employe and a part-time employe can use sick leave to provide care for a member of the employe's immediate family. The Union's proposed solution to the perceived disparity is to grant full-time employes 32 hours per year for the purpose of caring for a member of the immediate family.

Of the nine comparable counties, three make no reference to the use of sick leave for the care of members of the immediate family (Jackson, Trempealeau and Vernon). In the absence of language authorizing the use of sick leave for such purpose, presumably those counties do not permit the use of sick leave for the care of an employe's immediate family. The six counties that permit such use of sick leave vary both as to the amount of sick leave and the conditions under which it can be used.

Crawford permits the use of sick leave "for the preventive care or emergency illness of an employee's spouse or children provided, however, that the employee's non-Crawford County spouse is not able to provide access to the preventive care or emergency treatment for the employee's children."

Juneau permits the use of sick leave if the employe: "C) Is required to give care and attendance to a member of his/her immediate family during the illness of such family member ('immediate family' means spouse, children and/or parents)."

La Crosse provides: "Up to three (3) days of sick leave may be used for illness in the immediate family. The immediate family being defined as spouse, parents, children, or members of the employee's immediate household."

Richland provides: "9.03 An employee may use sick leave in the case of a bonafide emergency."

Sauk has two collective bargaining agreements which provide the following: "Employees may also be allowed to use up to three (3) days of accumulated sick leave period for the care of a spouse, child or other dependent who is ill and in need of such care."

And: "Employees may also be allowed to use accumulated sick leave for the care of a spouse, child or other dependent who is ill and in need of sick care, up to three (3) days for each occurrence or episode."

Wood provides:

> "G) Family Illness: Employees will be allowed to use sick leave in case of serious illness or injury in the immediate family where the immediate family member requires the constant attention of

"the employee. The immediate family is defined as employee's spouse, minor children, and dependents living within the household. Use of sick leave for the purpose of this section is limited to five (5) sick days for any illness or injury. All leave taken shall be deducted from accumulated sick leave."

A review of the above language indicates there are a wide variety of provisions relating to the use of sick leave for the care of immediate family. Of those counties that permit such use of sick leave, most grant three days or unlimited days. Some, however, especially those that are more liberal in the amount of time, are more restrictive in the use of sick leave, requiring a family emergency, the unavailability of a spouse, or a family member needing "constant attention."

The County permits use of sick leave for the "care and attendance" of a member of the immediate family, which is among the more liberal requirements for the use of sick leave. In this case the Union is requesting four days, which falls in the middle of those counties which grant sick leave for the care of members of the immediate family.

The Union's request, when considered in the context of all the comparable counties, including those that make no provision for use of sick leave in conjunction with family illness, falls in the higher range. The undersigned would be much more comfortable if the Union were requesting 24 hours.

As to the argument regarding part-time employes, it must be noted that they earn sick leave on a prorated basis. The fact that they enjoy a benefit which is commensurate with full-time employes is not sufficient justification to grant full-time employes twice as many hours of sick leave as they presently receive for the care and attendance of members of the immediate family.

The County's final offer is the more reasonable regarding this issue, only because the Union is seeking 32 hours--twice the number of hours currently provided. The comparabales do not support this large an increase.

6. ON-CALL TIME

County's Offer:

Effective January 1, 1986, unless otherwise noted, the following adjustments be made to the on-call time provisions of the respective agreements.

1. A minimum of two (2) hours compensatory time shall be received by employes who are assigned to an on-call basis and are required to handle face-to-face work or process fuel assistance requests (Professional Unit). Effective October 1, 1986.

2. The rate of pay for employes assigned to an on-call basis on holidays shall be increased from $1.00 per hour to $1.15 per hour (Professional Unit). Effective October 1, 1986.

3. Employes assigned to an on-call basis for the sole purpose of the fuel assistance requests shall receive $.30 per hour (Clerical/Para-Professional Unit).

Union's Offer:

The Union's offer proposes that effective January 1, 1986, unless otherwise noted, the following adjustments be made to the on-call time provisions of the respective agreements.

1. A minimum of two (2) hours compensation shall be received by employes who are assigned to an on-call basis and are required to handle face-to-face work (Professional Unit).

2. The rate of pay for employes assigned to an on-call basis on holidays shall be increased from $1.00 per hour to $1.50 per hour (Professional Unit).

3. The rate of pay for employees assigned to an on-call basis for the fuel assistance program shall receive an increase of $.30 per hour (Professional Unit).

4. Employees assigned to an on-call basis for the sole purpose of the fuel assistance program shall receive $.30 per hour effective November 25, 1985, (Clerical/Para-Professional Unit).

