STATE OF WISCONSIN
BEFORE THE INTEREST ARBITRATOR

In the Matter of the Petition of MARATHON COUNTY HEALTH DEPARTMENT PROFESSIONALS, LOCAL 2492B, AFSCME, AFL-CIO To Initiate Arbitration Between Said Petitioner and MARATHON COUNTY (HEALTH DEPARTMENT)	Case 149 No. 42015 INT/ARB-5220 Decision No. 26030-A

APPEARANCES: PHIL SALAMONE, Staff Representative, District Council 40, appearing on behalf of the Union.

Mulcahy & Wherry, S.C., Attorneys at Law, by DEAN R. DIETRICH, appearing on behalf of the County.

ARBITRATION AWARD

Marathon County, hereinafter referred to as the County or Employer, and Marathon County Health Department Professionals, Local 2492B, AFSCME, AFL-CIO, hereinafter referred to as the Union, were unable to resolve their negotiations over the terms to be included in a new collective bargaining agreement, to replace their prior agreement, covering professional employees employed in the County's Health Department, which expired on December 31, 1988. On April 7, 1989, the Union filed a petition with the Wisconsin Employment Relations Commission (WERC), seeking to initiate interest arbitration pursuant to the provisions of Section 111.70(4)(cm)6. of the Municipal Employment Relations Act (MERA). A member of the WERC's staff investigated the petition and, on May

30, 1989, the Commission certified that the conditions precedent to the initiation of interest arbitration pursuant to said section of the statutes had been met and ordered that the matter be submitted to arbitration. The parties selected the undersigned, from a panel of arbitrators provided by the WERC, and, on July 6, 1989, the WERC issued an order appointing the undersigned arbitrator, to issue a final and binding award pursuant to Section 111.70(4)(cm)6. and 7. of the MERA. A hearing was held at Wausau, Wisconsin on September 26, 1989, at which time the parties presented their evidence. Initial briefs were filed and exchanged by November 1, 1989, and reply briefs were filed and exchanged by December 1, 1989. Full consideration has been given to the evidence and arguments presented in rendering the award which follows.

ISSUES IN DISPUTE

Both parties propose that there be a two-year agreement, covering calendar 1989 and 1990. A review of their respective final offers discloses that the issues in dispute all relate to wages, except for a minor dispute over the appropriate rate of reimbursement for use of personal automobiles on county business.

WAGES

There are approximately 20 professional employees in the bargaining unit, consisting of seven public health nurses, five sanitarian II's, and eight individual professionals working as an adult aging nurse specialist, maternal and child health nurse specialist, health educator, CSYP coordinator, epidemiologist,

groundwater specialist, sanitarian I, and dental hygienist. The wage rates for these various classifications, in effect on December 31, 1988, are reflected in Appendix A of the expired agreement and are set forth as attachment 1.

Union's Offer

Under the Union's offer, the wage rates reflected in attachment 1 would be increased by 5.4%, effective January 1, 1989, and by an additional 5%, effective January 1, 1990. In addition, the classification of dental hygienist would be upgraded, so that the rates for that classification would be the same as the rates for the groundwater specialist. Also, the rate for public health nurse, which is currently the same as the rate for the groundwater specialist, would be upgraded by the equivalent of 20 cents per hour.

County's Offer

Under the County's offer, the wage rates reflected in attachment 1 would be increased by 3%, effective January 1, 1989, an additional 2%, effective January 1, 1990, and an additional 2%, effective July 1, 1990. The County does not propose to make any adjustment in the wage rates for the dental hygienist or the five public health nurses, beyond those which would result from these across-the-board increases.

MILEAGE RATE

The current agreement contains a provision, set forth as Section A of Article 22 - Travel Reimbursement, which reads as follows:

"A. Mileage Allowance: All employees required to use their private automobile for County business shall receive twenty-one cents ($.21) per mile for all miles traveled. In the event the County increases the mileage allowance applicable to nonunion County employees, employees in this bargaining unit will receive the same cent per mile increase provided the mileage rate increase results in a reimbursement rate higher than twenty-one cents ($.21) per mile. If the nonunion County employee increase results in a mileage reimbursement rate of twenty-one cents ($.21), employees in this bargaining unit shall not receive an increase beyond twenty-one cents ($.21) per mile."

The reference to non-union county employees was apparently intended to refer to those employees covered by Section 4.02 of the County's management personnel ordinance. Prior to March 28, 1989, that ordinance provided for reimbursement at the rate of 20.5 cents per mile and made no reference to the purchase or maintenance of minimum insurance coverage. On March 28, 1989, Section 4.02 was amended to read, in relevant part, as follows:

"Mileage when traveling by personal automobile on official County business shall be reimbursed at the rate of $.205 per mile. Those individuals who maintain a personal insurance policy of not less than one hundred thousand dollars ($100,000) combined single limits of bodily injury and property damage, and who provide their department head with a photocopy of their policy cover sheet or a certificate of insurance shall qualify for a higher level of reimbursement. Requests for reimbursement made on forms which indicate that the responsible department head has been provided with the necessary documentation certifying that the driver's personal insurance coverage meets or exceeds the established standards will be reimbursed at the rate of $.24 per mile;"

