In the Matter of the Petition Between:

OUTAGAMIE COUNTY PROFESSIONAL EMPLOYEE UNION
(Accreted Employees) LOCAL 2416, AFSCME, AFL-CIO

to Initiate Interest Arbitration
Between Said Petitioner and

OUTAGAMIE COUNTY

Decision No. 28777-A

Appearances: Richard C. Badger, Staff Representative,
for the Union
Roger E. Walsh, Attorney-at-Law, for the Employer

Outagamie County Professional Employee Union (Accreted Employees) Local 2416, AFSCME, AFL-CIO, hereinafter referred to as the "Union", filed a petition on August 15, 1994, with the Wisconsin Employment Relations Commission, hereinafter referred to as the "Commission", wherein it alleged that an impasse existed between it and Outagamie County, hereinafter referred to as the "Employer", in their collective bargaining. It requested the Commission to initiate arbitration pursuant to sec. 111.70(4)(cm) of the Municipal Employment Relations Act. A member of the Commission's staff conducted an investigation in the matter and submitted his report to the Commission.

The Union is a labor organization maintaining its offices at 2791 Village Lane, Oshkosh, Wisconsin and the Employer is a municipal employer maintaining its offices at the Outagamie Courthouse, 410 S. Walnut Street, Appleton, Wisconsin.

The Union is the exclusive collective bargaining representative of certain employees of the Employer in the collective bargaining unit consisting of all professional employees of Outagamie County in the Social Services Department, Office of Family Court Commissioner; and in the following divisions of the Department of Human Services: Mental Health and Alcohol Drug Abuse, Developmental Disabilities Unit of the Aging and Long Term Support Division; but excluding department heads, elected and appointed officials, supervisors and confidential employees. There is no collective bargaining agreement covering the wages, hours and working conditions of the employees involved in this dispute.

On June 20, 1994, the parties exchanged their initial proposals on matters to be included in an existing collective bargaining agreement which would be applicable to the employees accreted to it. The parties met on two occasions in efforts to reach an accord and the Union filed the instant petition. A member of the Commission's staff conducted an investigation on October 26, 1994 and it reflected that the parties were deadlocked in their

negotiations. By June 12, 1996 the parties submitted their final offers. Thereupon, the investigator notified the parties that the investigation was closed and advised the Commission that the parties remained at impasse. The Commission certified that the conditions precedent to the initiation of arbitration with respect to wages, hours and conditions of employment for a new collective bargaining agreement had been met. It ordered that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse and directed the parties to select an arbitrator and notify the Commission.

On July 29, 1996, the Commission was advised that the parties had selected Zel S. Rice II as the arbitrator. It appointed him as the arbitrator to issue a final and binding award pursuant to sec. 111.70(4)(cm) 6 and 7 of the Municipal Employment Relations Act to resolve said impasse by selecting either the total final offer of the Union or the total final offer of the Employer. Pursuant to said order the arbitrator conducted a hearing at Appleton, Wisconsin on September 24, 1996.

The final offer of the Union, attached hereto and marked "Exhibit A", proposed that accreted employees continue to be compensated for stand by duty at the rate of $157.50 per weekend, $40.00 per week night and $60.00 per holiday and employees would not receive any additional compensation for any call-outs or phone calls that might occur during such stand-by duty. It proposed that the accreted employees would continue to receive 11 holidays, 9 specified holidays and two floating holidays per calendar year. The Union's proposal provided that accreted employees would continue to receive two weeks of vacation after one year of continuous service and four weeks of vacation after twelve years of continuous service. It proposed that in addition to the full payout of unused accumulated sick leave on retirement or death, accreted employees would also receive a 50% payout of accumulated sick leave upon termination in good standing. The Union proposed that the accreted employees continue to receive funeral leave of three work days during the period between the date of death and ending with the second day after the funeral for the following relatives: spouse, child, parent, step-parent, step-child, brother, sister, grandparents, father-in-law, mother-in law, sister-in-law, brother-in-law, step-brother and step-sister. The Union's proposal would provide life insurance benefits for the accreted employees of 1 and 1/2 times the amount of annual salary to a maximum of $50,000. It proposed that the step an accreted employee would be placed on a salary schedule which would be based on a 1996 salary under the non-represented employee's salary schedule and the 1995 salary under the Local 2416 salary schedule. The Union's proposal provided that those employees hired prior to the date of the arbitration award would have the current stand-by pay, holidays, vacation, funeral leave and payout of unused sick leave "grandfathered."

