STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of DOUGLAS COUNTY (PARAMEDICS) To Initiate Arbitration Between Said Petitioner and WISCONSIN FEDERATION OF TEACHERS, AFT, AFL-CIO	Case 155 No. 40504 INT/ARB-4894 Decision No. 25594-A

APPEARANCES:

William Kalin, Staff Representative, Wisconsin Federation of Teachers, AFT, AFL-CIO, on behalf of the Wisconsin Federation of Teachers

Mark L. Pendleton, Personnel Director, Douglas County, on behalf of Douglas County

BACKGROUND

On February 16, 1988, Douglas County (Paramedics) (hereafter "the County") and the Wisconsin Federation of Teachers, AFT, AFL-CIO (hereafter "the Union") exchanged initial proposals for a successor agreement to the parties' collective bargaining agreement which expired on December 31, 1987 (hereafter "the prior agreement"). Following their failure to reach agreement, on April 26, 1988 the County filed a petition with the Wisconsin Employment Relations Commission (hereafter "the Commission") alleging that an impasse existed between it and the Union, and further requesting the Commission to initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA). On July 19, 1988, Mary Jo Schiavoni, a member of the Commission's staff, conducted an investigation in the matter and submitted a report advising the Commission that the parties remained at impasse. On July 26, 1988, the Commission concluded that an impasse existed in their collective bargaining on matters affecting wages, hours and conditions of employment of all regular full-time and part-time nonprofessional employees of the Douglas County Ambulance Department, excluding executive managerial, supervisory and confidential employees, and issued an Order requiring that Arbitration be initiated for the purpose of resolving the impasse. On August 8, 1988, the Commission was advised that the parties had selected Richard B. Bilder, of Madison, Wisconsin, as arbitrator, and on August 11, 1988, the Commission issued an order appointing Richard B. Bilder

as the arbitrator to issue a final and binding award in the matter pursuant to Sec. 111.70(4)(cm)6 and 7 of the MERA.

On November 11, 1988, the undersigned Arbitrator met with the parties at the Douglas County Courthouse, Superior, Wisconsin, to arbitrate the dispute. At the arbitration hearing, which was without transcript, the parties were given a full opportunity to present evidence and oral arguments. Post-hearing briefs were submitted by the parties and received by the Arbitrator on December 27 and 31, 1988, and Reply briefs were submitted by the parties and received by the Arbitrator on January 18, 1989.

This arbitration award is based upon a review of the evidence, exhibits and arguments, using the statutory criteria set forth in Section 111.70(4)(cm)6 of the MERA.

ISSUES

The parties are in agreement that the successor agreement should have a term of two years, commencing January 1, 1988 through December 31, 1989, and have reached agreement on various other matters. The issues which have not been resolved voluntarily by the parties, and which have been placed before the Arbitrator, are as follows:

1. Wage Increase and Compensation. The County proposal is:

   Effective January 1, 1988, 3% increase in base wage.
   Effective January 1, 1989, 3% increase in base wage.

   Appendix A:
   Effective 1988, revise: "$1595.47" to "$1145.04".
   Effective 1989, revise: "$1145.04" to "$1179.36".
   Revise third sentence: "nine compensatory days" to "6 1/2 compensatory days".

   The Union proposal is to revise Appendix A, Pay Schedule:

   Probationary Rate 10% less

January, 1988	July, 1988	January, 1989
$1784.00/month	$1838.32/month	$1947.00/month

   Earned days compensation shall be increased by same percentage as the wage rates. The 1988 lump sum payment shall be a proration of the January 1, 1988 and July, 1988, rate increases.

   Earned Days, 1988 = $1668.86
   Earned Days, 1989 = $1767.49

2. Retirement. Article 24 of the prior Agreement provides that the County will contribute to the Wisconsin Retirement Fund the Employer's share in full and that it

will also contribute on behalf of each employee an amount not to exceed 6% of the first $25,000 during 1986 and 1987 of the employee's annual income. The County proposes that this salary cap for the County's payment of the Employee's share of retirement contribution be increased by $2000 to $27,000. The Union proposes that the cap be increased by $3500 to $28,500.

