STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

LOCAL 2494, AFSCME, AFL-CIO

Requesting a Declaratory Ruling Pursuant to Section 227.41, Wis. Stats.,
Involving a Dispute Between Said Petitioner and

WAUKESHA COUNTY

Case 162
No. 58830
DR(M)-611

Decision No. 29929-A

Appearances:

Shneidman Myers Dowling Blumenfield Ehlke Hawks & Domer, by **Attorney Aaron N. Halstead,** 217 South Hamilton, P.O. Box 2155, Madison, Wisconsin 53701-2155, appearing on behalf of Local 2494, AFSCME, AFL-CIO.

Michael, Best & Friedrich, by **Attorney Marshall R. Berkoff,** 100 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4108, appearing on behalf of Waukesha County.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECLARATORY RULING

On May 2, 2000, Local 2494, AFSCME, AFL-CIO filed a petition with the Wisconsin Employment Relations Commission pursuant to Sec. 227.41, Stats., seeking a declaratory ruling that an interest arbitration award received by Local 2494 and Waukesha County is null and void.

On June 22, 2000, the Commission issued an Order Denying Motion to Dismiss in which it concluded that it had the statutory authority and jurisdiction to resolve the issue raised in the petition.

The parties thereafter filed exhibits and argument, the last of which was received October 19, 2000.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Local 2494, AFSCME, AFL-CIO, herein the Union, is a labor organization functioning as the collective bargaining representative of certain employees of Waukesha County.

2. Waukesha County, herein the County, is a municipal employer having its principal offices at 1320 Pewaukee Road, Waukesha, Wisconsin.

3. The Union and the County were able to voluntarily reach agreement on all terms of a January 1, 1999-December 31, 2001 collective bargaining agreement except for wages. On June 24, 1999, pursuant to Sec. 111.70(4)(cm)6 and 7, Stats., the Commission appointed Gil Vernon to resolve the wage impasse between the parties by selecting the final offer of either the Union or the County.

The Union's wage proposal was as follows:

6% across the board effective 1-2-1999
4% across the board effective 1-1-2000
4% across the board effective 12-30-2000

The County's wage proposal was as follows:

3% across the board effective 1-2-1999
2% across the board effective 1-1-2000
2% across the board effective 7-1-2000
3% across the board effective 12-30-2000

4. Arbitrator Vernon issued his Award on April 21, 2000. His Award is incorporated into this Finding of Fact as Appendix A-attached. As reflected in Appendix A, Arbitrator Vernon concluded as follows:

AWARD

> The final offer of the employer is to be part of the 1999-2000 collective bargaining agreement.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. The award issued by Arbitrator Gil Vernon on April 21, 2000 was lawfully made under the provisions of Sec. 111.70 (4)(cm) 6 and 7, Stats., and ERC 32.16 and 32.17.

2. The award issued by Arbitrator Gil Vernon on April 21, 2000 is imperfect in a manner of form not affecting the merits of the controversy.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

DECLARATORY RULING

1. The award issued by Arbitrator Gil Vernon on April 21, 2000 shall not be vacated.

2. Pursuant to ERC 32.17(4), the award issued by Arbitrator Gil Vernon on April 21, 2000 is modified to read:

> The final offer of the employer is to be part of the 1999-2001 collective bargaining agreement.

Given under our hands and seal at the City of Madison, Wisconsin this 17th day of November, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

I concur.

James R. Meier /s/
James R. Meier, Chairperson

Waukesha County

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECLARATORY RULING

POSITIONS OF THE PARTIES

The Union

The Union argues that Arbitrator Vernon's Award is null and void because he acted in excess of his statutory authority by failing to adopt the final offer of either party. The Union asserts that Arbitrator Vernon failed to adopted the final offer of either party because although each party had submitted a three year wage offer, Arbitrator Vernon selected the County's offer as a two year contract.

The Union asserts that the Arbitrator's error is one of substance not form because the core of the Arbitrator's analysis assumed that the parties were litigating a two year contract.

The Union acknowledges that pursuant to the parties' stipulation of agreed upon matters, the parties had agreed to a three year contract term. However, contrary to the County, the Union asserts that the existence of the stipulated three year term provides support for the Union's position. The Union contends that if the Arbitrator had abided by the parties' stipulation, he would have adopted one of the two three year wage offers. Instead, the Union argues the Arbitrator ignored the parties' stipulation and, in doing so, adopted neither party's final offer.