County's Position:

It is noted by the County that there are two bargaining units involved in this case and each must be viewed separately. The only item that remains in dispute in the Clerical and Para-Professional Unit regarding on-call pay is the date for the fuel assistance program to become effective. The County's position is that the increase should become effective January 1, 1986, which corresponds to the effective date of the collective bargaining agreement. The Union's position is to recognize the effective date of November 25, 1985, which is outside of the duration of the contract and would add costs not addressed in the County's offer.

It is emphasized by the County that in an effort to voluntarily resolve this issue, it chose to offer the Union exactly what the Union was seeking, excluding the effective date, in an effort to "buy out" this item and transfer these duties to the Social Worker position in 1986. Since they were already assigned the on-call status, the County offered an adjustment to the Social Workers who were assigned to fuel assistance work.

The Professional Unit has two items that are at issue. The first is the holiday pay rate while on-call. The County has made a significant offer of $1.15 per hour, an increase of $.15 per hour or 15% over the 1985 rate. In contrast, the Union is seeking $1.50 per hour or a 50% increase over the 1985 rate.

It is argued by the County that the external comparables show that the County compares favorably with the average holiday rate of $.99 per hour, and the Union far exceeds that figure with only one county equal to or exceeding $1.50 per hour. Under the circumstances, the County contends its position is the more reasonable of the two alternatives.

The remaining item at issue is the matter of on-call consideration of fuel assistance applications for Social Workers. The County's position is to allow a minimum of two hours' compensatory time for this work. The processing of a fuel assistance application usually does not require face-to-face work and normally takes approximately one hour or less to complete. Under the circumstances, the County's offer should be recognized as attractive and certainly a fair offer.

The Union's proposal would require an additional $.30 per hour when assigning fuel assistance work, which would not only substantially increase the on-call rate, but place the cost per occurrence at an unreasonable amount. The cost equated for the period of October 1, 1986 to December 31, 1986 of $499 would be estimated at a rate of approximately $83 per application for six occurrences, or $125 per application for four occurrences. Using either estimate, the cost on an on-going basis would be prohibitive to cost-effective operations of the department.

Union's Position:

The Union notes that there is no established pattern regarding the payment for on-call time for holidays. The provisions vary from one county to another; however, it is the Union's main contention that to be on-call on a holiday is of extreme inconvenience to the employe. Employes who are on-call can hardly be said to be on a holiday, and the Union contends that a $1.50 per hour is little compensation for the social events that the employe may be restricted from attending.

The Employer's final offer has an effective date, both for the increase in holiday compensation and the two-hour minimum for face-to-face contact with clients, of October 1, 1986. The Union submits the County has given no

justification as to why these provisions should not be retroactive, and the Union takes the position the County should not use the delay in negotiations to limit employe benefits that rightly should be effective on January 1, 1986, and would have been, had the parties been able to reach an agreement.

Regarding the issue of the fuel assistance program, both the Union and the County have agreed that the Clerical and Para-Professional contract should include an on-call reimbursement of $.30 per hour. The difference between the parties is in relation to the effective date. The Union's effective date is November 25, 1985, and the County's final offer date is effective January 1, 1986. The Union takes the position that its effective date is the more appropriate because the County assigned the duties in relation to the fuel assistance program effective November 25, 1985, and therefore the employe should be compensated for being on-call as of that date.

The Union notes that there is a possibility of the on-call fuel assistance program being transferred from the Clerical and Para-Professional Unit to the Professional Unit. The Union has proposed that if the fuel assistance on-call is transferred to the Professional Unit, then the $.30 per hour on-call received by the Clerical and Para-Professional employes should be added to the on-call of the Professional employes. The Union contends it is only fair that if the Clerical and Para-Professional employes receive $.30 per hour for being on-call for the fuel assistance program, the Professional employes should receive additional compensation for the additional duties assigned to them.

Discussion:

The evidence does not support the Union's request for holiday on-call pay to be established at $1.50 per hour. The comparables do not support such a rate. While the undersigned recognizes the significance of holidays and attendant festivities and the constraints placed on such festivities when an employe is on-call at that time, the employes of the comparable counties are subject to the same constraints but are not compensated at the rate urged by the Union.

There is an agreement that employes on-call for the fuel assistance program will receive $.30 per hour. The Union proposes that if the processing of fuel assistance requests is transferred to the Professional Unit these employes would receive the additional $.30 for being on-call. Employes in the Professional Unit who are on-call are already being compensated for being on-call. Therefore, the addition of the $.30 per hour for being on-call for fuel assistance requests would represent a bonus. This is especially true as Professional employes would be compensated for the actual processing of fuel assistance requests. The $.30 per hour on-call pay for the fuel assistance program was granted to the Clerical/ Para-Professional Unit because these employes were not previously on-call.