The Employer's proposal, attached hereto and marked as "Exhibit B", proposed that employee's accreted into the unit would be paid stand-by pay on the same basis that other employees in the Local 2416 unit are paid stand-by, i.e., $125.00 per week (effective December 26, 1996), $135.00 per week (pro-rated for periods of less than 1 week) and in the event that an employee is called out or is involved in a phone call of 30 or more minutes while on such stand-by duty, the employee shall receive overtime pay. It proposes that the accreted employees would receive the same holiday provisions that are applicable to all other employees in the bargaining unit, i.e., 10 holidays, 9 specified holidays and 1 floating holiday per calendar year. It proposed that the accreted employees receive the same vacation provisions of one, two and four weeks of vacation that are applicable to all employees of Local 2416 bargaining unit, i.e., one week of vacation after one year of continuous service, two weeks of vacation after two years of continuous service and four weeks of vacation after thirteen years of continuous service. The Employer's proposal provided that accreted employees would receive the same sick leave payout that are applicable to all other employees in the bargaining unit, i.e., full payout of unused accumulated sick leave upon retirement or death only. It proposed that the accreted employees receive the same funeral leave proposal that is applicable to all other employees in the bargaining unit, i.e., funeral leave not to exceed three regular work days between the period beginning the day of death and ending the day of the funeral for the funeral of employee's spouse, parent, child, parent-in-law, step-parent and step-child and funeral leave not to exceed two regular work days during the period between the day of death and ending with the day of the funeral for a brother or sister and funeral leave of one work day on the day of the funeral for the employee's brother-in-law, sister-in-law, grandparent or grandchild. The Employer proposed that the accreted employees be given the same life insurance benefits provided to all other employees in the bargaining unit, i.e., those employees with an annual salary of less than $5,000 would receive coverage of $3,000, those employees with an annual salary between $5,000 and $10,000 would receive $5,000 coverage, those employees with an annual salary between $7,500 and $10,000 would receive $8,000 in coverage, those employees with an annual salary between $10,000 and $15,000 would receive $10,000 coverage, those employees with an annual salary between $15,000 and $17,000 would receive coverage of $15,000, those employees with annual salaries between $17,000 and $20,00 would receive coverage of $18,000 and those employees with annual salaries of $20,000 or more would receive coverage of $20,000.

The Employer proposed that the step that an accreted employee would be placed on the salary schedule would be based on a 1995 salary under the non-represented employee's salary schedule and a 1995 salary under the Local 2416 salary schedule.

The major difference between the offers of the two parties on

all issues except the issue of step placement is whether the accreted employees should be covered by the benefit provisions that are applicable to all other employees in the bargaining unit or whether current accreted employees and similarly classified employees hired prior to the date of the arbitrator's award should be allowed to have the benefits that some of them had when they were unrepresented employees of the Employer.

Shortly after the Union was certified as the exclusive bargaining agent for the accreted employees, the parties began negotiations to include them within the 1994-1995 collective bargaining agreement that covered the other employees represented by the Union except for the issues in dispute in this proceeding. The parties reached an agreement that the terms of the 1994-1995 contract would be applicable to these accreted employees except as modified by tentative agreements which included a separate salary schedule for the accreted employees for calendar years 1994 and 1995. The Employer withdrew its original agreement relating to the step placement procedure initially contained in the tentative agreements and that also became an issue in the dispute. In addition to the step placement procedure there are six benefit areas in dispute between the parties. The Employer proposes that the accreted employees receive the same benefits provided to all other employees in the bargaining unit and the Union proposes that the accreted employees continue to be able to enjoy the benefits they had as non-represented employees. The Employer's final offer provides that the effective date for the accreted employees to come under the provisions of the 1994-1995 agreement between the Employer and the Union is the day after the date of the interest arbitration award in the proceeding. The Union proposes that all employees currently on the payroll and those that are hired prior to date of the arbitration award would continue to receive the additional benefits for as long as they remain employees in the bargaining unit.

The Union proposes a primary comparable group consisting of the counties of Brown, Manitowoc, Sheboygan, Fond du Lac and Winnebago. The secondary comparables proposed by the Union would include the counties of Waupaca, Shawano and Calumet. The Employer proposes an internal comparable group consisting of those employees represented by Local 980 of AFSCME, Teamsters Local 563, Professional Police Association, Highway Department Employee's Union Local 2046 AFSCME and all of those employees in Local 2416 AFSCME except those employees accreted to the bargaining unit.

ISSUE #1:

FLOATING HOLIDAYS

The Employer is proposing that the accreted employees receive the same number of holidays as all other employees covered by the collective bargaining agreement and in the same manner as all other

employees in the unit. It argues that there is no reason for the accreted employees to enjoy greater benefits than those granted to all of its other employees covered by a collective bargaining agreement. It contends that the additional holidays received by the Professional Police Association are really part of a workweek reduction program and are not part of a holiday provision but are related to a change in the workweek schedule that occurred during the 1990-1992 agreement and the change in the number of days in a vacation week. It contends that the employees covered by the Teamsters unit contract received two extra floating holidays because those employees work a 40-hour week and an 8-hour day work schedule that involves more work days than other employees and that the two additional floating holidays that they receive are part of a workweek reduction and not part of a holiday benefit.

The Union argues that the Employer's contention that the grandfathered holidays for certain investigators and sergeants was a result of the change of the workweek schedule has no merit. It concedes that the schedule for these individuals changed but there was no reduction in the number of hours worked. It takes the position that although those employees receive the full six days off when scheduled to work six days in a row, they also received only four days off when they were scheduled to work four days in a roll and there was no real reduction in the hours worked. The Union asserts that the Teamster's contract not only supports its proposal to grandfather holidays at 11 but would also support a contention to provide 11 holidays because the Employer admits that some Teamster's receive up to 12 holidays because those employees work a 40-hour week and 8-hour days, the same as the Human Services professional. It points out if one converts the extra hours worked by the Human Services professionals as opposed to the social workers, one finds that the professionals work more days per year. The Union argues that in spite of that evidence, its proposal merely grandfathers the additional floating holidays and is more reasonable.

The Employer presents no evidence that would establish why the accreted employees were entitled to the additional floating holidays before they were represented by the Union and why they are not entitled to those same holidays now that they are represented by the Union. It is easy to understand why the Employer would like to have uniform holidays in all of its bargaining units. However, it had no problem with providing the accreted employees with a different level of holidays when they were not represented by the Union. It seems comfortable in providing a different level of holidays to employees in the unit represented by the Teamsters and the unit represented by the Professional Police Association.

