STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Stipulation of MARATHON COUNTY and MARATHON COUNTY DEPARTMENT OF SOCIAL SERVICES AND COURTHOUSE EMPLOYEES, LOCAL 2492-A, AFSCME, AFL-CIO To Initiate Mediation-Arbitration	Case L No. 27464 MED/ARB-1027 Decision No. 18615-A

Appearances:

Mulcahy & Wherry, S. C., Attorneys at Law, by Mr. Dean R. Dietrich, appearing on behalf of the Employer.

Ms. Kathleen Paul and Mr. Donald J. Barrington, District Representatives, WCCME, AFSCME, appearing on behalf of the Union.

ARBITRATION AWARD:

On April 21, 1981, the undersigned was appointed by the Wisconsin Employment Relations Commission as Mediator-Arbitrator pursuant to 111.70 (4)(cm) 6.b. of the Municipal Employment Relations Act, in the matter of a dispute existing between Marathon County, referred to herein as the Employer, and Marathon County Department of Social Services and Courthouse Employees, Local 2492-A, AFSCME, AFL-CIO, referred to herein as the Union. Pursuant to the statutory responsibilities the undersigned conducted mediation proceedings between the Employer and the Union on July 6, 1981, over matters which were in dispute between the parties as they were set forth in their final offers filed with the Wisconsin Employment Relations Commission. The dispute remained unresolved at the conclusion of the mediation phase of the proceedings, and consistent with prior notice that arbitration would be conducted on July 6, 1981, in the event the parties were unable to resolve the dispute in mediation, the Employer and the Union waived the statutory provisions of Section 111.70 (4)(cm) 6.c. which require the Mediator-Arbitrator to provide written notice to the parties and the Commission of his intent to arbitrate, and to establish a time limit within which either party may withdraw its final offer. Arbitration proceedings were conducted on July 6, 1981, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were not transcribed, however, the parties agreed to file briefs which were to be due August 14, 1981. The Employer brief was received August 15, 1981. After inquiry from the Employer the Arbitrator, on his own motion, advised the parties that the time for filing briefs was extended to September 15, 1981. No brief has been filed by the Union.

THE ISSUES:

The final offers of the parties contain four disputed issues. The disputed issues are wages, mileage reimbursement, vacations, and whether there should be a wage reopener provision in the two year Agreement. The position of each party with respect to each of the four foregoing issues will be set forth fully as each issue is analyzed in the discussion section of this Award.

DISCUSSION:

The decision in the instant matter will be determined by the application of the statutory criteria found at Wis. Stats. 111.70 (4)(cm)7. Separate consideration will be given to each of the four disputed issues in this discussion, followed by a determination as to which final offer will be adopted in its entirety when considering all of the issues which are disputed.

Considerable evidence was entered at hearing directed at criteria d, the comparables, and the Employer brief directs considerable argument toward that criteria as well. The evidence which the parties adduced with respect to comparables establishes that the parties have different views as to what constitutes comparables for the purposes of this proceeding. Therefore, it becomes necessary to establish the comparables for the purposes of making comparisons of the final offers.

CRITERIA d - THE COMPARABLES

The Employer proposes that the comparables be established as the counties of Chippewa, Clark, Eau Claire, Langlade, Lincoln, Portage, Price, Shawano, Taylor, Waupaca and Wood. The Employer urges that these are the proper comparables by reason of geographic proximity, population and equalized valuation and full value tax rate. The Employer cites City of Two Rivers (Police), Case XXVI, No. 25740, MIA-43 (9/80); City of Brookfield (Police), WERC Dec. No. 14395-A (8/76); and School District of Mukwonago, WERC Dec. No. 16363-A (10/78) in support of its position.

The Union submits evidence with respect to the comparables which would include twenty-one counties. They are: Milwaukee, Dane, Waukesha, Brown, Racine, Rock, Winnebago, Outagamie, Kenosha, Marathon, Sheboygan, LaCrosse, Fond du Lac, Washington, Manitowoc, Eau Claire, Dodge, Wood, Walworth, Ozaukee and Jefferson. (Union Exhibit #6) The Union also submits evidence with respect to secondary comparables, which include Wood, Portage, Waupaca, Shawano, Clark, Lincoln, Langlade and Taylor counties. Thus, the Union secondary comparables include eight of the eleven comparables relied upon by the Employer. The Employer comparables include Chippewa, Eau Claire and Price counties which are not included in the Union's submission in their secondary comparables.

