BEFORE THE ARBITRATOR

ROSE MARIE BARON

In the Matter of the Arbitration of a Petition by

AFSCME Local 556-B (Social Service Non-Professionals)

and

Pierce County

Case No. 110
No. 52836 INT/ARB-7683
Decision No. 29057-A

APPEARANCES

Steve Hartmann, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of AFSCME Local 556-B.

Stephen L. Weld, Esq., Weld, Riley, Prenn & Ricci, S.C., appearing on behalf of Pierce County.

I. BACKGROUND

The County is a municipal employer (hereinafter referred to as the "County" or the "Employer"). AFSCME Local 556-B (the "Union") is the exclusive bargaining representative of certain County employees, i.e., a unit consisting of all nonprofessional and paraprofessional employees of the Pierce County Department of Human Services. The County and the Union have been parties to a collective bargaining agreement which expired on December 31, 1995. On May 31, 1995, the parties exchanged their initial proposals; after one meeting no accord was reached and the Union filed a petition requesting the Wisconsin Employment Relations Commission to initiate binding arbitration. Following an investigation and declaration of impasse, the Commission, on April 8, 1997, issued an order of arbitration. The undersigned was selected by the parties from a panel submitted by the Commission and received the order of appointment dated April 21, 1997.

Hearing in this matter was held on May 29, 1997 at the Pierce County Courthouse in Ellsworth, Wisconsin. No transcript of the proceedings was made. At the hearing the parties had the opportunity to present documentary evidence and the sworn testimony of witness.

Briefs and reply briefs were submitted by the parties according to an agreed-upon schedule. The record was closed on August 15, 1997.

II. ISSUE AND FINAL OFFERS

Several provisions for the successor contract were agreed upon; the following represent those issues which are before the arbitrator. These will be discussed fully below in Section IV, Positions of the Parties:

Wage adjustments

Elimination of certain classifications

Reclassification of Child Support Specialist

Reclassification of Accounting Assistant

Reclassification of Child Support Collection Clerk

Create a new grouping of positions: Food Service Driver, Commodity Clerk, Site Worker (County); Nutrition Site Managers, Commodities Clerk (Union)

Create a new grouping of positions: Field Assistant, Clerk II, Energy Assistance Coordinator, Van Driver (County); Field Assistant, Clerk II, Energy Assistance Coordinator, Van Driver (Union)

Reclassify Irene Kilness and Joe Stoetzel

Article 21, Section 21.01: $25 per month car allowance for miles over 600 (County); $25 for miles over 200 (Union)

III. STATUTORY CRITERIA

The parties have not established a procedure for resolving an impasse over terms of a collective bargaining agreement and have agreed to binding interest arbitration pursuant to Section 111.70, Wis. Stats. (May 7, 1986). In determining which final offer to accept, the arbitrator is to consider the following factors:

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 legislature 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 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 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.

IV. POSITIONS OF THE PARTIES AND DISCUSSION AND FINDINGS

The following statement of the parties' positions does not purport to be a complete representation of the arguments set forth in their extensive briefs and reply briefs which were carefully considered by the arbitrator. What follows is a summary of these materials and the arbitrator's analysis in light of the statutory factors noted above. Because the

selection of the appropriate communities for purposes of comparability will have a major impact on the selection of one of the parties' final offers, this matter will be addressed first.

A. The Comparables

1. The Union

The Union proposes the following eleven comparable counties:

Barron	Dunn	Polk
Buffalo	Eau Claire	St. Croix
Chippewa	Goodhue, Mn.	Washington, Mn.
Dakota, Mn.	Pepin St. Croix	

It is the position of the Union that its selection is the more valid since it relies upon the recommendations of arbitrator Haferbecker's award in the only other case involving the present bargaining unit of human service non-professionals (Dec. No. 18683-A, 08/28/81, Union Ex. 9). The Union disputes the County's characterization of a "previously agreed-upon pool" in its brief insisting that no comparables had been previously established by the parties.

The Union also argues that the County's reliance on arbitration awards involving other bargaining units (Sheriffs and professional Human Service employees) is improper.

Further, the Union has added to its earlier comparables three contiguous counties in Minnesota which it asserts represent the appropriate labor market. Data is presented showing commuter patterns from Pierce County to Minnesota: 6,166 to Minnesota; 5 from Minnesota to Pierce County. It is argued that such inclusion falls within the "greater weight" criterion of the statute to be considered herein. Argument is made that Pierce County is in direct labor market competition for the position of Child Support Specialist with certain Minnesota counties.