Given all of the foregoing, the Union asks that the Arbitrator's award be vacated.

The County

The County argues that through its petition, the Union seeks to convert what at worst is a clerical error in the Vernon award into another opportunity to win the arbitration case. The County asserts that the Union's attempt should be rejected because Vernon clearly and unequivocally adopted the County's final offer for the three year contract.

The County alleges that because the parties had stipulated that the successor agreement would have a three year term, the duration of the contract was not an issue before Vernon and thus could not have been decided by him. Thus, even if Vernon's analysis as to the effect, cost and lift of the County's offer was in error, the award must stand.

The County contends that all existing precedent supports the view that the Vernon award must stand. Thus, although the County disputes the Union's assertion that the text of the award reflects a significantly flawed analysis, the County argues that even if the Union's arguments are correct, application of existing precedent would uphold the award.

DISCUSSION

As reflected in our June 22, 2000 Order Denying Motion to Dismiss, a declaratory ruling petition filed pursuant to Sec. 227.41, Stats., is the vehicle by which a labor organization can acquire Commission review of interest arbitration awards issued pursuant to Sec. 111.70(4)(cm)6 and 7, Stats., under the standards established by ERC 32.16 and ERC 32.17. NEKOOSA SCHOOL DISTRICT, DEC. NO. 25876 (WERC, 2/89); SCHOOL DISTRICT OT WAUSAUKEE, DEC. NO. 17576 (WERC, 1/80), AFF'D CT.APP III (NO. 81-1869 UNPUBLISHED).

ERC 32.16(1) provides in pertinent part:

> In determining whether an interest arbitration award was lawfully made, the commission shall find that said award was not lawfully made under the following circumstances:
>
> (a) Where the interest arbitration award was procured by corruption, fraud or undue means;
>
> (b) Where there was evident partiality on the part of the neutral arbitrator or corruption on the part of an arbitrator;
>
> (c) Where the arbitrator was guilty of misconduct in refusing to conduct an arbitration hearing upon request or refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear supporting arguments or evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;
>
> (d) Where the arbitrator exceeded his or her powers, or so imperfectly executed them that a mutual, final and definite interest arbitration award was not made.

ERC 32.17 provides:

> If, in a proceeding for enforcement, it appears that an interest arbitration award is lawfully made, but that the award requires modification or correcting, the commission shall issue an order modifying or correcting the award. An interest arbitration award may be modified or corrected where:
>
> (1) A court enters an order, which is not subject to further appeal, reversing a commission ruling that a particular proposal contained in said award is a mandatory subject of bargaining;
>
> (2) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in said award;
>
> (3) Where the arbitrator has awarded upon a matter not submitted, unless it is a matter not affecting the merits of the award upon the matters submitted;
>
> (4) Where the award is imperfect in matter of form not affecting the merits of the controversy.

ERC 32.16 and 32.17 draw heavily upon Secs. 788.10 and 788.11, Stats., which establish the standards under which the courts will vacate or modify interest arbitration awards issued pursuant to Sec. 111.77, Stats., and grievance arbitration awards issued pursuant to Chapter 788 and/or Secs. 111.10, 111.70(4)(cm)4., and 111.86, Stats. Thus, it is appropriate for us to seek guidance from the holdings of our courts when they have interpreted Secs. 788.10 and 788.11, Stats., when reviewing interest arbitration awards issued pursuant to Sec. 111.77, Stats.

In LACROSSE PROFESSIONAL POLICE V. CITY OF LACROSSE, 212 WIS.2D 90 (CT.APP. 1997), the Court addressed the issue of the standard of review that should be applied when an interest arbitration is before the Court under Sec. 788.10, Stats. The Court stated that:

> . . . the inquiry must be whether the issue presented involves the scope of an arbitrator's statutory authority, as opposed to the arbitrator's discretionary weighing of the parties' offers in light of statutory factors. AT P. 100.

In LACROSSE, the Court concluded that the issue before it was:

> . . . whether the arbitrator kept within his statutory authority and whether he produced a legally sufficient award, not whether he selected the proper offer for the "right" reasons. AT P. 99.