The Employer urges that the listing of the twenty largest counties which the Union would have the Arbitrator consider as comparables are too diverse geographically to be considered as comparables. The undersigned agrees with the Employer position, and concludes that the proper comparables to be considered in this dispute are the eleven counties proposed by the Employer.

WAGE ISSUE

The final offers of the parties establish the parameters of the wage issue to be as follows:

EMPLOYER OFFER:

Effective 1/1/81

	MINIMUM	PSICM	MAXIMUM
Range I	1123	1176	1300
Range II	1199	1256	1452
Range III	1382	1449	1704

Effective 7/1/81

Range I	1133	1187	1312
Range II	1210	1268	1465
Range III	1395	1462	1720

Employees whose rates have exceeded the PSICM rate shall receive the same percentage increases granted to employees at the PSICM rate.

REOPENER: "In accordance with the procedures set forth at subsection "B", this Agreement shall be reopened on July 15, 1981, with the sole issue subject to negotiation being wages contained in Appendix "A", Article XIX, Insurance, and one additional article to be selected by each party."

UNION OFFER:

All employees' salary and rates listed in Appendix A to be increased as follows: Effective January 1, 1981 - 8%; effective July 1, 1981 - 4% of December '80 rate; effective January 1, 1982 - 10%.

The foregoing offers establish that the Union is proposing a two year Agreement with all terms established for the two year period. The Employer is also proposing a two year Agreement but with a reopener to bargain insurance, salaries and one item selected by each party. Additionally, the record establishes that the Employer offer proposes a 9% increase on all rates effective January 1, 1981, and a 1% increase of the December, 1980 rates effective July 1, 1981. From the foregoing it is established that the final offers of the parties leave them one-half percent apart on the wage issue in the first year when considering the cost of the offers for the first year only. When considering the increase in the wage rates themselves the Employer offer will increase the wage rates by 10%, whereas the Union's offer will increase the wage rates by 12% during the first year Agreement. Thus, the difference in the increase in the wage rates in the first year of the Agreement is established at a 2% difference. From Employer Exhibits #7 and 8 the actual cost differential for the first year represents a difference of $4,567.00. From these same exhibits it is also established that if the impact of the amount of year end lift is considered the difference, considering the year end lift for the first year, is established at $10,342.00. The foregoing differences include rollups. Without rollups the differences on actual first year costs become significantly less. Actual first year cost differential considering wages, overtime and longevity establish that the parties are $1,485.00 apart on actual cost for the first year; and that they are $6,397.00 apart when considering the effect of the year end lift differences in their offers.

The undersigned finds the actual cost differential between the parties for the first year as being so close that a clear preference for either party's offer is difficult, if not impossible, to establish based on that comparison. The differences, however, become more distinguishable when considering the impact of the year end lift in comparing the offers of the parties. Thus, it is the comparison of the effect of the lift which the Mediator-Arbitrator concludes will determine the outcome of the wage dispute as it goes to the first year. If the higher lift is to be supported by the evidence, then the evidence must clearly establish that the employees here are entitled to catch up when compared to the eleven comparable counties as established earlier in this Award.

The Employer has made a convincing presentation with respect to internal patterns of settlement. The evidence establishes that the Employer's 9.5% offer here is almost precisely the pattern of settlement established with other unions of the City of Wausau and Marathon County.[1] Employer Exhibit #9 establishes the following percentage of wage increase for 1981: Wausau Police, 9.5%; Wausau Police Supervisors, 9.5%; Wausau Department of Public Works, 9.5%; Marathon County Airport, 9%; Marathon County Deputy Sheriffs, 9.17%; Marathon County Highway, 9.5%; Marathon County Parks, 9.5%; Marathon County Nonpro-

1/ Both the City of Wausau and Marathon County are included for the purposes of internal comparisons of patterns of settlement because of the unique employer structure which exists between the City of Wausau and Marathon County. The record establishes that both units of government are served by a common Personnel Department and Bargaining Spokesman representing the Employer in negotiations with its unions. Therefore, the undersigned considers it appropriate to view both the City and the County here as though they were the same employer for bargaining purposes when comparing patterns of settlement.