The Union contends that all of the case law cited by the County regarding the inclusion of Minnesota comparables predate the changes in Wisconsin law setting forth criteria to be used by arbitrators in reaching their decisions. The Union believes that Section 7(g), "Factor given greater weight, 'the arbitrator or arbitration panel shall consider and shall give greater weight to the economic conditions in the jurisdiction'" indicates that the labor market assumes greater importance than previously. Thus, it concludes that previous case law loses its significance in light of the evidence showing a common labor market.

The Union also relies on a report describing the action taken by the federal Office of Personnel Management in establishing three metropolitan areas as "locality pay areas" to confirm its use of Minnesota counties as an appropriate labor market comparison. These include Milwaukee-Racine, Wis., Minneapolis-St. Paul, and Pittsburgh, Pa. Regulations were issued which will cover the compensation of federal employees in these areas. Counties included in the new pay area relevant to the instant matter are: "Minneapolis-St. Paul--includes, in Minnesota, Anoka, Carver, Chicago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright Counties and in Wisconsin, Pierce and St. Croix Counties;..." (emphasis added to indicate counties selected by the Union as comparables with Pierce County) (Union Ex. 13).

2. The County

The Employer proposes ten external comparables:

Barron	Pepin
Buffalo	Polk
Burnett	Rusk
Chippewa	St. Croix
Dunn	Washburn

The County notes that in 1995 the Legislature modified the statutory criteria to be used in interest arbitration by adding two new criteria, i.e., requiring the arbitrator to give "greatest weight" to state laws and administration directives which limit employer expenditures and/or revenues and "greater weight" to local economic conditions. The County asserts that since the crux of this case involves job reclassification issues, neither of the new statutory criteria is applicable. Neither the County's nor the Union's exhibits focus on these two factors but rather rely on the more traditional statutory criteria.

The County provides a background of previous Pierce County interest arbitrations beginning with the 1981 Haferbecker award cited above. In that case the Union proposed Buffalo, Pepin, Polk, Dunn and St. Croix counties as comparable. The County proposed the Wisconsin counties which are adjacent to Pierce County and an additional tier of counties contiguous to them for a total of 11 counties. Arbitrator Haferbecker used all the proposed counties in ruling for the County.

Three other awards involved the Sheriff's Department and one was in the Human Services Professionals affiliated with the Teamster's Union (see Table I below).

In the instant arbitration, the County proposes the proposes the eight-county group adopted by Arbitrator Kerkman (Dec. No. 26029-A, 12/89), plus Pepin (per Arbitrator Friess in Dec. No. 28187-A, 4/24/95), plus Buffalo (per Arbitrator Weisberger, Dec. No. 28186-A, 4/27/95). The County concurs in the Union's selection seven of the ten comparables, including the previously disputed Buffalo and Pepin Counties. However, the Union does not agree with the inclusion Burnett, Rusk and Washburn counties;for the first time the Union includes Eau Claire County and three Minnesota Counties.

The County presents a population chart in its brief which shows that Pierce County

at 33,687 differs from the average of 28,597 of its comparable counties by plus 5,090 whereas utilizing the Union's comparables, the average is 75,851, resulting in a difference of minus 42,164 (see Employer Ex. 20, Union Ex. 14, 16). Eau Claire County has over two and a half times Pierce County's population, Washington County, Minnesota is almost five times larger and Dakota County, Minnesota is almost nine times Pierce County's population.

The total value of Pierce County's real estate is close to the 10 comparables proposed by the County, i.e., $1,088,951,700 versus the average $1,027,056,380. A Comparison of Union Ex. 14 and 16 with the average of Pierce County shows that Minnesota counties of Dakota and Washington has 1994 land market values of $11,703,522,700 and $6,266,597,700 respectively. It is noted that the Union provided data on per capita income and levy rates for the three proposed Minnesota counties however it did not provide corresponding data for Pierce County thus providing little basis for determining comparability of these factors. The Union acknowledged that the Minnesota counties are not comparable economically and appear to be arguing that they are comparable for this proceeding solely because they are geographically proximate. The County points out that there are no data as to where in Minnesota Pierce County workers are commuting--is it to the three counties proposed by the Union or is it to the Twin Cities? Arbitral precedent is cited for the proposition that geographic proximity is not sufficient to elevate a community to an appropriate comparable.

The County has provided numerous arbitration awards addressing the propriety of using out-of-state comparables. These arbitrators have rejected comparisons with Minnesota public employers, i.e., counties, cities and school districts, because wages and

benefits in Wisconsin are bargained for under a different statutory procedure from that of Minnesota.