3. Longevity. The County and Union agree on new figures to replace the schedule of longevity pay in Article 40 of the prior Agreement, but disagree on the effective date. The County proposes that the new schedule become effective on July 1, 1988. The Union proposes that it become effective January 1, 1988.

4. Pay During Negotiations. Article 2.C of the prior Agreement provides that "for time spent in negotiations the County agrees to pay for one-half (1/2) the wages lost due to Committee attendance. The Union is to pay the balance." The Union proposes that Article 2.C be amended to read: "For the time spent in negotiations, which are mutually scheduled, the County agrees to pay the wages of any one (1) employee on the negotiations team so that he/she will suffer no loss in wages." The County proposes no change in the prior Agreement in this respect.

5. Dismissal. Article 3 of the prior Agreement, which deals with "DISMISSAL", provides that: "The Committee agrees that it will act in good faith in the dismissal of any employee", and provides for a review of dismissals under the Grievance Procedure provided in Article 4. The Union proposes that Article 3 be amended to read: "Dismissal: Employees beyond the probationary period shall not be discharged, disciplined or suspended except for cause." The County proposes no change in the prior Agreement in this respect.

6. Court Duty. Article 34 of the Prior Agreement provides that "Where an employee is expected to appear in Court on his day off, he shall be compensated at his regular rate of pay, but not to exceed eight (8) hours in any one (1) given day. Where Court has adjourned or rescheduled and no notification has been received by said employee informing him not to appear, said employee shall be entitled to a minimum of Five Dollars ($5.00) for each appearance." The Union proposes that this provision be amended to change "five dollars" to "four hours pay". The County proposes no change in the prior Agreement in this respect.

DISCUSSION

I. WAGE INCREASE AND COMPENSATION

The Union's Position

The Union argues that the Arbitrator should accept its proposal because:

1. The "lawful authority of the municipal employer" criterion favors selection of the Union's final offer. The County's salary proposal, which would reduce the payment in either wages or compensatory time from nine days (which the employees actually work but are not compensated for during their regular pay periods) to six-and-one-half days, would not pay the bargaining unit members for two-and-one-half days per year that they actually worked. This is not only unheard of in labor relations, but, due to the intent and stated reasons (both verbal and in writing) by the employer for making the proposal, places the employer in violation of the 1985 amendments to the Fair Labor Standards Act (FLSA). Five employees, or over 27% of the eighteen members of the bargaining unit, will experience a decrease in compensation if the County's final offer on earned days is implemented, and all bargaining unit members will receive less of an increase than any of the other County employees that have settled for 1988-89; this is based on the County's almost dollar-for-dollar offset proposal due to the overtime provision of FLSA.

2. The County does not lack the financial ability to implement either the County or the Union's offer; the settlement with the paramedics will make no appreciable difference in the County mill levy.

3. Consideration of historical wage relationships should take account of the fact that, in 1982, the bargaining unit agreed to a pay reduction to help the County out of financial problems, whereas other units received a 7% salary increase; the unit has yet to receive the catch-up necessary to bring them into line with the relationship with comparable units that existed prior to 1982; acceptance of the Union's proposal would advance that cause and eliminate the internal dissension which has existed since 1982.

4. Since other counties in the state do not provide paramedic services, but whose citizens have the service provided through city fire departments, it is most appropriate to look, for external comparables, to cities comparable to Superior and its surrounding area; a comparison of salaries for the comparable paramedic units in these nine cities show that their average salaries for 1988 exceed

even the Union's 1989 salary offer, and that the Union's offer is the most reasonable. In contrast, the County's set of external comparables do not contain employers with employees performing similar services to those of the Paramedics, and presents no evidence on wage comparisons with other paramedics; in fact, the County's exhibits present only percentage settlements rather than wage rates.