Under the circumstances, the arbitrator can find no reason to justify eliminating the holidays that it was willing to give to the accreted employees before they were represented by the Union. Accordingly, the Arbitrator finds the position of the Union with

respect to holidays to be more reasonable criteria than that of the Employer and meets the statutory criteria.

ISSUE # 2:

VACATIONS

The Employer argues that all of the employees in the bargaining unit including all of the other employees in the Local 2416 unit, have the same vacation schedule of one week after one year, two weeks after two year and four weeks after thirteen years. It contends that the Union's proposal for two weeks after one year and four weeks after twelve would make the accreted employees the only group of employees covered by the collective bargaining agreements that would have a higher vacation benefit. The Employer takes the position that there is absolutely no reason for the accreted employees to be granted this more generous vacation benefit.

The Union argues that all of the Employer's represented employees do not have the same vacation schedule. It points out that all of the employees in Locals 2046 and 2416 receive three weeks of vacation after seven years and five years of employment respectively. All of the rest of the employees receive three weeks of vacation after eight years. It concedes that the accreted employees represented by the Union will receive their second and fourth weeks of vacation one year sooner than other internal comparables but that is much less than the three year difference in reaching the third week of vacation that occurs now. The Union points out that there is external support for the grandfathered vacation schedule. In the primary external comparable group, only Manitowoc has a combined Social Services/Human Services unit such as created for the Employer by the accretion of Human Services employees. As often as not, Human Services and Social Service employees in the external comparables receive different vacation benefits. The Union takes the position that even if one considers the accreted employees aggregate total of vacation days alone, the Union's offer is not outside the norm. It asserts that the accreted employees still receive less than the average for the external comparables. The Union points out that when one considers that all future Human Services professional employees will be limited to an aggregate of 215 days of vacation earned after 15 years of service, its offer appears even more reasonable. It argues that when one considers the significantly greater amount of hours worked by Human Services professionals as opposed to the social workers (2,080 hours versus 1,950 hours) as well as the fact that the higher benefits represents the status quo, grandfathering these employee's vacations is the more reasonable proposal.

The arbitrator finds the rationale expressed with respect to the floating holidays to be applicable with respect to vacation. No evidence has been presented that would indicate why the accreted

employees were entitled to a higher level of vacation benefits before they were represented by the Union than they are entitled to since being represented. The desire for a uniform level of vacations for all of the Employer's employees is understandable. However, the Employer never sought to have such uniformity before the accreted employees were represented by the Union and seems comfortable with the fact that even with its proposal, all employees will not have a uniform level of vacation benefits. In the absence of any evidence of some compelling reason, the arbitrator is not inclined to eliminate the benefits that the Employer felt were proper for the accreted employees before they were represented by the Union. Standing by itself the concept of uniformity is not sufficient to overcome the Employer's longstanding determination of the level of vacations that its accreted employees should receive. Accordingly, it finds the position of the Union with respect to vacations to be more reasonable than that of the Employer.

ISSUE #3:

PAYOUT OF SICK LEAVE

The Employer argues that the contracts with AFSCME Local 2455, AFSCME Local 2486 and the social workers represented by the Union all have exactly the same benefits relating to sick leave payout. One hundred percent payout of accumulated sick leave is contingent upon the retirement or death of an employee. It contends that the Teamsters' contract provides for sick leave payout upon retirement at age sixty or over provided that the employee has at least ten years of service or if the employee separates from employment after twenty years of service and the Professional Police contract has the same provision. The Local 980 contract provides for 100% payout of sick leave on honorable separation or death. The Employer argues that the Union's proposal would provide accreted employees with the same 100% payout upon death or retirement but would also provide a 50% payout for anyone who terminates in good standing. The difference between the two offers involves a sick leave payout upon termination in good standing. Three of the four AFSCME units including the unit that represents the accreted employees do not provide for such payout and the Teamster and Police Association units require that the employee have at least twenty years of service to be eligible for a payout of sick leave for termination other than retirement. It contends that there is no basis for the accreted employees to be given a more generous benefit than granted to employees in three of the four AFSCME bargaining units or to the Teamster and Police Association units. The Union argues that employees represented by Local 980 have significantly better sick leave payout than the Union proposes to grandfather for the accreted employees in this case. Those employees have 100% payout upon honorable separation or death. It contends that is considerably better than the continuation of the status quo for the accreted employees which is only 50% payout upon

honorable separation. The Union concedes that the Employer's offer is the minimum provided represented employees but points out that half of the represented units of the Employer receive better benefits than the minimum offered to the accreted employees. It asserts that the Teamsters and Professional Police Association contracts provide sick leave payout benefits significantly better than it proposes for the accreted employees. The Union takes the position that because 50% payout represents the status quo for the accreted employees and future employees would not even have that benefit, there is no reason why the accreted Human Service professionals are now entitled to worse benefits than three of the Employer's six bargaining units.

As stated in the earlier rationale with respect to other issues, the arbitrator is at a loss to understand why the accreted employees should not now receive the same sick leave payout benefits that the Employer unilaterally granted to those same employees before they were represented by the Union. Three out of the Employer's six bargaining units will have a better payout of sick leave benefits than the Union proposes should be retained for the accreted employees. There is no evidence of any circumstance or change of conditions that would justify the arbitrator eliminating the benefits that the Employer had unilaterally chosen to give the accreted employees before they were represented by the Union.

