BEFORE THE ARBITRATOR

In the Matter of the Final and Binding Interest Arbitration of a Dispute Between	Case 627 No. 67103 INT/ARB-10965
MILWAUKEE COUNTY (Nurses)	**Decision No. 32241-A**
and	Arbitrator: James W. Engmann
WISCONSIN FEDERATION OF NURSES AND HEALTH PROFESSIONALS, AFT, AFL-CIO, LOCAL 5001.	

Appearances:

Mr. Mark F. Vetter, Davis & Kuelthau, S.C., Attorneys at Law, 300 North Corporate Drive, Suite 150, Brookfield, WI 53045, and Mr. Mark L. Olson, Davis & Kuelthau, S.C., Attorneys at Law, 111 East Kuelthau, S.C., 111 East Kilbourn Avenue, Suite 1400, Milwaukee, WI 53202, appearing on behalf of Milwaukee County.

Mr. Timothy E. Hawks, at hearing and on brief, and Mr. Jeffrey P. Sweetland, on brief, Hawks, Quindel, Ehlke & Perry, S.C., Attorneys at Law, 700 West Michigan, Suite 500, P.O. Box 442, Milwaukee, WI 53201-0442, appearing on behalf of Wisconsin Federation of Nurses and Health Professionals, AFT, AFL-CIO, Local 5001.

ARBITRATION AWARD

Milwaukee County (County) is a municipal employer which maintains its offices at the Milwaukee County Courthouse, 901 North Ninth Street, Milwaukee, WI 53233. Wisconsin Federation of Nurses and Health Professionals, AFT, AFL-CIO, Local 5001, (Federation), is a labor organization which maintains its offices at 9620 West Greenfield Avenue, West Allis, WI 53214, and which, at all times material herein, has been the exclusive collective bargaining representative for nurses and other professional employees (Unit) specified in the parties' collective bargaining agreement.

The County and the Federation have been party to a series of collective bargaining agreements, the last of which expired on December 31, 2006. The parties exchanged their initial proposals and bargained on matters to be included in the successor agreement. On July 9, 2007, the Federation filed a petition with the Wisconsin Employment Relations Commission (Commission) requesting the Commission to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA). An investigation was conducted by a member of the Commission staff on September 10, 2007, which reflected that the parties were deadlocked in their negotiations. On or before October 1, 2007, the parties submitted their final offers and stipulation on matters agreed upon, after

which the Investigator notified the parties that the investigation was closed. The Investigator also advised the Commission that the parties remained at impasse. On October 10, 2007, the Commission certified that the conditions precedent to the initiation of arbitration as required by statute had been met and ordered the parties to select an arbitrator from a panel of arbitrators submitted by the Commission.

The parties selected the undersigned to serve as the impartial arbitrator in this matter and advised the Commission of its selection. On November 10, 2007, the Commission appointed the undersigned as arbitrator to issue a final and binding award, pursuant to sec. 111.70(4)(cm)6. and 7. of MERA, to resolve said impasse by selecting either the total final offer of the County or the total final offer of the Federation. Hearing was held on January 22, 2008, in Milwaukee, WI, at which time the parties were afforded the opportunity to present evidence and make arguments as they wished. The hearing was transcribed, a copy of which was received on or about February 1, 2008. The parties filed briefs and reply briefs, the last of which was received in electronic form on April 28, 2008, after which the record was closed. Full consideration has been given to all of the testimony, exhibits and arguments of the parties in issuing this Award.

FINAL OFFERS

The final offers in this matter cover two pages, but all of the individual items involving health insurance and the term of the contract and part of the wages issue are contained in both offers and, therefore, are not in dispute. The only issue in dispute involves wages and the only aspects of wages in dispute are the first year (2007) increase and a lump sum payment as follows:

County

2.01 Wages

a. +1% effective November 4, 2007

b. A two hundred and fifty dollar ($250) lump sum payment shall be made to each employee who is on the County payroll as of the first pay period following the date of the Arbitration Award and who (1) has an assigned work week of twenty (20) or more hours per week, or (2) worked 1,040 hours during the 2006 payroll year as a “pool employee”.

Federation

2.01 Wages

b. Revise so as to provide for an across-the-board pay increase to all bargaining unit classifications of 2% effective first pay period in 2007 and an additional 2% increase effective first pay period in July 2007.

ARBITRAL CRITERIA

Section 111.70(4)(cm), MERA, states in part:

7. ‘Factor given greatest weight.’ In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. ‘Factor given greater weight.’ In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. ‘Other factors considered.’ In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the

wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost of living.

h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

POSITIONS OF THE PARTIES

County on Brief

The County argues that the internal comparables support its final offer; that settlements identical to its final offer were voluntarily achieved with five of its eight bargaining units; that non-represented employees received the identical increases and benefits; that this is sufficient evidence that the County's offer is reasonable and fully supportable; that no other group of employees has received a wage settlement similar to that which the Federation is seeking; that Arbitrators have consistently determined that internal consistency should govern throughout a community, regardless of what type of bargaining unit is involved; that stability in labor relations is supported by maintaining internal consistency in settlements; that in the instant case, the County's final offer is identical to that received by 85% of the County's employees; and that the Federation has not offered one scintilla of evidence which might justify its effort to achieve a greater wage increase than that which 85% of their fellow County employees will receive.

The County also argues that its final offer serves the interests of labor peace; that the importance of maintaining labor peace within the jurisdiction of a municipal employer has been emphasized in numerous arbitration decisions; that breaking the settlement pattern would create significant inequities and morale issues with the five units that have already settled their contracts; and that the public interest, labor peace, employee morale and job satisfaction considerations require the maintenance of the internal settlement pattern.

In addition, the County argues that arbitration is not a substitute for collective bargaining; that arbitral precedent clearly establishes that any settlement which does not adhere to the internal pattern must be voluntarily negotiated; that arbitrators have determined that interest arbitration should not be used as a reward for delaying the settlement of contracts; that the only exception to this arbitral tenet that allows a union to "leap-frog" a clearly established internal settlement pattern through arbitration is that the union must demonstrate that there is a significant factor, unique to the union in question, which will permit the arbitrator to disregard and override the internal settlement pattern established; that there is virtually no valid justification for the Federation demand that its members receive a 2007 salary increase of 3% impact and 4% lift where 85% of County employees have voluntarily agreed to a 1% 2007 salary increase; and that where, as here, there has been no such demonstrations of any variable which will justify ignoring the internal settlement pattern, arbitral precedent clearly establishes that the internal pattern must prevail.

In terms of the County's financial condition, the County asserts that the cost of the parties' final offers must be considered; that it is uncontradicted that the County is experiencing dire financial conditions; that the County has not laid claim to an inability to pay argument; that this, however, does not preclude consideration of the costs associated with both parties' final offers; that the additional cost which the County would be compelled to assume under the Association's final offer over the two-year term of the contract amounts to $995,450; that the two year cumulative lift is 5.41% under the County offer and 8.40% under the Federation offer; that the cost difference between the parties' final offers is significant; and that it should be assessed in analyzing the reasonableness of the final offers.

The County argues that future county liabilities must be considered in assessing the parties' final offers; that the new GASB 45 accounting standards has impacted all national public sector employers in that they must now report and account for their unfunded pension liabilities; that as of 2003 Milwaukee County had an estimated $400 million in unpaid medical liabilities; that the overall fiscal health of Milwaukee County is paramount to the County's ability to continue to provide services to its residents and jobs to its employees; that this Unit received a significant benefit enhancement in 2001-2002, when the backdrop pension benefit was added; and that this pension benefit is now creating a significant unfunded liability for Milwaukee County.

In addition, skyrocketing health insurance costs must be considered, according to the County; that costs continue to increase despite the efforts made by the parties; that arbitrators have traditionally upheld the importance of moderation in spending when municipalities have been subject to financial difficulties; that the severe and dire economic climate within Milwaukee County clearly supports its final offer, while underscoring the unreasonable nature of the final offer proposed by the Federation; that Milwaukee County continues to experience economic distress; and that arbitrators have recognized that municipal employers cannot, and should not, disregard the interests and welfare of the public and the financial ability of the unit of government to meet these costs.

The County's external comparable pool is appropriate, according to the County; that the County looked to three major factors: municipal governance, proximity, and size; that four counties are contiguous to Milwaukee County: Ozaukee, Racine, Washington and Waukesha; that the six largest counties in the State of Wisconsin were also selected as appropriate comparisons: Brown, Dane, Kenosha, Outagamie, Rock, and Winnebago; and that the City of Milwaukee was included because it is the largest city in the County and it comprises almost two-thirds of the County's population.

The County asserts that this Unit will receive a wage and benefit package which is unparalleled among the comparables; that the members of this Unit are among the highest paid in the external comparables; that Milwaukee County wage rates exceed the average each year; and that the County's wage ranking at the maximum rate will also continue to be the highest through 2007.

In addition, the County argues that the Federation's wage comparisons are flawed for two reasons; that, first, the Association included comparisons to Outagamie County and Winnebago County registered nurses, who are non-represented employees; that, two, the Association used the lowest paid registered nurse wage rates in Milwaukee County, even though most of the people in the Unit are at the top step; that these Unit members rank number one in 2007 and are only 1¢ per hour behind the number one ranking Dane County in 2008; that the County's offer places the Unit members $2.75 above the average in 2007 and $2.37 above the average in 2008; and that the Association's offer, in contrast, places the unit members $3.70 and $3.68 above the average in 2007 and 2008, respectively.

The County argues that the compensation reports submitted by the Association are not relevant to this dispute; that the wage and benefit package provided by the County is superlative to that offered by any of the comparables; and that the comparable fringe benefit data explicitly shows that the County's offer is the most reasonable.

Federation on Brief

The Federation argues that the highest paid registered nurses are psychiatric nurses; that the wages of County Registered Nurses lag far behind those of psychiatric unit nurses in the Milwaukee area; that, indeed, the wages paid to the County's Registered Nurses woefully lag behind their peers by virtually every measure; that psychiatric nurses wages across the country realized increases approaching 14% between 2005 and 2007; that during that same time period, some of the County's Registered Nurses saw their wages go up by about 4% and the rest by only 2%; and that not even the Federation's offer would make up the lag.

The Federation asserts that the County stakes its entire case on the argument that AFSCME District Council 48's (Council 48) wage settlement established an internal pattern of settlements for 2007 and 2008; that Council 48's wage settlement does not support the County's offer, given the history of that settlement; that Council 48 held out on a voluntary settlement until implementation of those changes during the 2005-06 contract had become

an impossibility; that all of the structural changes to which the Federation had agreed for 2006 was deferred for Council 48 to 2007; that, even so, Council 48 obtained the same across-the-board wage increases in 2006 that the Federation received; and that Council 48 also obtained three other quids for its 2007 wage freeze quo that were crucially important for a sizeable number of its members which the Federation did not receive.

The Federation notes that this is the first interest arbitration between these parties; that, consequently, there is no established set of external comparables; that the parties agree that the eight largest counties in the State, not including Milwaukee, are appropriate comparables; that Washington and Ozaukee Counties, though contiguous, are not comparable; that Washington County did not provide any information about its Registered Nurses; that Ozaukee County is much smaller than Milwaukee County; that it is vastly different in terms of both per capita income and per capita equalized value; that the City of Milwaukee, while comparable in terms of population, proximity, and other economic indicators, employs only Public Health Nurses; that, in contrast, the County's Registered Nurses' principal function is to deliver ongoing cares to specific patient populations in residential clinical setting, specifically the psychiatric hospital and detention facilities; and that the burden is on the County as the proponent to prove that the City of Milwaukee is comparable.