Under such circumstances, the Court concluded that:

> We therefore review the award de novo to determine whether the arbitrator acted within his statutory authority. AT P. 100.

Here, the Union raises questions as to whether the arbitrator acted within the scope of his statutory authority. Therefore, consistent with the teachings of the LACROSSE court, we apply a de novo review standard in this case.

Here, it is undisputed that the offers before the Arbitrator were limited to wage increases to be received during the agreed upon term of the three year contract. The Arbitrator selected the County's wage offer which -- like the Union offer -- proposed wage increases which only took effect during the 1999-2000 portion of the 1999-2001 contract to which the parties had already agreed. As argued by the County, because the term of the agreement was not before him, the Arbitrator could not -- and we conclude did not -- elect a County wage offer for two years through his erroneous use of the "1999-2000" dates in the AWARD portion of his decision. 1/

1/ We could speculate that the Arbitrator's "1999-2000" reference reflects the timing of the wage increases in the County offer he selected. But such speculation is not relevant to the issue before us.

Both sides point to differing portions of the Arbitrator's analysis which indicate that he did or did not understand that the wage offers before him were premised on the agreed upon existence of a three year term. However, because the term of the contract was not before him, any such inconsistency in the Arbitrator's analysis does not provide a valid basis for declaring the award null and void. Thus, we reject the Union's request that we do so and conclude that the parties to this dispute received what they were entitled to under Sec. 111.70(4)(cm) 6 and 7, Stats.

However, we are satisfied that the Arbitrator's reference to "1999-2000" in the Award portion of his opinion makes his award "imperfect in [a] matter of form not affecting the merits of the controversy" within the meaning of ERC 32.17(4). Pursuant to our authority under ERC 32.17, we have modified the Award to change "1999-2000" to "1999-2001."

Dated at Madison, Wisconsin this 17th day of November, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

Waukesha County

CONCURRENCE OF CHAIRPERSON JAMES R. MEIER

I concur to express my view that given the Commission's statutory responsibility to oversee the Sec. 111.70(4)(cm), Stats., interest arbitration process, we have the inherent power to remand an award to the interest arbitrator to allow for any clarification of the award that may be appropriate. Such a remand would potentially save the parties the substantial time and resource expenditure that they have incurred here. If such a remand did not resolve the dispute because (1) the arbitrator concluded no clarification was appropriate or (2) the clarification did not end a party's interest in seeking vacation of the award, then the Commission would proceed as we have here.

Dated at Madison, Wisconsin this 17th day of November, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/
James R. Meier, Chairperson

rb
29929-A

[Appendix A]

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

IN THE MATTER OF INTEREST ARBITRATION

Between

Case 156
No. 57133

WAUKESHA COUNTY

INT/ARB-8635
Decision No. 29622-A

And

WISCONSIN COUNCIL 40,
AFSCME, AFL-C10

APPEARANCES:

On Behalf of the County: Marshall R. Berkoff, Michael, Best & Friedrich, L.L.P.

On Behalf of the Union: Laurence S. Rodenstein, Staff Representative - Wisconsin Council 40, AFSCME

I. BACKGROUND

The bargaining unit involved in this dispute consists of 21 public health nurses and two community health educators employed by the County of Waukesha.

The Union and County were parties to a Collective Bargaining Agreement covering the years of 1996, 1997 and 1998. After failing to agree on a complete successor agreement, the Union filed a petition on December 23, 1998, requesting that the Wisconsin Employment Relations Commission initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On February 16 and 23, 1999, a member of the Commissioner's staff conducted an investigation which reflected that the parties were deadlocked in their negotiations, and by May 3, 1999, the parties submitted to said investigator their final offers, positions regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the Commission, as well as a stipulation on matters agreed upon, and thereafter the investigator notified the parties that the

investigation was closed.

The investigator also notified the Commission that the parties were at an impasse. On May 17, 1999, the Commission ordered the parties to select an arbitrator from a list it provided. The parties selected the undersigned. The Commission issued an order appointing the arbitrator on June 24, 1999. A hearing was initially scheduled for October 13, 1999, and later, at the request of the parties, the hearing was postponed. Ultimately it was held on January 4, 2000. A transcript of the proceedings were made and post hearing briefs were filed. The briefs were received and exchanged February 23, 2000.