fessional Social Services, 9.75%; and Marathon County North Central Health Care, 6% for employees over $5/ per hour and 9% for employees under $3.25/per hour. Additionally, Employer Exhibit #10 establishes that the final offers of the Employer for two units pending arbitration were 9.75% for the Wausau Firefighters and 9.5% for the Marathon County Health Department. Since hearing in this matter the decision in the Wausau Firefighters arbitration has been decided, and the Arbitrator there on August 12, 1981, awarded for the final offer of the Employer. This Arbitrator takes notice of that Award. The Arbitrator also takes notice of the resolution of the dispute involving Marathon County Health Department, which was disposed via a consent award by Arbitrator Haferbecker on August 28, 1981, Case LV, Decision No. 27849, MED/ARB 1115. In the Consent Award the parties agreed to resolve their dispute pursuant to the following terms. The wage increases embodied in the Consent Award are consistent with the Employer final offer in this dispute in that there is a 9% increase effective January 1, 1981, and a 1% increase on the 1980 rates effective July 1, 1981. The Consent Award further includes a wage reopener provision for the second year of the two year Agreement, identical to the proposal of the Employer in this dispute. From the foregoing the Employer offer here compares almost exactly to the settlements established among other units of the City of Wausau and Marathon County. Furthermore, the Award in City of Wausau Firefighters and Marathon County Health Department compares almost exactly to the offer made by the Employer in this dispute. It should be noted in stating the patterns of settlement, all of the settlements, with the exception of Marathon County Airport, Marathon County Deputy Sheriffs, and Marathon County North Central Health Care had split increases of the type proposed by the Employer in this dispute. Additionally, it is noted that the Awards of final offer of the Employer in the City of Wausau Firefighters and Marathon County Health Department also contained a split increase proposal of the type proposed by the Employer here. It is because of these settlements and Awards that the undersigned has concluded that the internal patterns of settlement favor the Employer offer in this dispute. Consequently, unless the Union evidence supports a clear and convincing case for catch up among these employees when compared to these same type of employees employed by the eleven comparable employers, the Employer offer on wages will be adopted.

If the Union is to establish its case for catch up the evidence will have to show that the employees here are underpaid in comparison to employees in the eleven other counties. The salary comparisons of the employees involved in the instant dispute to employees in the eleven other comparable counties present a problem to the Arbitrator. The record evidence establishes that while the wage schedules in this dispute provide for three steps (minimum, psicm and maximum) no employee in this unit is at the maximum rate, and the vast majority of employees in this unit have not progressed beyond the PSICM step. The Union evidence is focused in such a manner that they would have the undersigned compare the PSICM rates in effect for the instant Employer with the maximum rates in force in other counties, because the maximum rates are not paid to employees of this unit. The Employer agrees that the maximum rates are not paid to employees in this unit, however, he argues that the Union has failed to establish evidence at hearing that the maximum rates are attainable for employees of the eleven comparable counties. The Employer, therefore, urges that the Arbitrator make comparisons at all steps. A review of the evidence, specifically Employer Exhibits 18, 19 and 20, establish to the satisfaction of the undersigned that the maximum rates are attainable in seven of the eleven comparable counties. Employer Exhibits 18, 19 and 20 set forth the established rates for Social Worker I, Social Worker II and Social Worker III, and the exhibits on their face contain information setting forth the length of time it takes to reach the maximum rate in the comparable counties. Specifically, Employer Exhibits 18, 19 and 20 establish that the maximum rates in the following seven counties are reached as follows: Chippewa, 18 months; Clark, 18 months; Eau Claire, one year; Langlade, 42 months; Lincoln, 42 months; Taylor, 10 years; Wood, 8 years. No information is available in Portage, Price, Shawano and Waupaca with respect to the length of time it takes to reach maximum. From the foregoing, the undersigned is satisfied that this record, through Employer Exhibits 18, 19 and 20, establishes that maximum rates are reached in comparable counties for comparable employees. Since this record