5. The County's offer is not consistent with settlements with other county bargaining units. While six other units have settled for 3% in 1988, only three units have settled for 3% in 1989. Moreover, the County has not offered the paramedics unit a 3% salary increase for 1988; it has offered only a 0.77% salary increase for that year. Under the County's proposal, over the two year period, the paramedics will receive only 3.79% whereas other County units will receive 6.09%. Finally, no other County unit has been asked to work hours and not be paid for these hours worked.

6. The Union's offer more closely reflects the consumers price index (or cost-of-living increase), than does the County's offer.

7. The County's method of total costing, or providing cost-impacts for, each final offer is of little value unless one or both of the parties is making a comparison with the total settlement costs of comparable employee units, which neither party has done here.

The County's Position

The County argues that the Arbitrator should accept its proposal because:

1. The set of external county comparables suggested by the County are more appropriate than the list of selective municipalities suggested by the Union, which are statewide, geographically distant and not comparable, and the County's wage offer of 3% is closer to the pattern of settlements in these comparable counties than is the Union's offer. The County argues, moreover, that the compensation rates used by the Union for its list of comparable cities are actually for City employees primarily in the firefighter classification, and that the population comparisons it gives are inaccurate.

2. As shown by both the County's and Union's exhibits regarding the County's settlements with its other bargaining units, the County's wage offer of 3% is closer to these other internally comparable settlements than is the Union's offer of about 6% for each year. Even if the Union's computation method of deriving a two-year total

percentage lift (which shows the County's final offer as being a 3.79% increase over two years as compared with a 6.09% increase for all other County units), then the Union's final offer over the two years would be 12.43%; this would be 6.34% more than other county units, or more than double what other County employees have received, whereas the County's final offer is only 2.3% less than other county units will receive.

3. Given the current tax situation in Douglas County (i.e. a 46% tax increase in 1989), the statutory criterion of "interest and welfare of the citizenry" is better served by the County's final offer than by the Union's, especially when there is virtually no employee turnover in the unit.

4. The County's method of costing each final offer is more comprehensive than is the Union's method, since the Union's method not only excludes such important factors as health insurance premium increases, retirement contributions and Fair Labor Standards Act, but also the cost impact of increasing the longevity payments. This method shows that, under the County's proposal, the Paramedics overall compensation will still result in a substantial wage increase.

5. The historical wage relationships, including those between the Paramedics and other internal health service positions, Douglas County Deputies and City of Superior Firefighters, is better maintained by the County's final offer. Under the Union's final offer, the Paramedics would, for the first time, earn more than the positions stated above, thus causing internal dissension and likely early impasses in future bargaining concerning other units. The County believes that in order to properly review the historical wage relationships, an annual or even monthly comparison of wages is most appropriate, rather than the hourly comparisons used by the Union, which have no historical or arbitral support.

6. Through the widespread list of other voluntary settlements of 3%, the County has established that the "Cost of Living" factor, which is often measured by the settlement pattern, favors the County's final offer of 3%. The County objects to the Union's submission in its brief of new evidence relating to the December 1988 Consumer Price Index after the record in this case was closed.

7. As the County's exhibit on overall compensation and related cost-impact of both final offers indicates, the overall compensation of the bargaining unit members is increased by both final offers; however, previous arbitration decisions favor the County's final offer, whereas the Union's final offer lacks both arbitral

support and valid documentation (e.g. in its costing method).

8. The Union has failed to present evidence or justification that a compelling need exists that would support either a "catch-up" argument or its proposal for a "split-in-wages". In particular, it is impracticable to try to compare the present compensation issue to the 1982 labor agreement in which the lump sum payment and earned days provision was originally implemented; the time span is too long and the unit has undergone too many changes for comparisons to be meaningful. The County contends that the Union's statement that all units other than the paramedics received a 7% increase in 1982 is unsubstantiated and incorrect.