II. ISSUE

The parties were able to resolve all the outstanding issues except the issue of how much the wage rates should be increased in 1999 and 2000. The following reflects the offer of the parties:

UNION:

1999	2000
6% (effective 1-2-99)	4% (effective 1-1-2000)
	4% (effective 12-30-99)

EMPLOYER:*

1999	2000
3% (effective 1-2-99)	2% (effective 1-1-2000)
	2% (effective 7-1-2000)
	3% (effective 12-30-2000)

* The original final offer submitted to the Commission was different but the parties agreed on 11-11-99 to amend the final offer as reflected above.

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The Union.

First it is the position of the Union that the "greater weight" Factor 7g set forth in the relevant statute favors the Union offer. In this regard they compare the economy in Waukesha County to the following counties: Ozaukee,

Washington, Dane, Kenosha, Rock, Walworth, Jefferson and Dodge. Waukesha ranks high in population, has the second highest per capita income of any county in Wisconsin, and it is 39% higher than the statewide average. It ranks third in the comparable group in property values, and ranks highly in personal income and property valuation. In spite of this high capacity to pay superior wages and benefits, it has the lowest per capita expenditure of any county in the comparable group. In terms of specific expenditures on health and human services Waukesha spends less than any comparable. These economic conditions demonstrate that the Union's request is justified.

The Union also believes that its set of comparable units is more appropriate. The Union believes that the external pool of comparable units should include Dane, Rock and Kenosha Counties (even though Kenosha's wage levels are relatively low). Waukesha County's demographic characteristics are more in line with the above-mentioned counties in terms of economic performance and labor market connectivity. The Union contends that the Employer failed to offer any evidence for limiting the evaluation to contiguous counties (excluding Milwaukee.) Moreover, the previously cited arbitrations by County management involve non-professional employees in other bargaining units and arbitrators have held that the labor market for professionals is larger than that for non-professionals. The Union believes Waukesha is closer to Dane, Kenosha and Rock County in terms population, and income data than it is to Jefferson, Dodge, Walworth and Ozaukee County.

They also cite a previous interest arbitration case between the parties where Arbitrator Mueller held than Dane, Kenosha and Rock were relevant for comparison purposes and were more similar to Waukesha than to the contiguous counties.

When looking at the external comparables the Union notes the wage levels of the bargaining unit are depressed relative to Waukesha's high demographic and economic profile. The 1998 hourly wage rate ranked ninth ahead of only Kenosha and Jefferson County. Waukesha ranked 69 ¢ per hour below the median rate. Moreover, by the year 2000 under the Employer's offer, Waukesha would fall behind even Jefferson County, who ranked last in 1998. They note Jefferson County's maximum wage rate increases by 8.94% in 1999 and by 6.04% in 2000. Even assuming that the Employer's contention is correct, that only contiguous counties should be offered as comparables, the Employer's final offer still would

place Waukesha below all of the contiguous counties.

It is also the position of the Union that the internal settlements support the Union's final offer. In the County's data showing the percentage of wage increases in other bargaining units, the Union contends the County failed to provide and acknowledge the pertinent data regarding the additional adjustments provided to the 87 correctional officers in the "Accord" unit and the broad-based adjustments provided to over 200 courthouse employee members of the same AFSCME Local 2494, in a separate bargaining unit. For example the maximum wage rate for a correctional officer increased by 8.7% from the end of 1998 to the end of 1999. This is almost 50% greater than the Union's offer. Regarding the courthouse unit, its 200 members received additional wage adjustments greater than the final offer in this case. This contradicts the County's claim that there were consistent internal wage increases. For example the clerk and clerk-typist classifications had wage increases of 13.4% and 11.9%.

The Union anticipates that the Employer may defend its position against any equity adjustment based on some "ideological" analysis of labor market considerations. However, with citations they contend that since 1978, public policy, as embodied in the interest arbitration amendments to Sec. 111.70 Wis. Stats., recognizes equity adjustments for represented employees based on arbitral principles of equity. When the external comparables are examined, the evidence in the Union's opinion demonstrates that the maximum wage levels of Waukesha public health nurses lag behind those of comparable groups. Waukesha is plainly in the position to be a wage leader, based on demographic considerations, but lags behind all other counties but Kenosha and Jefferson. Thus, any equity adjustment is in order and justified.