According to the Federation, its 2007 wage offer would maintain the Unit's position among the comparables, while the County's would diminish it; that its offer for 2007 is far more consistent with the external comparables than the County's; that while the Federation's would maintain the County's ranking of seventh place for the minimum wage rate and fourth place for the maximum wage rate, the County's would move it down to fifth place on the maximum wage rate; that the Federation's offer would exceed the average percentage increase among the comparables by no more than 0.3%, while the County's would be 2.74 to 2.78% below it; that the County's offer would triple the Unit's lag behind the minimum; that the Federation's offer would slightly increase the Unit's position above the average maximum, while the County's would drop it closer to the average; and that the timing of the Federation's proposed split places the actual 3% increase in 2007 income squarely in the middle of the comparables, only 0.02% above the average, while the impact of the County's offer is so far below any of the others as to be effectively off the chart.

That in terms of the arbitral criterium of "Greatest Weight," the Federation argues that since the record is devoid of any evidence concerning the County's 2007-08 property tax levies, the county has nothing on which to base a "greatest weight" argument; that the County did not present any evidence of the percentage change in the County's equalized value due to new construction; that it is impossible to ascertain from the record whether compliance with levy limits is even an issue here; and that without such evidence, "greatest weight" and "levy limits" become nothing more than mere shibboleths,[1] lacking any substance in this proceeding.

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[1] This is a word of first impression for this arbitrator. "Shibboleth," pronounced "shíbeleth," is a noun which means "a long-standing formula, doctrine or phrase held to be true by a

The Federation also argues that in light of the County's per capita personal income growth and rising property values, the "greater weight" factor does not favor the County's offer; that per-capita personal income in the County has been on the rise since at least 2000, at rates of increase higher than the Wisconsin average; that more importantly, particularly in light of the County's reliance on property tax levies for much of its revenue, property values in Milwaukee County have been increasing in recent years, bucking downward national and

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party or sect (*must abandon outdated shibboleths*)." It comes from the Hebrew word "šibb_let" ("ear of corn") and was "used as a test of nationaltiy for its difficult pronunciation (Judges 12:6)." The Oxford Dictionary and Thesaurus (New York: Oxford University Press, Inc., 1996).

To further impress this word into my memory, I looked up Judges 12:6, which reads as follows:

> Then the Gileadites took the fords of the Jordan against the Ephraimites. Whenever one of the fugitives of Ephraim said, "Let me go over," the men of Gilead would say to him, "Are you an Ephraimite?" When he said, "No," they said to him, "Then say 'Shibboleth'," and he said, "Sibboleth," for he could not pronounce it right. Then they seized him and killed him at the fords of the Jordan. Forty-two thousand of the Ephraimites fell at that time." The New Revised Standard Version Bible (New York: National Council of Churches, 1989).

I hope this is helpful in case any of us runs into the men of Gilead.

regional trends; that while the County will point to various negative indicators in an effort to paint a “gloom and doom” picture of its economic condition, these positive trends more than offset them; and that the “greater weight” factor, in short, simply does not weigh in the County’s favor.

The Federation asserts that the County makes no claim of inability to afford the Federation’s offer; that the interest and welfare of the public will be best served by acceptance of the Federation’s offer; that arbitrators have long recognized that the level of remuneration affects employee morale, and that high employee morale serves well the interests and welfare of the public; that, moreover, competitive wages are important for the retention of veteran, more experienced staff; and that the Federation’s final offer is closer to the 2007 increase in the cost of living.

In conclusion, the Federation asserts that its proposal for a pair of 2% wage increases in 2007, one at the beginning of the year, the second at mid-year, is substantially more reasonable than the County’s proposal for a 1% increase to take effect in November; that even with the extra $250 cash payment tossed on top of it, the County’s offer is a mere pittance; and that the fact that Council 48 took the County’s offer has no bearing on this unit, since it was Council 48’s consideration for a 4% wage increase in 2006 when it was still enjoying the pre-2006 health insurance arrangement and significant job-protection assurances that are not part of the County’s final offer here and are inapplicable to this Unit.

County on Reply Brief

The County argues that the Federation’s “re-hashing” of prior negotiations and agreements is not relevant to this dispute; that the deal which was voluntarily forged between the parties in settling the 2005-06 contract was fair and equitable; that it in no way deprived this bargaining unit of any wage increases or benefit options that were offered to other County units; that, indeed, quite the opposite took place; that this Unit received increases which surpassed those which were voluntarily granted to any other County bargaining unit for 2005 and for 2006; that in both 2005 and 2006, this Unit received the same 2.0% as that received by four other County units; that this Unit also received an additional top step on their salary schedule each year; that the value of that top step was $0.50 per hour above the prior step each year; that the total monetary value of that additional step was $1,040 each year; that this was in excess of the 2.0% received by the employees in the four units referenced above; that Council 48 which represents the overwhelming majority of represented County employees received no salary increase in 2005; that the additional 2% increase which Council 48 employees received in 2006 did not occur until October 8, 2006, which does not fully compensate District Council 48 employees for the 0% salary increase in 2005; that it is therefore clear that the Registered Nurses, who comprise the large majority of the employees in this Unit, received two additional salary steps of $0.50 per hour each in the 2005-06 settlement, in addition to the 2% increases which were given to all of the other voluntarily settled bargaining units except District Council 48; and that these

employees were treated far more favorably by the County in 2005-06 than all other County employees who voluntarily settled for the same contract period.

The County asserts that the contract years which are in dispute here are 2007 and 2008; that revisiting and second-guessing "done deals" is not productive; that this arbitrator should not now analyze prior settlements as a part of this process; that this Arbitrator is charged with settling a 2007-08 dispute, not with evaluating prior bargains voluntarily entered into between the parties; and that this Unit cannot have it both ways in that it cannot voluntarily settle a contract for 2005-06 which surpasses all other 2005-06 voluntary settlements in the County and then attempt to use that settlement to justify a 2007-08 final offer which is also more generous than the other County settlements for 2007-08.

The County also argues that the agreement reached with Council 48 is relevant to this dispute and supportive of the County's final offer; that the Union incorrectly summarizes the County's 2007-08 voluntary agreement with District; that, in fact, salary and health insurance changes were not the only changes which were made in that contract as a part of the 2007-08 Council 48 settlement; that the Federation's assertion that the 2007 "no-layoff pledge", the 2008 "no-privatization pledge", and the "me-too" clause should be considered here are unconvincing at best; that these components of the 2007-08 Council 48 settlement were a direct result of the County's plan to lay off 108 Council 48 members at the end of 2006; that, significantly, the employees of this Unit were never the subject of any threat of layoff; that, therefore, the Federation cannot cite these components of the Council 48 2007-08 settlement as a justification for its discordant 2007 salary proposal, which was granted to no other County bargaining unit in 2007; and that, moreover, the "me-too" provision in the Council 48 2007-08 settlement fully justifies the County's good-faith refusal to exceed the County's 2007-08 settlement with Council 48.

The County states that the Federation's reliance on wage rates across the United States is purposely misplaced; that those comparisons virtually ignore the vast disparity between the funding sources which provide the foundation of the salaries and benefits for such employees; that, in contrast, the wage rate comparisons which take into account the funding sources, i.e., local taxpayers, are the wages paid in counties comparable to Milwaukee County; that these comparisons clearly demonstrate that Milwaukee County Registered Nurses are among the highest paid in the State of Wisconsin; that the Federation cannot credibly argue "catch-up" in view of the external comparables; that the surveys used as the basis for the Federation's arguments are not only overly broad, they are also inconsistent; that the surveys use data comprised of public sector and private sector information; that they use data from sources that do not include nursing personnel, thereby diluting and negating the value of the data; that the surveys do not represent a historical consistency in responders; that the surveys derive data from national labor markets, a comparison which is not supported by the relevant criteria which are clearly stated in Section 111.70(4)(cm)6, MERA; that the statute deems most relevant a local focus of the comparisons; that the County's external comparables are appropriate to this group of employees; that under the County's wage rate offer, the Nurses position among

the comparables is maintained; and that this clearly belies the Federation's assertion that there is any need for "catch up."

The County is not asserting an argument under the "greatest weight" factor but does believe the "greater weight" factor supports its final offer; that the "mere shibboleths" cited by the Union would, essentially, ignore the reality of the County's economic duress; that the County is suffering the effects of high unemployment and loss of taxpayer base; and that the County is responding to state directives to reduce its costs.

The County argues that its final offer which duplicates the 2007-08 voluntary settlements with five of the eight County bargaining units must be viewed as the most pertinent measure of the interests and welfare of the public; that the County's interests and welfare of the public are best served by maintaining consistency among all County bargaining unit employees; that the morale of all County employees is inevitably affected by any disproportionate increase in one bargaining unit's wage rate over and above that which has been granted to the other County bargaining unit employees; that such a detrimental effect upon morale becomes more pronounced where, as here, the Union has provided virtually no credible rationale which can justify why these employees should receive an increase which is larger than those to which the overwhelming majority of represented employees have voluntarily agreed; and that the Federation's attempt to again achieve disproportionately large salary increases vis-à-vis those granted to other County employees in 2007-08 through this arbitration is simply indefensible and untenable within the arbitral standards established in Section 111.70(4)(cm)6, MERA.

The County argues that the Consumer Price Index (CPI) should not be given any weight in this dispute; that the Federation's statement of the CPI encompasses both nationwide and Midwest data, thereby diluting the value of its argument; that the County has provided the CPI for the Racine-Milwaukee area which is far more relevant and applicable to this dispute than the overly broad and regionally irrelevant CPI data the Federation offered; that the CPI increases for the Milwaukee-Racine area indicate a 1.8% increase for the first half of 2007; that this increase is consistent with the County package and is not consistent with the Federation; that the County believes the dire economic conditions existing in Milwaukee County supersede the relevance of the CPI data, even on the limited Racine-Milwaukee scale; and that the existing and ongoing financial crisis which exists in Milwaukee County must be considered when analyzing the wage increases proposed by the County and the Union.

The County concludes that its offer is the most reasonable offer and is supported by internal Milwaukee County 2007-08 settlements, external Wisconsin 2007-08 settlements, economic conditions in Milwaukee County, and arbitral case law; that, in addition, the County's final offer is in the best interests and welfare of the public and will best serve the maintenance of labor peace, stability and morale within the County; and that, for all of the foregoing reasons and the arguments contained in its Initial Brief, this Reply Brief and exhibits, the County respectfully requests that the Arbitrator select its final offer.