Accordingly, the arbitrator finds the Union's position with respect to payout of sick leave more reasonable than that of the Employer.

ISSUE #4:

FUNERAL LEAVE

All of the employees of the Employer have exactly the same funeral leave provisions. The Union is proposing that the accreted employees have an additional day of funeral leave for brothers and sisters and two additional days of funeral leave for sister-in-law, brother-in-law and grandparents. It also proposes to grant an expanded period during which the funeral leave can be utilized from the date of death through the date of the funeral to the date of death through two days after the funeral. The Employer argues that there is absolutely no reason for the accreted employees to be granted a more generous funeral leave benefit than it granted to all other employees of the Employer covered by the collective bargaining agreements.

The Union concedes that the status quo funeral leave benefit of the accreted Human Services professionals is better than the that provided to the other represented employees of the Employer. It points out that its offer only grandfathers this benefit to the employees hired before the date of this award and future employees

would not have it. The Union takes the position that it would be unfair to take away a status quo benefit in the absence of some change of circumstances. It asserts that the primary external comparables support the more generous funeral leave. The Union points to Brown, Fond du Lac and Winnebago counties that grant three days of leave for deaths of brothers and sisters. Those same three counties, along with Winnebago county allow funeral leave to extend one or two days beyond the internment.

The arbitrator concurs in the Union's position that it would be unfair to take away a status quo benefit without some evidence of a new fact or new situation that would justify it. When the Employer unilaterally determined to give the accreted employee a better benefit than provided to its other employees in bargaining units, there must have been some reason for it. If that reason no longer exists or a new situation has arisen that would change circumstances, the burden was on the Employer to present that evidence. It has not done so and the arbitrator does not feel compelled to manufacture a reason to reduce a benefit that the Employer thought was justified for the accreted employees prior to their being represented by the Union. Accordingly, the arbitrator finds the Union's position with respect to funeral leave is more reasonable than that of the Employer.

ISSUE #5:

LIFE INSURANCE

All of the Employer's bargaining units have a maximum amount of life insurance of $20,000. The Union's proposal would provide a totally different type of life insurance program that granted benefits equal to 1 and 1/2 times the employee's salary to a maximum of $50,000. Based on the 1995 wage schedule attached to the tentative agreement, the minimum amount of life insurance granted to an accreted employee would be $43,000. A community support specialist at the after three year rate or psychiatrist RN rate after the one year rate as well as some other employees would be entitled to a maximum of $50,000 life insurance. Even a new employee hired before the date of the arbitrator's award would continue to receive more life insurance than any of the Employer's other organized employees. The Employer takes the position that there is no reason for the accreted employees to be granted a more generous life insurance benefit than is granted to all other county employees covered by a collective bargaining agreement.

The Union concedes that the accreted Human Service professionals would receive up to $50,000 in life insurance and that would be significantly more than the Employer's other organized employees. However, that would only apply to the grandfathered Human Services professionals. Future employees hired after the date of this award would only be entitled to received up to $20,000. The Union takes the position that Human Service

professionals are among the highest paid employees in the public sector and the accreted employees are by far the highest paid employees of the Employer represented by a labor organization. It contends that this is also true with regard to the primary comparables. The Employer is absolutely alone in providing minimal life insurance for its Human Service professionals. Every single primary comparable provides life insurance based on annual salary and only one of them caps the insurance at $50,000. Even the lowest paid Human Services professional in the primary comparable group starts out at $29,000 and many of the employees make well over $50,000. All future employees of the Employer in the Human Services Department would have a better life insurance coverage if they worked for any one of the comparable counties and that would also apply to some of the accreted employees who would continue to receive the same insurance coverage under the Union's proposal. Again, the Employer has failed to provide any evidence indicating a change in circumstances, working conditions or any other fact that would justify eliminating the life insurance benefit that it unilaterally determined to give to the accreted employees. Those employees are still doing the same work that they were doing before they were represented by the Union and are still occupying the same positions. No circumstances changed for them other than the fact that they are now represented by the Union. That fact, standing by itself, is not a basis for eliminating a benefit that the Employer unilaterally determined to give to the accreted employees the last time that it made an adjustment of their insurance coverage.

Under the circumstances, the arbitrator finds the position of the Union to be more reasonable than that of the Employer.

ISSUE #6:

STAND-BY PAY

Currently the accreted employees are compensated at the rate of the $157.50 per weekend, $40.00 per week night and $60.00 per holidays and employees do not receive any additional compensation for any call-outs or telephone calls that might occur during such stand-by duty. The Employer proposes that employees in the accreted unit be paid stand-by pay on the same basis that other employees in the bargaining unit are paid to stand-by. The social workers receive $125.00 per week and $135.00 per week pro-rated for periods of less than one week. In the event that an employee is called-out or involved in a telephone call of 30 minutes or more while on such stand-by duty, the employee would receive overtime pay. The Employer argues that there is no practical difference between the parties' final offer relating to stand-by pay. It contends that the accreted employees would quite likely receive better benefits under its proposal than under the Union's proposal. The Employer takes the position that under its proposal, the accreted employees would receive the same stand-by pay benefits that is granted to all other employees in the bargaining unit

represented by the Union. It takes the position that it wants to avoid having two types of benefit provisions covering employees in the same bargaining unit. The Employer argues that there may not be any monetary difference between the two proposals and the Union concedes the employees have a chance to make more money under the Employer's proposal than under its final offer on the issue. The Employer contends that while the actual stand-by pay amount is higher under the Union's proposal, there is no additional pay in the event that an employee is called out while on stand-by duty. The Employer's offer would pay employees overtime at the straight time rate for time spent on call out during the employee's stand-by duty. Depending on the number and length of call outs, the employee could make more money under the Employer's proposal. The Employer argues that since there really may be no practical difference between the two offers and its offer may, in fact, result in higher compensation for the employees, the arbitrator should select its offer on this issue and the stand-by pay benefit would be uniform for all employees in the Local 2416 bargaining unit.