According to the Union, another significant factor to be considered is the fact that the wage differential between County RNs at Health Facility and PHNs has grown since the previous arbitration. Arbitrator Mueller found this to be important in the 1990 arbitration. The current data indicates that the difference between RNs and PHNs has widened since the last arbitration. RNs in Waukesha County may earn at the maximum a biweekly rate of $2,024.05. The 1998 biweekly maximum rate for PHNs was $1,563.55. When applying the Employer's 3% increase in 1999 and the 2000 increases, a 2000 maximum biweekly rate of $1,675.04 results. The difference between the two rates if $349.01 biweekly or $4.36 per hour ($349.01/80). This same kind of disparity is between RNs (health

facility) and PHNs in other comparable counties. The wages on a median basis are virtually the same between the two types of nurses. Even under the Union's offer the differential would be $3.66 per hour. Some of this imbalance relates to the fact that the percentage increase for Waukesha PHNs in 1997 was 10.13% compared with the 2.99% increase received by Waukesha PHNs.

B. The Employer

The County notes that of the other bargaining units, the nurses unit is the most highly paid of any represented unit in the County. The 1998 average hourly rate in the unit is $19.15 per hour. Under the County's final offer, the average rate in the unit will increase to $21.14 by January of 2001 - an increase of $1.99 per hour during the 3-year contract term. The top step in the third year will be $21.68. The split of 2/2 in the second year (2000) is part of a quid pro quo for employees increasing their health insurance contributions from 5% to 10% beginning in 2000. In addition, in 2000, the County has added 10¢ per hour to the nurses' wages over and above the across-the-board percentage increase. This 10¢ remains part of the wage base in the third year of the contract also and was an option offered to the units in lieu of a VEBA (post-employment retirement plan benefit.) They also note that for a very long time there has been uniformity in the across-the-board settlements for all the internal groups. They also note that there has been no turnover problems and that open positions are easily filled.

The County contends too that PHNs should not be compared to RNs at the County Mental Health Center who work in an entirely different clinical setting and are subject to shift work seven days per week. The labor market for hospital-based RNs is highly competitive as well.

In terms of costs the County's final offer has, in wages alone, an average of $7,717 in new money for the PHNs over the contract term. The Union's final offer seeks more than twice that amount – $15,663.00. Thus, the Union cost is $190,694 greater than the County cost. The Union offer would cost $375,912 compared with the County package of $185,218.00. In addition, the lift in the Union package of 6-4 and 4 is 14.67% or 4.27% more than the County package lift of 10.40%. This 4.27% added lift on the Union's package average hourly rate at contract end is 81¢ per hour - or $1,685 per year per employee more than the County final offer.

The Employer also contends that the counties contiguous to itself are the counties to be considered as comparable. In this regard they note that several

arbitrators deciding Waukesha County interest arbitration cases have accepted and used the contiguous counties of Dodge, Walworth, Washington, Ozaukee and Jefferson as the unique or primary comparables for Waukesha County rates. The County historically and consistently considered the aforementioned contiguous counties as comparable. They do not believe there is any evidence for comparability of Dane County, the City of Madison, Kenosha County or Rock County as claimed by the Union.

With respect to the contiguous counties, the Employer's offer in 1999 would maintain its relative rank. If the Union's final offer were implemented, the 6% increase would put the nurse top rate in the County in 1999 at $20.71, an hourly increase of $1.17. It would jump the County's pay position over two counties (Ozaukee and Washington) in 1999 without any basis for such an adjustment. The County also highly questions the "special adjustments" in Jefferson County. For the year 2000 the rank of Waukesha is not known because Ozaukee is not settled. However, if Ozaukee's 1999 rate of $20.22 is increased by 3% in 2000 as it was from 1998 to 1999, its 2000 rate would be $20.83 or 22¢ per hour less than Waukesha's July 2000 rate.

It is the position of the Employer that its offer is more appropriate because it is more consistent with the wages of other Waukesha County employees than is the Union's. In this regard they note that the County's final wage offer matches the voluntary settlements of its other six units including three other AFSCME units. Consequently, the County's internal settlement pattern should prevail in this case. Departing from internal settlement patterns is only done where compelling circumstances support such a departure and no such compelling circumstances exist in this case. With citation they note that internal settlement patterns like those in the present case deserve the most weight because there is a history of units accepting like or identical wage proposals.