The County has a number of agreements with other AFSCME affiliated local unions which include similar "me too" provisions. In addition, it has agreements with at least one AFSCME affiliated local and two other unions, which call for reimbursement in

accordance with the above quoted County ordinance. On June 28, 1989, pursuant to a procedure agreed to by the County, a consolidated grievance was filed on behalf of five AFSCME affiliated locals, including the Union herein, alleging that the County was in violation of these "me too" clauses by granting non-represented employees 24 cents per mile and not making the increase available to the employees covered by the agreements in question. During the interim period, between the March 28, 1989 effective date of the ordinance, and the filing of the consolidated grievance on June 28, 1989, the Union submitted its final offer in this proceeding.

In its final offer, the Union proposes to amend Section A of Article 22, set forth above, by increasing the agreed to rate from 21 cents to 24 cents. At the hearing, the Union strenuously objected to any consideration being given to evidence offered by the County concerning its offer to extend the terms of the modified ordinance to all of the local unions represented by AFSCME affiliated locals. In the Union's view, that evidence constitutes an inappropriate reference to an offer to compromise the dispute covered by the consolidated grievance. The evidence was admitted over the objection of the Union on the basis that it was not an offer to compromise the dispute in this case (assuming without holding that such evidence should be excluded), but constituted relevant background information concerning the dispute in this case.

In its final offer, the County makes no specific proposal to

amend Section A of Article 22. Thus, under its proposal, the language set forth therein will remain the same during the term of the new agreement and the rate of reimbursement will remain at 21 cents per mile, unless the consolidated grievance is settled under terms calling for a higher rate or a grievance arbitrator awards a higher rate.

Union's Position

In setting forth its position, the Union addresses each of the statutory criteria. It first notes that the dispute in this case does not involve the lawful authority of the County or the stipulations of the parties.

The interests and welfare of the public (but not the financial ability of the County to meet the costs of either final offer) are implicated by the dispute in this case, according to the Union. While it is in the public interest to obtain services at the lowest possible cost, it is also in the public interest that qualified employees be attracted to and retained in County service. Citing the December 1988 findings of the secretary's commission on nursing, appointed by the United States' Secretary of Health, Education and Welfare, the Union notes that there exists a "critical nurse shortage" which is expected to grow worse in the future. According to that same report, existing "wage compression" and "inadequate compensation" is likely to discourage potential nurses from entering the profession.

Problems with recruitment and retention of professionals first became apparent in the County during the summer of 1988, according

to the Union. At that time, the County experienced difficulty in hiring an assistant district attorney at the proper step of the existing wage schedule. Citing newspaper accounts and other evidence, the Union points out that the County's personnel committee then acknowledged that there was a problem with compensation for "professional" [and managerial] positions and commissioned a comparative study of salary levels for managerial positions. While the study of compensation for managerial positions ultimately resulted in sizeable increases for a majority of the managers, the County thereafter refused to adjust the wages for other professionals in a similar fashion, according to the Union. It is as a result of those events, according to the Union, that all three unions representing professional employees are now involved in interest arbitration proceedings.

In particular, the Union asserts that the interests and welfare of the public include the ability to attract and retain high calibre, quality professionals from a wide labor market, which is not limited to the County or surrounding counties. This is reflected by the evidence demonstrating that the various members of the bargaining unit generally received their professional education elsewhere. It is also reflected in the advertizing conducted by the County in recruiting, the Union argues. While most of the employees recently hired, have come from the northern part of the State, that fact merely serves to demonstrate that the County is presently unable to recruit from a larger area. Further, the testimony shows that the last two nurses hired as public health

nurses had no prior experience in the field. Also, according to the testimony, other public health nurses have left their employment for better paying jobs elsewhere.

The County's ability to pay the cost of the Union's proposal is not only undisputed, but supported by certain other evidence, according to the Union. Thus, local business leaders surveyed recently indicated that the County is a very good place to do business, but admitted some difficulty in recruiting professional employees. The County ranks 22nd out of 72 counties in median household after tax income and is ahead of all the contiguous counties relied upon by the Employer in its arguments. Just as the County could afford the increases for managers and deputy sheriffs, which were in excess of the County's offer here, the County can afford the increases sought by the Union, it argues.

Turning to the comparability criterion, the Union argues that its proposed comparables should be favored over those advanced by the County for a number of reasons. Those reasons include the fact that there has never been an interest arbitration determination of comparables for this bargaining unit; the relative size, as measured by population, of the County; the fact that the counties selected by the Union are the same counties selected by the County's personnel committee for its managerial study, based upon relative equalized valuation, which are roughly comparable in size; the fact that the County did not give any weight to the contiguous County comparisons in granting the increases to managers; the fact that the deputies' settlement was not based upon contiguous

comparisons; the fact that another arbitrator rejected contiguous comparisons for a dispute involving the highway department; and the fact that a majority of the positions in this bargaining unit do not exist in contiguous counties.