Two of the County's proposals do not become effective until October 1, 1986, under the County's final offer. The County gave no persuasive rationale for the delay. Under the circumstances, the undersigned is reluctant to delay the implementation of holiday on-call pay and the two-hour minimum for processing fuel assistance requests and face to face work until October 1, 1986.

The Union's final offer involves making the $.30 per hour on-call pay for the fuel assistance program retroactive to November 25, 1985. The Union's request is based on the assertion that it was at this time that employes in the Clerical/Para-Professional Unit were assigned on-call responsibilities for the fuel assistance program. The Union's final offer providing for retroactivity to November 25, 1985, raises an unusual issue. The parties had a collective bargaining agreement covering calendar year 1985. It was under that agreement that on-call duty for fuel assistance was apparently assigned to the Clerical/Para-Professional Unit. There is no evidence in the record regarding what, if any, actions the Union took at that time concerning the rate of pay to be paid for on-call work. In view of the fact the on-call pay issue arose during the term of the 1985 agreement, and the authority of this arbitrator involves the 1986 agreement, the undersigned is reluctant to award retroactivity beyond the term of the agreement presently the subject of the arbitration.

Based on the evidence, it is the opinion of the undersigned that the County's final offer regarding this issue is the more reasonable of the final offers.

7. LEAVE OF ABSENCE

County's Offer:

That the period of time allowed for maternity leave be reduced to "up to 14 weeks" from "up to 16 weeks" as provided for in the 1985 Agreement.

Union's Offer:

Retain current contract language.

County's Position:

It is the County's position that its final offer on maternity leave of absence is the more reasonable based on internal comparisons and external comparables. When considering the internal comparisons, the County notes that in two of the three other bargaining units an allowance of up to 14 weeks maternity leave of absence is already in place. The County submits it is evident that in order to provide for internal consistency, the Union should not be allowed to maintain up to 16 weeks allowance for maternity sick leave.

The external comparables establish the following counties base maternity leave of absence solely on a physician's certification, without a guaranteed minimum leave of absence: Crawford, La Crosse, Richland, Sauk, Trempealeau, Wood, and Juneau. Only Jackson County, which is up to 12 weeks, and Vernon, which is up to six weeks, allow a minimum guaranteed leave of absence.

The County's position of up to 14 weeks for maternity leave of absence is not only equal to the internal comparisons, but the most generous of the external comparisons. There is no support for the Union's position, other than to maintain status quo within the bargaining unit.

In this case maintaining status quo, by itself, is not sufficient justification to maintain the existing contract language.

Union's Position:

It is emphasized by the Union that in this issue the Union is merely seeking to maintain the status quo, while the County's offer is to reduce the amount of maternity leave from 16 weeks to 14 weeks.

While the Union concedes there is no consistent standard that can be derived from the comparable communities, the Union contends the 16-week position is reasonable; and further, the Union takes the position that this issue is not of great magnitude and should be afforded little weight by the arbitrator.

Discussion:

The language regarding maternity leave varies greatly among the comparable counties. Some specify a specific period for maternity leave while others

8. SENIORITY

County's Offer:

The County proposes modifications in the layoff provision that provide:

> "Section 2. When the employer reduces the number of employees in a classification because of a shortage of work, a lack of funds, the discontinuance of a position, or the downgrading of a position, the least senior employee in that classification will be laid off unless the employee can exercise his seniority to bump into either a lower classification or a classification with the same wage rate, provided he is qualified to perform the duties. The least senior employee in the classification into which an employee bumps can then exercise his seniority in a similar manner. The employer retains the right to assign job duties among the remaining employees in each classification."

Union's Offer:

The Union proposes modifications in the layoff provision to provide:

> "Section 2. When an employee is laid off resulting from a shortage of work, lack of funds, the discontinuance of a position, or the downgrading of a position that employee shall have the right to bump into any position that he may qualify for and his seniority will permit him to hold. The person with the least amount of seniority shall be laid off. The exception is the Support Section. Layoff shall be by seniority in that section and no Support Worker may bump into another section nor can other employees bump into the Support Section."

County's Position:

The County emphasized that both it and the Union are proposing revised language regarding layoff and the bumping procedures in the seniority article. Both parties recognize that changes are needed in order to more clearly define the procedure and to make it adaptive to each bargaining unit.