The Union argues that even if there is no monetary change under a new system, the Employer has failed to give sufficient reason for changing the method of compensating stand-by duty. It contends that the current stand-by pay system has worked well for Human Service professionals and forcing the social worker system on them without good reasons does not make sense. It points out that the Human Services professionals and the social workers already work different hours (40 hours per week versus 37.5 hours per week) and perform different duties when on stand-by. The Union asserts that although social workers stand-by duties may involve life and death situations, they most often deal with protective placements for juveniles and related follow-up calls to school administrators, guardians and other public agencies. The Union argues that the Employer is attempting a "one size fits all" approach. It takes the position that in light of the different hours and job duties of the Human Services and Social Services employees as well as the Employer's failure to provide any basis for a change other than "administrative convenience", its proposal relative to the status quo stand-by procedure is a more reasonable proposal.

This arbitrator generally agrees that it is desirable for an employer to have as much uniformity as possible in working conditions for all of its employees. However, there obviously was a reason for the Employer to unilaterally impose the current stand-by pay arrangement on the accreted employees before they were represented by the Union and maintain a different pattern of stand-by pay for the social workers who were represented by the Union. The mere fact that both groups are now represented by the Union does not, standing by itself, justify eliminating the stand-by pay arrangement that the Employer felt proper to impose upon the positions accreted to the bargaining unit.

Accordingly, the arbitrator finds the Union's proposal with respect to stand-by pay to be more reasonable than that of the Employer.

ISSUE #7

PLACEMENT OF SALARY SCHEDULE

When the tentative agreements were initially discussed, it was anticipated by the Employer that the arbitration award might come down during the calendar year 1995. The existing salary of an accreted employee would have been based on the 1995 non-represented salary schedule and that employee would have been placed on the appropriate step of the 1995 salary schedule that was contained in the tentative agreement. Both salary schedules used in step placement would have been the 1995 salary schedule. Because of the passage of time, the non-represented employee's salary schedule has been increased for 1996 and the arbitration award will be handed down when the employees' salaries will be based on the 1997 non-represented employee's salary schedule. The Employer withdrew its tentative agreement and proposal that whatever step placement was made would be based on the 1995 wage scale, and for purposes of step placement only, the employee's wage rate under the non-represented salary schedule would be rolled back to the 1995 wage rates. The step on the non-represented salary schedule that would be utilized for step placement purposes would still be the one that the employee would be in at the time of this arbitration award. However, the wage rate for that step would be rolled back to the 1995 level. It is the Employer's position that the only way to make fair computation of the step placement is to use the 1995 wage schedules. It contends that using a 1996 or 1997 non-represented wage schedule would result in an unfair advantage to the employees in the step placement procedure for some employees.

The Union argues that the parties did not agree to the tentative agreement until late 1995 and the Employer could not have really believed that an arbitration award would come down in 1995. It contends that under the best circumstances an arbitrator's award could not have come down in less than three months and more realistically four or five months. The Union takes the position that the county should have known that there would be no award in 1995 and its rejection of its earlier tentative agreement is unnecessary because the parties have not ratified a successor agreement to the one that expired December 31, 1995.

The Union takes the position that this matter should be limited to the 1994-1995 issues. It asserts that the Employer's offer forces the arbitrator to make a determination that could significantly affect the next contract which has not even been ratified. The Union argues that the Employer's offer would place it in a better position in 1996 and future years than could have reached through voluntary bargaining.

The arbitrator finds this a very close question. Obviously, the parties intended the issue to be determined long before 1997. While it is quite clear that it was unrealistic to expect a decision in this matter in 1995, one would ordinarily have expected an arbitrator's award in 1996. However, the Union's position has merit because the Employer's position on the issue would be based on 1996 and 1997 wage rates that are speculative because they have not been ratified by the Union. The arbitrator finds neither more nor less merit in the position of either party on this issue and it will not be considered as the basis for a determination of the basic question before the arbitrator.

CONCLUSION

The basic question for determination by the arbitrator is whether or not the accreted employees should be allowed to keep certain benefits they enjoyed as non-represented employees now that they are represented by a bargaining unit that does not receive those benefits.

It is unquestioned that the Employer has the legal authority to enter into an agreement with the Union based on the Union's proposal. The stipulations of the parties do not impact upon this award. The Employer presented no evidence or arguments that the Union's final offer is contrary to the interest of the public or beyond the Employer's financial ability to pay. In fact, the Employer stands to save money in the long run under either party's offer. Both parties have submitted evidence from external comparables and internal comparables play a large role in this proceeding. Grandfathering benefits is nothing new to the Employer. The current labor agreement between the Employer and the Outagamie County Professional Police Association contains a provision that provides eight regular holidays and five floating holidays to investigators and sergeants hired prior to July 1, 1993. In addition, those sergeants and investigators with over 15 years of service receive six floating holidays in addition to the eight regular holidays. The rest of the sworn officers receive only two floating holidays in addition to their eight regular holidays. There are also differences among the bargaining unit with respect to stand-by/call in pay, vacations, funeral leave and life insurance. It is not unusual to provide different benefits for employees who work different hours (8 hours per day versus 7.5 hours per day) and have significantly different job duties. The Union's final offer recognizes these differences but the Employer's offer does not. However, the Employer has made provisions for such difference in its collective bargaining agreements with its other bargaining units. The Employer has not found it inconsistent to provide different benefits to employees with different hours and doing different types of work and it has not demonstrated that continuation of those differences within this bargaining unit would cause it any hardship.