9. Contrary to what the Union suggests, the County's proposal is not in violation of the FLSA. The County's proposal does not reflect any "dollar for dollar" offset due to the overtime provisions of the FLSA. Instead, the proposed reductions are the result of complex negotiations and bargaining under the County's final offer; indeed, under the stipulated items, each employee will be the beneficiary of increased compensation both generally and also as a result of the FLSA overtime mandates, and they will continue to benefit for years to come. Moreover, statements by County negotiators regarding the FLSA overtime pay obligations, which could properly be taken into consideration in arriving at a negotiated wage rate and benefit proposal and increase, were made in the course of settlement negotiations and should be taken in context; negotiators should be free to make statements in such negotiations.

10. The Union's allegations that, under the County's proposal, the County would not be paying the employees for 2.5 hours of work is false. The hourly rate of compensation, as well as the overtime rate, has never included the lump sum payment as part of the hourly rate computations; the actual application or payment of the lump sum has been in addition to wages already earned based on a 56-hour work week.

11. A comprehensive analysis clearly shows that the County's final offer is more reasonable than is the Union's final offer.

Discussion

At the threshold of discussion of the wage and compensation, it is necessary to address the parties' differences as to what their respective wage and compensation offers amount to, and how they should be compared.

The Union argues that the County's offer is effectively only 0.77% for 1988 and 3% for 1989, or a total of 3.79% for the two years. This is because the County's proposal, while giving a 3% wage increase in 1988, at the same time also significantly reduces the end-of-the-year lump sum (compensatory time) payment, which has been included in Appendix A as part of the total compensation package since 1982; this proposed reduction in lump sum payment is $416.11, or 2 1/2 compensatory days. The Union's position is that the Arbitrator should not pay any attention to total compensation figures in this arbitration, since all County bargaining units get similar fringe benefits, and neither internal or external comparison figures based on total compensation have been presented by either party.

The County argues that the Arbitrator should not only give weight to the actual wage increases of 3% per year or, 6.12% for the two years which it proposes, but should consider total compensation received by the bargaining unit members under its proposal, which significantly adds to the benefits they will receive. Moreover, it points out that, on the face of the Union's offer, the increases it proposes amount to a 6.28% total lift in 1988 and a 5.91% in 1989, or a total wage increase over the two years of 12.43%. Indeed, the County argues that if total compensation and fringes, including longevity, are included, the increase over the two years under the Union's proposal will be 15%.

The Arbitrator agrees with the Union that, in view of the absence of equivalent total compensation figures for other internal and external comparables in this arbitration, the Arbitrator will have to rely principally on the wage and lump sum payment figures, as reflected in the proposed amendment to Annex A, set forth in the two offers. The Arbitrator also agrees with the Union that the County's proposal effectively reduces the County's proposed increase for 1988 to .67%, or a total of about 3.8% for the two years. On the other hand, the Arbitrator accepts the County's argument that, even under the method of costing the Union suggests, the Union's proposal amounts to an increase of over 6% for 1988 and almost 6% for 1989, or a total of about 12.4% for the two years. Consequently, the Arbitrator will generally employ the above figures in the ensuing analysis.

The arguments of the parties concerning the wage and compensation issue are lengthy and complex, and appear best dealt with through a <u>seriatim</u> discussion of the various statutory criteria:

a. <u>The lawful authority of the municipal employer</u>. The Union argues strongly that the Arbitrator should accept its offer because the County's offer would violate the non-discrimination provisions of the FLSA. These provisions preclude any reduction in regular pay or fringe benefits by an employer in order to reduce or to eliminate the cost of compliance with the overtime pay requirements of the Act. The Union contends that the County

is illegally proposing in its offer to reduce the lump sum (compensatory day) payments of paramedics in order to make up for the "windfall" they were provided by the post-prior agreement statutory requirement that certain wages (which had already been negotiated and agreed in the prior Agreement to be paid at straight time) be paid instead at time-and-a-half. The Union points to certain statements by the County's negotiator in negotiations which it claims indicate that he intended to make up for this increase, and further claims that the County proposal would amount to a "dollar-for-dollar" reduction on account of this statutorily required increase. It argues that, whatever the average figures may be as to FLSA compensation, the County's proposal to reduce the lump sum payment would result in at least five employees suffering a reduction in pay.