unequivocably establishes that the preponderance of employees in this unit are at the PSICM step and that no employees in this unit reached the maximum rates, the undersigned now concludes that the proper comparisons should be between the PSICM step here and the maximum rates payable among the seven comparable counties where it has been established that employees in those units reach the maximum. The undersigned will consider the average maximums paid among the seven foregoing counties compared to the PSICM rate proposed by the parties in this dispute. In establishing the maximum rate paid, the maximum rates in Clark and Langlade counties are still disputed, and the undersigned has used the Employer final offer at the maximum for these averaging purposes. The average maximum paid among the seven counties paid for Social Worker I calculates to $1,259.43 compared to the Union offer of $1,208.00 at the PXICM step in this dispute. The Union offer here is $51.43 lower than the average maximums paid in comparable counties. The average maximum salary paid among the seven comparable counties for Social Worker II is $1,350.86. The Union offer here of $1,290.00 for Social Worker II is $60.86 below the average maximums paid in comparable counties. The average maximum of the seven counties for Social Worker III is $1,436.14. In the instant dispute, the Employer final offer at PSICM is $1,462.00 and the Union final offer is $1,488.00. Therefore, the Employer final offer is $25.86 higher than the average of the maximum in the seven comparable counties, while the Union final offer is $51.86 higher than the average of the maximums in the seven comparable counties.

The evidence has established that Social Worker I and Social Worker II classifications deserve catch up consideration, and that the Social Worker III classification does not. The undersigned, therefore, concludes that the Union has failed to make a clear case of need for catch up when considering all three classifications, and because they have failed to do so the undersigned further concludes that catch up should not be awarded here. The undersigned has further concerns with respect to the wage practices of these parties, and believes it would be in the best interest of the parties to establish a meaningful wage schedule via the process of negotiations, which would permit employees to reach maximum, rather than to perpetuate the "fictional" schedule which now exists.

Having concluded that the internal patterns of settlement support the Employer final offer; and having concluded that the Union has failed to establish to the satisfaction of the undersigned a case for compelling need to catch up; it follows that the Employer offer should be adopted on the issue of wages for the first and second year of this Agreement, inclusive of the Employer proposal for a wage reopener.

VACATION AND MILEAGE ISSUES

EMPLOYER OFFER:

VACATION: Except as otherwise provided in this section, employees shall receive vacation with pay based on their length of service in accordance with the following schedule:

Years of Continuous Service	Bi-weekly Accrual
Date of hire to 8th Anniv.	3 hrs., etc.
8th Anniv. to 16th Anniv.	4.5 hrs., etc.
After 16 yrs.	6 hrs., etc.

All employees hired before January 1, 1981 shall continue to receive vacation benefits under the vacation schedule contained in the 1979-80 Agreement between Marathon County and Local 2492-A, AFSCME, AFL-CIO.

ALL REMAINING LANGUAGE OF PARAGRAPH A - ANNUAL VACATION WILL CONTINUE AS IN THE 1979-80 COLLECTIVE BARGAINING AGREEMENT.

MILEAGE - All employees required to use their private automobiles for County business shall receive eighteen cents (18¢) per mile effective 1/1/81. In the event the County increases the mileage allowance applicable to non-union County employees, employees in this bargaining unit shall receive the same increase added to the eighteen cents (18¢) per mile.

UNION OFFER:

VACATION - The Union proposes that the terms of the predecessor Collective Bargaining Agreement remain in effect for the duration of this Agreement.

MILEAGE - The mileage allowance be increased to 20¢ per mile effective January 1, 1981 and to 21¢ per mile effective January 1, 1982 (Article 22, A). The car allowance to remain $20 per month (Article 22, B).

