In the Matter of the Petition of

SHEBOYGAN COUNTY

To Initiate Interest Arbitration
Between the Petitioner and

Case 399
No. 68434
INT/ARB – 11258
Decision No. 32735-A

SHEBOYGAN COUNTY HUMAN SERVICES PROFESSIONAL EMPLOYEES, LOCAL 437, AFSCME, COUNCIL 40, AFL-CIO

APPEARANCES:

Mr. Michael J. Collard, Human Resources Director, appearing on behalf of the County

Mr. Sam Gieryn, Staff Representative, AFSCME Council 40, appearing on behalf of the Union

ARBITRATION AWARD

Sheboygan County, hereinafter the County or Employer, and Sheboygan County Human Services Professional Employees, Local 437, AFSCME, Council 40, AFL-CIO, hereinafter the Union, reached impasse in their bargaining for the 2009 – 2010 collective bargaining agreement. The County filed the subject interest arbitration petition on December 26, 2007. The Wisconsin Employment Relations Commission's staff investigator conducted an investigation of the petition on March 5, 2009, and by April 16, 2009 the parties had submitted their final offers to the investigator. The Commission, on May 6, 2009, certified their impasse/final offers and provided them with a panel of ad hoc arbitrators from which they selected the undersigned to hear and resolve their bargaining impasse. A hearing in the captioned matter was held on September 15, 2009,

in Sheboygan, Wisconsin. The parties submitted post-hearing briefs and reply briefs that were received by November 16, 2009.

BACKGROUND:

This dispute is concerned with the terms of the parties' 2009-2010 collective bargaining agreement in the bargaining unit of

> "all employees of the Sheboygan County Health and Human Services Department-Division of Social Services engaged in professional social work and volunteer coordinating activities, excluding the Director, Division Manager-Social Services and Social Work Supervisors * * *"

The final offer item that remains in dispute is wages for calendar years 2009 and 2010. The seniority list dated June 15, 2009 shows there were 50 employees in the bargaining unit, whereas County Exhibit C5 reflected there were 47 bargaining unit employees on September 15, 2009. Whether there are 50 or 47 employees in the bargaining unit they represent 6% of the 786 employees in the County's unionized workforce. The seniority list also shows that on June 15, 2009, 11 of those bargaining unit employees were classified as Social Worker III MA/S, 33 employees were classified as Social Worker III, and 7 employees were classified as Social Worker II. The salary schedule maximum for the contract ending December 31, 2008, was $28.49/hr for Social Worker III MA/S, $27.41/hr for Social Worker III, and $23.96/hr for Social Worker II. In addition to the published wage schedule's hourly rate, employees also receive monthly longevity pay as follows:

Employees hired prior to January 1, 1995

- After 5 years of service 2 1/2 % of monthly base pay
- After 10 years of service 5% of monthly base pay
- After 15 years of service 7 1/2% of monthly base pay
- After 20 years of service 10% of monthly base pay
- After 25 years of service 12 1/2% of monthly base pay

Employees hired after January 1, 1995

- After 5 years of service $20 Per Month

After 10 years of service	$30 Per Month
After 15 years of service	$40 Per Month

FINAL OFFERS ON THE ISSUE IN DISPUTE:

County's Final Offer:

Wages

1/1/09 2.95% ATB pay increase and revise the Article 9 salary ranges by the same amount

1/1/10 2.05% ATB pay increase and revise the Article 9 salary ranges by the same amount

Union's Final Offer:

Wages

1/1/09 2% ATB and revise the Article 9 salary ranges by the same amount

7/1/09 1% ATB and revise the Article 9 salary ranges by the same amount

1/1/10 2% ATB and revise the Article 9 salary ranges by the same amount

7/1/10 1% ATB and revise the Article 9 salary ranges by the same amount

PARTIES' ARGUMENTS:

County:

The County argues that under current law the County is subject to a cap on total 2010 tax levy, which is 3% greater than the tax levy for 2009. Under the County's 2010 wage offer wage and benefit increases together will cost over $2 million for the year. This means that, even if the County's final offer is selected, the County's wage and benefit costs in 2010 will outstrip its ability to raise property taxes by over three-quarters of a million dollars. Increasing revenue from sources other than the property tax levy

cannot make up that difference. Revenue from those other sources is not only failing to keep pace with the 3% levy increase limit, it is going down. This analysis shows that the expected loss in outside revenue to the County in 2010 is approximately $1.2 million. Accepting the Association's offer would simply put the County further in the hole.

This does not mean that the County is "unable" to pay the wages requested by the Union. It does mean, however, that if the County were to pay those wage increases the difference would eventually have to be made up for through the loss of services to the public, in one form or another. The County submits that this is exactly the type of situation that the legislature must have had in mind when it inserted the "greatest weight" factor into the statute. Services to the public should not be further curtailed than necessary just to benefit one group of employees.

The County also asserts that the March 2009 unemployment figures for Sheboygan County are at 9.9%, with the City of Sheboygan itself at a whopping 12.5% unemployment. These figures are from the month during which the parties' final offers were certified, which the County submits is the most appropriate time to measure local economic conditions, since after that point the parties have not had the opportunity to revise their positions. If one looks to the most recent available data at the time of hearing, the unemployment disaster had only slightly moderated, with the County-wide unemployment rate at 9.3% and the City of Sheboygan at 12.1%. Both of these figures are well above the state average rate of 8.7%. Also, Sheboygan is one of the most manufacturing-dependent communities in the state, and these industries have been hit hard. Companies such as Kohler, J.L. French, Pentair, and Thomas Industries have lost hundreds of local employees each recently.

Some arbitrators in earlier cases have reasoned that local economic conditions are subsumed within the external comparables factor if the same economic conditions are present statewide. However, the County respectfully submits that this course is not open to the Arbitrator in this case. There has been a drastic change, which has affected settlement patterns. Most of the comparable settlements were reached during much better economic conditions than currently prevail. Only two of them came later than January 2009.

The County does not consider "lawful authority of the employer" statutory factor to have any significance in this case. Also, it notes that the parties reached no relevant stipulations.

Concerning the "interests and welfare of the public" statutory factor, the County states that at the present time the public is feeling the direct impact of the economy to a degree not often felt by public servants. Resentment of public employees is high. Across the state, settlements that would in most years attract little or no public attention are drawing spirited debates about ratification. And, in some cases, boards are refusing to ratify tentative agreements reached at the bargaining table. The Columbia County Board refused to ratify an agreement with its Sheriff's Department employees.

Regarding the "internal comparables" statutory, the County argues this factor very strongly favors the selection of the County's. The status of the seven other bargaining units in the County is summarized in Exhibit C41. A strong settlement pattern has been established among those bargaining units. The County has now reached settlements with five out of the seven bargaining units that have interest arbitration rights, but has not reached a voluntary settlement in this bargaining unit or in Sheriff's Department Deputies' bargaining unit. Of the units that have voluntarily settled, some will receive across-the-board wage increases equivalent to those contained in the County's offer, and some will receive less with some countervailing advantages that explain the difference. The public health/community programs professionals bargaining unit settlement contains the same wage increase the County is offering this bargaining unit. The Highway Department bargaining unit settlement is slightly less at 2.75% and 2.05% in 2010 or 0.2% increase less for 2009. The Health Care Centers bargaining unit, the second largest bargaining unit, received a 2.0% wage increase in each year for four years, covering 2009 through 2012, and the County promised not to sell the County Nursing Home through December 31, 2012. The registered nurses at the Health Care Center received a 2.0% wage increase in 2009 and 2.05% increase in 2010. The largest bargaining unit, the supportive services unit received a 2.75% wage increase on 1/1/2009 and 2.05% increase effective 1/1/2010. they also received an additional 10 cent an hour increase on the

longevity rate for only those employees hired after 1/1/1995, which has the equivalent economic value to the 0.2% difference in the across-the-board wage increase for 2009.