The County argues that its proposed reduction in the lump sum (compensatory day) payment would not constitute any illegal discrimination under the FLSA, that it may legally take such statutorily required increases in total compensation (which here increase an employee's overall compensation by an average of $647 annually) into consideration in determining its position and proposals in future collective bargaining negotiations, that its proposals would in any event still result in increased compensation by bargaining unit members and retention of some FLSA windfall, and that its position in this respect is supported by recent arbitral authority, citing the opinion of Arbitrator William Petrie in City of Watertown and Watertown Fire Fighters, Local No. 877, Dec. No. 23156-A (June 26, 1986).

This issue is complex and important. However, on balance, the Arbitrator is in agreement with the conclusions of Arbitrator Petrie in the City of Watertown case. As the Arbitrator reads that opinion, Arbitrator Petrie decided both that it is appropriate for an arbitrator to address this question of the effect of the FLSA, and that it is not in itself a violation of the statute for a municipality, in negotiating a collective bargaining agreement, to take increased costs due to compliance with the FLSA into consideration in deciding upon its negotiating positions and offers. The Arbitrator has considered the Union's arguments that this decision is distinguishable, but is of the opinion that the reasoning of Arbitrator Petrie is applicable to the situation here under discussion. In the Arbitrator's view, such a negotiating proposal, even if affected by cost considerations arising from FLSA requirements, does not in itself amount to the type of discriminatory unilateral reduction in wages or benefits which the FLSA would condemn; in particular, the Arbitrator is not persuaded that the County's offer in these negotiations could reasonably be considered to constitute retaliation for the employees' assertion or receipt of FLSA coverage, or that it could be considered a unilateral reduction of regular pay or fringe benefits that is intended to nullify the application of the FLSA to the paramedics. Indeed, any final agreement embodying the County's proposal would be the result, not of unilateral action by the County, but of either

negotiation, or, in lieu of voluntary agreement, as is here the case, arbitration. Consequently, the Arbitrator does not accept the Union's argument that the County's offer must be rejected as illegal under the FLSA, and that the lawful authority of the employer criterion definitively favors the selection of the final offer of the Union.

b. Stipulations of the Parties. This factor would not appear significant with respect to the wage and compensation issue.

c. Interest and welfare of the public, and financial ability. The County argues that its taxpayers in 1989 have faced an unprecedented 46% increase in their tax levies, and that the Union's proposal would excessively add to that tax burden. The County also points out that there has been little turnover in the Paramedic unit, and thus there is no need to give an unusually high increase in compensation in order to retain a high level of service. The Union argues that the large increase in County taxes is due to a special situation regarding County nursing homes and the using up of a previous budget surplus, and consequently, that the rise in taxes does not reflect any lack of financial ability by the County. The Union argues, further, that the additional increase its proposal would involve would have an insignificant effect on the tax levy.

The Arbitrator is not persuaded by the evidence either that there is any significant financial constraint on the County's ability to pay the increases the Union proposes, or that there is any compelling need to provide unusual increases to the paramedics in order to assure the continuation of needed services. Consequently, the Arbitrator is of the opinion that this factor should have little effect on his decision one way or the other.

d.(1) Internal Comparables. The evidence shows that wage settlements have been reached between the County and eight of its ten other bargaining units for 1988, all at 2% or 3%, and with three of these units for 1989 at 3%. The County argues that its proposal is closer to these settlements than is the Union's proposal. The County argues further that acceptance of its proposal would maintain a five year historical pattern of similar internal wage settlements as among the various units within the County, all generally in the range of 3-4% in recent years. Moreover, it would also maintain an historic pattern of wage differentials and relationships as among the paramedics, other health workers, deputies and firefighters. In contrast, acceptance of the Union's proposal would distort these historic relationships and create dissension and problems in future negotiations. For example, over the past five years, paramedics have earned about the same as a public health nurse but somewhat less than a deputy or firefighter; the Union's proposal would reverse these relationships.