To the extent there were any variations, they were minor and related to unit choices for a 10¢ wage increase in lieu of the VEBA post-employment health plan (a choice also exercised by the nurses unit) and a use by the Parks unit of ½ % of its second 2% lift to obtain a County paid LTD plan (which the nurses already have.) The parties also agreed in the case of the AFSCME master unit which has the lowest average hourly rate of any of the units, to put a 40¢ floor on the 3% calculations. The 3% in all other units was in excess of 40¢ per hour. These equity adjustments do not break up internal patterns. In the past Waukesha has proposed

and agreed to equity adjustments for certain classifications within the units if turnover is high or a difficulty in hiring is encountered and then they are prospective only because their purpose is to deal with employees leaving jobs. Additionally there is no evidence that the County has ever used equity adjustments to raise the wage of an entire unit. There is not a turnover problem in the PHN unit.

Internally, the employer again stresses the lack of comparability to RNs at the Mental Health Center. Like the Union, the Employer relies on Arbitrator Mueller's 1990 decision involving the parties where he found the positions "extremely different" and "like comparing apples to oranges." There also is a turnover and recurrent problem with psychiatric RNs. Indeed they claim the data supports the fact that the jobs are different and are in different markets. They note, as Arbitrator Mueller did, that PHNs are free to apply to work as RNs at the Mental Health Center but have not. Even though the Union prevailed before Arbitrator Mueller, the Employer believes it is critical to note however that the Union did not demand unusual increases or claim application of the Mueller award in the contracts for 1990-91, 1992-93, 1994-95 or 1996-98. In all four of these contracts, the County-wide settlement patterns were maintained with the PHN unit. They question the relevance and binding affect of the award as to the issue of comparability. It was also contrary to an earlier award.

The County also contends that the average consumer price data (cost of living) strongly supports the County final offer. The U.S. City Average CPI for urban wage earners and clerical workers in 1998 was 1.45%. The Midwest urban index for 1998 showed an increase of less than 1% (.00974) and this same index showed a January - November 1999 index change of 2.7%. The averages for Milwaukee are even less. Clearly, in their opinion the County final offer which is higher than any of these figures is more appropriate than the Union's which in 1999 is 6% (exactly twice the County's final offer) and is inflationary.)

The Employer also looks at the overall compensation factor. The overall compensation of the public health nurse is substantial and the wage benefits in the County offer roll up into large nonwage benefits. The County final offer moves the average salary of a public health nurse from $39,796 in 1998 to $41,027 in 1999, to $42,258 in 2000 and to $43,965 in 2001. Direct additional paid benefits bring the salary and benefits to $56,977 in 2001 and including the rollups in vacations, holidays and sick leave, the value of paid time off added to the wage and

direct benefit package brings the nurses to $61,883 in 2001. Thus, the average compensation for the nurse goes from $19.15 (1998) per hour to $21.14 per hour (2001) - an increase over the three years of $1.99 per hour.

Concerning comparisons with comparable counties on the basis of pay rank, the employer argues that the Union's extraordinary issues are not justified. In the first year of the new contract, the County's offer keeps it in the same ranking as in 1998. In 2000, Waukesha County's final package would move it ahead of Washington and most probably Ozaukee. But for the disputed settlement in Jefferson, it would also have been well ahead of Jefferson. It is noteworthy too that since 2000 is the year of the 1% lift the County's 2000 increase of 2/2 has a cost of 3% but lift of 4%. Also the 10¢ per hour in lieu of the VEBA plan is added to the salary base in January 2000. There is no basis for the Union's demand of an additional 57¢ per hour in 2000 and another 4% in 2001.

Last the Employer looks to the catch-all factor, arguing that normal or traditional factors taken into consideration through voluntary bargaining, mediation, fact-finding, and arbitration favor the County's final offer. They contend that public and private employers, in establishing rates of pay, look primarily at attracting or retaining qualified employees and there is no difficulty in hiring nursing personnel and there is no turnover problem. There is a different market for psychiatric nurses but they are not comparable. Moreover, the decade old Mueller award has not been followed by the parties. Most private employers settling at 3% per year or less with its other units would view such a demand by a small unit as a strike issue, especially if they had other units who had settled in good faith at uniform and more appropriate levels. Additionally every unit can find some "comparable" somewhere to target to secure extraordinary treatment but going outside one's own job classification to claim comparability should require a very heavy burden of proof which cannot be met here.