Federation on Reply Brief

The Federation argues that Council 48's 2007 settlement was part and parcel with its 2006 settlement and so is not a valid internal comparable; that in determining whether a pattern of settlement has been established, an individual element, such as wages, should not be isolated and considered in a vacuum; that if an alleged pattern-setter's wage increase reflected a concession, it does not establish a pattern for other units to which the same concessions do not apply; that the County claims that settlements identical to its final offer were achieved with five of the eight bargaining units; that, actually, there were only three: the Attorneys, Machinists and TEAMCO which account for only 94 County employees, far fewer than this Unit's 341 employees; that the Building Trades contract was not identical; that it continued the 2006 contract's formula of 96% of prevailing outside wages for its members; that, in fact, except for apprentices, all craftsmen's wages increased in 2007 by amounts far in excess of the 1%; that neither small units nor non-represented employees establish patterns of settlement; that, consequently, the existence of an established pattern of settlement for 2007 wage increases depends entirely on the proper characterization of Council 48's bargain; that Council 48 agreed to a paltry 2007 wage increase as a concession in exchange for other contract items that do not apply to this Unit; that, most notably, it reflected the County's agreement to a pair of 2% increases in 2006, even though Council 48 enjoyed all of the pension, sick-leave payout and health-insurance provisions of its 2001-04 bargain for the duration of its 2005-06 contract; that the County's strategy for bargaining its 2005-06 contracts was to limit future payment of pension backdrops and cash out of unused sick-leave time, grant a 4% pay lift for 2005-'06 and get employees to pay more for health care co-pays and, in the case of families, a higher monthly premium; that this Unit agreed to all of this to take effect in December 2005 and January 2006; that for this it obtained a pair of 2% increases and additional top steps for full-time Registered Nurses; that the other bargaining units had the same settlement; that Council 48 held out, ensuring that the structural changes would take effect for its members only on or after the implementation date of the 2007-08 contract; that the health insurance changes would be effective following the ratification of the 2007-08 contract; that Council 48's contracts were not ratified until February 1, 2007; that Council 48 still obtained the 4% increase for 2005-06; that its only concession was acquiescence in a single 1% wage increase for 2007; and that this concession does not apply to this Unit.

The Federation also argues that the second unique *quid pro quo* that Council 48 received was the County's no-layoff pledge for 2007 and a no-privatization pledge for 2008; that no similar provisions are contained in the County's final offer to this Unit; that the convoluted history and interplay between Council 48's 2005-06 and 2007-08 contracts, as well as the protections against layoff, render its 2007 wage settlement wholly irrelevant to this interest arbitration; that the 1% increase was inextricably bound up with the County's agreement to de-link, only for Council 48, the total 4% increase for 2005-2006 from the structural changes; that the County insisted on such linkage in the other unions' 2005-06 bargains; and that since the County has offered no comparable concessions to this Unit as a *quid pro quo* for its paltry 2007 wage offer, Council 48's 2007 wage agreement is no more comparable to this one than an apple is to an orange.

The Federation also argues that if unorganized employees are not to be considered as external comparables, they must also be excluded as internal comparables; and that arbitrators, including this one, generally exclude unorganized employees from consideration.

In addition, the Federation argues that the County's offer is far below the external comparables; that it is the County's methodology Is flawed; that the Federation used the minimum and maximum wages of an Registered Nurse ; that the County, in contrast, has blended all of the Registered Nurse 1, Registered Nurse 2 and Registered Nurse Pool rates; that the County lumps public health nurses in with Registered Nurses, despite the substantial differences in the educational, training and licensing requirements and duties and responsibilities of the two positions; that by blending its Pool Registered Nurses with its regular Registered Nurses, the County essentially equates them, even though it pays Pool Registered Nurses a higher wage in lieu of benefits; that, again, by blending its Registered Nurse 1s and Registered Nurse 2s, it similarly equates them, even though the duties of an Registered Nurse 2 are so substantially different and more complex than those of an Registered Nurse 1 that the County places Registered Nurse 2s in a higher pay range; that the Federation, by focusing on the rates of the Registered Nurse 1s who are principally responsible for the delivery of direct patient care, has kept the comparison between "apples" and "apples;" that the County has provided no evidence that any of the other counties' bargaining unit nurses do anything more than that; that, consequently, the inclusion of the higher-paid Registered Nurse 2s in the calculation of the County's comparative wage rates unjustifiably skews those rates higher; that the Federation presented both the minimum and maximum pay steps of both the County's Registered Nurse 1s and those of all the other counties' comparable Registered Nurses; and that, where it focused on only one of them, it was the maximum, not the minimum.

The Federation argues that even if Outagamie and Winnebago counties are excluded from consideration, the County's offer is still well below the comparables; that no other comparable came anywhere close to the 1% that the County proposes for 2007; that the next lowest is Rock County's 2.5%; and that all of the rest are 3% or higher.

In addition, the Federation argues that all of the benefits that the County seeks to array as additional make-weights pale in comparison to the far more valuable benefits that the other counties' Registered Nurses receive as members of the Wisconsin Retirement System (WRS); that the County is, of course, expected to fund the cost of pension benefits under its plan; that, however, the County has repeatedly and deliberately underfunded the pension plan; that the tax-free payments of required employee contributions that the other counties make to WRS on their employees' behalf amount to an additional 6% over and above their base wages; that this changes the placement of the County among the external comparables; that the County's health insurance cost-sharing program is inferior to many of the comparables; that in three of the six comparable counties, the employees contributed nothing at all in 2007; and that, at best, the County's program is in the lower middle of the pack.

The Federation also argues that the wage survey information presented through the AFT Research Director is relevant in that it reflected wage patterns among psychiatric unit Registered Nurses nationwide and in the Milwaukee County area; and that, as such, it bore on the statutory factors of comparisons to the wages, hours and conditions of employment of other employees in public and in private employment in the same community.

The Federation argues that the County's fiscal condition is improving significantly and does not warrant selection of the County's offer; that the Federation's final offer on 2007 cannot credibly be viewed as a budget-buster, however, since the County's adopted 2007 budget assumed that practically all personnel in the Federation's bargaining unit would receive salary increases of approximately 5.56% in 2007; that the Federation's proposal for a pair of 4% increases with a combined lift of 4.04% in 2007 was well within these budgetary parameters; that, consequently, even though it would produce a total 2007 cost increase to the County that is approximately $532,870 higher than the County's, it has already been budgeted; that the difference of $532,870 between the two wage proposals for 2007 represents only 0.2% of the total tax levy; that, since the tax levy covers only that part of the total County budget not covered by other revenues, the difference between the two offers represents an even smaller portion, approximately 0.06% of the total budget; that the public interest does not favor the County's offer; that in terms of the County's financial condition, the County vastly overstates its case; that the County says its dire financial conditions are uncontradicted in the record when, in fact, its own exhibits contradict them; that this is due principally to the significant progress the County has made, with the help of the Federation and the other unions, in bringing pension and employee health-insurance costs under control; that to whatever extent the public is served by holding the County's nursing staff to a 1% wage increase coming practically at the end of 2007, it is more than outweighed by the public interest in maintaining the morale of these employees; that, for all of the reasons set forth herein and in the Federation's principal brief, the Federation's final offer on wages is more reasonable than the County's; and that the arbitrator should adopt the Federation's final offer and incorporate it into the parties' 2007-2008 contract.

DISCUSSION

Introduction

The County, ultimately, has two main points: first, that settlements identical to its final offer in this matter were voluntarily achieved with five of the eight bargaining units in the County and, therefore, should be selected in this proceeding and, second, that the financial situation of the County limits the County's ability to fund a larger settlement. The Federation also has two main points: first, that because of the background to Council 48's 2005-06 and 2007-08 agreements and the concessions Council 48 received, there is no binding settlement pattern and, second, that the external comparables favor its final offer. Since this is the first arbitration between these parties and since they disagree in part as to what entities should constitute the comparable pool, there is where we need to start.

External Comparable Pool

Under Sec. 111.70(4)(cm)7r(e), MERA, the arbitrator is required to give weight to the comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in comparable communities. We begin by determining what those comparable communities are.

The County states that it looked to three major factors in determining the entities it would offer as external comparables: municipal governance, proximity and size. In terms of proximity, the County proposes the four counties contiguous to Milwaukee County as part of the comparable pool: Ozaukee, Racine, Washington and Waukesha. In terms of size, the County offers the top eight most populated counties, not including Milwaukee: Brown, Dane, Kenosha, Outagamie, Racine, Rock, Waukesha and Winnebago.[2] Finally, the County asserts that the City of Milwaukee should be included in the comparable pool because it is the largest city in Milwaukee County and it comprises almost two-thirds of Milwaukee County's population.

The Federation agrees that the pool should include the eight most populous counties after Milwaukee: Brown, Dane, Kenosha, Outagamie, Racine, Rock, Waukesha and Winnebago. Absent from this list but included on the County's list are the contiguous counties of Ozaukee and Washington. The Federation argues that Washington County should be excluded because no information was provided about its Registered Nurses, if any. The Federation asserts that Ozaukee County should not be included because it is so small compared to Milwaukee County and because both its per capita income and equalized value is so much greater than Milwaukee County's. In addition, the Federation excludes the City of Milwaukee because it only employs Public Health Nurses. According to the Federation, while the City of Milwaukee is comparable with the County in terms of population, proximity and other economic indicators, PHNs are not comparable as they have different licensing and education requires and do different work than Psychiatric Nurses and Registered Nurses.

On reply brief, the County notes that it did not include any information about Washington County as the nurses there are not represented for purposes of collective bargaining; indeed, the County asserts that arbitral precedent has established that non-unionized employees are not comparable to those employees who are represented by a union. It is unclear, then, why the County included Washington County in its proposed comparable pool other than the fact that it is a contiguous county. On reply brief, the Federation notes that it included Outagamie and Winnebago Counties, even though the Registered Nurses in these two counties are unrepresented for purposes of collective bargaining. It asserts it did so simply to provide a complete picture of the status of Registered Nurses in the largest

[2] Note that two counties qualify under both proximity and size in the County's proposed pool: Racine and Waukesha.

counties. Both parties seem to be in agreement that non-represented nurses should not be in the comparable pool, even though they both proposed counties with such nurses.

So let us start out with the easy decision: until they are represented for purposes of collective bargaining, I exclude Outagamie, Washington and Winnebago Counties from the comparable pool.

The Federation makes a showing that Psychiatric Nurses and Registered Nurses are distinct and different from Public Health Nurses. This is made clear in that Kenosha, Ozaukee, Rock and Waukesha have both job classifications in their wage scale. Since the parties in this matter agree that Kenosha, Rock and Waukesha Counties should be included in the pool of comparables, I will include them. But since the Unit in this matter does not include any Public Health Nurses, I will only include these counties' wage rates from the Psychiatric Nurse and Registered Nurse classifications.

The Federation argues against the inclusion of Ozaukee County, stating that contiguous does not necessarily mean comparable. While I can agree with that to a point, and as I agree that Ozaukee County is quite different from Milwaukee County, I find the fact that Ozaukee County has organized Psychiatric Nurses and that it is contiguous strong factors for including it in the comparable pool. I will include it but only for its Psychiatric Nurses, again, not for its Public Health Nursess. As both Brown County and the City of Milwaukee only have Public Health Nurses, I reject them as comparables to this unit.

Finally, both Dane and Racine Counties have organized units of Registered Nurses so I will also include them in the comparable pool. To summarize, the comparable pool will be composed of the psychiatric and registered nurses units of Dane, Kenosha, Ozaukee, Racine, Rock and Waukesha counties.

Support for the Internal Settlement Pattern

Under Sec. 111.70(4)(cm)7r(e), MERA, the arbitrator is required to give weight to the comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community.

The County asserts that settlements identical to its final offer were voluntarily achieved with five of the eight bargaining units in the County for 2007-08.The identical settlements, according to the County, include a 1.0% wage increase effective November 4, 2007, and a lump sum payment of $250. These settlements cover 4008 of 4859 or 82.5% of the County's represented employees.[3] The County has also given its 866 non-represented employees the same wage increase. Three units are unsettled: Firefighters, Deputy Sheriffs

[3] In some calculations and charts, the County included non-represented employees. I do not so there will be differences between some of the Counties calculations and mine.

and this unit of Health Care Professionals. These three units comprise 851 employees or 17.5% of the organized employees. See Table 1 below.