The other bargaining unit, which remains unsettled, is the sworn law enforcement employees unit, which is also in interest arbitration. There the County's final offer is the same as its offer to this bargaining unit – a 2.95% wage increase in 2009 and a 2.05% increase in 2010.

The County also notes that the wage increase settlement reached in the other bargaining unit of professionals, as well as its proposed wage increase in the Deputies bargaining unit, are what the County is offering this bargaining unit. In the Supportive Services, and Highway Department bargaining units the voluntary wage settlements reached are the same being offered to this bargaining unit, except 0.2% lower in 2009 with an economically equivalent increase elsewhere. And, settlements with two units representing nursing home employees have lower settlements, but with a promise that the County will not sell or close its financially-pressured facility through 2012.

The County argues that many arbitrators in many, many cases have placed great weight on the internal comparables factor in reaching their decisions, and with good reason. An overwhelming number of interest arbitration decisions subscribe to the theory that internal consistency should be followed. The philosophy of maintaining internal consistency continues to be advanced as the standard to achieve by a variety of arbitrators in numerous cases. When considered in conjunction with local economic conditions and the weakened impact of the external comparables factor caused by the fact that most comparable settlements were reached in vastly different economic conditions, this factor is nearly dispositive in favor of the County's offer.

The County asserts that the parties are in agreement as to the list of comparable counties, which has been used in several previous interest arbitration proceedings - Calumet, Eau Claire, Fond du Lac, Kenosha, La Crosse, Manitowoc, Marathon, Outagamie, Ozaukee, Washington, and Winnebago. Wages can be compared, and are commonly compared in interest arbitration proceedings, in at least two ways: The wage rates paid can be compared, and the increases given during the term of the proposed

contract can be compared. Social workers in Sheboygan County fare quite well in terms of wage rates when compared to their counterparts in the eleven comparable counties. The best summary of just how well is County Exhibit C38. The County submits that the most accurate and useful way to compare wages is to take the actual employees in the bargaining unit at issue, and see how the actual wages paid to each of those employees compares to the wage rate that each employee would have received if their wages were determined by each of the comparable contracts in turn. After all, the statute directs consideration of the wages of the employees involved in the arbitration proceeding, not just the maximum or minimum wages provided for.

County Exhibit C38 is just such a comparison. It shows that, on average, a Sheboygan County Social Worker is paid $1.14 per hour, or 4.4% more that that same social worker, with the same number of years experience, would be paid in one of the eleven counties. The difference between the average for Sheboygan and the other counties is sufficient that selection of the County's offer would not change the relative ranking.

With regard to comparison of the percentage across-the-board increases of the County's final offer with settlements in comparable counties, those increases may again be measured two ways: by the lift in wages over the contract term, and by the budget impact during the years in question. The County's final offer clearly calls for a wage lift that is less than the average of the comparable counties. However, the impact of the County's relatively low wage lift is ameliorated somewhat by the fact that the County's offer would provide the full increase on January 1 of each year, unlike many of the comparable settlements, which call for split increases. This improves the budget impact of the County's offer.

For 2009, the average budget impact of the comparable settlements is about 2.60%. (Calumet 3.0, Eau Claire 2.5, Fond du Lac 3.0, Kenosha 0.5, La Crosse 2.5, Manitowoc 3.0, Marathon 3.0, Outagamie 3.0, Ozaukee 2.5, Washington 3.0, and Winnebago 2.625) Sheboygan County's proposed 2009 budget impact of 2.95% is therefore 0.35% higher than the average comparable settlement. Of the eight comparables settled for 2010, the average budget impact over the 2009 rates is about

2.60% as well. Sheboygan County's proposed 2010 budget increase of 2.05% is thus about 0.55% lower than the average comparable settlement. Combining these results, the average yearly budget impact of Sheboygan County's final offer is only about 0.2% less than the comparables.

The County also contends that the external comparables factor as a whole should be given relatively little weight in this case, since most of the comparable settlements were reached under sunnier economic skies. And, the County's also contends that its overall compensation and benefit package is generous when measured against the external comparables.

The County also argues that the private sector comparable statutory factor strongly favors the County's position, as does the cost of living statutory factor. It argues that many arbitrators have agreed that the most appropriate CPI analysis is one that focuses on the previous one-year period, looking to the cost of living increase during the full calendar year immediately prior to the contract year in question. It notes that the Consumer Price Index-All Urban Consumers (CPI-U) for calendar year 2008, the full calendar year immediately prior to the contract year at issue declined, representing a decrease in the cost of living of 0.32% for the entire year. Similarly, the Consumer Price Index – Urban Wage Earners and Clerical Workers (CPI-W) for calendar year 2008 declined representing a decrease in the cost of living of 0.7% for the entire year.

The County argues that the CPI-W is the more appropriate measure of changes in the cost of living for collective bargaining, since the CPI-W uses a standard basket of goods and services that is designed to more closely emulate the typical expenses of a wage earner, and our purpose is to determine the appropriate wage for a wage earner. Either measure of CPI provides very strong support for the County's offer as preferable to the Union's offer. There is no need for an overall wage increase in 2009 to maintain the wage earner's buying power. However, County Exhibit C56 shows that even over a ten-year period bargaining unit wage increases have consistently outpaced inflation.

In its reply brief the County asserts that the Union's argument that if the County's offer is accepted a drastic turnover of social workers will occur, damaging the

interests of the public is absurd. The County argues that the average Social Worker in this bargaining unit has been continuously employed by it for almost sixteen years. Ten percent of the unit's members were hired in the 1970s and have remained in County employment for thirty years or more. The County contends that under either offer, the public of Sheboygan County may expect to continue to receive outstanding service from its experienced and dedicated staff of social workers.

Regarding the external comparables statutory factor, Union Exhibit 4 shows that the average 2009 wage lift of the eleven counties used as comparables is about 2.7 percent. The County's proposed lift of 2.95% is closer to that average than the Union's proposed lift of 3.02%, which is slightly higher than 3% because of the compounding effect of the split wage increase. The Union can contend that this favors their proposal only by inviting the arbitrator to simply disregard the Kenosha County settlement, despite admitting that the reasons for that settlement are not in the record. It would be more reasonable to ignore all of the settlements produced by wage offers made before employers were aware of the full impact of the economic situation than it would be to ignore a voluntary settlement simply because it does not help the Union's position.