IV. **OPINION AND DISCUSSION**

It must be noted at the outset that neither party argued the applicability of Factor No. 7, "the greatest weight factor". There is no evidence that any state law or legislative agency directive limits the amount of revenue or expenditures of this particular municipal employer.

The Union did argue the applicability of Factor 7g, the "greater weight" factor. This factor requires the Arbitrator to consider and give greater weight to

the economic conditions in the jurisdiction than any of the other factors listed under Subd. 7r. The Arbitrator however finds the record lacks any persuasive evidence that the economy and the economic conditions in Waukesha County deserve any special consideration. Its local economy is not shown to be materially distinguished from any other local economy so as to be able to be meaningfully assess whether the Union's offer or the Employer's offer should be selected.

The Union's main point here is that Waukesha is a wealthy county with an above average income and valuation profile and a below average expenditure rate for health and human services. However much the same thing can be said about Washington and Ozaukee County, who are in both parties comparable group for 7R.d purposes. The local economic conditions may suggest that Waukesha can afford to pay more than it has been paying for its employees but the critical question is "how much more?" None of the evidence presented by the parties under Factor 7g bears in any meaningful way on precisely how much more Waukesha can afford. For lack of evidence, Factor 7g is inapplicable in this particular case.

Looking at the more typical factors under Factor 7r, this case shapes up as a classic battle between the "internal" comparables and the "external" comparables. The Employer is relying on the assertion that its offer is consistent with the settlements of all its other unionized bargaining units. In turn they argue that to break this pattern would create inequities and instability in bargaining. The Union however relies primarily on comparisons to wage rates paid to other PHNs by other municipal employers arguing that their offer is needed to put Waukesha employees in their proper position. The Union doesn't ignore all internal comparisons. They look at the wage levels of RNs within the County and argue their offer is needed to catch-up to these much higher wage levels.

First with respect to the comparisons of PHNs to RNs employed by the County at the Health Center, it is noted that both parties draw support from Arbitrator Mueller's 1990 award between the parties. The Employer is mostly right in its reading of the award. Arbitrator Mueller did not find wage level comparisons appropriate between PHNs and RNs in Waukesha County. It was an "apples to oranges comparison." Nonetheless this arbitrator can understand why the Union believes Arbitrator Mueller's analysis supports their position because ultimately he's found "...the substantial rate differential existing between the PHN rate and that of the RN rate to be wholly unsupported by any evidence,

comparative or otherwise." This seems to contradict his conclusion that PHNs and RNs weren't comparable.

However the only way to make sense of Arbitrator Mueller's award is to conclude that when discussing the unacceptable differential between PHNs and RNS he was not talking about the internal comparisons within Waukesha County, but to external comparisons of internal wage disparities in other counties and the fact that in most other jurisdictions, RNs and PHNs are paid at much the same rate. He had analyzed the relative comparison of RN rates and PHN rates within comparable counties and noted that "Waukesha County is the only one where the rate of PHNs would be substantially below that of RNs." He continued when he stated "they stand alone among all other comparables in creation of such a wide pay rate differential." Then in the introductory sentence to the paragraph relied on by the union he said, "I find the external conditions to be most persuasive in this case." (Emphasis added)

There is no doubt that in most other counties there is no dramatic disparity between the wage rates for RNs or PHNs. In Waukesha there is. However, there is also a large disparity between the hourly rate of RNs in Waukesha and what is paid to RNs in other counties. The RN in Waukesha in 1999 made $25.30 which is $3.81 or 17.7% more than the average RN in comparable counties which average $21.49 per hour.

The Union lost the battle in 1990 that there should be a direct comparison between Waukesha County RNs and Waukesha County PHNs. The Union can not bootstrap the fact there is no significant disparity between RNs and PHNs externally into a persuasive justification that the internal disparity between Waukesha RNs and Waukesha RPNs should be eliminated. In essence the Union is arguing RNs in Waukesha get paid dramatically more than other RNs in comparable counties and so should we.