The Union points out that the Paramedics will be receiving only 0.77% in 1988 under the County's proposal, much less than the 3% other units will receive. Moreover, it argues that the paramedics voluntarily accepted a lesser wage settlement in 1982 than did other units (which the Union claims received 7%), and that they are now entitled to a "catch-up"; thus, the only historic relationships which should count are those prior to 1982. The County responds on this point that the Union has failed to present persuasive evidence of such prior wage relationships or that the paramedics fell substantially behind in 1982 and it denies that other units received 7% increases at the time; moreover, the County argues that it is impractical after so many years to try to deal with any such problems through arbitration rather than negotiation.

The evidence is persuasive that the general trend of settlements between the County and other internal bargaining units is 3% per year or 6.09% for the 2 years of the Agreement. Using the figures of 0.77% plus 3%, or 3.79% total for the County's 2-year offer and about 6% plus 6%, or 12% total for the Union's 2-year offer, it appears to the Arbitrator that the County's offer is closer to the pattern of other internal settlements than is the Union's; in this respect, the Union's proposal for more than 12% is, in the Arbitrator's opinion, well above the norm. Even taking the County's offer for 1988 as 0.77%, the difference between this figure and 3% is 2.23%, whereas the difference between the Union's offer of 6.28% in 1988 and 3% is 3.28%. Moreover, the Arbitrator is persuaded by the evidence that the County's offer is more likely to preserve, rather than disrupt, historic patterns of wage relationships between the paramedics and County employees in other related occupations than is the Union's.

As regards the Union's claim to a "catch-up", the Arbitrator accepts the evidence that members of the bargaining unit showed great restraint in their demands in 1982. However, beyond this, the evidence is not clear, particularly as to the unit's motivation, the extent of any increase relinquished, the makeup of the unit at that time and its wage structure as compared with other units, any commitments made by the County, and so forth. In particular, the Arbitrator does not believe the Union has presented persuasive evidence as to how much, if any, "catch-up" is justified, or of a compelling need for changing a post-1982 five-year pattern of wage relationships as among these related positions. If some adjustment is in fact appropriate in this respect, it seems better achieved by the parties themselves through their own negotiation than by an arbitrator on the basis of incomplete and inadequate information.

Consequently, in the Arbitrator's opinion, the Internal Comparables more strongly support the County's proposal than they do the Union's.

d.(2) External Comparables. No other County near Douglas County has a unionized full-time paramedic unit. The County argues that the appropriate comparables are employees in related professions who perform similar duties, such as deputies and firefighters, in nearby counties. The counties it proposes, which it argues have traditionally been considered comparable to Douglas County by other arbitrators, are Ashland, Bayfield, Barnett, Iron, Sawyer, Taylor and Washburn. It presents evidence that wage settlements in these other comparable counties have tended to be in the area of 3% for 1988; it also presents evidence that City of Superior settlements have been for a 2% increase. The Union attacks the County's comparables on the grounds that they do not actually cover paramedics and do not present actual wage levels, and argues that the appropriate external comparables are instead a group of cities statewide that have paramedic units--Beloit, Chippewa Falls, Fond du Lac, Green Bay, Greenfield, Janesville, Oshkosh, Waukesha and West Allis. It presents evidence that the wage levels in these other cities for the most part greatly exceed even the Union's 1989 offer. The County replies that the Union's statewide list is inappropriate and that the Union's figures are in any event inaccurate.