The County argues that case law emphasizes the importance of consistent settlement terms and that arbitral authority clearly mandates the maintenance of internal consistency; indeed, the vital and overarching importance of internal consistency has been emphasized by numerous Arbitrators, according to the County, in numerous interest arbitration decisions rendered throughout Wisconsin.

In support, the County cites a recent case in which the Arbitrator Hahn emphasized the importance of internal consistency as follows:

> One of the purposes of the interest/arbitration laws was to create labor stability which has been recognized by arbitrators as case law under the Interest/Arbitration Statute has evolved. This is why significant weight is given to internal comparables. While it is true that jobs and work within the County differ between bargaining units, the more working conditions and labor and employment contract language that guides those working conditions is similar, the more stability will be achieved between the County and its bargaining units and among the employees themselves.
>
> Marquette County (Highway), Dec. No. 31735-A (Hahn, 2/20/07).

Table 1: Bargaining Unit Size and Contract Status

Bargaining Unit	# of Employees	% of Employees	Settlement Status
Attorneys	50	1.0%	Settled
Building Trades	91	1.9%	Settled
Council 48	3,823	78.7%	Settled
Firefighters	17	0.3%	Not Settled
Health Care Professionals	**341**	**7.0%**	**Not Settled**
Machinists	6	0.1%	Settled
Deputy Sheriffs	493	10.1%	Not Settled
Techs, Engineers, Architects	38	0.8%	Settled

TOTAL	**4,859**	**99.9**[4]	**Settled: 4008 = 82.5 %**

In terms of the importance of an employer seeking uniform settlements with its bargaining units, the County cites Arbitrator Michelstetter as follows:

> The internal comparison criterion is a very important measure of how parties very similarly situated would establish the amount of a general increase and make changes in other benefits. Further, the internal comparison criterion is important when parties have a history of uniform settlements across bargaining units because it would be difficult or impossible for a public employer with multiple units to achieve voluntary settlements if parties could freely 'break the pattern'.
>
> Eau Claire (Sheriff's Department), Dec. No. 30152-A (Michelstetter, 3/7/02).

The County asserts that internal consistency should govern throughout a community, regardless of what type of bargaining unit is involved, for internal comparisons provide consistency and equitable treatment, citing Arbitrator Fleischli:

> On an issue such as the appropriate across the board wage increase which should be granted, internal comparisons (i.e., increases granted to other represented employees of the municipality) should in the view of the undersigned, carry great weight, regardless of whether the bargaining unit consist of firefighting or law enforcement personnel (subject to the provision of 111.77 of the Wisconsin Statutes) or professional, blue color, or white collar workers (subject to the provisions of Section 111.70(cm)6, Wisconsin Statutes).
>
> City of Waukesha, Dec. No. 21299 (Fleischli, 8/28/84).

Another goal which is supported by arbitrators, according to the County, is stability in labor relations which is supported by arbitrators maintaining internal consistency in settlements, as Arbitrator Gundermann wrote:

> As a general proposition, arbitrators are inclined to look toward internal comparables rather than external comparables where a clear pattern of voluntary settlements exist. . . .It is also asserted that by using internal comparables there is added stability to the bargaining process and less

[4] This is 0.1% off due to rounding.

> opportunity for dissension arising out of one unit receiving preferential treatment over another unit.
>
> City of Oshkosh, Dec. No. 26923-A (Gundermann, 3/3/93).

The County cited Arbitrator Vernon for the proposition that internal settlement patterns were are more important than any single other criteria.

> In municipalities that have a number of different bargaining units the internal pattern of settlements – if one exists – deserves a great deal of attention. This is well established and the reasons have been well expressed by Arbitrators across the state. A pattern of consistent increases agreed to by various bargaining units is a collective consensus of the appropriate influence all the various statutory criteria should have as a whole relative to the particular economic circumstances in any city. It is really a good yardstick for the proximate mix of all factors as it subsumes all of them. As such, the internal pattern is more important than any single other criteria.
> City of Appleton (Police), Dec. No. 25636-A (Vernon, 4/20/89).

The County argues that its Final Offer serves the interests of labor peace and that maintaining labor peace has been emphasized and repeated in numerous public sector interest arbitration decisions; indeed, the County asserts that arbitration awards historically emphasize internal consistency as a means of maintaining labor peace, as Arbitrator Stern wrote:

> If an arbitrator making an award that resolves the last outstanding dispute in a city adopts a position that overturns the pattern already set, he creates problems for the following year in the other negotiations. Furthermore, when an arbitrator does this, it discourages prompt voluntary settlements by the parties and encourages bargainers to be the last to settle on the chance that they can get a little bit more through arbitration than those that settled previously.
>
> City of Manitowoc (Waste Water Treatment Plant), Dec. No. 17463-A (Stern, 1/27/81).

An arbitration award that deviates from the settlement pattern has a specific negative effect on employee morale, according to the County, citing Arbitrator Fleischli:

> Municipalities understandably strive for consistency and equity in treatment of employees. Any unexplained or unjustified deviations from an established pattern of settlements with represented groups, whether achieved through negotiations or an arbitration award, can be disruptive in terms of their negative impact upon employee morale and the municipality's collective bargaining relationship and credibility with other labor organizations.

City of Waukesha, Dec. No. 21299 (Fleischli, 8/28/84).

The County argues that arbitrators should find in favor of supporting an internal settlement pattern even if the unit's position among the external comparables is harmed, as Arbitrator Johnson wrote:

> "It is well accepted by most arbitrators and certainly by this one that if several bargaining units of the same employer have already settled for the identical conditions that are being offered to the unit involved in the arbitration proceeding, there would need to be a very persuasive case to overcome the presumption that a similar settlement should be applied to the unit in question. I am sympathetic with the Association's position that accepting the Employer's final offer will in all probability cause a continuation and for all anyone knows an intensification of the current decline in real wages of policemen in this unit. But I would be reluctant to risk the disarray between the Employer and the other bargaining units that might result in future years from adopting the Association's final offer.
>
> City of Chippewa Falls (Police), Dec. No. 28334 (Johnson, 8/8/95).

The County agrees with Arbitrator Oestreicher that internal settlement patterns is good public policy:

> Some public sector employers have established a pattern of settling with all of their employee units for essentially equal percent wage and benefit package increases. This practice has been recognized as good public policy. When the practice has been established, it has been recognized as a major consideration in contract negotiations. When parties have been unable to agree, arbitrators consider internal settlement patterns as significant factors to be considered.
>
> Mount Horeb School District (Auxiliary Personnel), Voluntary Impasse Procedure, Dec. No. 7301 (Oestreicher, 12/6/95).

With a brief full of citations like these, the County will get no argument from this arbitrator about many of these assertions, for the public interest, labor peace, employee morale and job satisfaction considerations do indeed require the maintenance of an internal settlement pattern, assuming an internal settlement pattern is established. And the Federation would assert one should not assume that too quickly.

A Contrary View of the Internal Settlement Pattern

The Federation argues that Council 48's wage settlement does not support the County's offer, given the history of that settlement, and without Council 48's settlement, there is no

internal settlement pattern in this case. According to the Federation, in early 2006, most of the County's unions, including the Federation, voluntarily settled for pension, sick leave and health insurance changes effective at the beginning of 2006, changes that the County so desperately sought in order to put its financial house in order. In return, the Federation and other bargaining units received two 2% wage increases in 2006, the year in which the structural changes went in effect. There was no wage increase for 2005 without the structural changes.

The County's largest union, Council 48, however, found the health insurance changes unacceptable, according to the Federation. At some point, the County took steps to lay off 108 employees represented by Council 48. On December 27, 2006, the County and Council 48 struck a deal for two contracts: one for 2005-06, the second for 2007-08.

The Federation states that all of the structural changes to which the Federation had agreed to take effect in 2006 were deferred to 2007 for Council 48. Even so, Council 48 obtained the same two 2% across-the-board wage increases in 2006 that the Federation had received. The Federation asserts that, in short, Council 48 was rewarded for holding out on a voluntary settlement until implementation of those changes during the term of its 2005-2006 contract had become an impossibility. Had the County treated Council 48 the same as it had treated the Federation, it would have held Council 48 to a wage freeze in 2006, with the two 2-percent raises taking effect in 2007 when the structural changes took effect for Council 48. As a result, in 2006, Council 48's members enjoyed the same wage increases that the Federation had obtained but they did not have to pay the same increased health insurance costs, and they continued accruing sick leave eligible for a 100-percent payout on retirement.

The Federation cites Arbitrator Greco in this regard as follows:

> There of course is nothing wrong when the Union chooses to exercise that right, one which also means that its members have not yet received any of the wage increases granted to all other City employees in 2002. Nevertheless, DPW employees have paid less for their insurance than other unionized City employees, which is a fact that must be considered when looking at internal comparables.
>
> City of Green Bay (Public Works), Dec. No. 30532-A (Greco, July 15, 2003).

According to the Federation, Council 48 agreed to the structural changes in 2007 when it also accepted a virtual wage freeze of a 1% wage increase on November 4, 2007, and a $250 lump sum payment; however, its members received two 2% raises for 2006 with a lift of 4%, even though they were then paying less for their insurance than other unionized employees and enjoying benefits the others had given up. This "is a fact that must be considered when looking at internal comparables," according to the Federation, particularly the suitability of Council 48's 2007 wage increase as a valid "comparable" for this bargaining unit.

But the Federation's arguments are misplaced because, as pointed out by the County, the settlement for 2005-2006 is not before this arbitrator. This is especially true in this instance as the Federation and the County agreed in the 2005-2006 agreement to add two new top steps to the salary schedule, each worth approximately $1000 a year, new steps that no other bargaining unit, including Council 48, received in 2005-2006.

The Federation and the County entered into an agreement for 2005-2006 and the County kept its part of the agreement. The issue before this arbitrator is not whether there was a settlement pattern in 2005-2006 or how Council 48 was treated better than this Unit during that time period. The Federation cannot successfully come into a hearing on the 2007-08 collective bargaining agreement and argue before this arbitrator that, based upon what happened in settlements for 2005-2006, there is no internal settlement pattern here when the record is clear Council 48 and four other bargaining units accepted a 1% wage increase effective November 4, 2007, and a $250 lump sum payment, the same offer that the County has made to the Federation.[5]

But what constitutes a internal settlement pattern? Is there more that is needed to make an internal settlement pattern into a binding internal settlement pattern? Normally, the arguments before me have been whether there are enough units and/or enough employees to find an internal settlement pattern. Here, that is not at issue. If that was all it was, then the case would be over for the County has a settlement of 1% wage increase on November 4, 2007, and a $250 lump sum payment with five of its bargaining units and 82.5% of its organized employees. These are impressive numbers. But the Federation raises the question of whether more must be present in order to declare a internal settlement pattern that can be enforced on the remaining units and employees.

In a case with this County and one of its other bargaining units, the Firefighters, for the 2005-06 collective bargaining agreement, Arbitrator Yaeger stated as follows:

> Clearly, (the Council 48) bargaining unit is the elephant in the room in terms of internal comparables, whereas this bargaining unit represents the fewest employees of any of the bargaining units and cannot, standing alone, ever be a pattern setter in negotiations with the County. Indeed, it is highly questionable whether all of the bargaining units taken together, excluding AFSCME District Council 48, have the ability to establish a pattern settlement when they comprise only 24% of the represented employees.