Turning to external, public sector comparisons, the Union notes that RN's employed by the Marathon County Health Care Center received increases in 1987, 1988, and 1989 which totaled 17.5%, primarily because of an 11.5% increase in 1988. Under the County's offer, RN's in this group will receive only about 9% over the same period. Similarly, the teachers for the Wausau School District have received increases of 5.4% and 5% for 1989 and 1990, which matched the increases sought by the Union here.

Turning to its proposed comparables, the Union notes that the average minimum and maximum for public health nurses for 1989 within that group, are $11.29 per hour and $13.62 per hour, respectively. Under the Union's offer, the minimum ($11.04 per hour) and maximum ($12.96 per hour) established for that classification would more nearly approximate this average. In 1988, the County ranked tenth out of eleven in this group and that rank would not improve in 1989, under the County's offer. Under the Union's offer, it would improve to eight out of eleven. This data establishes the need for "catch up," according to the Union, and also demonstrates that the Union's offer would only provide a modest amount of "catch up."

Any effort by the County to show its relative rank among its comparables, based upon yearly wages, is misleading, according to

the Union, because the County contract calls for a 40-hour work week. Utilizing an hourly rate for comparison purposes, the County only ranks at the midpoint among the comparables it utilizes. According to the Union, arbitrators have generally recognized that hourly rates should be utilized for such comparative purposes.

A final problem with external comparisons exists in the case of the sanitarian, according to the Union. Only Eau Claire, among the Union's comparables, and LaCrosse, among the County's comparables, had a similar position. The available data indicates that the sanitarian in Eau Claire earns more at the starting rate and at the maximum rate and the same may be true in LaCrosse, if proper consideration is given to the number of hours worked.

Turning its attention to the evidence concerning internal comparisons, the Union notes that the wage increases granted to 11 of the County managers clearly exceeded the 3% wage increase, alleged to be the settlement pattern for 1989. Several of those managers received adjustments of as much as 11%, on top of the 3%, the Union notes. The parks department settlement also departed from the alleged pattern, according to the Union, since it involved reclassifications for 19 of the 32 employees in that department in July of 1990. Finally, the settlement involving the deputy sheriffs also exceeded the alleged pattern, the Union notes. Due to changes in the classification system, detectives will receive a total of 15% over the two years of the agreement and most of the deputies will move up a classification, which will generate between 5 and 5.8%, in additional compensation. While the County alleges

that the new classification system requires additional training, the evidence discloses that all but one of the deputies will qualify. When consideration is given to existing wage levels and educational requirements for deputies and detectives, in relation to the members of this bargaining unit, this settlement will exacerbate the already large wage differential that exists between the two groups.

It is also significant, according to the Union, that deputies are indisputably hired from a local labor market and ought to be compensated on the basis of local comparisons. Professionals on the other hand are hired in a different labor market and both federal and state laws on labor relations recognize they have a separate community of interests, from non-professional employees. This is particularly significant now, since health care professionals are enjoying large wage increases nationally, according to the Union's evidence.

The claim that the County has always followed a "pattern of settlements" is not borne out by the evidence, according to the Union. However, even if it were borne out by the evidence, that pattern does not mean that employees are forever tied to such patterns. Otherwise, needed changes, reflecting a larger reality, could never be brought about. Thus, arbitrators have already recognized that, when internal comparables come into direct conflict with the labor market, the labor market must be allowed to prevail.

Turning to private sector comparisons, the Union acknowledges

that this particular criterion is not often given controlling weight in arbitration proceedings involving public sector employees. However, in the case of the dental hygienist, the results of a survey conducted in the County, on behalf of dental hygienists, strongly supports that portion of the Union's final offer, it argues. It showed that 88 of 89 existing positions enjoyed starting wages in excess of the wages paid the County's dental hygienist and only about a third of the 89 earned less than the present County maximum. Further, citing settlements and existing wage schedules in Madison, Wausau and various cities throughout the United States, the Union notes that registered nurses have been making substantial gains in hourly wage rates and yearly earnings.

The cost of living criterion supports its offer, according to the Union, because the percentage increases sought by the Union more closely approximate increases in the Consumer Price Index and because of the relatively high disposable income enjoyed by residents of the County.

In the Union's view, the criterion dealing with overall compensation and other conditions of employment is not implicated by the evidence or the arguments of the parties and there have been no changes in the criteria already discussed, which were not brought out at the hearing.

The "other factors" criterion is relevant in this proceeding, according to the Union. The evidence concerning the pattern of settlements, internal comparisons, and bargaining history point to

the fundamental unfairness of the Employer's position in this case. Specifically, the County has granted substantial wage increases to the deputies, with little or no rationale to support doing so, but has resisted the proposals of this bargaining unit, which are well supported. This is so, in spite of the "high hopes" members of the unit had, going into negotiations, because of the County's apparent recognition of a need to increase the compensation for professionals.