The County also contends that the Union's exhibits incorrectly state the maximum pay in Sheboygan County. For example, in Union Exhibit 15a it states that $27.65 was the maximum Sheboygan County 2008 pay, including longevity, for a Social Worker III. Looking at Exhibit C38, however, we see that out of a total of 35 Social Worker III's, 24 of them actually earned more than $27.65 per hour in 2008. The average pay for a Social Worker III in 2008 was $28.50, or $0.85 more than the Union gives as the maximum. Apparently, the Union decided to include the percentage longevity in its figures for 1994, but to exclude the percentage longevity from its "maximum" wage figures for 2008. In an exhibit, which purports to show the maximum wages including longevity, this is misleading to say the least. The Union's entire erosion argument is based on comparing a set of numbers for 1994 which include Sheboygan's percentage longevity, with numbers for 2008-2010 which exclude Sheboygan's percentage longevity. As previously noted, 24 out of 35 Social Worker III's do receive the percentage longevity. One of those receives 5.0% of pay as

longevity, while the rest are at 7.5%, 10.0%, or 12.5%. The percentage longevity remains a very substantial part of the County's compensation plan.

The County argues that not only does it retain its number one position under either offer, for 2010 the maximum rate is $2.42 per hour higher than the second highest-paying county on the list under the County's final offer, and $2.75 above number two if the Union's offer is accepted. It was the Union's choice to emphasize maximum pay including longevity as the most appropriate comparison. In all candor, because of the percentage longevity, then maximum pay including longevity does somewhat overstate the case for the County's compensation scheme. Not all employees are paid at, or even eligible for, the maximum. That is why the County has developed a method of measuring the actual impact of the longevity pay on the entire bargaining unit as compared to compensation that might be available under agreements in effect in other counties. That comparison is shown in Exhibit C38. On average, the County's workers were paid $1.15 more per hour than they would have been paid elsewhere.

One might reasonably ask whether Sheboygan County's wages were always as relatively high as the Union says they were in 1994. It seems that the Union was contending otherwise just a few years earlier, in 1991. In that interest arbitration the arbitrator at page 7 summarized data showing that the social worker pay in Sheboygan County in 1990, including base rate and longevity, ranged from $0.15 to $2.41 per hour below the average of the same list of eleven comparables. The Union at that time argued that it had historically been "in the basement", being 17.6% below average pay for 1989, and was entitled to catch-up pay. There is no natural reason why the pay for social workers in Sheboygan County should necessarily be at the top of the list. Sheboygan County is not richer than its comparable counties, some of which are significantly larger in population. It appears that through a series of favorable interest arbitration decisions our social workers have achieved a very favorable contract. Even if there were some gradual erosion in that favored position, it should be seen as the natural course of events, rather than something to be prevented.

The County claims that the Union contends that the County's internal settlement pattern argument should not be given controlling weight, for essentially two reasons: 1)

the settlements have not been completely consistent, and 2) the other groups of employees do not perform similar work to this bargaining unit. The first reason is a mere quibble. The evidence in the record shows that the departures from the 2.95%/2.05% pattern for across-the-board raises were all due to equivalent value being given in some other form. If arbitrators were to find that such trade-offs for equivalents were to destroy the value of an internal settlement pattern, they would make these mutually beneficial trade-offs less likely to happen, and thus make settlements harder to achieve. As its second reason, the Union seems to be arguing that blue-collar workers don't deserve as much of a pay increase as white-collar workers. However, Sheboygan County's public health nurse/community programs professionals bargaining unit includes only professional employees, just like the this bargaining unit. Both units contain exclusively employees of the Health and Human Services Department. It would be hard to imagine two units with a greater community of interest while still separate bargaining units. That unit reached a settlement on wages of 2.95% effective 1/1/09 and 2.05%, and its provisions for longevity and holidays give that unit exactly the same benefit as enjoyed by the social workers.

Union:

The Union seeks 2% and 1% across the board increases on January 1 and July 1 of both 2009 and 2010, for a 6% lift over the duration of the two-year collective bargaining agreement, while the Employer offers 2.95% across the board on Jan. 1, 2009 and 2.05% across the board on Jan. 1, 2010 for a 5% overall lift.

The Union asserts that the external comparable pool for this case is well established through prior interest arbitration cases and is not in dispute, and that its final offer is well supported by those external comparables. Of the eight (8) external comparable bargaining units that have settled for both 2009 and 2010, six (6) have received overall lifts of 6%. Of the 11 external comparable bargaining units, nine (9) received a full 3% lift for 2009. This unit is only asking for what their colleagues are receiving in comparable counties.

The Union states that "ability to pay" is not an issue, since the two-year cost of the offers is nearly identical. While the additional 1% lift sought by the Union will have implications for the future, there is no reason to expect that Sheboygan County is in a position that is any worse than the comparable counties that have settled upon a 6% lift. It claims that Sheboygan County also had the steepest decline in levy rate of any of its comparables in 2008. It continues to enjoy the ability to also forego a county sales tax, which if the sales tax revenues of some of its neighbors are considered, could bring in between $6 and $10 million per year.

This bargaining unit is concerned with a long-term trend of wage erosion, which has been occurring. This trend is demonstrated by a review of the historical wages received by this unit and its external comparables since 1994. In 1994 this bargaining unit ranked number 1 in the comparable group at two of its three positions, the highest paid masters degree and highest paid non-masters degreed positions, which represent the vast majority of the unit. Since that time the maximum wage rate for those positions has fallen in ranking. While the Union's offer would maintain or slightly improve the ranking of these positions among the comparable set, the Employer's offer would have one position maintaining and another falling further behind in rank.

The Union also argues that the Employer's claim that there is an internal settlement pattern, which must be followed, is untrue. The Employer's offer to this bargaining unit is dissimilar to any of the internal settlements. The Union also demonstrated that uniformity of wage increases among the internal comparables has not been a primary consideration in the past. Arbitrators often prefer to look to external comparables where professional employees are concerned because those employees tend to be drawn out of a wider labor market than non-professional employees. The Union's offer should be selected to prevent any further erosion to this bargaining unit's ranking among the comparables.

In applying the statutory criteria to this dispute there is no question that the County has the authority and ability to fund either offer. This is because the cost of the offers is nearly identical over the two-year period. The difference in cost between the

Union and Employer offers is $2,989 or just one-tenth of one percent (0.1%) of 2008 wages.

The Union also concurs with the Employer statement that the parties reached no relevant stipulations.

Regarding the statutory criteria of "interest and welfare of the public" the Union argues that while selection of either offer will not appreciably affect the earnings of members of this bargaining unit during the contract term, the impact of the lower lift provided by the Employer's offer in future years is not lost upon these Employees. They know that their wages will be one percent (1%) lower for the remainder of their careers with Sheboygan County. And, they are aware of their declining wage rank among the comparables. This surely cannot have a positive impact on retention, and due to the nature of social work, there is a strong value to be placed on retention of competent and qualified staff. Poor worker retention places vulnerable populations such as children and the elderly at greater risk. Social service agencies with poor worker retention suffer gaps and delays in service delivery. This impacts credibility with clients, as well as with treatment providers and other professionals with whom they must collaborate to meet the needs of clients and their families. Turnover leads to lack of follow through on well thought out treatment plans and a reliance on patchwork crisis management. I n settlement of a lawsuit over the insufficiency of the child welfare system in Milwaukee County, the State of Wisconsin took over the County's system in 2002, with a goal of improved service delivery and increased safety of children. Poor worker retention results in larger caseloads for remaining employees who may struggle to perform job duties with which they are unfamiliar. Large caseloads can lead workers to take shortcuts to complete work and prevent them from being able to operate within an ethical framework. Thus, due to the importance of retention in the social work field, the interest and welfare of the public is better served by the Union's offer.