It is also asserted by the Employer that the Union has not provided evidence of demographic or economic changes which would warrant the inclusion of Minnesota comparables or the exclusion of Burnett, Rusk and Washburn Counties. The County questions why this comparable pool should be different from that selected in Human Services Professionals unit arbitration in 1995. The County contends that the burden of proof is on the Union to demonstrate a need to modify previously-established comparables. It concludes that there have been no demographic or economic changes which would warrant modification of those comparables.

3. Discussion and Findings

The arbitrator has attempted to reconstruct past comparables for the purpose of comparison with the present offers. This task has been made more difficult because Arbitrator Haferbecker, in his 1981 award (Union Ex. 9), while making reference to the Union's five proposed comparables "...Pepin, Polk, Buffalo, Dunn, and St. Croix counties...", did not similarly list the County's proposed counties. Reference is made to the Employer comparing wages with "...eleven other counties in west central Wisconsin. These were selected on the basis of proximity, population, and equalized property value." (at page 4). It appears from the arbitrator's language that Clark County was one of the eleven counties proposed by the Employer and that it was beyond the immediately adjacent counties and the first tier of counties adjacent to them. It is unclear from the award whether the arbitrator did or did not adopt Clark County as one of the comparables. The Union apparently believes that the Haferbecker comparables were: "...the first tier

adjacent to Pierce County (St. Croix, Dunn and Pepin) and the tier immediately adjacent to the first tier (Buffalo, Eau Claire, Chippewa, Barron, and Polk) (Union Brief, p. 5).

Because Clark County has not been not been proposed by either party in the instant case, it will not be considered in the following discussion. Eau Claire County, however, is a different proposition. In the section of Arbitrator Haferbecker's award entitled "Union Position" it states: "Eau Claire, with a population twice as large as Pierce, should not be included." Under "Arbitrator's Comments" he says: "I do not find the inclusion of Eau Claire to be unreasonable. It is important in the labor market area." (at page 4). One must therefore conclude that Eau Claire was proposed by the County and included in the list of comparables in 1981.

In the matter before us, the Union and the County have reversed their positions on the inclusion of Eau Claire as a comparable. The Union buttresses its choice by commuting data which show that 34 individuals commute from Eau Claire County to Pierce County and 16 commute from Pierce County to Eau Claire County. The Employer argues against inclusion, citing the fact that Eau Claire's population is over two and one half times that of Pierce, i.e., 87,737 to 33,687 (County Brief, p. 12).

Table I below is an attempt by the arbitrator to graphically represent the evolution of comparable counties determined by arbitrators in cases involving Pierce County and several of its bargaining units after the 1981 Haferbecker decision.

TABLE I

PAST COMPARABLES REVIEW*/PRESENT OFFERS

Haferbecker 1981, AFSCME	Kerkman 1989 Sheriffs	Friess 1995 Sheriffs	Weisberger 1995 H.S. Profs.	Local 556-B, AFSCME 1997 offer	Pierce County 1997 offer
Barron	Barron	Barron	Barron	Barron	Barron
Buffalo	--	--	Buffalo	Buffalo	Buffalo
--	Burnett	Burnett	Burnett	--	Burnett
Chippewa	Chippewa	Chippewa	Chippewa	Chippewa	Chippewa
Clark	--	--	--	--	--
Dunn	Dunn	Dunn	Dunn	Dunn	Dunn
Eau Claire	--	--	--	Eau Claire	--
Pepin	--	Pepin	Pepin	Pepin	Pepin
Polk	Polk	Polk	Polk	Polk	Polk
--	Rusk	Rusk	Rusk	--	Rusk
St. Croix	St. Croix	St. Croix	St. Croix	St. Croix	St. Croix
--	Washburn	Washburn	Washburn	--	Washburn
				Dakota, Mn.	--
				Goodhue, Mn.	--
				Washington, Mn.	--

*According to the County, Arbitrator Malamud, in his 1988 award involving the Sheriff's Department, did not find it necessary to select either party's pool of comparables (County Brief, p. 10). That case is therefore not included in this analysis. Dashed lines indicate that a County was not utilized as a comparable in awards or in final offers.