Historically, arbitrators have addressed changes in language conservatively and very carefully when subject to the mediation/arbitration process. Arbitrator Vernon in City of Madison (Library), Dec. No. 22001-A 9/85 referenced Arbitrator Yaffe, Dec. No. 20807-A, as he stated in general:

> "'Although many of the concepts proposed by the Union appear to be relatively non-controversial and essentially sound, particularly in a unit such as this which is composed of employees assigned to clerical and para-professional positions, the Union has failed to incorporate those concepts in a procedure which is administratively efficient and which will minimize disruption.
>
> . . . it is neither customary or reasonable to provide for the potential of multiple bumping among the employees who are subject to involuntary transfer, which is essentially what the Union has proposed herein.'"

Arbitrator Vernon continued:

> "Above all else, Arbitrator Yaffe expressed that the concepts of Article IX were 'basically sound conceptually.' The main problem under his award was the disruptive effect of multiple bumping."

It is well settled that arbitrators have held the position that language modifications regarding layoff and bumping procedures should be non-controversial, conceptually sound, administratively efficient, minimize disruption, limit the effect of multiple bumping, and interest arbitration should not be used as a procedure for changing basic working conditions at issue unless they are unfair.

The Union's language provides that "if a layoff takes place, the affected employe shall have the right to bump into any position that he may qualify for and his seniority will permit him to hold." This language is nonrestrictive, and not only could result in bumping into a higher classification but also elicits unlimited bumping throughout the entire bargaining unit except for the support workers in the clerical/para-professional unit. Such language is potentially very disruptive as well as administratively inefficient.

The language further provides that the least senior person shall be laid off. There is no proviso that limits this provision to provide that the remaining employes are qualified to perform the work at hand. This is a very serious void as potentially the County could be required to retain employes who may not be qualified to perform the remaining work.

According to the County, the language it proposed was patterned after recommendations of a mediator and provides that in the event of layoff the employe affected "can exercise his seniority to bump into either a lower classification or a classification with the same wage rate, provided he is qualified to perform the duties." Such procedure will eliminate the possibility of bumping into a higher classification, and provide for a fair method of bumping without being disruptive. The proposal goes on to provide: "The least senior employee in the classification into which an employee bumps can then exercise his seniority in a similar manner." This process would be a fair method of bumping which would assure that qualified employes would be retained with a minimum amount of disruption. The remaining statement is simply a management prerogative: "The employer retains the right to assign job duties among the remaining employees in each classification." In contrast to the Union's proposal, it appears as though the County's proposal has met all the criteria previously mentioned by a number of arbitrators in consideration of modifying the language through the interest arbitration process.

Union's Position:

It is noted by the union that both final offers require that an employe must be qualified to perform the duties of the position into which that employe is bumping. The basic difference between the two offers is whether an employe is eligible to bump once he/she has been laid off. The Employer's proposal requires an employe to bump either into a lower classification or one with the same wage rate, whereas the Union's does not. In examining the comparable counties, only four of the twelve require employes to bump into classifications that are equal to or in a lower pay rate.

According to the Union, there is one fatal flaw in the Employer's position: The Employer's offer requires an employe who is laid off and exercises bumping rights to bump the least senior employe within a classification. None of the comparable counties require such restrictive bumping activities; and because the employe must be qualified, it is conceivable that the employe might be determined not to be qualified for the duties of the least senior person in a classification even though the laid-off employe may be qualified to perform the duties of another person in the classification.

For all the above reasons, the Union submits its final offer is the more reasonable of the offers before the arbitrator and therefore should be awarded.

Discussion:

The final offers of both parties contain modifications of Article XVI, Seniority, Section 2. The current language provides the following:

> "Section 2. Layoffs shall take place by sections. These sections being: professional, para-professional, and clerical. The employee who has the least amount of seniority, determined by their amount of seniority in that section, shall be the first laid off. That individual laid off would have bumping rights based on the date of hire across section lines, if qualified for that position in question. (See Addendum A) The exception is the Support Section. Layoff shall be by seniority in that section and no Support Worker may bump into another section nor can other employees bump into the Support Section. (See Addendum B)"

The County's proposed language would state the following:

"Section 2. When the employer reduces the number of employees in a classification because of a shortage of work, a lack of funds, the discontinuance of a position, or the downgrading of a position, the least senior employee in that classification will be laid off unless the employee can exercise his seniority to bump into either a lower classification or a classification with the same wage rate, provided he is qualified to perform the duties. The least senior employee in the classification into which an employee bumps can then exercise his seniority in a similar manner. The employer retains the right to assign job duties among the remaining employees in each classification."