In comparing this bargaining unit to other public employees in comparable communities the settlements received by the external comparables strongly support the Union's offer. For 2009, the Employer offers a two and ninety-five one-hundredths percent (2.95%) lift while the Union proposes a three percent (3%) wage lift. Union

Exhibit 4 demonstrates a strong external pattern of three percent (3%) wage lifts in 2009. Nine (9) of the eleven (11) external comparables received the three percent (3%) lift proposed by the Union. For 2010, the Employer offers a two and five one-hundredths percent (2.05%) lift while the Union again proposes a three percent (3%) lift. Union Exhibit 4 again shows that six (6) of the eight (8) external comparables, which were settled for 2010 received the three percent (3%) lift. The reason for the low lift in Kenosha County is not in the record. Clearly, this is an outlier in terms of comparable settlements and does not dictate the settlement pattern. Occasionally, financial constraints may operate to depress what can be achieved through negotiations. In this case, the Arbitrator should ignore the Kenosha settlement.

The Union also argues that the difference in the lifts proposed by the Union and Employer for 2010 is much greater than for 2009. The offers differ by almost a full percentage for 2010. It claims that when comparing the overall wage lift for the two year period, the external settlements clearly favor the Union's offer. And, the Union further contends that its offer splits the lifts so as to reduce the two-year cost to the Employer and that fact should not be ignored. It also asserts that its offer is sensitive to economic conditions. Three (3) of the six (6) external units that received three percent (3%) lifts in both 2009 and 2010 did not split the lifts. The splitting of the lifts in the Union offer reduces the actual cost of the offer to two and five tenths percent (2.5%) in both years.

Union Exhibits 15a and 15b demonstrate the wage erosion that has occurred for this bargaining unit. Both the highest Non-Masters Level Social Worker (Social Worker III) and highest Masters Level Social Worker (Social Worker III-MA) positions, which represent eighty-eight percent (88%) of bargaining unit employees, ranked number one (1) among the comparables in 1994. Five years later the Social Worker III position had dropped in ranking to number two (2) and the Social Worker III-MA had dropped to number three (3). By 2008 both positions had dropped in ranking to number four (4). Under the Employer offer, the Social Worker III position, by far the most populated position in the unit, representing seventy percent (70%) of the unit employees, would drop further to number five (5). The Union's offer maintains the current ranking of Social Worker IIIs and would recapture the ranking of number three (3) for Social

Worker III-MAs. This is another good reason to favor the Union offer based on the external comparables.

Arbitrators have often found that a pattern of wage erosion provides justification for wage proposals that may be in excess of an internal or external settlement pattern. The Union's wage proposal is not in excess of the external pattern, but right in line with it. The result of the proposal would be to keep the majority of the unit from experiencing further erosion.

The Union also argues that the internal wage settlements do not provide justification for a wage offer below the external pattern, and that in fact there is not an internal settlement pattern. The pattern of settlement claimed by the Employer was not achieved. The settlements among the internal units vary widely with regard to across the board wage increases, other financial adjustments, benefit changes, and other substantive language changes. In 2010, wage increases are more uniform, although the nursing home paraprofessionals received slightly less than the others and the units in arbitration, if successful, would receive significantly more than the others. The units that settled voluntarily also received varying additional financial adjustments in addition to the across the board increases. The impact of those variances in dates cannot be ignored. The earlier date means that a much larger percentage of the public health nurses (just over one-half of the unit, if the seniority level is comparable to that of the social workers unit (Union Ex. 22) will receive the additional ten dollars ($10.00) per month.

The public health nurses received the highest across the board wage increase, and received the most value from the increased longevity. On top of that, the public health nurses also received an additional one-half holiday which was not received by any other unit. Thus, the settlement for public health nurses is much richer than that of the nursing home paraprofessionals of professionals. Courthouse and highway employees received higher across the board wage increases than both the nursing home paraprofessionals and professionals, and less than public health nurses, but received a longevity adjustment of ten cents ($0.10) per hour, rather than ten dollars ($10.00) per month. The difference in the longevity adjustment amounts to approximately eighty-eight dollars ($88.00) per year. In addition, the manner in which the ten cents ($0.10) per hour was applied differed

for those two units. Also, all five (5) settled units received substantive language and benefit changes of varying value. The courthouse unit added certain relatives to bereavement leave, increasing the value of that benefit. The highway unit added fewer relatives to bereavement leave, but received improvements in CDL protections, which are difficult to value monetarily, but could save an individual employee's job in certain situations. Nursing home paraprofessionals received a four-year "no-sale, no-close" agreement. Given the fact that many counties are considering sale or closure of their nursing homes, the agreement is of inestimable value. Two of the five settled units received increased meal per diems.

Thus, the Union concludes that there is an overall lack of uniformity in the settlements among the internal bargaining units. While it is true that the Union's final offer for social workers results in a higher across the board wage lift than for any of the settled units, the Employer has not offered this unit the additional financial adjustments, or any of the benefit or language changes it has offered to the other units. Thus, no internal pattern has been established. In order 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. In summary, the internal settlements vary widely with regard to the across the board increases, the longevity increases, benefit increases, and the other substantive language changes.

The Union also contends that its Exhibit 16 demonstrates that the wage settlements received by the internal bargaining units have differed substantially over the years. For fourteen (14) of the twenty (20) years spanning 1989 through 2008, this bargaining unit has received across the board wage settlements that differed from at least one other internal bargaining unit. However, the Union's offer in this case is not outside the range of variance that has been tolerated in the past. Uniformity may work to the Employer's advantage in this particular case, but it does not appear to be a goal upon which the Employer has placed primary importance in the past. Thus, even if an internal pattern was established by the previous settlements, this would not be a major consideration in this case. And, many arbitrators have been unwilling to give internal

comparability great weight where the bargaining history of the Employer does not demonstrate adherence to that principle.

The Union also claims that settlements received by the external or "intra-industry" comparables are more relevant. Particularly with regard to professional employees, arbitrators have expressed reluctance to place considerable weight on a comparison to other internal bargaining units. The concern regarding reliance on internal comparability involves the difference in the occupational make-up of the units under consideration. Therefore, the disparate nature of the occupational groups compels the conclusion that internal comparability will not be afforded the same quantum of weight as the direct comparison with the external comparables, i.e., employees doing similar work (institution workers) in the stipulated ten counties. Another important point when considering internal comparables relates to the essence of separate bargaining units, i.e., the unique quality of each and every unit. In some units, concerns about the impact of two-tier longevity systems on unit solidarity may be particularly pressing, while this unit has not made such concerns a priority. Although the County's desire for uniformity in its settlements with its other bargaining units is understandable, there is no reason why this factor should be controlling. Also, the community of interest in a unit of professional social workers is different from that of a highway department, law enforcement department, nursing home, or other bargaining units. Each unit uses the collective bargaining process to achieve the specific goals of its members to the best of its abilities. Internal comparisons should not be used to prevent this bargaining unit from realizing the same gains made by professional social workers in other jurisdictions.

Regarding the cost of living statutory criteria, the Union claims numerous arbitrators have held that the best measure of the cost of living is not the Consumer Price Index, but the pattern of settlement among comparable employees in comparable communities. Here, the overwhelming majority of external settlements were three percent (3%) lifts. This indicates that the appropriate cost of living increase for this unit is three percent (3%).