The accreted employees lose some tangible benefits under both parties' offers and the overall compensation of the employees is affected no matter which position is selected by the arbitrator. Under the Union's offer, these benefits are lost gradually through attrition. Under the Employer's offer, the benefits that employees are now receiving are eliminated immediately.

The most important issue before the arbitrator is whether the accreted employees have any long term claim to the benefits that they received as non-represented employees. The fact that a benefit was unilaterally imposed does not make it any less the status quo since the benefits were undoubtedly granted by the Employer to maintain some comparability with other employees performing similar work for similar employers. Just because the accreted employees became dissatisfied with their unrepresented status and chose to organize does not mean that the status quo ceased to exist when the employees became organized and now seek to retain their benefit level beyond that of the rest of the bargaining unit. The Union recognized that it could not realistically hold on forever to benefits superior to the rest of the employees in the bargaining unit. They chose to remedy the situation by grandfathering those benefits and gradually phasing them out. That prevents the unfair result of stripping current employees of the benefits that they are already receiving because they elected to become part of a collective bargaining unit and be represented by the Union and have the protection of the contract.

It therefore follow from the above facts and discussion thereon that the undersigned renders the following:

AWARD

After full consideration of the criteria set forth in the statutes and after careful and extensive evaluation of the testimony, argument, exhibits and briefs of the parties, the arbitrator finds that the Union's offer more closely adheres to the statutory criteria than that of the Employer and directs that its proposals contained in Exhibit A be incorporated in the collective bargaining agreement as a resolution of this dispute.

Dated at Sparta, Wisconsin, this 2nd day of January, 1997.

Joel S. Rice II
Arbitrator

Davis & Kuehn, s.c.
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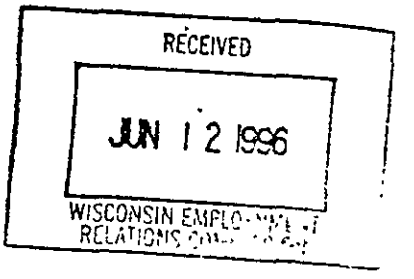
EXHIBIT B

Writer's Direct Dial
(414) 225-1440

June 11, 1996



William C. Houlihan
Wisconsin Employment
Relations Commission
14 W. Mifflin St.
Madison, WI 53707-7870

Re: AFSCME Local 2416 Final Offer
Case No. 230 No. 51416 INT/ARB-7390

Dear Mr. Houlihan:

Please be advised that the County has reviewed the final offer of AFSCME Local 2416 to Outagamie County, dated May 25, 1996 and will not make any changes to the April 19, 1996 final offer submitted by the County to AFSCME Local 2416. Accordingly, the County also requests that you close the investigation and certify this matter for interest arbitration. It is the County's understanding that the Union has requested certification in its letter dated May 25, 1996.

Enclosed is the WERC form requesting the closing of the investigation executed by me on behalf of the County.

If you have any questions about this, please contact me.

Very truly yours,

Roger E. Walsh

REW/mdp
Enclosure

cc: Rob Sunstrom
Richard C. Badger

Name of Case: Outagamie County and AFSCME Local 2416 INT/ARB

Case No. 230 No. 51416 INT/ARB-7390

The following, or the attachment hereto, constitutes our final offer for the purposes of arbitration pursuant to Section 111.70(4)(cm)6, of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me. Further, we ~~(do)~~ **(do not)** authorize inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted to the Commission.

June 11, 1996 — Roger E. Walsh

(Date) (Representative)

On behalf of: Outagamie County

Davis & Kuelthau, s.c.
ATTORNEYS AT LAW
111 E Kilbourn Suite 1400•Milwaukee, WI 53202-6613
414-276-0200•Cable Address SHIPLAW•Fax 414-276-9369

Writer's Direct Dial
(414) 225-1440

June 11, 1996

Richard C. Badger
Wisconsin Council 40, AFSCME
2791 Village Lane
Oshkosh, WI 54904

Re: Outagamie County and AFSCME Local 2416
Case 230 No. 51416 INT/ARB-7390

Dear Mr. Badger:

In response to your June 4, 1996 letter in the above matter, the County's April 19, 1996 Final Offer clearly withdraws the County's agreement to a specific portion of the document entitled "Tentative Agreements - 10/18/95," i.e. the first paragraph after the wage scale on the Appendix "A" effective January 8, 1995, and adds a revised first paragraph after the wage scale on the Appendix "A" effective January 8, 1995. As I read the Union's May 25, 1996 Final Offer, this Offer retains the same first paragraph after the wage scale on the Appendix "A" effective January 8, 1995 that is contained in the "Tentative Agreements - 10/18/95." Therefore, the parties have no agreement on that first paragraph after the wage scale and, thus, this paragraph is in dispute. I hope the above clears up any misunderstanding that you have with the County's April 19, 1996 Final Offer.

Enclosed with this letter is a copy of my letter to Mr. Houlihan requesting that he close the investigation and certify this matter for interest arbitration, if you do not plan to revise your May 25, 1996 Final Offer. I am also sending Mr. Houlihan a copy of this letter.