Finally, turning to the travel reimbursement issue, the Union argues that its proposal is merely designed to grant that which it thought the agreement provided for in the first place. While acknowledging that the decision of a grievance arbitrator may moot this issue, it argues that its proposal is reasonable and ought to be favored.

In reply to County arguments, the Union makes the following points:

1. While geographic proximity may be an appropriate basis for establishing comparability pools for public employees in some circumstances, it is not in a case like this, where the evidence shows that professionals come from a statewide and national job market.

2. Cases cited by the Employer to support comparables drawn from close proximity all involved employee groups where such comparisons were more appropriately made.

3. The County's reliance upon the award of Arbitrator Jos. B. Kerkman (Marathon County, Department of Social Services,

Decision No. 19615-A, 1981) is misplaced because the Union filed no brief in that case, which involved a different bargaining unit, and because Kerkman has recognized that changes in Section 111.70(4)(cm)7.d establish that arbitrators no longer need to confine their comparisons to "comparable communities."

4. Other arbitrators have also used statewide comparisons, in cases where traditional comparisons were unavailable.

5. The County is being inconsistent in relying upon the 1981 comparisons adopted by Kerkman, even though it abandoned those comparisons when it established salary ranges for managers.

6. The County is wrong when it contends that employees have consistently accepted pattern settlements, since the evidence discloses that there have frequently been significant deviations within the alleged pattern.

7. Some cases cited by the Employer to support the importance of internal comparisons are inapposite, because they involved fringe benefits rather than wages.

8. Contrary to the County's assertion, it does not damage bargaining relationships for individual bargaining units to seek to establish deviations from a pattern, where they have a valid basis for doing so. If they do not have a valid basis, the rejection of their efforts is sufficient to discourage others from doing the same. The cases cited by the Employer recognize that increases beyond the pattern are justified, where the Union can show "overriding considerations" requiring such deviations.

9. As anticipated, the County uses misleading comparisons

based upon yearly wages.

10. The County is wrong in its contention that the Union offers no support for its position on the dental hygienist rate, and offers only one comparison in support of its defense of the status quo on that rate.

11. The County misstates the record when it alleges that the County accepted a catch-up argument for deputies, based upon suburban police forces. The personnel director denied that the County did so.

12. The County is attempting to camouflage a general wage increase for deputies by creating a new classification system, under which deputies will nearly all qualify for advancement immediately.

13. The County seeks to distinguish department heads from members of this group, even though department heads are often professionals, must have college degrees and are otherwise comparable. Even the cover page to the study itself, reflected the judgment that the principles applied in interest arbitrations involving professionals were applicable. Further, the chairperson of the personnel committee did not limit her observations to managers, but spoke of all professional people employed in the County, when she acknowledged that there was a problem.

County's Position

According to the County, the first issue that must be decided in this proceeding relates to the appropriate comparable pool, which ought to be utilized for purposes of public sector

comparisons. Citing the decisions of numerous arbitrators, the County argues that it appropriately took geographic proximity into account, when it proposed its list of comparables, while the Union did not.

The County notes that eight of its comparables (Clark, Langlade, Lincoln, Portage, Shawano, Taylor, Waupaca, and Wood) are all contiguous counties. Because Marathon is the largest county in this group, it added Chippewa, Eau Claire, and LaCrosse. Even so, the County argues that the latter three counties should be considered as "secondary" comparables. Together these counties are nearly identical to the counties found appropriate for comparison purposes by Arbitrator Kerkman, in a proceeding involving a sister local of the Union, representing professional social service employees [cited above under the Union's position]. Citing arbitrator opinions to that effect, the County argues that it is destablizing to the parties' collective bargaining relationship, to allow them to rely on different comparables in subsequent proceedings, after a comparability group has been established.

The comparables chosen by the Union are inappropriate, according to the County, since they include counties located within the Fox Valley labor market (Outagamie, Winnebago, Fond du Lac, Sheboygan, and Manitowoc), and the Milwaukee and Madison labor markets (Washington County and Rock County). The only central Wisconsin labor market counties included in the Union's proposed comparables are Portage and Wood County.

The statewide comparisons, also relied upon by the Union, are

even more inappropriate, according to the County. Not only does this grouping include counties which are larger and influenced by other labor markets, they are so geographically dispersed, that they provide no valid basis for comparison. This was the conclusion that Arbitrator Kerkman reached in the above cited case, when the Union there sought to compare itself to the 20 largest counties, the County notes.

Turning to the merits of the two final offers, the County argues that its final offer should be judged the more reasonable offer, when it is viewed in light of the historical settlement pattern that has been maintained among public employees in the County over the years. Citing evidence introduced in the record going back to 1976, the County notes that a settlement pattern has been followed in the 11 bargaining units (and among the non-union ordinance employees) over those years and that, for 1989, six of the eleven bargaining units have already agreed to a 3% wage increase for 1989 and split 2% increases for 1990. These groups represent 77% of all County employees, it notes. For this reason alone, it would be improper to award a 5.4% increase in 1989 and a 5% increase in 1990 to this bargaining unit, according to the County. To do so would severely injure the negotiating relationship between the County and all of its other bargaining units.