The Union's proposed language would state the following:

"Section 2. When an employee is laid off resulting from a shortage of work, lack of funds, the discontinuance of a position, or the downgrading of a position that employee shall have the right to bump into any position that he may qualify for and his seniority will permit him to hold. The person with the least amount of seniority shall be laid off. The exception is the Support Section. Layoff shall be by seniority in that section and no Support Worker may bump into another section nor can other employees bump into the Support Section."

Under the Union's offer, a laid-off employe "shall have the right to bump into any position that he may qualify for and his seniority will permit him to hold. The person with the least amount of seniority shall be laid off." Under the County's final offer, "the least senior employee in that classification will be laid off unless the employe can exercise his seniority to bump into either a lower classification or a classification with the same wage rate, provided he is qualified to perform the duties. The least senior employee in the classification into which an employee bumps can then exercise his seniority in a similar manner."

The primary difference in the final offers is the right of the employe to bump into any position for which the employe is qualified, as proposed by the Union, and the right of the employe to bump into a classification with the same wage rate or a lower classification, as proposed by the County.

Under the Union's final offer, a laid-off employe could bump to any classification for which the employe is qualified and has sufficient seniority to claim. Thus, a laid-off employe could conceivably receive a promotion as a result of being laid off, a highly unusual result of a layoff. The Union's proposal further provides: "The person with the least amount of seniority shall be laid off." Without modification, the wording "the person with the least amount of seniority" presumably refers to the least senior person in the bargaining unit. In order to accomplish what the Union is seeking under its proposed language, (the right of the laid-off employe to bump into any position for which the employe is qualified and has seniority to bump into, and, the layoff of the least senior employe in the bargaining unit,) a number of bumps may very well be necessary. The Union's procedure contains no limit on the number of bumps which could occur, nor on the number of classifications which could be involved.

It is conceivable, as noted by the Union, that under the County's proposed language a more senior employe could be laid off while a less senior employe in a higher classification could be retained. This would be unlikely, but it is possible.

While the Union argues that under the County's language the laid-off employe must bump the least senior employe in a classification having the same wage rate or in a lower classification, the County's proposed language does not specify that the employe exercising seniority in a classification with the same wage rate or in a lower classification must bump the least senior employe in the classification. The language only states that once the employe exercises seniority, the least senior employe in the classification will either be laid off or will exercise his or her seniority in the same manner as the more senior employe

exercised seniority. The exercise of seniority is subject to the caveat the employe be qualified to perform the duties of the classification to which the employe bumps.

The issue of seniority is one of the more vexing issues that an arbitrator can confront due to the fact it represents legitimate competing interests which can have profound results on both the employe and the employer. As noted by a number of arbitrators, it is a subject more appropriately addressed by the parties than by the arbitrator. After a careful review of the proposed language regarding this issue, it is the opinion of the undersigned that the County's proposal is the more reasonable of the final offers.

Conclusion:

Neither party's final offer can be characterized as being unreasonable. Of the eight issues in dispute, there is substantial evidence to support each party's final offer in two or more of the disputed issues. In the area of eligibility for the 4th week of vacation, and in the area of the number of holidays, the evidence clearly supports the Union's final offer. Regarding the issues of on-call pay and seniority, the evidence supports the County's final offer.

In the other areas in dispute the evidence is less compelling regarding either party's final offer, although there is sufficient evidence to permit a reasoned judgment.

While the undersigned recognizes that in the areas of vacation eligibility and holidays the County is behind the comparable counties, in the opinion of the undersigned there are three factors which weigh heavily in favor of the County. First, the Union's final offer regarding on-call pay is retroactive to 1985. During that period a collective bargaining agreement existed and the arbitrator's authority is for the 1986 agreement. Secondly, the Union's language relating to layoff permits unlimited bumping subject only to the caveat the employe be qualified to perform the duties of the position the employe is seeking to bump into. Such bumping procedure could result in numerous bumps and be disruptive of the operations. The County's final offer regarding this issue more appropriately recognizes the legitimate interests of both the employe and the County.

Finally, the County's final offer regarding wages is not unreasonable. It is competitive with other wage increases and exceeds the cost of living.

After giving due consideration to the statutory criteria, the evidence presented and the arguments advanced in support of each party's final offer, the undersigned renders the following

AWARD

That the County's final offer be incorporated into the 1986 collective bargaining agreement along with all other items to which the parties previously agreed.

Neil M. Gundermann, Arbitrator

Dated this 16th day
of December, 1986
at Madison, Wisconsin.