The arbitrator has utilized maps provided by the Union (Ex. 11) and the Employer (Employer Ex. 19) in considering the parties' arguments relating to certain factors in determining comparability. For purposes of this discussion the following will be relied upon:

Contiguous counties in Wisconsin (those bordering on Pierce County): St. Croix, Dunn, Pepin

1st Tier (those bordering the three contiguous counties): Polk, Barron, Chippewa, Eau Claire, Buffalo

2nd Tier (those bordering on the five 1st tier counties): Burnett, Washburn, Rusk

Contiguous counties in Minnesota (those bordering on Pierce County): Washington, Dakota, Goodhue

Inspection of Table I confirms that the only arbitration between the Social Service Non-Professionals bargaining unit and Pierce County was in 1981, e.g., the Haferbecker award. Assuming arguendo that Clark County was not utilized as a comparable, eight counties (composed of three contiguous and five 1st tier) comprised the comparability group. Three interest arbitrations followed (including Malamud, 1988); Kerkman in 1989 and Friess in 1995. Kerkman did not rely on Buffalo, Eau Clair, or Pepin, however he added three new counties (the 2nd Tier, above), Burnett, Washburn, Rusk. This arbitrator does not have information which would explain the arbitrator's conclusions. In the Friess 1995 case, Kerkman's eight counties are adopted with the addition of Pepin. The County had proposed both Pepin and Buffalo, however, Arbitrator Friess declined to adopt Buffalo County. Shortly thereafter in a case involving Pierce County Human Service Professionals, Arbitrator Weisberger increased the pool of comparable communities. The Employer proposed that she adopt the comparables from the previous Sheriff's Department arbitrations, plus Buffalo and Pepin counties. The Union (General Teamsters Union Local 662) rejected the inclusion of Buffalo and Pepin counties because of their rural character. Arbitrator Weisberger ruled that the appropriate primary comparables were counties selected in prior Sheriff's Department arbitrations, plus Buffalo and Pepin Counties.

Despite the significant demographic differences between Pierce County and Buffalo and Pepin Counties, she held that their proximity and employees who perform functions similar to this bargaining unit made them appropriate part of a secondary set of comparables. It is noted that Arbitrator Weisberger had no reservations about applying the comparables arrived at in the Sheriff's Department to the Human Service professionals bargaining unit.

The Union argues that it is not appropriate to rely on comparables for other bargaining units. Arbitral precedent is cited in support of the Union's argument. In Douglas County (Dec. No. 26686-A, 1991) Arbitrator Malamud said:

> The Arbitrator is reluctant to rely upon awards involving the same Employer for purposes of comparability where the unit which was the subject of the arbitration award is substantially different from the one is question.

In a case involving public health nurses, Columbia County, Dec. No. 28141-B, 1995, Arbitrator Oestreicher rejected the Union's proposed pool which had been used in cases involving other units. This was a first arbitration between the parties, he said, and concluded that "Prior decisions relating to other bargaining units have limited relevance to this state certified professional unit."

Obviously, the instant case differs from Columbia County since it is not a first contract or arbitration and the parties have a history of both voluntary agreements and a arbitrator-awarded final offer. Reliance on comparables from both the Sheriff's Department and the professional Human Services employees which have evolved over the years does not seem to raise the specter of unreasonableness. Further, there is evidence that since the Haferbecker award in 1981, the Union has reversed its position on whether to include Eau Claire, i.e., it first rejected and now includes that County in its pool. While it is geographically contiguous (in the first tier), it fails as a true comparable because of its

great disparity in terms of population, i.e., Pierce County at 33,687 vs. Eau Clair County at 87,737. Other data showing differences between these counties is the value of real estate. The County provides figures for 1996: $1,088,951,700 for Pierce County (Employer Ex. 21). The Union's full land value figures are for 1995: Pierce County $1,039,282,000; Eau Claire County is $2,527,660,290 (Union Ex. 14). Although the years differ the fact is that Eau Claire County's property values are approximately two and one-half ties greater that of Pierce County.

In an earlier case this arbitrator was faced with a similar problem in selecting comparables (Middleton-Cross Plains School District, Dec. 27599-A (1993). The Association proposed, in addition to the athletic conference districts, the inclusion of Madison in its comparables pointing out that Middleton had more in common with Madison, to which it was physically closer, than with the smaller, more rural school districts in the conference. In rejecting the inclusion of Madison, it was held:

> Ultimately, the decision as to whether it is appropriate to include Madison at all must be made. While it is true that Middleton is not an isolated rural community with limited employment opportunities, and is on the doorstep of the Madison labor market, one must not apply comparability standards in a mechanical way. In this case the extreme difference in size deserves greater weight in a determination than proximity....However, a direct comparison would be erroneous because of the extremely large size differential. (p.10)

While this arbitrator believes that geographic proximity is entitled to weight, it is by no means the only, and most likely not the most compelling criterion utilized to determine comparability. Upon careful review and consideration of the record evidence and argument in the instant case, it is held that the Wisconsin Counties selected as comparables by Arbitrator Weisberger in the case involving the professional staff in Human Services are

appropriate for the non-professional human service bargaining unit.