In support of this argument, the County cites a number of arbitration awards recognizing the disruptive impact that pattern breaking awards have on future negotiations. To grant an across-

the-board increase which is greater than increases granted to any of the other bargaining units which have already settled would penalize those bargaining units which have settled under the pattern and discourage them from settling voluntarily in the future.

The Union's additional proposal to upgrade the public health nurse rates by 20 cents per hour, on top of the pattern breaking percentage increases sought is "unnecessary, avaricious, and not justified," in the County's view. Citing arbitration awards to that effect, the County argues that, in order to justify such an adjustment on top of an across-the-board increase, the Union has the burden of proving that there exist significant, overriding considerations which require such an increase. That evidence is lacking in this proceeding, according to the County. There is no evidence that the wages of nurses in the bargaining unit have been suffering in comparison to the wages of nurses in other counties within the County's comparability groups. In fact, the maximum 1988 annual rate for Marathon County in 1988 ranked third out of 12, the County notes. Under the County's offer, nurses would remain second out of 11 counties settled. If wages and insurance benefits are considered together, the County will rank number one among the eleven settled counties for 1989, it notes.

Even the Union's data supports a finding that public health nurses in Marathon County are well compensated, according to the County. Utilizing selected statewide comparisons of minimum and maximum salaries for 1988 and 1989, involving 22 counties, the

County asserts that the minimum and maximum hourly rates in Marathon County compare quite favorably to the average of this group. While the use of statewide comparisons is inappropriate, according to the County, this comparison nevertheless shows that public health nurses in Marathon County are well compensated, it argues.

The Union has also failed to meet its burden of establishing the need for the proposed upgrade of the dental hygienist position, according to the County. While only Portage County, among the comparables, has a similar position, that position is part-time, the County notes. Even so, on an hourly basis, the County's wages are considerably higher. The proposal to upgrade the position would merely widen the gap that already exists, the County notes. On the other hand, according to the County, the Union has offered "no justification" to support this proposed upgrade.

The Union cannot rely upon the settlement in the sheriff's department to support its request for a higher than normal increase, according to the County. This is so because the evidence demonstrates that it was based upon a need for "catch up," with other police departments located in Marathon County and there is no similar showing of a need for "catch up" in this bargaining unit. In order to prevail in arbitration, the Union must produce compelling evidence of a need for "catch up" and it has failed to do so in this case, according to the County. It is also significant that the settlement in the sheriff's department also involved substantial changes in the wage structure and

classification system. Promotions are no longer automatic and a number of qualifications must now be met for promotion purposes.

Similarly, the Union's reliance upon the equity adjustments granted department heads, is misplaced, according to the County. Those adjustments were based upon a combination of surveys of contiguous counties and counties located throughout the state and were not granted to all positions. Only specific positions, with a proven need, received equity adjustments, over and above the across-the-board 3% increase.

Finally, the Union has failed to justify its proposal for an increase in the mileage rate for travel reimbursement, according to the County. By this proposal, the Union would increase the mileage rate from 21 cents per mile to 24 cents per mile, without requiring employees to provide evidence of personal insurance, as required for other County employees. The evidence discloses that the Union could have agreed to accept the increase in the mileage rate under the same conditions its was increased for those employees, but declined to do so. It should not be allowed to obtain the same increase under different conditions, according to the County. Further, the Union's proposal would establish a rate which is higher than eight out of eleven comparable counties, the County notes. Therefore, the Union has failed to meet its burden of proof and the County's proposal to maintain the status quo on this benefit should be sustained, it argues.

In reply to Union arguments, the County makes a number of points, as follows:

1. The fact that the Union did not submit a brief to Arbitrator Kerkman in the 1981 proceeding does not constitute a basis for rejecting the conclusion reached by the arbitrator therein, concerning the appropriate comparables.

2. The Union's arguments must be evaluated in light of the fact that it does not just seek equity adjustments similar to those granted certain managerial positions, but also seeks across-the-board increases which are substantially greater than the pattern of across-the-board increases granted to all employees, including the managerial employees. This constitutes obvious overreaching.

3. The Union is being inconsistent by arguing that professional employees should be treated differently than other County employees, but yet insisting on making hourly wage rate comparisons.

4. It is also important to note that the same percentage across-the-board increases were granted employees in the sheriff's department and parks department and yet the Union seeks larger than pattern across-the-board increases, in addition to its claimed equity adjustments. In the case of public health nurses this will result in a 7.05% increase in 1989 and an additional 5% increase in 1990 and in the case of the dental hygienist it will result in a 17.55% increase in 1989 and a 5.0% increase in 1990.

5. The across-the-board increases sought by the Union not only exceed those granted other County employees, but also exceed those granted other groups, among the Union's comparables. The County's proposal of a 3% increase in 1989 is much closer to the

increases and the average increase among a number of statewide comparables relied upon by the Union.

6. Within the County's comparable pool, its 3% increase even more closely approximates the increases granted for 1989. Only in Shawano County did the parties reach a voluntary settlement, which called for a substantially larger increase.