In the Arbitrator's opinion, the County's list of nearby counties is more appropriate for use in this arbitration as External Comparables than is the Union's list of statewide cities. The County's evidence that other arbitrators have customarily used these other geographically-proximate counties as comparables is persuasive; in contrast, the list of cities statewide presented by the Union does not seem to the Arbitrator to be as closely comparable, since, as the County points out, they are in many cases distant, and are subject to different labor markets, economic factors and metropolitan influences. The Union's proposal of over 6% for 1988 is more than double the wage settlements of about 3% reached in most of these counties. While the County's proposal is lower than these comparable units for 1988, it is in the Arbitrator's opinion again somewhat closer to them than is the Union's offer. Moreover, if settlements for similar 3% average increases are reached for 1989, for a total of a little more than 6% for the two years, the divergence from comparable settlements of the Union's proposal for a more than 12% increase for the two years will become even greater.

e. Cost-of-Living. The parties presented little evidence or argument with respect to this factor. The Union in its brief presented figures showing a CPI rise of 4.44% from December 1986 to December 1987 and 5% from December 1987 to December 1988. The County argued that the pattern of wage settlements, at about 3%, was the best measure of this factor, and objected to the Union's evidence as introduced after the close of hearing. The Arbitrator does not regard this factor as definitively favoring the proposal of either party.

f. Overall compensation. The County argues that the Arbitrator, in considering the cost-impact of its proposal, should take into account the fact that employees will also receive increased longevity payments and an additional $647 annual compensation each as a result of the FLSA. According to the County's figure on total cost-impact of the two final offers, (excluding impact of FLSA), the County's offer represents an increase of 2.5% for 1988 and 5.1% for 1989, or a total of 7.6%, and the Union's offer represents an increase of 5.1% in 1988 and 9.3% in 1989, for a total of 15%. The Union, as previously indicated, argues that such figures are not useful, since the unit's fringes are similar to those of other internal units, and neither side has submitted evidence permitting useful comparisons with respect to external comparables.

While overall compensation figures may certainly often be useful and significant, the Arbitrator is of the opinion that it is unnecessary in this case to enter into a complex discussion as to the pros and cons of a resort to this measure. However, to the extent that they are appropriate and useful, they would appear to lend support to the County's proposal.

g. Changes in Circumstances. This factor does not appear to be relevant.

h. Other Factors. The Union argues that the County's proposal, by reducing the amount of the lump sum (compensatory day) year-end payment in Annex A, would leave unit members unpaid for 2 1/2 days, which it says is improper and unprecedented. The County responds that the unit members have always been fully paid for all of their work, and that the lump sum payment has never been considered as allocated on an hourly-or-days-work basis. Consequently the proposed downward adjustment in the lump sum payment in no way denies the employees wages for work done.

Based on explanations at the hearing and on the briefs, the Arbitrator's understanding of the lump-sum payments arrangements in Annex A conforms to that of the County rather than that of the Union--that is, that the actual application or payment of the lump sum has been in addition to wages already earned based on a 56-hour work week. Consequently, the County's proposal to reduce this payment, while certainly affecting the total compensation package, is not, in the Arbitrator's opinion, improper as requiring "work without pay".

To sum up on the Wages and Compensation issue, the Arbitrator believes that, on balance, both the Internal Comparables and the External Comparables tend to support the County's wage and compensation proposal over that of the Union. Consequently, since the Arbitrator does not consider the other statutory factors as strongly favoring either side or equally significant as they affect this issue, the Arbitrator is of the

opinion that the County's proposal on wages and compensation is preferable.

II. RETIREMENT

Positions of the Parties

The County argues that the cap on County contributions of the employee's share of retirement should be increased only $2000 to $27,000 because this covers employees in the bargaining unit; it presents evidence that it has settled with three other units for a $1500 increase in retirement cap; the $2000 increase it proposes for the Paramedics exceeds these and equals its settlement with the Sheriffs Unit. In contrast, the $3500 increase the Union proposes would be completely out of line with these other settlements. The Union argues that the County has granted a cap of $28,500 to the Douglas County Sheriff's Department effective January 1, 1988.

Discussion

Neither of the parties presented detailed arguments on this issue, which both appear to consider as minor. The internal comparables appear to lend support to the County's lower proposal, and the Union has presented no persuasive reasons why it should get a greater increase than other units. Consequently, in the Arbitrator's opinion, the County's proposal on this issue is preferable.