The Union contends that the Employer has gone to great lengths to demonstrate that the economic climate justifies the lower wages in its offer. However, the Employer

did not demonstrate that economic conditions in its jurisdiction are any worse than in that of the external comparables. Arbitrator Frederic R. Dichter described how in order to justify providing a wage increase below that of comparable communities, the Employer must show that economic conditions are worse in its jurisdiction than in the comparable jurisdictions. Thus, there must be more than a showing that nationally the economy is down. Instead, the key to determining whether this factor is applicable in a particular proceeding is to determine how this locality is faring when compared to other surrounding localities. Is its economy more depressed than others?

In fact, economic indicators and other factors demonstrate that Sheboygan County's financial condition is one of the healthiest in the comparability pool. The Sheboygan County Finance Department's 2008 Annual Report (Union Ex. 8b) notes that the total levy was decreased for 2009 and that Sheboygan County is the also the only county in Wisconsin that reduced its tax levy in both 2008 and 2009. In addition, Sheboygan County's decrease in levy rate for 2009 was the largest in the comparability pool (Union Ex. 8a). These indicators clearly demonstrate that this Employer is in sound financial shape. Further, Sheboygan County lies right in the middle of the pack with regard to 2008 unemployment rates (Union Ex. 11), 2007 adjusted gross income (Union Ex. 12), and 2005 median income (Union Ex. 13). Sheboygan County also ranked fourth (4^{th}) among the comparables in 2006 per capita income (Union Ex. 14).

In its reply brief the Union contends that the main thrust of the Employer's argument is that there is an established internal settlement pattern that must be followed in the interests of consistency. Contrary to the Employer's argument, there is actually no established internal settlement pattern. There is instead a spectrum of internal settlements with varying costs and benefits inherent in each. The Union's offer is within the range of those settlements. Even if the Union's offer were outside an internal pattern, it would be justified because the external settlements support it and because the offer represents a reasonable effort to prevent further wage erosion.

The Employer also alleges that selection of the Union's offer will lead to cuts in service. This was not demonstrated. The difference in the cost of the offers is insignificant and inability to pay was not shown. In addition, the Employer's political

choices regarding reducing the property tax levy two years in a row will have a much greater impact on what level of service Sheboygan County can provide than selection of either offer.

Last, the Employer argues that local economic conditions in Sheboygan County justify a wage settlement below that of comparable jurisdictions. However, economic conditions are no worse in Sheboygan County than elsewhere, and despite the current economic downturn, the comparable counties continued, for the most part, to settle along the lines proposed by the Union, both before and after expiration of the collective bargaining agreement. In most of the examples given by the Employer, it neglects to mention significant benefit or language changes that were part of those settlements. For example, with regard to the public health nurses unit settlement, the Employer neglected to mention the additional ten dollars ($10.00) per month for employees hired after 1995 and an increase in holiday time that make that settlement a richer settlement than the Employer's offer to this, or any other unit. A review of all of the internal settlement agreements (Union Exs. 18a-18e) reveals too many permutations of varying levels of significance, both economic and non-economic, to find any established pattern. There is, instead, a range of settlements. The Union's wage offer here is within that range and is of equal cost to that of the Employer. Even if there were a pattern established, that would not necessarily mean that other factors might make consideration of the external comparables more relevant with respect to wages. Many arbitrators prefer to look at the external comparables first with respect to wages. In addition, the Union demonstrated that internal parity was not always given substantial weight by the Employer in its previous negotiations. Thus, the Union concludes that the importance of internal comparability in this jurisdiction is not as compelling.

The Union also claims it has made a strong showing that wage erosion vis-à-vis the external comparables is a reasonable concern. Here, unlike in ***New Berlin***, there *has* been a showing by the Union that the Employer's offer would result in continuation of a pattern of wage erosion that has been impacting the majority of the Employees in the unit since 1994. Arbitrator Raymond McAlpin, in deciding two similar cases involving the highway and public health nurse units with this same Employer, made it clear that

the unit's wage ranking among the external comparables was an important concern, and left the door open to its consideration in future negotiations, if the ranking declined. In this case, the Union contends it has made a reasonable proposal designed to stem the erosion affect that it has documented with respect to this unit. The County does not dispute the strong external comparable support for the Union's wage offer, but instead claims that its employees are already well-compensated in comparison to the externals. But, the Employer's 2008 Wage Comparison does not compare "apples to apples". It compares the actual wages paid to Employees at Sheboygan County to a set of mythical wages paid to mythical employees that might exist if the comparable counties all had the exact same seniority and classification population as Sheboygan County. There are too many factors unaccounted for to make the assumption the Employer is making. It is highly unlikely that the comparables all have identical workforces. There is no evidence in the record regarding the seniority level of the external comparables, nor any regarding how the various classifications are populated. A more meaningful comparison would have been between Sheboygan County's actual average hourly wages and the comparables' actual average hourly wages.

In addition, the Employer fails to account for the impact that the two-tier longevity system encompassed in Article 12 – Longevity (Union Ex. 2) has upon the average wages of this unit, and how the loss of the older longevity results in an average wage that is slowly declining vis-à-vis the external comparables as the employees who qualify for the older longevity are replaced by new employees who do not. It would be unfair to allow the Employer to use the elevating effect of the old longevity system upon average wages to justify a decrease in the wages that Employees hired after 1/1/95 can earn. The Employer should not get two kicks at the cat. Arbitrator Tyson agreed with their proposal to significantly lessen the longevity for new employees effective 1/1/95.

The actual wage schedules determine what any new employee can expect to earn at the minimum and maximum rates as well as the length of time to the maximum rate. In addition, the actual wage schedules, as they apply to new hires, is expected to be the status quo for all future employees. Use of the grandfathered employees will result in

a decision that will have to be relitigated after they leave the unit. Use of the status quo wage schedules will result in stability more stability, because the grandfathered rates will work themselves out of the unit with time. The Wage Erosion Tables show that the maximum wages plus longevity for Sheboygan County employees has been declining vis-à-vis the comparables.

The Union contends that the Employer admits in its Initial Brief that ability to pay is not at issue. However, the Employer still tries to argue that the difference between the offers will impact public services. However, the Employer's figures regarding a potential deficit are based on assumptions and some inaccurate calculations. The data provided by the Employer regarding the cost of benefit increases in 2010 is speculative. It is based on the budget assumptions listed on the first page of the Assumptions Memorandum. No data or testimony was presented regarding how the Employer assumed the five percent (5%) increases in health and dental benefits that it did. The use of the July Assumptions Memorandum as a basis to predict the potential of cuts in service is a dubious exercise. And, the difference between the costs of the offers is too small to make spending limitations relevant.

More troubling to the Union, is the fact that any actual gap in revenue alleged by the employer is purely a matter of political choice. The County chose to completely forego any increases in property tax revenue that were allowable for budget years 2008 and 2009. Instead, the County reduced the total levy both years. In 2009 the County could have collected an additional $0.9 million. Thus, the 2009 property tax revenues could have been $2.6 million higher in 2009 than in 2007. Unfortunately, the County appears poised to forego the allowable increase for 2010 as well. The County also continues to ignore potential sales tax revenue, which, as we indicated in the Union's Initial Brief (p. 23), could generate several million dollars in additional annual revenue.