7. The selected 1989 maximum public health nurse hourly rates relied upon in its principal arguments demonstrate that the County ranks at or above average, even if those inappropriate comparisons are drawn.

8. Even the modified group of counties utilized in connection with "option A" under the department head study (which excluded Kenosha and Racine Counties) support the County's position with regard to the maximum hourly rate for public health nurses. The increases granted and maximum hourly rates established in Eau Claire, Fond du Lac, LaCrosse, Outagamie, Sheboygan, Rock, Washington, and Winnebago Counties all compare more favorably to the increases granted and maximum rates established under the County's final offer for 1989.

9. The Union's reliance upon national statistics and data, while interesting reading, offers no support for its overreaching wage demands in this proceeding. Statistical data demonstrates that all employees hired by the health department in the last two years have been hired from within the City of Wausau and there is no showing that the County has ever recruited public health nurses from across the country. In fact, most positions have been filled

through recruitment in the local newspaper.

10. While the Union claims that this hiring from the local labor market supports a finding that the County's recruitment efforts are failing to attract professionals from elsewhere, the fact that the greatest number of responses are local actually suggests that professionals are not as mobile as the Union argues.

11. The Union argues in effect that public health nurse issues faced in Marathon County are different than those faced in contiguous counties, but are comparable to issues faced in Cleveland, New York, etc. This argument is obviously spurious, and designed to justify a larger wage increase for all employees in the bargaining unit, than otherwise supported by comparable evidence.

12. The Union's effort to convince the arbitrator that professionals are "different" is really an argument of convenience, designed to break out of a pattern of bargaining established over the years. Under the rationale that the results of arbitration should reflect what the parties should have agreed to, had they been able to reach a voluntary agreement, that effort should not be allowed to succeed.

DISCUSSION

At the outset, it should be noted that the evidence strongly supports the County's position that there exists, a pattern of bargaining, going back many years, under which the same across-the-board increases have been granted employees in the 11 bargaining units with which the County bargains. Further, that same pattern has generally been extended to the unrepresented employees of the

County. On the other hand, there is also some evidence that, from time to time, the County has agreed to some "deviations" from that pattern, usually in the form of split increases which were apparently designed to create additional "lift," without increasing the percentage wage increase actually received during the year in question. Further, it is important to note that the same percentage across-the-board increases offered the Union here have been agreed to in the six bargaining units which are already settled.[1]

Under these circumstances, the undersigned is very reluctant to accept a final offer by either party, which would significantly deviate from the pattern, as it has developed, for 1989 and 1990. To do so, without compelling evidence requiring such a result, would undoubtedly prove to be very disruptive and possibly destructive of a voluntarily established pattern of bargaining, spanning many years.

On the other hand, the existence of this pattern of bargaining ought not preclude the possibility of either party seeking deviations from the pattern in a given year, when there is compelling evidence justifying such a deviation. To give a relevant example, if there is compelling evidence establishing that the wage rates for a particular job classification, such as public health nurse or dental hygienist, have fallen substantially behind

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[1]The undersigned recognizes that there were significant other aspects to the agreement in two of those settlements, involving the sheriff's department and parks department. They are discussed below.

appropriate external comparables and/or the County is unable to recruit and retain employees in those classifications because of the existing wage rates, a "reallocation" or upward adjustment in the rates, over and above that called for under the across-the-board increase, might be required. Similarly, if there exists compelling evidence that the existing wage rates for an entire bargaining unit, such as the health department, have fallen behind appropriate external comparables and/or the County is experiencing difficulties in recruiting and retaining employees in that department, then some additional "lift" might be justified. However, it would be more consistent with the parties' established pattern to provide that lift in the form of split increases, designed to maintain internal equity during the year in which the additional lift is provided. Finally, the existence of this pattern of bargaining ought not preclude the parties from introducing change, such as the new salary schedule and promotion requirements established in the sheriff's department, especially if they do so through voluntary bargaining.

Here, the Union seeks to justify deviations from the pattern in the form of significantly larger across-the-board increases, without the use of split increases, and upward adjustment in the rates for two classifications. It offers a number of arguments in support of its proposals and the County seeks to rebut those arguments. Because the outcome of this aspect of the dispute is crucial to the outcome of this proceeding, the undersigned will endeavor to analyze those arguments, before discussing some of the

other arguments presented.

At the outset of this analysis, it should be observed that those Union arguments which are based upon national trends in the nursing profession, including the results of negotiations at large urban hospitals, are not deemed persuasive, for present purposes. While it may be that those trends will ultimately have an impact upon the County's ability to recruit and retain qualified nursing personnel, the undersigned does not believe that it is appropriate to base a decision in an interest arbitration in a local dispute upon such general evidence. While that evidence may raise important legislative policy questions on a national and statewide basis, it does not implicate the criterion dealing with the interests and welfare of the public in this proceeding. To take such an expansive view of the "public" affected by this proceeding would be a usurpation of legislative authority which has not been delegated to interest arbitrators, in the view of the undersigned.