Having reached that decision, it is necessary to consider the Union's proposal to include three counties in Minnesota which it asserts is part of Pierce County's labor market. The arbitrator believes that the Union's argument regarding the labor market with Minnesota is flawed. First, the contention that Union Ex. 13 supports its position is not well-taken. This document discusses the establishment by the federal Office of Personnel Management of new "locality pay areas" for federal employees in determining compensation. One of the newly created pay areas is:

> Minneapolis-St. Paul--includes in Minnesota, Anoka, Carver, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington and Wright Counties and, in Wisconsin, Pierce and St. Croix Counties;

Of the three Minnesota counties selected by the Union as comparable only two are shown above, i.e., Dakota and Washington. The city of St. Paul is located in Ramsey County; the city of Minneapolis is in Hennepin County; neither of these counties has been selected by the Union as appropriate comparables for Pierce County nor have any of the other counties in this locality pay area. No data has been provided to show that federal employees compensation is appropriate for comparison with municipal employees under the Wisconsin statute. The fact that Pierce County has been included in a federal locality pay area is of only minor import and will be given no weight in this consideration of comparables.

Second, in addressing the commuting argument made by the Union, there is no information regarding exactly where in Minnesota the 6,166 commuters from Pierce County are employed (Union Ex. 12, Wisconsin's Commuting Patterns, February 1994, pp. 98-99). It is not possible therefore to determine whether these workers have any relationship with the three Minnesota counties selected by the Union as comparables, i.e.,

Dakota, Goodhue, and Washington, or if the majority of them work in one of the Twin Cities which are in other counties. It is also noted that the data provided is more than three years old and raises the question of whether local economic conditions may have changed sufficiently in Pierce County to lead to a significant difference in commuting patterns. Because of the paucity of this data, no weight will be accorded to this argument.

Third, and most significant, is the argument raised by the Employer against the Union's choice of out-of-state counties for use as comparable communities under Wis. Stat. 111.70(7), (7g), and 7(r). Although the Union contends that the case law cited by the County arose before the Wisconsin Statutes were amended to include factors of "greatest weight" and" greater weight", the arbitrator is not persuaded by that argument.

The arbitrator has carefully reviewed the evidence in order to determine whether the "greater weight" argument vis-a-vis the comparables proposed by the Union is meritorious. This section provides:

> 7(g) '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.

The Union asserts that Section 7(g) means that the labor market assumes greater importance than previously in an arbitrator's consideration. No explanation or arbitral precedent has been given for this proposition. The arbitrator reads the plain language of this section as focusing on economic conditions in the municipality itself, here Pierce County, and that economic condition would take precedence over the factors now in Subd. 7r (which once made up the entire statutory basis relied upon by arbitrators). Economic conditions in a municipality would appear to comprise such negative factors as

increase in number of bankruptcies, high unemployment rates, need for second mortgages, decrease in sales, plant closings, or possibly positive factors such as the opening of new plants, low unemployment rates, etc. Without a great deal more detail from the Union as to exactly what it meant in tying the "labor market" to include Minnesota counties to local economic conditions, the arbitrator must reject this argument.

The great weight of the evidence supports the County's argument that arbitrators decline rely on comparisons with states outside of Wisconsin since the laws governing collective bargaining differ. Thus this arbitrator holds that the inclusion of counties in Minnesota proposed by the Union must be rejected for purposes of comparability.

It is therefore held that the appropriate comparable counties in the instant case are those proposed by the Employer: Barron, Buffalo, Burnett, Chippewa, Dunn, Pepin, Polk, Rusk, St. Croix, and Washburn.

B. Statutory criteria for selecting a final offer

Before addressing the specifics of the parties' final offers, it is important to note specify the criteria by which each party's offer will be reviewed. It is agreed by the parties that neither party has introduced any evidence claiming reliance on Wis. Stats. 111.70(4)(cm)(7), i.e., the "greatest weight" provision. The County does not believe that the second faction, Sec. 7(g), "greater weight" is of relevance since it asserts that this a case primarily involving reclassifications and thus Sec. 7(r) factors are appropriate. The Union, however, had asserted that the condition of the local economy must be considered and given "greater weight", especially as revealed by property values and sales tax, the two primary sources of County income from its citizens (Union Ex.14, 15 [1995]). The Union contends that Pierce County is enjoying good economic times with increasing

property values and sales tax distributions The Human Services Department reported a surplus of $253,055 in its annual report (Union Ex. 20).

The County has also provided data showing full value by classification (real estate) for 1994 and 1996 showing an increase of 17.24% (Employer Ex. 21, 22).