Very truly yours,

Roger E. Walsh

REW/mdp
Enclosure

cc: Rob Sunstrom
William Houlihan

F:\DOCS\OUTA-COU\ACC-2416\MEL3640

Davis & Kuelthau, s.c.
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111 E Kilbourn Suite 1400•Milwaukee WI 53202-6613
414-276-0200•Cable Address SHIPLAW•Fax 414-276-9369

Writer's Direct Dial
(414) 225-1440

April 19, 1996

Gregory Spring
Wisconsin Council 40, AFSCME
1121 Winnebago Avenue
Oshkosh, WI 54901

Re: AFSCME Local 2415 Final Offer
Case No. 230 No. 51415 INT/ARB-7390

Dear Greg:

Enclosed is a copy of the County's Revised Final Offer dated April 19, 1996, in the above-entitled matter.

With regard to the second paragraph of your April 5, 1996 letter to Rob Sunstrom, it is the County's position that the interpretation of your Final Offer must be gleaned from the written Final Offer that you have submitted. Whether that Final Offer accomplishes your intent is subject to argument at the hearing.

Very truly yours,

Roger E. Walsh

REW/mdp
Enclosure

cc: William C. Houlihan
Rick Badger
Rob Sunstrom

FINAL OFFER OF OUTAGAMIE COUNTY

TO

AFSCME, LOCAL 2416

April 19, 1996

The newly accreted employees, i.e., the employees of the Mental Health and Alcohol & Drug Abuse Division and of the Developmental Disabilities Unit of the Aging and Long Term Support Division of the Department of Human Services, will, effective the day after the date the Interest Arbitration Award is rendered in Case 230, No. 51416, INT/ARB - 7390, be covered by all the provisions of the 1994-1995 Agreement between Outagamie County and AFSCME, Local 2416, except as modified by the provisions of the Tentative Agreements dated October 18,1995 (except as noted in Item 2 below), and by the provisions below:

1. ARTICLE VII- WORKWEEK

A) Add SECTION 7.01(B) to read:

For employees of the Mental Health and Alcohol & Drug Abuse Division and of the Developmental Disabilities Unit of the Aging and Long Term Support Division of the Department of Human Service, the normal workday shall be eight (8) hours and the normal workweek shall be forty (40) hours, Monday through Friday. Excluding time worked while on standby, which will be compensated as provided in Section 7.02(C), all work by such employees outside of the normal workday or workweek, including phone calls, shall be compensated in accordance with Section 8.02 below.

B) Renumber existing SECTION 7.02(B) as SECTION 7.02(C) and revise it to read:

"C) Any member of the professional staff who is assigned standby responsibilities, including those referred to in Sections 7.02(A) and (B) above, will be compensated on the basis of one hundred and twenty-five dollars ($125.00) per week [effective December 26, 1995, one hundred and thirty-five dollars ($135.00) per week] for each week of such standby. In the event it is necessary to make standby assignments in less than one (1) week assignments, such payment will be prorated on the basis of time assigned in relation to a full week. An employee will receive no compensation in addition to the above standby pay for any phone call during such standby period involving up to thirty (30) minutes of time which is related to the employee's work for the County and which is taken and handled by the employee at the employees' home or other location not the employee's normal workplace at a time other than the employee's

normal work hour. An employee will be compensated as provided in Section 8.02 for any such phone call which involves thirty (30) minutes or more of time and for any time spent away from the employee's home or other location where the employee received the phone call."

C) Create new SECTION 7.02(B) to read:

B) Every member of the professional staff in the Crisis Intervention, Evaluation and Psychotherapy and Clinic and Community Support Units will be responsible for participating in the Crisis On-Call responsibilities involved in the Crisis On-Call System in their respective division.

2. Revise the Tentative Agreement dated October 18, 1995 by changing the first paragraph after the wage scale on the Appendix "A" effective January 8, 1995 to read as follows:

Each employee will retain the rate of pay in effect on the date of the arbitration award until such time as that employee reaches his/her anniversary date with the County, when he/she will advance to the next higher step in the assigned grade listed above. In the event that on the date of the arbitration award, the employee's wage rate reflects any general salary increase for 1996 that was added to the AS&P salary rates, the 1995 AS&P salary rates for the pay range and pay step that the employee is at will be used to determine the next higher step in the assigned grade listed above to which the employee will advance.

AFSCME COUNCIL 40

Wisconsin Council 40
AFSCME, AFL-CIO

8033 Excelsior Drive, Suite B
Madison, Wisconsin 53717-1903
Phone: 608 836-4040
Fax: 608 836-4444

Michael Murphy
President
Robert W. Lyons
Executive Director

PLEASE REPLY TO:
RICHARD C. BADGER
STAFF REPRESENTATIVE
2791 VILLAGE LANE
OSHKOSH, WI 54904
414/231-9129

EXHIBIT A

May 25, 1996

Mr. Rob Sunstrom
Human Resources Director
Outagamie County
410 S. Walnut Street
Appleton, Wisconsin 54911

Re: AFSCME Local 2416 Final Offer
Case 230 No. 51416 INT/ARB-7390

Dear Mr. Sunstrom:

Enclosed you will find a copy of the Union's revised Final Offer to Outagamie County in the above-entitled case. Pending the County's response to this Final Offer, the Union is prepared for certification.