[5] I take exception to classifying one of these settlements as part of an internal settlement patters. I will discuss this later. For now, I will continue to use "five" settlements, as claimed by the County, though with this standing exception.

Milwaukee County (Airport Fire Department), Decision No. 31600-A (Yaeger, 6/19/07).[6]

And so it is here. Council 48 has settled for the 1% wage increase November 4, 2007, and a $250 lump sum payment, as have four other bargaining units, which covers the vast majority of the County's represented employees. Is this an internal settlement pattern, the end of this case? Can this internal settlement pattern be foisted upon the Federation? Is the Federation without a valid argument?

Catch-Up Claim

In the case between the County and its Firefighter unit for the 1005-2006 agreement, Arbitrator Yaeger also stated:

> The County asserts that its wage proposal is supported by the wage/salary settlements it has bargained with all of its other represented employees and that the undersigned should find that fact controlling of the outcome of this dispute. The undersigned agrees that generally internal comparability is entitled to significant if not controlling weight when an employer has successfully negotiated the same (across the board) wage/salary increases with its other units. I have so stated in other decisions. However, this case involves more than just (across the board) salary proposals. The Union's final offer on salaries contains a "catch-up component which distinguishes this case from those where the dispute is over, for example, the size or timing of the (across the board) increase or the proposed modification of a fringe benefit. . .(E)ven if one concludes that an internal settlement pattern has been established for the (across the board) increase, it cannot be the case that, therefore, consideration of the Union's claim that a salary catch-up adjustment is warranted in this bargaining unit is precluded.

So there is at least one exception, and the Federation argues that exception of "catch-up" as part of its case here in its effort to upset the apparent internal settlement pattern. The Federation argues that the County's Registered Nurses lag far behind those of psychiatric nurses in the Milwaukee area. Even acceptance of the Federation's offer would not make up the gap, the Federation argues.

Under Sec. 111.70(4)(cm)7r(d) and (f), MERA, the arbitrator is required to give weight to the comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and of other employees in private employment in the same community and in comparable communities.

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[6] All quotes from Arbitrator Yaeger come from this Award.

And to that end, the Federation submitted much testimony and documentation. Their chief witness, Jewell Gould, Director of Research for the American Federation of Teachers, the Federation's parent organization, for 20 years, testified competently and thoroughly about wage and salary research regarding psychiatric nurses. The Federation entered many exhibits through his testimony and over the objection of the County. The testimony and exhibits assert that the wages paid to the County's Registered Nurses woefully lag behind their peers by virtually every measure. The Director testimony and supporting exhibits showed that while psychiatric nurses across the country realized increases approaching 14%, some of the County's Registered Nurses saw their wages increase by 4% and the others by only 2%.

As noted above, the County objects to the inclusion of many of these exhibits. It asserts that the pool of comparables is over broad, that there is a lack of regional information and a lack of consistency among responders, that there is a mix of public and private sector data and a mix of unionized and non-unionized participants, that there is a lack of specific information on items included or excluded from comparisons, and that, in some cases, different methodology was used to arrive at data extrapolated for preparation of the exhibits. As a result, the County argues that no weight should be given to those exhibits.

I agree with the County. I especially find the testimony and exhibits lacking in one important way: specificity. The testimony and evidence did not allow me to determine which institutions paid its nurses what amount per hour. I want to see the employer listed and the wages that employer is paying delineated. So while I worked with this research, reading and reviewing it, attempting to mine some gold from it, I was left empty handed. Therefore, I will not use this testimony or evidence in applying the statute's criteria in this matter. And much of the Federation's "catch-up" argument hinged on this testimony and evidence.

Table 2: Unit Composition by Job Title

Job Title	**# of Employees**	**% of Unit**
Registered Nurse 1	141	43.1%
Registered Nurse 2	62	18.2%
Registered Nurse 1 (Pool)	55	16.1%
All Other Nurses	36	10.6%
Subtotal: All Nurses	**294**	**86.2%**
Occupational Therapists	34	10.0%
All Other Job Titles	13	3.8%

Subtotal: All Non-Nurses	**47**	**13.8%**
TOTAL	**341**	**100%**

This Unit is comprised of over 86% nurses. The County, in its calculations, mixed Registered Nurse, Registered Nurse 2, and Pool Nurses together to get a composite or blended wage rate. Pool Nurses do not consistently work regular shifts. In a sense, they are like on-call employees, scheduled when they are needed and when they are available. As such, they do not receive any benefits that the Registered Nurses classifications receive, such as insurance and paid leave time; instead, they are paid a higher hourly rate in lieu of benefits. For this reason, including them in the comparisons skews the wage rates higher, making the wage rates unrepresentative of the regular bargaining unit member who takes some of the earnings in benefits. So I do not include Pool Nurses in my calculations. In addition, the comparables have nurses consistent in duties to Register Nurses 1 who provide direct patient care. They do not seem to have the more advanced position of Registered Nurse 2 or, if they do, not in sufficient numbers to make valid comparisons.

Therefore, I will focus on the position of Registered Nurse 1 which comprises over 43% of the bargaining unit. And, as pointed out by the County, since the majority of bargaining unit members are at the maximum step, I will prefer that data over the data for the minimum rate. In doing so, I will have different amounts and rankings than the County and the Federation offered, mainly because of the selection of external comparables and, in the County's case, the elimination of the Poor Nurse and Registered Nurse 2 classifications from the computations.

Table 3 below shows the ranking for the 2006 hourly rates among the comparables.

Table 3: 2006 Ranking of Wage Rates

Rank/County	Minimum	Rank	Maximum
1. Dane	$23.71	1. Rock	$29.99
2. Ozaukee	$23.63	2. Dane	$28.69
3. Rock	$22.31	**3. Milwaukee**	**$28.42**
4. Kenosha	$21.82	4. Ozaukee	$27.79
5. Racine	$21.21	5. Racine	$27.48
6. Milwaukee	**$21.10**	6. Kenosha	$26.51
7. Waukesha	$18.66	7. Waukesha	$21.02

Average[7]	$21.89	**Average**	$26.91
Milwaukee Co	**-$0.79**	**Milwaukee Co**	**+$1.51**

For 2006, the County is $0.79 or 3.6% below the average on the minimum rate for a rank 6th out of 7, and $1.51 or 5.6 % above the average on the maximum rate for a rank of 3rd out of 7. One might argue that since Milwaukee is the largest County by far among the comparables and since the majority of its nurses work in the psychiatric hospital and detention facilities, difficult assignments, to say the least, that its minimum rate should be more competitive. Even so, based upon these rankings, there is no screaming cry for catch-up at this time. Thus, the Federation's argument for catch-up fails.

Uniformity of the Internal Settlements

But Council 48 also obtained three other benefit clauses for its 2007 1% wage increase that were crucially important for a sizable number of its members: a "no-layoff" pledge for 2007, a "no-privatization" pledge for 2008, and a "me-too" clause applicable to any higher voluntary settlement package that the County might negotiate with any other union. The no-layoff pledge laid to rest for 2007 the County's plan to lay off 108 of Council 48's members. The 2008 no-privatization pledge insulates Council 48 members from loss of jobs due to privatization for the following year. According to the Federation, these were valuable clauses to Council 48, which in exchange agreed to a 1% wage increase November 4, 2007, and a $250 lump sum payment, what the Federation calls a virtual wage-freeze.

The County's final offer here proposes to give none of these assurances to Federation members. In essence, it demands that Federation offer up the *quo* that Council 48 gave, acceptance of a 1% wage increase effective November 4, 2007, without receiving the *quid* that Council 48 obtained: a "no-layoff" pledge for 2007, a "no-privatization" pledge for 2008, and a "me-too" clause applicable to any higher voluntary settlement package that the County might negotiate with any other union. According to the Federation, it is fundamentally unfair to impose a deal, fair as it might be for one union representing County employees, upon another for whom the consideration has little or no value.

[7] The average was determined without including Milwaukee County. This will be true of all tables which include an average: Milwaukee County will not be part of the calculation to determine the average of the comparables.

So here we have a powerful union, Council 48, threatened with the loss of 108 bargaining unit positions. My experience tells me that saving these positions would be of the highest priority for Council 48. So what would Council 48 give to get a “no-layoff” pledge for one year, a “no-privatization” pledge for the next year, and a “me-too” clause if any other unit settles at a higher rate? These pledges keep the bargaining unit safer, if not totally safe in 2008, and its wage settlement is guaranteed to match the highest. What would such guarantees be worth to Council 48? One might believe that it could possibly agree to accept a 1% wage increase November 4, 2007, and a $250 lump sum payment in order to get the “no-layoff” pledge, the “no-privatization” pledge, and the “me-too” clause.

In his case with the County and the Firefighters, Arbitrator Yaeger had a similar situation.

> It is also the case that while the County touts the uniformity of the settlements it negotiated with six other bargaining unit, the Union has pointed out that while the size and timing of the (across the board) wage increases may be the same there were other changes negotiated as part of those settlement that undermine the County’s claim of a uniform pattern.

Arbitrator Yaeger specified some of the changes.

> In the case of the Deputy Sheriff’s contract the County agreed to drop the bottom two steps of the salary schedule in 2006, which effectively increases the beginning wages and reduces the length of time it will take to reach the top of the salary schedule. The Deputies also received an additional week of vacation and added a new holiday.

He specifically mentioned the Nurses bargaining unit, the very unit involved in this case, as follows:

> The Nurses bargaining unit also was granted a new maximum step in 2005 valued at $.50 per hour and an additional new step in 2006 also valued at $.50 per hour.

In addition, he made mention of the Attorneys and Building Trades units, both settlements which had their unique aspects. Arbitrator Yaeger found the following:

> So, while the County urges the undersigned to conclude a clear settlement pattern exists the evidence is to the contrary.

As noted above, I take exception to one bargaining unit’s inclusion in the internal settlement pattern of 1% wage increase effective November 4, 2007, and a $250 lump sum payment: Building Trades. The contract for this unit connects wages to the prevailing rates paid those trades in the private sector. The County does not negotiate with this unit over actual wages; instead, it negotiates what percentage of the prevailing rate it will pay. At this point in time, that is 96%. Thus, this unit did not get a 1% wage increase November 4, 2007, but received

96% of the hourly wage in the private sector. Thus, this settlement is not part of any internal settlement pattern.

The Building Trades settlement is also inconsistent with an internal settlement pattern in another way. Council 48 was not the only unit to get a "no-layoff" clause for 2007 and "no-privatization" clause for 2008: Building Trades also received the two guarantee clauses. And it does not stop there. The Machinists and the Technicians, Engineers and Architects also received the guarantee clauses for a total of four of the five settled units. The fifth unit, the Attorneys, did not receive such guarantees. Contrary to the assertion by the County, the five settlements are not identical. In addition, the Deputy Sheriffs are in arbitration but the County's final offer in that case does not include the two guarantees.[8] And, of course, the Health Care Professionals, the Nurses, was not offered such guarantees. The score at this point is four units with the guarantees to three units with no guarantees.

But, the County argues, in terms of the 2007 "no layoff" pledge and the 2008 "no-privatization pledge", the record is clear that these components of the 2007-08 Council 48 settlement were a direct result of the County's plan to lay off 108 Council 48 members at the end of 2006. Significantly, the County continues, the employees of the Federation were never the object or subject of any threat of layoff; therefore, according to the County, the Federation cannot cite these components of the Council 48 2007-08 settlement as a justification for its discordant 2007 salary proposal.