The arbitrator has analyzed these data using the counties adopted as comparables and shown in the Employer's exhibits to determine how Pierce County compares with the ten counties. In determining an average score for the comparables, the arbitrator has relied on the median, not the arithmetic mean. The median is preferred since it eliminates skewing the distribution either toward the high or low end; the average is the mid-point of the counties values, in this case the average of the fifth and sixth rank. Thus for 1994, the ten counties range in total real estate from a high of $1,954,230,600 (St. Croix) to a low of $173,456,500 (Pepin). The median is found between Dunn County at $907,623,200 and Burnett at $597,977,300, i.e., $752,800,250. Comparisons for 1994 and 1996 based on the County's exhibits are shown below. The data from Union exhibit 14 for 1995 contains only seven of the ten adopted comparables, plus Eau Claire, and therefore its applicability to this analysis is of lesser value. The Union exhibit shows that Pierce County's full value average is below the mean; the meaning of this finding is unclear. The figures below for 1995 reflect the counties the Union showed, with the deletion of Eau Claire, utilizing the median.

TABLE II

Year	Total Real Estate: Median	Pierce County	Difference
1994	$ 752,800,250	$ 928,835,700	$ 176,035,450 +
1995	1,234,865,150	1,039,282,000	195,583,150 -
1996	921,053,300	1,088,951,700	167,898,400 +

These data show that the value of Pierce County total real estate has progressively increased each year (despite the 1995 variance, i.e., the value being less than the median). Inspection of the 1994 and 1996 figures reveals that the value of Pierce County real estate exceeds the average of the comparable counties.

The Union also provided information regarding sales tax distributions and asserts that Pierce County has enjoyed the greatest increase in its comparable pool by a substantial margin.

The arbitrator has considered the argument of the Union that when the legislature added the "greater weight" criterion, it may have assumed that times (economic conditions) in municipalities would always be bad. Now, the Union asserts, employers who expected to prevail in interest arbitrations under this factor by showing that times were bad, must now be prepared to lose under this factor when times are good and the economy is strong as it now is in Pierce County.

The County responds to the Union's picture of a thriving economy with an update of the Union's data on page 26 of its brief, i.e., Employer Ex. 49. (The Union has registered its objection to the admission of this data which was part of the Employer's Reply Brief). The arbitrator will admit this exhibit, as she has also done with the Union's

submission on July 18, 1997 of the newly ratified wage schedule for St. Croix County, since the record in this matter was not closed at the time these materials were submitted. The County argues that from 1995 to 1996 Pierce County's property values did not increase as rapidly as its neighboring counties (including Eau Claire), i.e., 6.67% versus an average (mean) of 9.42%. The arbitrator notes that if Eau Claire is left out of the evaluation, and the median is utilized instead of the mean, the percent increase in per capita value shown in Employer Ex. 49, is 8.35% (4th of 7 comparables, Buffalo) versus Pierce County's 6.67%. While there is lesser growth experienced from 1995 to 1996 than its comparables, the record demonstrates that Pierce County is enjoying a growing economy, at least in terms of the increasing value in its real estate. The point the Union makes is that for purposes of this arbitration, the local economy is good, and the arbitrator should take this into consideration when considering which of the final offers is the more reasonable.

The Employer has not argued an inability to pay the additional costs which it would incur if the Union's final offer were to be selected. Rather it argues that the interests and welfare of the public do not support the higher wage demand of the Union and, therefore, it asserts an unwillingness to pay for these added costs. Both parties' offers include an across-the-board wage increase of 3% per year, however, it is the cost of numerous reclassifications and the Union's proposed wage bumps which will result in wage increases far higher than the Employer's.

The arbitrator believes that the Union's surmise that the "greater weight" factor was most likely intended to apply during bad economic times than good is probably correct. However, it is difficult to see how this factor will significantly influence these

proceedings since there is no contention by the Employer that it cannot afford to fund the Union's final offer, but rather that it is unwilling to do so for reasons having to do with reclassification of positions, internal and external comparisons, retention of employees, and competitive wage rates for purposes of recruitment.

The County contends that the crux of these proceedings is job reclassification issues and notes that both parties' exhibits reflect the traditional statutory criteria, i.e., Section 7(r). After extensive review of the arguments of the parties regarding the statutory criteria to be applied, the arbitrator has concluded that the final offers of the parties are most appropriately analyzed by applying the "other factors considered" criteria set forth in Sec. 7(r).

C. Unresolved issues

1. **Wage adjustments:** Both wage offers are for a 3% across-the-board increase on January 1st of each year, however, the Union seeks an additional increment to the two Economic Support Specialist positions, i.e., ESS I: $.15 per hour effective 10/1/96 and $.15 per hour on 10/1/97; ESS II: $.25 per hour on 10/1/96 and $.25 on 10/1/97.