The other arguments advanced by the Union in support of its wage proposals can generally be broken into two groups: those which are based upon the history of these negotiations, including deviations and alleged deviations from the pattern, and those dealing with external comparisons. Because the dispute in this case had its apparent origin in the history of negotiations and the deviations and alleged deviations from the pattern, that group of arguments will be addressed first.

While there may have been significant events which preceded it in time, which were not made a part of the record herein, this

dispute apparently had its origin in 1988, when the County encountered difficulty in hiring an assistant district attorney, because the existing pay range was insufficient to attract a qualified candidate without hiring above the minimum. Thereafter, the head of the County's personnel committee publicly expressed the view that the salary ranges for "professionals," which was apparently intended to include department heads, were insufficient to attract and retain qualified personnel.

At that point a study was conducted in an effort to determine what would be the appropriate pay range for department heads, based upon the assumption that Racine, Rock, Winnebago, Outagamie, Kenosha, Sheboygan, LaCrosse, Fond du Lac, Washington and Eau Claire Counties were appropriate for comparison purposes because of similarities in equalized valuations. While the ultimate political solution arrived at apparently involved a compromise, whereby the importance of comparisons with Racine and Kenosha Counties was downplayed, a majority of the department heads did receive equity adjustments over and above the across-the-board increases granted non-represented personnel, which is the same as the pattern proposed by the Employer herein.

In the view of the undersigned, there are a number of reasons for questioning the significance of these equity adjustments and the rationale behind them, for present purposes. Thus, even though the County has apparently extended the same across-the-board increases to department heads over the years, there is no showing that increases for such non-represented personnel were jointly

viewed as relevant comparisons. Also, while it is obviously impolitic to grant large increases to managerial personnel while attempting to impose modest increases on other personnel, there are obvious differences between the requirements and responsibilities of such positions and the requirements and responsibilities of professional positions. While both may require college degrees in most instances, it can be argued that the relative size of a department of County government is more significant when endeavoring to recruit and retain department heads, as opposed to the professionals they supervise.

Perhaps more significant in the case of the professional employees are the social, economic, and political conditions existing in the area served by the department in question. Further, the County asserts, without contradiction, that it recruits department heads on a national basis. While the Union asserts that members of the bargaining unit also come from a national labor market, the evidence will really not support a finding that they are recruited on that basis. Instead, most recruiting efforts have been conducted locally, and nearly all of the professionals in the unit who have been hired recently have come from a local labor market. Predictably, they acquired their educational background elsewhere, in most stances.

The Union also places great emphasis on the voluntary settlements involving the sheriff's and parks departments. The record is not really adequate for purposes of determining whether the increases voluntarily agreed to in those departments were

"justified" in the sense that there was compelling evidence, as described above. However, that is not a controlling consideration in this proceeding. It is significant that the across-the-board increases in both departments followed the pattern. It is also significant that there was a claim made by the Union in the sheriff's department that the wages being paid deputies and detectives did not compare favorably within the local labor market. While the Union points out that the County's personnel manager did not actually state whether he agreed with that argument, the County sought to establish a new salary schedule and promotion scheme within the sheriff's department and it was successful in that effort. As noted above, the undersigned does not believe that an existing pattern of settlements ought to preclude the parties from making such innovations through voluntary settlements. Finally, the Union has failed to demonstrate that either settlement was a subterfuge devised to break out of the pattern or to offer any explanation why the County would be motivated to do so.

If the Union's wage proposals are to be found to be supported by compelling evidence, that evidence must come from appropriate external comparisons. Unfortunately, the parties do not agree on the appropriate external comparisons. The undersigned is reluctant to saddle the parties with any particular set of comparables through arbitration. In the view of the undersigned, agreement on an appropriate set of comparables is far more desirable for purposes of future stability in bargaining. Even so, the available evidence would not appear to justify the use of comparables as

widely dispersed and diverse, the social, economic and political sense, as those advanced by the Union. Clearly, greater weight should be given to proximity, in view of the evidence substantiating the County's claim that most recruiting and nearly all hiring occurs within a more localized labor market.

On the other hand, labor market considerations are not the only considerations which are relevant for purposes of establishing appropriate comparables. In the private sector, where the ability to make a profit is crucial to survival, the product market is deemed to be of nearly equal importance. In the public sector, it is the social, economic and political environment which ought to be given some consideration. Thus, contiguous counties may very well be appropriate for most labor market purposes. Even so, work as a public health nurse in Marathon County, which is much more populous than its contiguous counties, is arguably comparable to work in that profession in other more populous counties, with a similar social, economic and political environment. This is particularly true if there is evidence that the labor markets do overlap to some extent. Thus, in this case, there is some suggestion that professionals have been successfully recruited in the past from Eau Claire County, Chippewa County, and Brown County.