But the County misses the point. The Federation is not saying that because it was not offered these pledges, the internal settlement pattern breaks down. It is saying that what these Units gave up to receive those pledges was not given to the Nurses. What did Council 48, Building Trades, Machinists, and Technicians give to get those pledges? What did the County get from these units to agree to these pledges? No one can convince me that the County gave these units these pledges without something in return. The only thing in the Agreements that these units could have given the County for the pledges was a lessening of their wage demands down to a "virtual wage freeze," to use the Federation's description, that is, 1% increase for two of the 12 months of 2007 and a one-time, not to go on the wage rates $250 lump sum payment.

The Nurses assert that whatever these Units gave up in monetary value to get these pledges should have been offered to them if the County wants an internal settlement pattern. Those two guarantees (and the "me-too" clause) have a financial value which has been given to four units in the form of two pledges but which has not in any way been offered to the other three units and, specifically, the Health Care Professionals or Nurses Unit. Without that amount, the Nurses are not getting the same value if they accept the

[8] The Firefighter unit is unsettled and final offers have not been certified so it cannot be said what the County will ultimately offer this unit in regard to the guarantees.

County's offer that the four units received and, therefore, the Nurse's settlement is not worth the same amount as the settlement received by the four units who gained the two guarantees.

What if the County had not agreed to provide these four units with the two guarantees as part of a 2007-08 package? Would these units have settled at 1% on November 4, 2007, and a $250 lump sum payment if the two guarantees were not part of the deal? What wage increase would these Units have settled at without the pledges? That is the wage increase the Nurses believe they are entitled to if there is to be a true internal settlement pattern. What would these units have final offered in terms of a wage proposal if they had not received the two guarantees and had not accepted the County's wage offer of 1% effective November 4, 2007, (and that every present $250 lump sum payment)? Could it have been two 2% wage increases in 2007? We cannot know. But what we can know is that the Nurse's unit was not offered the economic value of the two guarantees granted the four units and, therefore, these settlements are not identical. It is that simple.

I find that there can be no internal wage settlement pattern which can be enforced on a bargaining unit in a situation where one or more of the employer's bargaining units received a benefit as part of the settlement which one or more of the units was not offered or did not receive. To have an internal settlement pattern, the wage offers must be consistent, and so must other aspects of the employer's offer, especially those that have a financial impact. Arbitrator Yaeger does not come right out and say that there is no settlement pattern in the case before him, but I find that there is no internal settlement pattern in this case that can be imposed upon the Nurse's unit. This finding takes away one of the two major points of the County's argument in favor of its Final Offer.

"Factor Given Greatest Weight"

Section 111.70(4)(cm)7, MERA, requires the arbitrator to consider and give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer.

The County makes no argument under this section of MERA. The County specifically states that it has not laid claim to an inability to pay argument. The Federation argues that since the record is devoid of any evidence concerning the County's 2007 and 2008 property tax levies, the County has nothing on which to base a "greatest weight" argument.

MERA also requires the arbitrator to give an accounting of the consideration of this factor in the arbitrator's or panel's decision. I have considered these points and as there is no testimony or evidence regarding the "factor given greatest weight," I find that this factor will not influence the decision in this matter.

Factor Given Greater Weight

Section 111.70(4)(cm)7g, MERA, requires the arbitrator to consider and give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r, factors we will consider below.

Because of this, the County argues that the cost of the parties' final offers must be considered. According to the County, the additional cost of the Federation's Final Offer is $995,450 for the two year term. The two year cumulative lift under the County's offer is 5.41% and under the Federation's it is 8.40%, according to the County. I wholeheartedly agree with the County that this cost difference is, indeed, significant.

How, the County asks, can the Federation justify, or the Arbitrator accept, a Federation proposal which nearly triples the cost of the County offer, when the Federation has demonstrated virtually no need for any "catch-up" increases, and has given the County and the Arbitrator nothing, by way of mitigating circumstances, which would demonstrate the need for such an exorbitant salary and package increase? The County notes that no County bargaining unit has such a settlement for 2007-2008, and yet the Federation would have the Arbitrator disregard this reality for no reason which has ever been articulated to the County or to this Arbitrator.

The County overstates its case. In terms of tripling the County's offer, that is as much a result of the "virtual wage freeze" and the attempt by the County to secure a settlement pattern in terms of wages as it is the Federation's two 2% wage increases. I agree with the County in regard to catch-up, as was discussed above. But we have not looked at the external comparables yet, so we do not know if the Federation's two 2% wage increases are "an exorbitant salary and package increase." The fact that no other bargaining unit of the County received such a settlement is, again, the result of the County's stand in bargaining that its offer was 1% wage increase on November 4, 2007, and a $250 lump sum payment and no more.

The County argues that it is experiencing dire financial conditions and that its "financial crisis" needs to be considered as a relevant factor in this interest arbitration. Again, I wholeheartedly agree that financial conditions and crises must be considered, especially under sec.111.70(4)(cm)7g, Stats. The County also asserts that raising taxes to maintain County services could very well have the effect of causing residents to relocate to a more friendly taxing environment, creating a downward spiral of loss of tax revenues, as county population diminishes. Maybe, but there was no evidence specifically on this point.

Table 4: Economic Comparisons Part 1

County	2005 Per Capita Income & Rank	2006 Operating Rate & Rank	2006 Tax Rate & Rank	Nov. 2007 Unemploy-ment Rate & Rank

Dane	$40,007 - 3	$0.001985188 - 3	$2.26 - 3	3.4% - 7
Kenosha	$30,552 - 6	$0.002734427 - 4	$3.81 - 5	5.1% - 4
Ozaukee	$52,490 - 1	$0.001617744 - 2	$1.68 - 1	3.7% - 6
Racine	$33,676 - 5	$0.002884314 - 5	$3.14 - 4	5.9% - 2
Rock	$28,804 - 7	$0.004918510 - 7	$5.46 - 7	5.5% - 3
Waukesha	$45,454 - 2	$0.001581200 - 1	$1.82 - 2	4.0% - 5
Average	$37,839	$0.0028848273	$3.15	4.8%
Milwaukee	**$33,888 - 4**	**$0.003205325 - 6**	**$3.91 - 6**	**6.0% - 1**

The County makes much out of the loss of population to the four contiguous counties, stating that it is abundantly clear that the taxpayers of Milwaukee County are seeking "greener pastures" in adjoining counties in an effort to avoid the financial consequences of the untenable situation which has been created in Milwaukee County as a result of settlements, such as that proposed by the Association in the subject case, which disregard the reality of the County's current fiscal crisis.

I again assert that the County is truly overstating its case. To place the entire cause for the exodus of population from Milwaukee County as a direct result of labor settlements suggests a myopic view of the contemporary urban environment.

The County points to an April 15, 2005, article in the Milwaukee Journal Sentinel headlined, "Milwaukee County continues to lose population."

> Milwaukee County continues its slow population bleed, with 13,00 moving out between mid-2003 and mid-2004, according to the U.S. Census Bureau figures released Thursday.

Apparently the Milwaukee Journal Sentinel likes to overstate the case as well, for we learn in the very next sentence that the first sentence presented only a partial picture and, therefore, was not totally candid.

> The net population loss was a more modest 4,125 for that period, when other changes are factored, for a one-year drop of 0.4% to 928,018, the bureau reported.

So sentence one did not tell the whole story, though one reading only that sentence would reasonably believe that the population of Milwaukee County had decreased by 13,000. If

one stays to read sentence two, one finds that the insinuation of sentence one is really an overstatement by almost 9000 people of what actually occurred. Even still, the article quotes Tim Sheehy, president of the Metropolitan Milwaukee Association of Commerce, as saying, “I’m not going to throw up the white flag over those numbers. . .It’s not like they are leaving (Milwaukee) County in droves.” All of us hope not.

Table 5: Population Change

County	2000	2005	Change	2007 Est.	Change
Dane	426,536	442,000	3.6%	468,514	6.0%
Kenosha	149,577	160,544	7.3%	161,370	0.5%
Ozaukee		171,006		173,773	1.6%
Racine	188,831	195,708	3.6%	195,113	-0.3%
Rock	152,307	154,296	1.3%	159,530	3.4%
Waukesha	360,767	378,971	5.0%	381,651	0.7%
Average	255,604	266,303	4.2%	273,236	2.6%
Milwaukee	**940,164**	**921,654**	**-2.0%**	**937,324**	**1.7%**

But the County is correct that between 2003 and 2004, Milwaukee County’s population decreased by 4,125 people or 0.4% while Ozaukee County’s population increased by 3,708 people or 4.5%, Racine County increased by 1,628 or 0.8%, Washington County increased 2,058 or 1.7% and Waukesha County increased by 3007 or 0.8%. That was “then”.

“Now” is reflected in Table 5 above which includes the 2007 estimated population by County and which shows a more favorable picture; indeed, between 2005 and 2007, Milwaukee County’s population increased at a greater rate than the populations of Kenosha, Ozaukee, Racine and Waukesha Counties, four of the six comparables, three of which are contiguous counties.

The County asserts that future liabilities must be considered in assessing the parties’ final offers. Again, I wholeheartedly agree. It appears that the County’s bargaining units agree as they have made concessions in the health insurance, pensions and other areas. The County also asserts that skyrocketing health insurance costs must be considered as part of the County’s fiscal planning. Again, I agree. Employers and Unions must put aside their disputes and join together to deal with the insurance companies and contain costs. It is a huge problem in every labor relationship and is a part of almost every interest arbitration, though, I am glad to say, not this one, per se.

Table 6: Economic Comparisons Part 2

County	2006 Operating Levy (in millions) & Rank	% Increase Operating Levy from 2001-2006 & Rank	2006 Equalized Value (in millions) & Rank	% Increase Equalized Value from 2001-2006 & Rank
Dane	$89.5 - 2	18.85% - 4	$45,074 - 3	57.89% - 1
Kenosha	$36.2 - 6	18.28% - 5	$13,222 - 5	57.05% - 2
Ozaukee	$16.9 - 7	No Data	$10,474 - 6	No Data
Racine	$41.3 - 5	15.54% - 6	$14,308 - 4	54.62% - 4
Rock	$45.6 - 4	28.14% - 1	$9,278 - 7	33.71% - 6
Waukesha	$76.7 - 3	18.95% - 3	$48,476 - 2	56.00% - 3
Average	$81.2	20.08%	$28,925	51.72%
Milwaukee	**$197.6 - 1**	**20.73% - 2**	**$61,640 - 1**	**51.06% - 5**

The County argues that case law has taken financial considerations into account in interest arbitrations, specifically noting the need for fiscal restraint. According to the County, arbitrators have traditionally upheld the importance and significance of moderation in spending when Wisconsin municipalities have been subject to financial difficulties. Arbitrator Yaffe discusses restraint as follows:

> [I]t has been demonstrated that the economic environment in the County is one in which restraint in wage and benefit improvements is justified. In this regard, it is un-refuted in the record that tax delinquencies have significantly increased, that unemployment in the area exceeds the very high rate that exists across the State, and the layoffs in the County and the Department are contemplated. Under such circumstances, though the County has not demonstrated that it cannot afford to provide its law enforcement officers with comparable benefits, it has persuasively demonstrated that it cannot afford to be a wage and benefit leader at this time.
>
> Racine County (Sheriff's Department), Dec. No. 19709-B (Yaffe, 4/5/83).