The County notes that its five other unionized units have settled for a 3% general wage increase (Employer Ex. 17). The Union cites arbitral precedent for the proposition that the internal comparables of voluntary settlements should carry heavy weight in arbitration proceedings. Deviations from an established pattern can be disruptive and have a negative impact on employee morale. The County admits that the Union is not seeking modification of the wage settlement rate, but it is, by numerous reclassification requests, seeking to do better than the other voluntary settlements. The County contends that only strong inequities should influence an arbitrator to break an internal settlement pattern.

Thus it is argued that the burden is on the union to justify that it deserves or needs more of an increase than other employees.

The Union argues that a labor market adjustment for the ESS I and II classification and proposes increments in October of 1997 and 1998 for both classifications in order to move these employees closer to the average of the comparables, i.e., from $.65 below the average in 1995 to $.86 below the average in 1997 under the County's offer. If the Union offer is adopted, the employees would move to $.36 below the average in 1997. The Union strongly asserts that it is the ESS workers who are the "foot soldiers" of the welfare reform movement, however, the County would permit them to fall further behind the averages.

The arbitrator is confronted with a problem in comparing the data provided by the Union and the County regarding each of the unresolved issues, beginning with the wage increments for the ESS classification proposed by the Union. As discussed above in Section IV(A), the comparables proposed by the County were adopted; thus, the date provided by the Union in its Brief and Reply Brief supporting its argument are not representative of the entire comparability pool. Therefore, it is held that the Union has not provided credible evidence in support of its position on this issue. The wage offer of the County is therefore deemed to be the more reasonable and is adopted.

2. Reclassification of Child Support Specialist: The County proposes to create a CSS I classification equal in pay to Economic Support Specialist I and to create Child Support Specialist II classification equal in pay to Economic Support Specialist II. The Union wishes to maintain a single Child Support Specialist classification equal in pay to Economic Support Specialist II. The Union argues that the County's proposal for the

position of CSS represents a radical departure from the status quo. Also, there is only a single position of CSS among the Haferbecker comparables; thus there is no support for the creation of a two-tier CSS classification. The Union provides data from several of the Haferbecker comparables, excluding those which are not represented by a Union (Goodhue, Minn.; St. Croix) or have no similar position (Pepin).

Both parties provided extensive support for their positions, however, the arbitrator once again must rely on the accepted comparability group. The evidence provided by the County is therefore given greater weight than that provided by the Union as regards the Child Support Specialist Classifications and the County's offer on this issue is adopted.

3. Reclassification of Accounting Assistant and Child Support Collection Clerk positions: Both parties propose to reclassify Mary Berg, a former Clerk II, to the Accounting Assistant classification. She will receive the 3% annual wage adjustment and an additional reclassification adjustment of $.44 effective January 1, 1997. The Union proposed to tie her wage rate to the ESS II rate which would add $.25 bumps proposed by the Union for the ESS II classification on 10/1/96 and 10/1/97.

The same analysis applies to the Child Support Collection Clerk classification which is a reclassification of the Clerk II position. The Union proposes to place the position at the same pay rate as the CSS which, in turn, is equated with the ESS II pay rate; this position would also receive the additional $.25 wage bump on 10/1/96 and 10/1/97.

These two proposed reclassifications were tied to the CSS/ESS classifications. The County's initial understanding was that the reclassification would result in a 3% annual wage adjustment and an additional reclassification of $.44 per hour effective January 1, 1997. However; the Union's offer included the two October wage boosts, which the

County did not anticipate and revised post-hearing exhibits were provided. The County asserts that the Union has not provided any wage comparison to justify the $.25 wage boosts to these positions. The Union argues that it was the County which proposed tying these rates together for reasons of internal comparability. Therefore it is asserted they should go wherever the ESS II goes.

The arbitrator, having found the County's wage offer regarding the Economic Support Specialists classifications to be preferable, now concludes that the County's proposal regarding the reclassification of Accounting Assistant and Child Support Collections Clerk is appropriate.

4. Part-time employees: The County has provided some background on the evolution of part-time work in the County. After the non-professional Human Services bargaining unit affiliated with AFSCME, the contract provided that employees who worked part-time were paid at the pay rate for the job classification in which they worked. When Department of Aging employees were brought into the bargaining unit, they had a "part-time" classification, that is regardless of the actual assignment, employees were paid a single part-time pay rate.

This part-time classification became part of subsequent collective bargaining agreements, however Human Services Department Clerk IIs were paid at their classification's regular hourly rate. The 1995 part-time rate was $8.33 per hour with no progression.