To the extent there is no significant disparity between RNs and PHNs externally, this will naturally be accounted for in a comparison of Waukesha PHN rates with rates for comparable employees (other PHNs) employed by comparable employers. It is not appropriate to compare or to link the salaries of PHNs in Waukesha to RNs in Waukesha. Not only do they have significantly different working conditions there is no reasonable basis to conclude that one anomaly justifies another. The more meaningful comparison for Waukesha PHNs is to other

PHNs with similar duties and working conditions in other counties. Again to the extent RN wages should influence the wages of PHN's, it is reflected in the wage rates for PHN's in other counties where such wages tend to track RN wages. A single wage rate for RNs, albeit from Waukesha County, that is such a dramatic departure from the RN norm ($25.30 versus an average of $21.49) can not be given more weight in analyzing PHN wage levels than wage rates for similar positions with similar duties and working conditions for similar employers. The later is simply more reflective of the broad labor market for PHNs.

What remains is the argument between the parties as to whether the internal settlements should prevail. The general well established rule in these circumstances is that an internal settlement pattern should control unless it can be demonstrated that adherence to that pattern would cause unreasonable and unacceptable wage relationships relative to the external comparables. In this case, based on the evidence and influence of Arbitrator Mueller's award, the Arbitrator will use the following counties for comparison purposes:

Dane	Washington
Walworth	Ozaukee
Dodge	Kenosha
Rock	Jefferson

The Arbitrator also finds that there is, generally speaking, an internal settlement pattern. The Union is correct that there isn't absolute uniformity. However, the variations are minor and not wholly unexpected in a diverse unit such as the courthouse where equity adjustments may be needed in isolated positions from time to time. The settlement with the other unions is vastly consistent to such a predominant degree that a general trend and pattern is established. Moreover, the Employer's offer is consistent with the pattern.

When the wage data is analyzed for the external comparables, it is clear that ultimately adherence to the employer's offer doesn't create any wage level disparity, compared to the wages paid PHs in other counties. The fact is that the employer's offer improves the Waukesha PHNs position over the two year contract. The following table shows this to be true:

YEAR END MAXIMUM RATES FOR PHNs

(DEGREED) WITHOUT LONGEVITY

	1998	1999	2000
Dane	21.79	22.44	N/S
Walworth	20.30	21.02	21.76
Dodge	20.29	21.00	N/S
Rock	20.19	20.80	N/S
Washington	19.78	20.37	20.98
Ozaukee	19.63	20.22	N/S
Kenosha	19.20	19.93	20.23
Jefferson	18.23	19.86	21.06
AVERAGE	**$19.93**	**$20.71**	**$21.13**

Waukesha	$19.54	$20.13 (County)	$21.68 (County)
(Difference to	(-.39/-1.9%)	(-.58/2.8%)	(+.55/+2.6%)
to average)		$20.71(Union)	$22.51(Union)
		(-0-)	(+1.38/6.5%)

First, this data shows that in 1998 the disparity between Waukesha and the external average was not overly dramatic at less than 2%. By the end of 1999, the wage rate disparity under the employer offer increases. However, based on available settlements for 2000, because the employer offer is rear loaded (three of the four and six of the overall 10% increase is in the last year of the contract), the employer offer by the end of the contract will exceed the average under the employer offer by 2.6% or 55¢ per hour. Settlements in the comparables in the year 2000 would overall have to average more than 4.5% over the 1999 average rate for this favorable margin to be erased. Even if the average settlements were as high as 6% equaling the employers offer here, Waukesha would still be less than 1.25% behind the average, which is not significant enough under these circumstances to justify breaking the internal pattern. This is particularly true when it is considered that PHNs in Waukesha County compare quite favorably to Ozaukee and Washington. This is significant given Waukesha is probably most comparable, in essential respects, to these Milwaukee collar counties.

When this analysis is taken into consideration, along with other factors such as the cost of living, the arbitrator must conclude that based on the statutory criteria, the employer offer is the more reasonable of the offers.

AWARD

The final offer of the employer is to be part of the 1999-2000 collective bargaining agreement.

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Gil Vernon, Arbitrator

Dated this 21st day of April, 2000.