Arbitrator Fogelberg considered the economic condition of a county to be of prime importance:

> The relatively poor standing of Vernon County is further manifested through an examination of the largely un-refuted evidence presented by the Employer in connection with their financial condition. . . .Certainly the interest and welfare of the public (a criteria specifically referenced in the statute) must be given every consideration in the instant matter as current economic conditions in the County warrant as much.
>
> Vernon County (Sheriff's Department), Dec. No. 19779-A (Fogelberg, 1/19/83).

The County asserts that an offer acceptable in good economic times may not be so in difficult times, citing Arbitrator Monfils:

> In the best of economic times the Union Final Offer might be suitable as a bargaining posture. But, in economic conditions like those prevailing in the City of Oconto, the Union might be expected to offer something to the Employer. . . . The Union does not offer any offsetting relief to the Employer in return for what would be a generous settlement and substantial improvement in the immediate and long range position of the Union.
>
> City of Oconto Police, Dec. No. 19800-A (Monfils, 11/5/82).

The County notes that Arbitrator Mueller stated that the economic climate must have a controlling influence on settlements, and should be given paramount consideration:

> [T]he state of the economy . . . is the greatest overall circumstance that is presently exerting controlling influence on the level of labor management settlements at the current time. The high level of workers on layoff along with the ever increasing publicity attendant to shortfall in funds that is occurring or which is predicted at all levels of public employment from the smallest public employer to the very top of the federal government, has contributed to a marked suppression of generous optimism. The increase in delinquent real estate taxes . . . has likewise had an impact on the public employers.
>
> There is ever increasing concern amongst most public employers, with the State not being the least, about a shortfall of funds and the possibility of huge deficit. Such fears simply announce the realities and effects of the down economy, the effects of which are coming increasingly into reality."
>
> Madison Area VTAE District, Dec. No. 19793-A (Mueller, 11/22/82).

The County points out that consideration of economic conditions is deemed appropriate, citing Arbitrator Imes:

> [T]he ultimate factor which will affect the outcome of this arbitration is the weight of the comparability criteria juxtaposed with the weight of the interest and welfare of the public standard. The District has argued it would not be reasonable to implement the Association's offer during a period of high unemployment, recession, declining enrollment, and diminishing resources.
>
> Recognizing the recessionary condition of the state and nation carries added weight in determining which of these offers is more reasonable, the undersigned reviewed the final offers of the parties keeping in mind the ability of the public to continue financing the costs of government.
>
> When unemployment is high and the general economic conditions are tenuous, moderation in pay increases is demanded.
>
> Cochrane-Fountain City Community School District, Dec. No. 19771-A (Imes, 1/24/83).

The County submits that the severe and dire economic climate within Milwaukee County clearly supports its final offer, while underscoring the unreasonable nature of the final offer proposed by the Union. Again, I am not ready to classify the Federation's final offer until I have looked at the external comparables and applied all of the criteria of MERA. According to the County, the distressed and dire economic climate in Milwaukee County demands that the it exercise immediate and significant spending restraints.

The Federation acknowledges that Milwaukee County suffered severe economic dislocations in the 1970s and 1980s but it asserts that the County is now recovering. The Federation points to per-capita income which it states has been on the rise since at least 2000, increasing between 2000 and 2005 by 20.1%, above the Wisconsin average of 16.5% and the United States average of $15.5%.

More importantly, according to the Federation, property values have been increasing in Milwaukee County, an important factor since the County receives much of its revenue through property taxes. The Federation states that in 2004, Milwaukee County registered an 8.2% increase in property value. And in 2007, when average home prices fell in Waukesha and Ozaukee Counties, Milwaukee county continued to enjoy rising property values, registering a 4.9% over 2006.

Table 7: 2001-2007 Tax Rates

Year	Operating Rate	Change
2001	$0.004010331	
2002	$0.003841931	-4.20%

2003	$0.004043420	5.24%
2004	$0.003831982	-5.23%
2005	$0.003438014	-10.28%
2006	$0.003205325	-6.77%
Total		**-20.07%**
Average		**-4.0%**

The Federation also notes that the County's tax rates have decreased four of the past five years with an total decrease of over 20% during that time, an average decrease of 4.0% each year.

In its arguments regarding the internal settlement pattern, the County appeared convinced that if it only proved the pattern, the case was over and the County wins. And, it appears, the County believed it was going to prevail on that issue. The County has a similar attitude in regard to its arguments regarding its economic conditions. It seems the County believes that if it just proves that Milwaukee County's economic conditions are poor, that the case is over and the County wins. But the "factor given greater weight" does not say that greater weight is given to the economic conditions than to all of the other factors that can be considered; it states that it is given greater weight than any of the factors. The factors still have to be considered and, in part or in total, can have greater weight than just this one factor; indeed, the County's description of its dire financial condition cannot determine the result of this proceeding in and of itself. The other factors must be given weight, as well. So we move on to the external comparables.

External Comparables

As noted above, under Sec. 111.70(4)(cm)7r(e), MERA, the arbitrator is required to give weight to the comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in comparable communities. To refresh our memory, I have determined that the comparable pool is composed of the psychiatric and registered nurses units of Dane, Kenosha, Ozaukee, Racine, Rock and Waukesha counties.

The County argues that this Unit receives a wage and benefit package which is unparalleled among the external comparables. The Federation argues that its 2007 wage offer maintains the County's position among the comparable while the County's offer

diminishes it. Since both parties were using comparables different in part from those I have found proper, let us see how these arguments turn out under the new comparable pool.

As noted in the discussion about catch-up, the County's 2006 minimum rate, the status quo, is $21.10 which ranks 6th out of seven comparables, and the County's 2006 maximum rate, also the status quo, is $28.42 which ranks it 3rd among the seven comparables. See Table 3 reproduced in part below.

Table 3: 2006 Ranking of Wage Rates

Rank/County	Minimum	Rank	Maximum
1. Dane	$23.71	1. Rock	$29.99
2. Ozaukee	$23.63	2. Dane	$28.69
3. Rock	$22.31	**3. Milwaukee**	**$28.42**
4. Kenosha	$21.82	4. Ozaukee	$27.79
5. Racine	$21.21	5. Racine	$27.48
6. Milwaukee	**$21.10**	6. Kenosha	$26.51
7. Waukesha	$18.66	7. Waukesha	$21.02

In terms of comparison to the average of the comparables, the County's 2006 minimum rate, again, the status quo, is $0.79 or 3.6% below the average of the comparables. The County's 2006 maximum rate is $1.51 or 5.6 % above the average. See Table 8 below.

Table 8: 2006 Wage Rates Compared to Average of Comparables

	2006 Min.	2006 Max.
Average of Comparables	**$21.89**	**$26.91**
Status Quo	$21.10	$28.42
$ Difference	-$0.79	$1.51
% Difference	-3.6%	5.6%

Rank of 7	6	3

The 2007 ranking of the County's and Federation's offers do not match up exactly with 2006 since one of the comparables, Racine County, was not settled at the time.

Table 9: 2007 Ranking of Wage Rates and Offers[9]

Rank	**Minimum**	**Rank**	**Maximum**
1. Dane	$25.34	1. Rock	$30.74
2. Ozaukee	$24.58	2. Dane	$30.60
3. Rock	$22.87	**3. Fed. Offer**	**$29.57**
4. Kenosha	$22.78	4. Ozaukee	$28.90
5. Fed. Offer	**$21.95**	**4. Co. Offer**[10]	**$28.70**
5. Co. Offer	**$21.31**	5. Kenosha	$27.87
6. Waukesha	$19.41	6. Waukesha	$21.87

In any case, in terms of the minimum, the County's offer of $21.31 and the Federation's offer of $21.95 ranks 5th among the six comparables. Since Racine County had a higher minimum than Milwaukee County in 2006, it can be argued that both offers moved up in rank from 6th to 5th or that both offers remained in the same place, second from last, only ranking 5th out of six comparables in 2007 instead of 6th out of seven comparables in 2006.

[9] As noted above, Racine County is not settled for 2007-08 and, therefore, is not included.

[10] The County and the Federation are ranked as if the other is not included to emulate the situation if that party should prevail in this matter.

In terms of the maximum, the County's offer of $28.70 drops the 2007 ranking to 4th between Ozaukee and Kenosha Counties.[11] The Federation's offer of $29.57 keeps the 3rd ranking that Milwaukee County had in 2006. See Table 9 above.

Under the County's 2007 offer, the minimum rate drops from $0.79 or 3.6% below the average in 2006 to $1.69 or 7.3% below the average. Strangely, under the Federation's offer, the minimum also drops from $0.79 or 3.6% below the average to $1.05 or 4.6% below the average. Under either offer, the minimum rate loses ground in 2007.

In terms of the maximum rate, under the County's 2007 offer, it drops from $1.51 or 5.6% above the average to $0.70 or 2.5% above the average. The rate is still above the average, but 54% less than it was above the average in 2006. The Federation's 2007 offer increases the maximum from $1.51 or 5.6% above the average to a slightly larger amount of $1.57 or 5.6% above the average. Though it is an increase, it is not enough to change the percentage rate. See Table 10 below.

Table 10: 2007 Wage Rate Offers Compared to Average of Comparables

	County Minimum	Federation Minimum	County Maximum	Federation Maximum
Average of Comparables	**$23.00**	**$23.00**	**$28.00**	**$28.00**
Offer	$21.31	$21.95	$28.70	$29.57
$ Difference	-$1.69	-$1.05	$0.70	$1.57
% Difference	-7.3%	-4.6%	2.5%	5.6%
Rank	5 of 6	5 of 6	4 of 6	3 of 6

The County and the Federation agree on the wage increase for 2008: three 1% increases spread through out the year.[12] But the lift in the 2007 offers, 1% for the County and 4% for

[11] Again, because Racine County is not included, and because Racine's 2006 position was between Ozaukee and Kenosha Counties, we cannot be sure that Racine would not have taken the 4th ranking when it settled, dropping the County's offer to 5th.

the Federation, will have a full impact in 2008, with the difference in the lift playing a bigger part in determining the wage rate. It becomes harder to rank the two offers as a second comparable, Waukesha County, was not settled for 2008, leaving only four comparables for us to evaluate.

In terms of the minimum rate, the County's offer of $21.96 and the Federation's offer of $22.84 continues their 2007 ranking of 5th, though now if is 5th out of five. My best guess is that Waukesha County not being available does not really impact the analysis as Waukesha was continually in last place among the comparables, both in terms of the minimum and the maximum rates. But Racine County, again, could have impacted the ranking, possibly falling between the two offers, pushing the ranking of the County's offer lower. But we do not have Racine, so I can make no finding to that end.

In terms of the maximum rate, the County's offer of $29.57 and the Federation's offer of $30.77 has both offers ranked 3rd. This is a move up from the 4th ranking for the County. But even though the two offers end up ranking the same in relationship to the comparables, on a purely financial basis, the offers are $1.20 apart, not an insignificant amount in terms of an hourly rate. See Table 11 below.

[12] The County is offering a $250 lump sum payment, but as it is not applied to the wage schedule, it has no impact on this.

Table 11: 2008 Ranking of Wage Rates and Offers[13]

Rank	Minimum	Rank	Maximum
1. Dane	$27.07	1. Dane	$32.63
2. Ozaukee	$25.07	2. Rock	$31.51
3. Rock	$23.44	**3. Fed. Offer**	**$30.77**
4. Kenosha	$23.16	**3. Co. Offer**	**$29.57**
5. Fed. Offer	**$22.84**	4. Ozaukee	$29.48
5. Co. Offer	**$21.96**	5. Kenosha	$28.14

Under the County's 2008 offer, its minimum rate drops from $1.69 or 7.3% below the average in 2007 to $2.73 or 11.1 below the average in 2008. Under the Federation's offer, the minimum also drops from Likewise, under the Federation's 2007 offer, the minimum rate drops from $1.05 or 4.6% below the average to $1.85 or 7.5% below the average. Under either offer, the minimum rate again loses ground in 2008.