With respect to the mileage issue, both parties propose to continue the current $20.00 per month car allowance to all employees. The record evidence establishes that the parties value the $20.00 per month car allowance as the equivalent of an additional 2¢ per mile, and the evidence further establishes from Employer Exhibits 36 A and B and from the testimony of Jerry Stone, Director of Personnel and Labor Relations for the County and the City, that the car allowances are unique to the employees of the Department of Social Services. The evidence further establishes that the consistent pattern of mileage reimbursement among other units where car allowances are not in effect is 20¢ per mile. Given the parties' recognition of the value of 2¢ per mile for the $20.00 car allowance, the Employer final offer in this unit of 18¢ per mile is consistent with the terms of the other bargaining agreements which provide mileage at 20¢ per mile, except for the mileage provision contained in the Consent Award involving Marathon County Health Department employees, where the Haferbecker Award of August 28, 1981, contains a provision that the reimbursement rate on October 1, 1981, shall be 21¢ per mile. Clearly, the Haferbecker Consent Award breaks the consistent pattern of mileage reimbursement since it exceeds by 1¢ per mile the prior established pattern. While the Employer offer contains a type of "me too" provision, however, it is limited to a committment that would increase the mileage allowance in this unit if the mileage allowance to non-union employees is unilaterally increased by the Employer. The Award involving Health Department employees affects union employees and, therefore, the "me too" provision proposed by the Employer is not operative by reason of that Award. Having concluded that the Haferbecker Award breaks the consistent pattern of mileage reimbursement, those patterns are no longer persuasive. Having concluded that the patterns are no longer persuasive, the undersigned now considers the record evidence with respect to the cost of operating a car, which convinces the Arbitrator that the Employer offer of 20¢ per mile is low. The undersigned, therefore, now concludes that the Union offer on mileage reimbursement is the more reasonable.

With respect to the vacation issue, the record is clear that employees in this unit have enjoyed the vacation schedule proposed by the Union under predecessor collective bargaining agreements. The Employer proposes that new hires after December 31, 1980, receive three weeks vacation after eight years rather than three weeks vacation after four years as provided for in the predecessor collective bargaining agreement. The Employer further proposes that new employees hired after December 31, 1980, become entitled to twenty days

the vacation provisions as originally adopted in the Collective Bargaining Agreement in force for the year 1973-74 provided a vacation schedule which linked the vacation entitlements of employees in this unit to the vacation entitlements of social workers at the Marathon County institutions. A dispute arose when the Employer failed to improve the vacation benefits, and by arbitration award (Union Exhibit #15) dated December 13, 1973, the Arbitrator found for the Employer, and the vacation improvements sought by the Union were denied. The Arbitrator in his dicta, however, stated that while he awarded to the Employer based on the unambiguous language of the Contract, he felt the Union had been deceived in the bargaining process. After the award the parties again bargained, and in that round of bargaining for an agreement becoming effective January 1, 1975, the Employer agreed to the instant vacation schedule squaring with the vacation schedules then in effect at what is now the North Central Health Care facilities. Given the foregoing history of how the present vacation entitlements have been established, the undersigned concludes that the bargaining history supports a continuation of the vacation schedules in this unit as they have previously existed and, therefore, the Union proposal for the status quo would be adopted on this issue.

SUMMARY AND CONCLUSIONS:

The undersigned has concluded that the evidence supports the Employer position on the wage issue, and that the evidence supports the Union position on the mileage reimbursement and vacation issues. In balancing all of the issues, the Arbitrator now concludes that the Employer offer should be adopted.

The foregoing conclusion is reached because the Arbitrator considers the wage issue to be the paramount issue in dispute between the parties, and further concludes that the mileage reimbursement dispute is too narrow a dispute to sway the decision in the Union's favor. The vacation issue, if it had affected all employees in the unit, very likely would have swayed this decision in the Union's favor, however, since the Employer has limited the impact of the proposed vacation changes to employees hired after December 31, 1980, the undersigned now concludes that the Employer offer should be adopted. In so doing the undersigned recognizes that during the term of this two year Agreement the proposed vacation change of the Employer will have no impact on the new hires because they will not have reached the threshold at which the vacation differential proposed by the Employer comes into play. The undersigned believes that in the subsequent round of bargaining the parties should reinstitute the terms of the predecessor vacation agreement for all employees, and if the parties do so, this deficiency in the Employer offer can be remedied before it has any impact on any employee in this bargaining unit.

Therefore, based on the record in its entirety, and the discussion set forth above, after considering the arguments and after applying the statutory criteria, the Arbitrator makes the following:

AWARD

The final offer of the Employer, along with the stipulations of the parties, as well as the terms of the predecessor agreement which remain unchanged through the bargaining process are to be incorporated into the written Collective Bargaining Agreement between the parties for the years 1981-82.

Dated at Fond du Lac, Wisconsin, this 22nd day of October, 1981.

Joe. B. Kerkman,
Mediator-Arbitrator

JBK:rr