It would be one issue if the County were truly in a financial pinch. Any difficulty that may exist continues to be based on the County's decisions, and not necessity. Thus, there is no reason that this Employer should not provide the same level of wages that comparable jurisdictions are providing through the downturn.

Here, the force of Sheboygan County's arguments are diminished by their continued refusal of additional available revenue. The issue of whether an increase in property tax revenues will be sufficient to fund the County's increased labor costs is largely irrelevant, given the small difference in the costs of the two offers, and fact that the County has turned away so much additional annual revenue for two years straight. The County points to declining revenue in several areas. The losses in revenue have not prevented the County from achieving significant goals such as reducing the levy. Nor has the County demonstrated that the losses will result in cuts to any particular service.

Also, the Union argues that the County does not demonstrate what the small difference in the cost of the offers will mean to public services. Thus the greatest weight factor does not come into play. Here there is essentially no difference between the costs of the two offers. If the County were truly concerned about their ability to afford wages in the future, it is unlikely that they would continue to forego available levy increases and reduce levy rates as they have the past few years.

The also asserts that in order to justify a departure from the settlement pattern the County must show that it is harder hit by reductions in state revenue and economic conditions than the comparable jurisdictions. Here there is no indication that things are significantly worse for Sheboygan County than anywhere else in the region. Sheboygan is no different from other counties with respect to economic conditions. Each local government is struggling with revenue reductions. It was claimed that Sheboygan is one of the most manufacturing-dependent communities in the state, and these industries have been hit hard. Assuming that Sheboygan County is heavily dependent on manufacturing, there was no comparison made to the level of dependence on manufacturing in the comparable jurisdictions. The County also claimed significant job losses in the area. However, there was no comparison of job losses in Sheboygan County to the comparable counties. It is well known that the dramatic economic conditions cited by the Employer are present statewide. All the comparable counties have experienced significant increases in unemployment. The Department of Workforce Development's March 2009 unemployment figures (County Exhibit C59) indicate that three of the comparables had higher unemployment rates

than Sheboygan County and that Sheboygan County was only one out of six (6) comparables that had an unemployment rate of nine percent (9%) or better.

The County also made the argument that economic conditions were better at the time of settlement in those jurisdictions that settled earlier. But the evidence derived from the Employer's summary of external settlements demonstrates that even among the six (6) counties known to have settled in the month when the instant parties' collective bargaining agreement expired or later, the majority still agreed to the total six percent lifts for 2009-2010. The effects of the downturn were well known by January of 2008, and yet the comparables continued to settle along the lines proposed by the Union. Regardless of the fallout in the local newspaper, Eau Claire County decided, even in March of 2009, that the external pattern of three percent (3%) annual lifts sill was most determinative of the appropriate wage settlement. The external comparables almost uniformly found that they would be able afford the same total six percent (6%) lifts for 2009-2010 requested by the Union here. There seems to be significant uniformity of opinion among the comparable set about what is affordable and appropriate in this time frame, regardless of when those settlements occurred.

No doubt the current economic downturn, which appears to be moderating to some degree, will make it more difficult for local governments to make ends meet during this time frame, and beyond. The struggle is also likely to depress what wage increases local governments can offer in 2011 and beyond…. If the Union's final offer is selected, the County will be in the same boat as its neighbors, not riding high. All the counties, including Sheboygan, will have to assess what impact the total six percent (6%) lifts for 2009-2010 will have on their ability to offer wage increases in future years. In that sense they will all be on the same footing. It is abundantly clear that Sheboygan County can afford them. If there are economic constraints that depressed the settlements in one or two counties, there is no indication that those constraints are present here.

DISCUSSION:

Subsequent to the hearing and submission of briefs in this matter, the Union on December 10, 2009, advised the undersigned that an arbitration award had been rendered involving the County's Sheriff's Department Deputies bargaining unit. The Union stated

> "Recently Arbitrator Hempe made an award (Dec. 32720-A) in an interest arbitration involving this employer and its sworn Sheriff's Deputies bargaining unit. The awarded contract covers the same time period as in our case and is a "Change in any of the foregoing circumstances during the pendency of the arbitration proceedings", and thus, according to Wisconsin Statutes Section 111.70(4)(cm)7(e) and (i), should be considered in making your decision."

Subsequently, on December 17, 2009, the County replied to the Union's December 10th communication stating

> "On behalf of the County, I must object to any consideration of the interest arbitration award cited by the Union below. At our hearing you clearly stated that the record in the present case would be closed as of submission of the parties' initial briefs. This took place on October 26, 2009. The November decision should not be included in the record unless the record is to be reopened for submission of additional information by all parties."

At the conclusion of the hearing in this matter, the parties requested that they be permitted to supplement the documentary evidence presented with additional supporting documents and correct any errors in the documentation already submitted. They requested that they be given 3 weeks from the date of the hearing within which to do so. The undersigned granted the request, and advised the parties that the record in this matter would be closed upon receipt of their briefs, and specifically stated that doing so precluded submission of any arbitration awards rendered after the record had been closed.

In this instance, the last reply brief was received in the undersigned's office by November 16, 2009. Consequently, the record in this matter was already closed when the Union advised the undersigned of Arbitrator Hempe's award in the Deputies bargaining unit and its opinion that the award should be considered by me in deciding which final offer to select. I have also been apprised that Hempe's award was issued on November 19, 2009, and thus rendered after the record in this matter was closed. Consistent with my ruling and notice to the parties at the time of the hearing in this matter, the undersigned is denying the Union's request to, in essence, reopen the record in this matter

in order to give consideration to the Arbitrator Hempe's award in the Deputies bargaining unit. Also, the undersigned is not knowledgeable of Hempe's award or rationale for his award in that matter.

In determining which offer to select the arbitrator is required to apply the following statutory criteria established for the evaluation of the parties final offers.

Section 111.70(4)(cm)

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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes, 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.

The parties agree upon the appropriate external comparables. They are Calumet, Eau Claire, Fond du Lac, Kenosha, La Crosse, Manitowoc, Marathon, Outagamie, Ozaukee, Washington and Winnebago Counties. The parties' briefs also make clear that the greatest weight factor is not an issue in this matter. Further, there were no stipulations of the parties that are to be considered, and the lawful authority of the County is not in issue. Also, there is insufficient data respecting private sector wages, hours and conditions of employment in Sheboygan County from which to make an informed comparison with the wages, hours and conditions of employment of the employees in this bargaining unit. The parties also did not argue that in determining which offer to select

the overall compensation of social workers including fringe benefits as compared to those of other County employees needed to be analyzed. And, I have already addressed the only change in circumstance that occurred during the pendency of this proceeding that has been raised with me by either party.

The only issue in dispute is the amount of the across the board wage (ATB) increase to be awarded for calendar years 2009 and 2010. The County's final offer is for a 2.95% increase to all rates effective January 1, 2009 and another 2.05% on all rates on January 1, 2010. The Union's final offer calls for a first year increase of 2.0% across the board on January 1, 2009 and another 1% across the board increase on July 1, 2009, while in the second year the Union's final offer is for a 2.0% across the board increase effective January 1, 2010 and an additional 1% ATB increase on July 1, 2010. By splitting its proposed wage increases for 2009 and 2010 into two segments – January 1st and July 1st in each year the Union's 2009 wage proposal has a cost of 2.5% in 2009 and its 2010 wage proposal has a cost of 2.5% in 2010. The Union's offer, however, does increase wage rates in each year by 3% for a total wage lift over the 2 year contract of 6%. The County's 2009 wage proposal costs 2.95% in 2009 and its 2010 wage proposal costs 2.05% in 2010. The wage lift over the 2 year contract under the County's offer is 5%. Thus, at the end of the contract term the published wage rates would be 6% more than they were on December 31, 2008 if the Union's offer is selected, and 5% more than they were on December 31, 2008 if the County's offer is selected.