In terms of the maximum rate, under the County's 2008 offer, it drops from $0.70 or 2.5% above the average to $0.87 or 2.9% below the average. The Federation's 2008 offer decreases the maximum from $1.57 or 5.6% above the average in 2007 to $0.33 or 1.1% below the average. See Table 12 below.

Table 12: 2008 Wage Rate Offers Compared to Average of Comparables

	County Minimum	Federation Minimum	County Maximum	Federation Maximum
Average of Comparables	**$24.69**	**$24.69**	**$30.44**	**$30.44**
Fed. Offer	$21.96	$22.84	$29.57	$30.77
$ Difference	-$2.73	-$1.85	-$0.87	-$0.33
% Difference	-11.1%	-7.5%	-2.9%	-1.1%

[13] Racine County is not settled for 2007-08 and, therefore, not included.

Rank	5 of 5	5 of 5	3 of 5	3 of 5

Overall, the average difference between 2006 and 2008 in the minimum rates was $1.82 or 7.9%. The County's offer had a difference between 2006 and 2008 of $0.86 or 4.1%. For the Federation, the difference was $1.74 or 8.2%. It is obvious that, in terms of minimum rate, the Federation's offer is so much closer to the average that it must be preferred. See Table 13 below.

Table 13: Comparison of 2006 and 2008 Minimums

	2006 Minimum	2008 Minimum	$ Difference	% Difference
Dane	$23.71	$27.07	$3.36	14.2%
Ozaukee	$23.63	$25.07	$1.44	6.1%
Rock	$22.31	$23.44	$1.13	5.1%
Kenosha	$21.82	$23.16	$1.34	6.1%
Average	$22.87	$24.69	$1.82	7.9%
County	$21.10	$21.96	$0.86	4.1%
Federation	$21.10	$22.84	$1.74	8.2%

In terms of the maximum rates, the average difference between 2006 and 2008 was $2.29 or 7.8%. The County's offer had a difference of $1.06 or 3.7%. The Federation's offer had a difference of $2.35 or 8.3%. Again, the Federation's offer is so much closer that it must be preferred in terms of the maximum rates and, therefore, in terms of the external comparables. See Table 14 below.

Table 14: Comparison of 2006 and 2008 Maximums

	2006 Maximum	2008 Maximum	$ Difference	% Difference
Dane	$28.69	$32.63	$3.94	13.7%
Ozaukee	$27.79	$29.48	$1.69	6.1%
Rock	$29.99	$31.51	$1.52	5.1%

Kenosha	$26.51	$28.14	$1.63	6.1%
Average	$28.25	$30.44	$2.29	7.8%
County	$28.42	$29.48	$1.06	3.7%
Federation	$28.42	$30.77	$2.35	8.3%

Interests of the Public and Financial Ability of the County

Section 111.70(4)(cm)7r (c), MERA, requires the arbitrator to give weight to the interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

In terms of the interests and welfare of the public, the County argues that these are served by whatever can be done to relieve the tax burden of Milwaukee County, and the Federation argues that the interests and welfare of the public are served by properly compensating professional health care workers in a manner consistent with their training and their peers. Both sides are correct. This aspect of this factor, therefore, favors neither party.

In terms of the County's financial ability to meet the costs of the final offers, it is clear that the County is not alleging an inability to pay the costs if the Federation's offer should be accepted. But its "dire financial conditions" is best served, according to the County, by keeping expenses down so taxes do not have to be raised which will only continue the exodus from the County and its downward spiral. The County asserts that arbitrators should recognize that municipal employers cannot and should not disregard the "interests and welfare of the public and the financial ability of the unit of government to meet these costs." Arbitrator Yaffe stated it as follows:

> While it is true that there were other alternatives available to the District to possibly increase revenues and to reduce expenditures, the record demonstrates that the District went through a conscientious, responsible, and non-arbitrary decision making process in deciding how to deal with the budget problems it faced. . . .[T]he record demonstrates that if the Association's final offer were selected, the District's financial problems would be significantly exacerbated and the interest and welfare of the public the District serves would in all likelihood be harmed . . . ."
>
> School District of Greendale, Voluntary Impasse (Yaffe, 2/2/81).

But the Federation notes that in four of the past five years, the County's tax rate has actually declined such that, in those five years, the rate declined by an average of 4% a year or 20% over the five years. It is one thing not to raise taxes but another to lower them.

This is the hard issue of this case. I sympathize with the County's financial problems. Born and raised in Milwaukee County, I am concerned for its financial health and I am saddened when I read about its troubles. But I am also gladdened when I see good news about the County, such as that people are moving into the County, that its property values and home prices continue to increase in a difficult market, and that the per-capita income has been on the rise since at least 2000 at a rate higher that the state and national average.

I have reviewed the numerous financial documents provided by the County at great length and, to the best of my ability, I understand that paying for the Federation's offer will not be easy, but it can be done. The County can meet the costs of either final offer. Therefore, this aspect of this factor favors neither party, as well.

Cost of Living

Section 111.70(4)(cm)7r(g), MERA, requires the arbitrator to the average consumer prices for goods and service, commonly known as the cost of living. The County argues that the Consumer Price Index (CPI) should not be given any weight in this dispute; that the CPI indicates a 1.8% increase for the first half of 2007; that this increase is consistent with the County package and is not consistent with the Federation; and that the County believes the dire economic conditions existing in Milwaukee County supersede the relevance of the CPI data.

It is difficult for me to see how the County's offer of 1% effective near the last two months of 2007 is consistent with a 1.8% increase in the cost of living in the first half of 2007. It is obvious that the Federation's offer is close to the rise in the cost of living and consumer price index, whereas the County's offers little if any relieve. The Federation's offer is also more consistent with the external comparables, which is another way to measure purchasing power. Therefore I find that this factor strongly favors the Federation

Other Factors to Be Given Weight

Under MERA, the arbitrator shall give weight to other factors specified in the statute in making a decision. There is no dispute between the parties regarding the lawful authority of the municipal employer, the stipulations of the parties, changes in any of the circumstances during the pendency of the arbitration proceeding, or such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through arbitration, so none of the factors favor one party or the other.

In terms of the overall compensation received by the municipal employees, the parties work hard to provide evidence that the employees have the Cadillac of fringe benefits (the employer's general line) or that the employees are everyone's poor cousin in terms of the benefits received. Comparing things, such as amount of vacation, holidays and excused time is easy to manage. But when we get into the areas of medical and hospitalization benefits, other insurance and pensions, it is difficult if not impossible to make a determination of how well an employee is compensated overall. Insurance plans vary, with

some having a higher contribution rate and lower co-pays and/or deductibles and others having a different combination such that they can't, in many ways, be compared. In this case, the Federation argued how superior the Wisconsin Retirement System is over the Milwaukee pension but, who knows? I don't pretend to know. The case before me is about a wage increase. The parties have bargained all the fringe benefits previously, and as they are not at issue here, the pay raise for 2007 can be evaluated on its own merits.

Final Considerations

Finally, the County argues that interest arbitration is not a substitute for collective bargaining, and should not be used as a reward for delaying the settlement of contracts. In this case, the County asserts that the Federation should not be rewarded for refusing to reach a voluntary settlement, especially in view of the fact that the majority of the County's bargaining units (5 of 8) and the majority of employees in Milwaukee County (85%) will receive the identical wage package as that being offered by the County to the Nurses and Health Professionals.

But let me be bold here and say that desiring an internal settlement pattern is also not a substitute for collective bargaining. The County criticizes the Federation for refusing to reach a voluntary settlement. What the County is really saying is that the Federation refused to accept the wage rate that the County determined would be the internal settlement pattern. There is no evidence that the County offered any leeway in its negotiations with its eight bargaining units, other than to provide some with a "me-too" clause, a "no layoff" guarantee for 2007, and a "no privatization" guarantee in 2008. Locked into the internal settlement pattern it determined, it is the County that refused to reach a voluntary agreement with this Unit. The options that the bargaining units had at the bargaining table, or what the County would call the "agree to our internal settlement pattern or else" table, were accepting a 1% wage increase effective November 4, 2007, and a lump sum payment of $250 or going to arbitration. This was not much of a choice. This was not much of a bargaining experience.

The County cites Arbitrator McAlpin concerning the role which an arbitrator must play in an interest arbitration as follows:

> In an interest arbitration, the Arbitrator must determine not what the parties would have agreed to, but what they should have agreed to, and, therefore, it falls to the Arbitrator to determine what is fair and equitable in this circumstance.
>
> City of Oak Creek (Dispatchers), Dec. No. 30398-A (McAlpin, 5/5/03).

I will do so.

There will be those who will characterize this Award as breaking or being inconsistent with the internal settlement pattern. The finding in this Award is that,

even though it may look like such if only viewing the wage offer, there is no internal settlement pattern in this case. The County's argument section of its brief begins, "The County's exhibits indicate that settlement identical to its final offer were voluntarily achieved with five (5) of the eight (8) bargaining units in the County for 2007-2008." (Emphasis in original). The County is wrong from the beginning because it is obvious that the settlements were not identical.

The County expresses concern about employee morale for those who settled earlier for the 1% wage increase on November 4, 2007, and a $250 lump sum payment. But it should be explained to the members of Council 48, Building Trades, Machinists, and Technicians, Engineers, and Architects units that the Nurses did not turn down the deal offered to them, that the offer to the Nurses did not include a "me-too" clause or a "no layoff" guarantee or a "no privatization" guarantee. These four units got two or three of those things in addition to the financial offer presented to this Unit. But we have no way of knowing how much those three items were worth financially, but we do know they are worth more than was offered to the Nurses. If there is a unit that should be upset, it is the Attorneys who also did not get those three items. But I am not going to worry too much about them.

Summary

In terms of the external comparable pool, it was determined to include the four contiguous and the and the eight most populous counties, not including Milwaukee County, but only those units of psychiatric or registered nurses who are organized for the purposes of collective bargaining. This created an external comparable pool consisting of Dane, Ozaukee, Rock, Kenosha, Racine and Waukesha counties. While on its face there may appear to be an internal settlement patter, I find that there can be no internal wage settlement pattern which can be enforced on a bargaining unit in a situation where one or more of the employer's bargaining units received a benefit as part of the settlement which one or more of the units was not offered or did not receive. To have an internal settlement pattern, the wage offers must be consistent, and so must other aspects of the employer's offer, especially those that have a financial impact. Therefore, I do not find an internal settlement pattern in this case that can be imposed upon the Nurse's unit. The County made it case that its financial situation must be taken into account, and I therefore gave greater weight to its economic conditions that any other factor. But the "factor given greater weight" was outweighed by the difference in the offers such that great weight was awarded to the Federation's in regard to the comparison with both the external comparable pool and the consumer price index.

Both parties, especially the County, made other arguments, too many to answer individually but all of which were considered and found wanting in one way or another.

Based upon the facts and reasoning stated above, this arbitrator finds

AWARD

That the final offer of the Federation is the more reasonable of the two offers and shall be incorporated into the parties' 2007-08 collective bargaining agreement.

Dated at Madison, Wisconsin, this 29th day of July 2008.

By _____
James W. Engmann, Arbitrator