As a practical matter, the decision in this case must be based upon the evidence and arguments as presented by the parties, including the evidence and arguments presented with regard to their respective comparables. In general, that evidence discloses that the wage rates paid by the County compare favorably to those paid

by contiguous counties and are competitive with those paid by some other, more populous counties. There is no evidence of erosion in the relative standing of the County, over time. More importantly, even though the average increase granted for 1989 by these other counties is slightly larger than that proposed by the County here, it more nearly approximates the County's proposal of 3% across-the-board than it does the Union's proposal of 5.4% across-the-board, with additional adjustments for public health nurses and the dental hygienist. There is insufficient data with regard to 1990 to draw any meaningful conclusions.

If there were strong evidence that the County was experiencing a high rate of turnover or an inability to recruit and retain employees as a result of the existing wage rates, the Union would have a much stronger case. Such evidence, combined with the fact that the County does not necessarily pay "top rates" in comparison to the contiguous counties, might arguably suffice as a basis for justifying the relevant portions of the Union's wage proposals.

Without getting into all of the details of the evidence, the available evidence fails to demonstrate the existence of a recruiting or retention problem as this point in time. A number of employees have quit their employment, for a variety of reasons, some of which related in part to the hope of earning more money or working fewer hours (in the case of the school district). However, there is no showing that any employee has been "recruited away" by another county on a wage rate basis or that the County has had a shortage of willing applicants to fill vacant positions. While

one emergency room nurse was required to accept a $2.00 pay decrease in order to accept a position as a County public health nurse, the County points out that there must have been some incentive for her to do so. One might speculate whether it was due to working conditions, hours, or available benefits, but the point is made that the County was able to recruit her successfully at existing wage levels. This is unlike the situation experienced in the case of the assistant district attorney.

None of the other evidence and arguments relating to the wage proposals or the mileage rate issue is deemed sufficient to overcome the conclusion which flows from the above analysis. The Union's evidence in support of its proposal on behalf of the dental hygienist all comes from the private sector. If working conditions and benefits are disregarded, that evidence does tend to support the possible need for a higher wage rate, particularly in view of the educational requirements and educational responsibilities of the position. However, neither party presented much in the way of persuasive evidence with regard to this aspect of the Union's proposal, which is clearly not of controlling importance to the outcome, in any event.

Similarly, some of the other criteria arguably support the Union's position, but not with sufficient compelling importance, to affect the outcome. Thus, for example, the Union's across-the-board proposal more nearly approximates recent increases in the cost-of-living in most cases, depending upon the index chosen and the time period analyzed for purposes of making such comparisons.

Even so, other area settlements and even many of the statewide settlements in evidence, which presumably take cost-of-living into account, more nearly approximate the County's final offer.

The Union's inclusion of a proposal to increase the mileage rate by 3 cents per mile is not deemed to be of major consequence, particularly in view of the fact that all bargaining units with "me too" clauses, including this bargaining unit, are likely to be found to be entitled to such an increase, with or without the insurance requirement attached. Thus, even though it might result in the establishment of a different benefit for this bargaining unit, the undersigned would not hesitate to select the Union's final offer, if it was otherwise supported by the evidence and arguments pertaining to is wage proposals.

For these reasons, and based upon all of the evidence and arguments of record, including those not specifically addressed herein, the undersigned concludes that the County's final offer is the more reasonable final offer under the statutory criteria and renders the following

AWARD

The final offer of the County is selected for inclusion in the parties' 1989-1990 collective bargaining agreement, along with any changes agreed to by the parties and the provisions of the expired agreement which are to remain unchanged.

Dated at Madison, Wisconsin, this 23d day of January, 1990.

George R. Fleischli
Arbitrator

APPENDIX A - HOURLY RATES

EFFECTIVE - January 1, 1988

	Step A	Step B	Step C	Step D
Adult Aging Nurse Specialist Maternal & Child Health Nurse Spec Health Educator CSYP Coordinator Sanitarian II Epidemiologist	$10.598	$11.221	$11.844	$12.467
Public Health Nurse *Groundwater Specialist	10.292	10.898	11.504	12.110
Sanitarian I	9.525	10.085	10.644	11.204
Dental Hygienist	9.231	9.773	10.315	10.858

APPENDIX A - MONTHLY RATES

EFFECTIVE - January 1, 1988

	Step A	Step B	Step C	Step D
Adult Aging Nurse Specialist Maternal & Child Health Nurse Spec Health Educator CSYP Coordinator Sanitarian II Epidemiologist	$1,837	$1,945	$2,053	$2,161
Public Health Nurse Groundwater Specialist	1,784	1,889	1,994	2,099
Sanitarian I	1,651	1,748	1,845	1,942
Dental Hygienist	1,600	1,694	1,788	1,882

APPENDIX A - ANNUAL RATES

EFFECTIVE - January 1, 1988

	Step A	Step B	Step C	Step D
Adult Aging Nurse Specialist Maternal & Child Health Nurse Spec Health Educator CSYP Coordinator Sanitarian II Epidemiologist	$22,044	$23,340	$24,636	$25,932
Public Health Nurse Groundwater Specialist	21,408	22,668	23,928	25,188
Sanitarian I	19,812	20,976	22,140	23,304
Dental Hygienist	19,200	20,328	21,456	22,584

ATTACHMENT "1"