The County has reached voluntary agreements for the 2009 and 2010 calendar years with all of its represented bargaining units except this bargaining unit (47/50 employees), the law enforcement (Deputies) bargaining unit (55 employees), and the law enforcement supervisory bargaining unit (26 employees). Thus, the County has reached voluntary agreements with 83%, or 655 of its 786 represented employees for calendar years 2009 and 2010.

The County and Union offers for calendar 2009 are only 0.05 of a percent different in terms of wage lift - 2.95% vs. 3%. As the parties' exhibits show that translates into a 1 cent ($0.01) per hour difference in the schedule maximum wage rates for Social Worker III and Social Worker III MA/S at the end of calendar year 2009. However, the County by granting almost the identical wage lift effective on January 1,

2009 instead of on July 1, 2009, as the Union's offer does, generates greater take home wages for employees in 2009, but the cost to the County is more in 2009 than if the Union's offer was selected. And, even though the additional 0.05% wage lift (3% vs. 2.95%) will generate its full cost to the County in 2010 over what the County's final offer will cost in year two that cost is negligible – $20.80 per year per employee.

The crux of this dispute lays in the parties' wage offers for calendar year 2010. In 2010 the Union proposes a 3% wage lift with 2% of the lift going into effect on January 1, 2010 and 1% effective July 1, 2010, resulting in a cost to the County in 2010 of 2.5%. The County has proposed a 2.05% wage increase effective January 1, 2010. The difference in the final offers as reflected in the maximum schedule wage rates on July 1, 2010 for Social Worker III is $0.28 per hour and $0.30 per hour for Social Worker III MA/S. As noted, because the Union's proposal for the additional 0.95% wage lift does not take effect until July 1, 2010 the cost to the County in 2010 is less than it will be in subsequent years when the full effect of the additional lift is realized.

The County argues that either measure of the CPI - Consumer Price Index-All Urban Consumers (CPI-U) or the Consumer Price Index – Urban Wage Earners and Clerical Workers (CPI-W) provides very strong support for the County's offer as preferable to the Union's offer. The County concludes there is no need for an overall wage increase in 2009 to maintain its employees buying power and that over the last ten-year period this bargaining unit's wage increases have consistently outpaced inflation. The Union, on the other hand, argues that numerous arbitrators have held that the best measure of the cost of living is not the Consumer Price Index, but the pattern of settlement among comparable employees in comparable communities. And, it contends that in this case the overwhelming majority of external settlements contained three percent (3%) wage lifts. The Union asserts that this indicates that the appropriate cost of living adjustment for this bargaining unit is three percent (3%).

It is generally understood that one component of an across the board wage increase can be a cost of living adjustment to account for any erosion of purchasing power of existing employee wages occasioned by an increase in inflation. The CPI is one measure of the impact of inflation upon the purchasing power of employee wages. As argued by the County, the Consumer Price Index-All Urban Consumers (CPI-U) for

calendar year 2008, the full calendar year immediately prior to the contract year at issue, declined, representing a decrease in the cost of living of 0.32% for the entire year. Similarly, the Consumer Price Index – Urban Wage Earners and Clerical Workers (CPI-W) for calendar year 2008 declined, representing a decrease in the cost of living of 0.7% for the entire year. Consequently, the purchasing power of employee wages in this bargaining unit was arguably not diminished by inflation in 2008. Thus, the cost of living factor, standing alone, supports adoption of the County's lower wage offer over the Union's final offer.

The County has also argued that the deteriorating economy in Sheboygan County should be factored into any analysis of which final offer to select. It contends that unemployment in the County was 9.3% and the City of Sheboygan had an unemployment rate of 12.1%. It asserts that both of these figures are well above the statewide average rate of 8.7%. It also claims that the Sheboygan area is one of the most manufacturing-dependent communities in the state, and these industries have been hit hard with companies such as Kohler, J.L. French, Pentair, and Thomas Industries shedding hundreds of local employees. However, the Union argues that the County has not demonstrated that the economic conditions in the County are any worse than in the external comparable counties, and other arbitrators have concluded such a showing must be made in order to justify a wage increase offer less than wage increases received in comparable counties. And, in this case the Union contends that economic indicators and other factors demonstrate that Sheboygan County's financial condition is one of the healthiest in the comparability pool.

The undersigned is persuaded that because the County has not demonstrated that economic conditions are significantly worse in Sheboygan County than the economic conditions in the comparable counties its economic circumstance is not a basis for disregarding or diminishing the persuasive value of the settlements in the comparable counties.

The Union foots it claim that its offer should be selected primarily upon the percentage across the board wage increases received by social workers in the agreed upon comparable counties for 2009 and 2010, or in other words external comparability; what it contends is a long term trend of erosion of County Social Worker wages vis-à-vis social

workers in the comparable counties; and what it sees as the County's lack of an established internal settlement pattern despite the County's contrary claim. The County, while acknowledging that those ATB increases granted to social workers in the comparable County's are larger than what it is proposing for its social workers, argues it has established an internal settlement pattern wherein all but three of its represented bargaining units, including this bargaining unit, have voluntarily agreed to percentage across the board wage increases identical to, equivalent to, or less than what it has offered this bargaining unit.

It is undisputed that of the 11 agreed upon comparable counties all have contracts for the 2009 calendar year and 8 have settlements for the 2010 calendar year. Three counties, Eau Claire (Human Services Professionals), LaCrosse (Professionals), and Marathon (Social Workers) in 2009 settled for a 2% increase effective January 1st and a 1% increase effective July 1st. Four counties granted 3% increases effective January 1st – Fond du Lac (Social Workers), Manitowoc (Human Services Professionals), Outagamie (Professionals), and Washington (Social Workers). Calumet County (Human service Professionals) granted a 3% wage increase effective February 1, 2009. Winnebago County granted a 2.5% increase to its Human Service Professional and Non-Professional bargaining unit employees effective January 1, 2009 and an additional 0.5% increase effective September1, 2009. Ozaukee County in a combined bargaining unit granted employees a 2.5% increase effective January 1, 2009. Kenosha County granted it Social Workers a 1% increase effective January 1, 2009. Thus, nine (9) of the eleven (11) comparable counties granted wage increases that generated a wage lift of 3% for calendar year 2009 and two (2) of the eleven (11) comparable counties granted wage increases generating a wage lift of less than 3%.