III. LONGEVITY

The parties are agreed on the amount of longevity increases, but disagree as to the effective date for such increases; the County proposes that the new schedule become effective July 1, 1988 and the Union proposes that it become effective January 1, 1988.

The parties have not, in either oral hearing or briefs, presented detailed arguments for their respective positions, and appear to consider it a minor issue. Absent persuasive arguments either way, the Arbitrator regards the parties' positions as evenly balanced on this issue.

IV. PAY DURING NEGOTIATIONS

Positions of the Parties

The Union argues that the agreement should be amended to require that the County pay the wages of one employee on the negotiating team for time spent in negotiations because this reflects an informal practice of the parties. The County disputes the existence of any such prior practice. Moreover, it

argues that any such change is best left to negotiation by the parties and, absent evidence of compelling justification by the Union, it is inappropriate to import such a provision into the Agreement through arbitration.

Discussion

The parties again presented little argument or evidence on this issue and clearly regarded it as subsidiary to the compensation issue. In the Arbitrator's opinion the Union has failed to show persuasive evidence of a past practice in this respect or to establish any persuasive justification for its proposal to change the existing language of the Agreement. Consequently, the Arbitrator is of the view that the County's proposal that this provision be left unchanged is preferable.

V. DISMISSAL

Positions of the Parties

The Union argues that similar language requiring that employees be discharged, disciplined or suspended only "for cause" is found in most of the other Agreements between the County and other bargaining units and is consistent with usual practice in collective bargaining agreements. The County argues that problems in this respect have rarely arisen (there has been only one instance of discipline in the unit in recent years and the Union eventually dropped its complaint in that respect), and that, absent evidence of compelling need by the Union, such additional language should be left to negotiation between the parties rather than imported into the Agreement by an arbitral award.

Discussion

As the County indicates, there is little evidence that the absence of specific language in the Contract requiring that discipline or dismissal be only "for cause" has thus far occasioned any significant problems for the parties in practice. However, the Union's evidence regarding the existence of similar language in agreements between the County and other bargaining units is very persuasive. The Arbitrator also takes arbitral notice that such language occurs frequently in public sector collective bargaining agreements and is viewed by bargaining units as of significance. The County has not offered any substantive explanation of why it has objected to inclusion of such a provision. In this context, and particularly in view of such provisions in other comparable County agreements, the Arbitrator is of the view that, on this issue, the proposal of the Union is preferable.

VI. Court Duty

Positions of the Parties

The Union argues for its proposed increase in minimum pay for canceled court appearances as more in line with similar provisions in the County's agreement with other County and city units where court testimony is required, and as generally more reasonable than the present provisions. The County argues that the evidence shows that this issue has rarely caused problems in practice (there have apparently only been a few cases in which paramedics have had to appear in court and had the hearing canceled) and that this is better left to future negotiations between the parties.

Discussion

There is little evidence indicating that this has been a significant problem or that there is a compelling need for change in the Agreement in this respect. Consequently, the Arbitrator is of the opinion that the County's position on this issue is preferable.

CONCLUSION

The Arbitrator has concluded that the County's proposal is the more reasonable with respect to the issues of Wage Increase and Compensation, Retirement, Pay During Negotiations, and Court Duty; that the Union's position is more reasonable with respect to the issue of Dismissal; and that the parties' positions are evenly balanced on the issue of Longevity. Consequently, particularly since the issue of Wage Increase and Compensation is considered both by the parties and by the Arbitrator as the most significant, the Arbitrator finds that the County's final offer is the more reasonable.

AWARD

Based upon the statutory criteria contained in Section 111.70(4)(cm)(7), the evidence and arguments of the parties, and for the reasons discussed above, the Arbitrator selects the final offer of the County, and directs that it, along with all already agreed upon items, and those terms of the predecessor Collective Bargaining Agreement which remain unchanged, be incorporated into the parties 1988-89 collective bargaining agreement.

Richard B. Bilder

Madison, Wisconsin
February 16, 1989

Richard B. Bilder
Arbitrator