Very truly yours,

Richard C. Badger II

Richard C. Badger
Staff Representative

cc: Barb Barczak, President, Local 2416
Roger Walsh, Attorney, Davis & Kuelthau, S.C.
William C. Houlihan, Investigator, WERC

OU TAGAMIE COUNTY PROFESSIONAL EMPLOYEES
LOCAL 2416, AFSCME, AFL-CIO
(ACCRETED EMPLOYEES)

Final Offer of Local 2416
to
Outagamie County
May 25, 1996

Apply the terms of the 1994-1995 Agreement between Outagamie County and the Outagamie County Professional Employees Union, Local 2416, AFSCME, AFL-CIO to the newly-accreted employees except as modified by the initialed Tentative Agreements dated 10/18/95 and the following:

1. ARTICLE VII - WORKWEEK

A. Add the following Section 7.01 (B):

"7.01 - B) For employees of the Mental Health and Alcohol & Drug Abuse Division and of the Developmental Disabilities Unit of the Aging and Long Term Support Division of the Department of Human Service, the normal workday shall be eight (8) hours and the normal workweek shall be forty (40) hours, Monday through Friday. Excluding time worked while on standby, which will be compensated as provided in Section 7.03, all work by such employees outside of the normal workday or workweek shall be compensated as in the past and in accordance with Section 8.02 below."

B. Section 7.02 (B) - Revise the start of the first sentence to read as follows:

"B) Any employee covered by Section 7.02(A) who is assigned such standby responsibilities..."(remainder unchanged)

C. Add the following Section 7.03:

"7.03 - Employees of the Mental Health and Alcohol & Drug Abuse Division and of the Developmental Disabilities Unit of the Aging and Long Term Support Division who are assigned to standby shall be compensated as in the past for such standby at the rate of one hundred and fifty-seven dollars and fifty cents ($157.50) per weekend, forty dollars ($40.00) per weeknight and sixty dollars ($60.00) per holiday. As in the past, employees will not receive additional compensation for time worked as the result of standby responsibilities."

2. In addition to the above, the parties shall enter into the following side agreement which would grandfather certain benefits for employees hired prior to the date of the arbitration award:

"Outagamie County and Local 2416 agree that employees of the Mental Health and Alcohol & Drug Abuse Division and of the Developmental Disabilities Unit of the Aging and Long Term Support Division of the Department of Human Services who were hired prior to the date of the arbitration award will continue to receive the following benefits:

1. Floating Holidays. Floating holidays are paid leave not tied to any particular day (as are fixed holidays), are available for use at a time mutually agreeable between the employee and his/her supervisor, and can be taken in increments no smaller than one (1) hour. Like fixed holidays, full time employees receive credit for a full day's time and part-time employees who work at least twenty (20) hours per week receive a prorata amount which is determined each January 1 and July 1.

   New employees hired prior to March 1 are eligible for two (2) floating holidays; those hired between March 1 and June 30 are eligible for one (1) floating holiday; and those hired on or after July 1 are not eligible for any floating holidays during that calendar year. New employees are not entitled to use any floating holiday until after successful completion of their initial probationary period.

   Employees are eligible for two (2) floating holidays each calendar year after successful completion of their initial probationary period. Full time employees are credited with eight (8) hours for each floating holiday. The number of floating holiday hours a part-time employee is eligible for is determined each January 1 and July 1 by prorating his/her hours worked compared to a full time employee.

   Employees are not allowed to use floating holidays after having given notice to terminate employment. No payout of floating holidays will be made.

2. Vacations. Vacation benefits are as provided in Article XI of the Agreement except as follows: After one (1) year of continuous service - two (2) normal workweeks; after twelve (12) years of continuous service - four (4) normal workweeks.

3. Sick Leave Payout. Employees who terminate in good standing will receive a 50% payout up to 120 days of accumulated sick leave. Employees retiring under Wisconsin Retirement will receive a 100% payout of accumulated sick leave. In the event of the death of an employee, the County will make the same 100% payment to the employee's estate.

4. Funeral Leave. All permanent full-time employees will be allowed three (3) days with pay for attending funerals for a death in the immediate family, to include spouse, child, parent, stepparents, stepchild, brother, sister, grandparents, father-in-law, mother-in-law, sister-in-law, brother-in-law, stepbrother, and stepsister. The funeral leave can be taken any time after the death occurs, but must be completed within two (2) days after burial.

   Sick leave may not be used to extend funeral leave without a physician's excuse. However, floating holidays and vacation may be used with the approval of the Department Head.

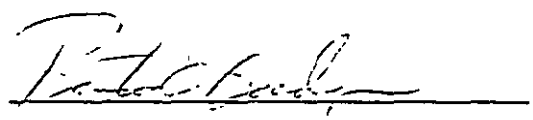
5. Life Insurance. The County will provide group term life insurance to all permanent, full-time employees, effective the first of the month following 30 days continuous employment. Premiums will be fully paid by the County, and the amount of coverage will be equal to one and one-half times the amount of annual salary, to a maximum coverage of $50,000.

   Upon termination, the employee shall have the opportunity to elect conversion to a personal policy. Application can be made through the Human Resources Department.

   In the event of an unpaid leave of absence or layoff, employees can elect up to 12 months of continuation by paying the group rate premium to the County Treasurer by the 10th of the month for the following month's coverage. If the unpaid leave is a medical leave, the County will pay the first three months of continuation premium."

Dated this 25th day of May, 1996.

Submitted by:



Richard C. Badger, Staff Representative
on behalf of Local 2416, AFSCME, AFL-CIO