As stated earlier, the County's final offer for 2009 provides for a wage increase and lift effective January 1, 2009 of 2.95% or 0.05% percent less and one (1) cent per hour less that what a 3% wage lift would have generated in 2009. The County has seven other represented bargaining units and five of those bargaining units representing 83% of the County's represented employees have reached voluntary agreements with the County that provide the identical, equivalent, or less of a wage increase for calendar year 2009

than the County's final offer to this bargaining unit. The County's professional public health nurses and community programs bargaining unit voluntarily agreed to the same across the board wage increase for calendar year 2009 that the County has offered this bargaining unit. The County's Supportive Services bargaining unit voluntarily agreed to a 2009 2.75% ATB increase, plus an additional $0.10 per hour increase for employees hired on or after 1/1/1995 and with at least five (5) years with the County. The County Highway Department bargaining unit voluntarily agreed for calendar year 2009 to the same 2.75% ATB and an additional $0.10 per hour, but only for employees hired on or after 1/1/1996. The County's claim that the additional $0.10 was the equivalent to the 0.2% difference between a 2.95% ATB wage increase and a 2.75% ATB wage increase is not disputed. Thus, the wage increase generated in those two bargaining units for calendar year 2009 equated 2.95%, the same as it has offered this bargaining unit. The two Health Care Center bargaining units, registered nurses and the non-professional bargaining unit, both voluntarily agreed to a 2% ATB wage increase for calendar year 2009, but also received assurance from the County that it would not close the Health Care Center before 2012. Thus, for calendar year 2009 those five (5) bargaining units voluntarily agreed to 2009 calendar year wage increases of 2.95% or less. And, contrary to the Union's assertions, the undersigned concludes that there is an established internal wage settlement pattern for 2009.

In 2010, with the exception of the Deputies and Law Enforcement Supervisor bargaining units, and the Health Care Center non-professional employees bargaining unit that accepted a 2% ATB wage increase, as it had for 2009, the County's other represented bargaining units voluntarily settled for the same 2.05% ATB wage increase that the County final offered to this bargaining unit. So clearly, the County also has an established internal settlement pattern for ATB wage increases in 2010.

The undersigned has stated in prior decisions that an employer's ability to negotiate to a successful voluntary agreement with other unions on the terms that it proposes in arbitration is a factor to be accorded significant weight, if not controlling weight, absent some unusual circumstance surrounding such an agreement(s) that diminishes it persuasive value. Clearly, however, if there is a persuasive reason to

deviate from an unambiguous established internal pattern it would support selection of such an offer over the internal pattern. But, if a Union is to be successful in obtaining selection in interest arbitration of a final offer that significantly deviates from a clear and established internal settlement pattern it must persuasively establish that there is/are substantial reason(s) to deviate from the established internal pattern. In this case, the Union, while arguing there is not an established internal settlement pattern, argues the ATB wage settlements among the agreed upon external comparables provides justification for selection of its final offer, presumably even if it were to agree that the County has established such an internal settlement pattern.

For calendar 2010 the external comparable wage settlements mirror the settlements in 2009. The three counties that granted 3%-1% slit wage increases in 2009 did so again for 2010. Three of the four counties that granted 3% increases effective January 1, 2009 did so again effective January 1, 2010. One of those four counties, Washington, has not reached agreement for 2010. LaCrosse and Marathon Counties repeated their 2009 2% - 1% split wage increase again in 2010. Ozauke repeated its 2009 2.5% increase in 2010, and Kenosha County increased its ATB wage increase in 2010 from 1% in 2009 to 1.5%. And, Winnebago and Calumet counties have not reached agreement for 2010.

The Union has argued that this bargaining unit should be receiving a wage increase in 2010 that generates a 3% wage lift, and 2009 for that matter, because that is the predominant wage lift that was granted in six (6) of the (8) counties that have reached agreement on wages for 2010. These are employees with whom this bargaining unit has a strong community of interest, in the sense that they are professionals performing the same or similar work in other comparable counties. Furthermore, the Union claims that in this bargaining unit the trend has been that their wages have been eroding vis-à-vis employees in the other comparable counties performing the same or similar work, and in order to stem this trend the Union's offer should be selected. The Union relies upon a comparison of schedule maximum wage rates plus longevity. However, the undersigned believes the more appropriate comparison is of the wage schedule maximum rates exclusive of longevity for the reason that the Union advances as to why the County's

arguments relative to what the Union refers to as the "County's mythical comparison" – taking existing County Social Workers and examining what they would be paid under the comparable county collective bargaining agreements – should be rejected.

> "It would be unfair to allow the Employer to use the elevating effect of the old longevity system upon average wages to justify a decrease in the wages that Employees hired after 1/1/95 can earn."

In the undersigned's opinion, the inclusion of longevity pay, which is tied to length an of employee's service, when merged with the wage schedule rate which already valuates experience with experience step increases, distorts what is otherwise a valuation of the duties and responsibilities of the position taking into account experience. If one is truly attempting to achieve/maintain wage parity with other like professionals in other comparable jurisdictions inclusion of bonus payments tied to length of service where experience has already been factored into the negotiated wage schedule is, in the undersigned's opinion, inappropriate. Furthermore, the schedule maximum wage rate is a constant, whereas longevity fluctuates with the demographics of the bargaining unit work force, as older more senior employees retire and are replaced with younger less senior workers the average wage of the bargaining unit will fall as the size of longevity add-ons decrease. And, as the bargaining unit workforce ages the average wage of the bargaining unit will rise when longevity payments are included. Couple that with the fact that the demographics will also be changing among the comparable County bargaining units and it becomes obvious why such a comparison should not be the measure for measuring comparable wage rates. Regardless of the demographics of the bargaining unit, wage schedule maximums are not impacted. Consequently, the Union's erosion argument must rise or fall on a comparison of wage schedule maximum rates exclusive of longevity.

That analysis shows that in 1994 the schedule maximum wage rate for non masters level Social Worker placed this County in 4th place among the agreed upon comparables. In 1999 it ranked 2nd, in 2004 it ranked 3rd, and in 2008 it ranked 4th. However, whichever offer is selected this bargaining unit will rank 3rd among its comparables in both 2009 and 2010. Examining the same data for the highest masters level Social Worker in 1994, 1999, 2004, 2008 this bargaining unit ranked 3rd among its comparables. And, whichever offer is selected this bargaining unit will maintain its 3rd

place ranking in 2009 and move into 2nd place in 2010. Thus, this analysis persuades me that this bargaining unit has not incurred wage erosion at the highest masters level Social Worker. And, while the bargaining unit may have suffered some minimal erosion at the non masters level Social Worker position it does not persuasively support an argument that sufficient erosion has occurred warranting a conclusion that external comparability overcomes internal comparability where 83% of the County's represented employees have voluntarily agreed to an ATB wage increase with a wage lift equal to or less than what the County has offered this bargaining unit.

The Union has also argued that the interests and welfare of the public will not be served by selection of the County's final offer. It contends that doing so will continue the erosion of Social Worker wages in the County and lead to more turnover among bargaining unit employees that will have an adverse impact on the level and quality of service received by the County's citizens. The County disagrees. I am persuaded that there is no record evidence supporting the Union's assertion, and it is at best speculative. If significant turnover results in the years to come the County will have to determine the causes and address them. But that is not now.

Therefore, based upon the evidence, testimony, arguments, and application of the statutory criteria contained in Section 111.70(7) r. Wis. Stats. to the facts of this dispute the undersigned enters the following

AWARD

That the County's final offer is selected along with any tentative agreements of the parties and shall be incorporated into the parties' 2009-2010 collective bargaining agreement.

Entered this 21st day of January 2010.

Thomas L. Yaeger

Thomas L. Yaeger
Arbitrator