Both parties' final offers eliminate the part-time classification and propose several new classifications. The County proposes three new positions to replace the Part-time classification under the expired contract, i.e., Site Worker, Commodity Clerk, and Meal Delivery (Food Service) Driver. Each of these will be discussed in detail.

a. Site Worker: The position of Nutrition Site Manager has not been filled since the former incumbent retired in the early 1990's. Prior to 1987, this employee was responsible for planning menus, purchasing food, cooking, cleaning and serving. In 1987, the County discontinued cooking and instead prepared meals were delivered to the Nutrition sites and served by the Manager. Under the last contract, the pay rate for this vacant classification was $10.09 per hour.

Under the expired contract, part-time Meal Site Managers are paid at the rate of $8.33 per hour. The position has a job description which shows that there are no cooking, purchasing, or planning of meals duties, thus distinguishing it from the Nutrition Site manager position.

The County has proposed deleting the Nutrition Site Manager classification and creating a new "Site Worker" classification for employees formerly known as Meal Site Managers. The pay rate for this position is based on the former part-time rate of $8.33 plus a 3% adjustment in each year of the contract.

The Union proposes at all Meal Site Managers (Berger, Beyer, and Niedermeyer) be paid at the rate of full-time Nutrition Site Managers. This would be accomplished by placement into the wage schedule for part-time employees over the three year contract term (Union brief, p. 21):

Site Manager 1/1/96 $ 8.58 1/1/97 $ 9.28 1/1/98 $ 10.02

In addition to the progression, the Union intends to apply the 3% across-the-board increase.

The County challenges the Union's characterization of its reclassification attempt as "equal pay for equal work." It is argued that the site manager/site worker position is not

the same as the nutrition site manager position, that is, there are lesser work duties and therefore there should not be a higher pay rate. The costing by the County of the Union's offer for site worker at the most senior level (18 months) is shown in Employers Ex. 3A (revised):

1/1/96 $ 10.39 1/1/97 $ 10.70 1/1/98 $11.02

The County further argues that under the Union's offer providing a gradual progression for current part-time employees, new hires might well be hired at the schedule's starting rate of $9.88 her hour for 1996, which is a full $1.55 higher than the 1995 maximum rate of $8.33.

In addition, the County asserts that the Union's offer on progression is unclear and will, if adopted, introduce ambiguity into the contract. Arbitrator Malamud is cited holding that an arbitrator should not include an ambiguous contract term through an interest proceeding. (Pierce County Sheriff's Dept.), Dec. No. 25009-A (5/88).

The County relies on the fact that the Union's offer is out of line with the comparables. Employer Ex. 40 revised shows that even under the County's offer, Pierce County's meal site managers will be paid the highest wage rate of any of the comparables. It is further noted that County employees are eligible for full benefits, unlike the comparables (except for Washburn County).

The analysis of the parties' offers regarding the part-time positions has been extremely difficult and time-consuming. Aside from trying to reconcile data which often is irreconcilable, certain logical flaws exist.

First, the arbitrator cannot accept the Union's position that the duties of the site managers/workers are comparable to the duties as the Nutrition Site Manager had in the

past. The record is clear that after a certain point, no employee in the food service area actually did any cooking. Thus the need for planning of menus, purchasing of food, and actual cooking disappeared. The incumbent employee was paid the previous wage by virtue of a grievance having been filed by the Union. However, when that employee retired, the position was left vacant for several years. The subsequent employees in the elderly food program, now "Site Managers" had, inter alia, the duties of food service, i.e., serving, clean-up, dishwashing, etc. (Employer Ex. 42). Remaining related duties did not require any comparable skills to that of cooking, et al. There has been no evidence in this record that would indicate any significant change in the job duties of the position which the County wishes to re-title "Site Worker" (to avoid the confusion of the managerial title), and which the Union generally refers to as "Site Manager." What does emerge from the wealth of discussion is that the County wants to pay Site Workers at the former part-time rate of $8.33 per hour with an across-the-board 3% increment for each of the three years of the contract and the Union is attempting to remedy what it sees as an inequity in the wages of part-time employees. The arbitrator concurs with the Union's argument, and arbitral precedent cited, that part-time employees should be classified and paid on the basis of the duties they perform, not on the mere fact that they work less than a 40-hour week. Having made that determination, however, does not end this analysis.

The question for the arbitrator is whether there is sufficient evidence to support the Union's position. The question of who has the burden in changing the status quo, i.e., elimination of the part-time wage classification, is not as simple as it may seem. Both parties agree to eliminate the part-time wage classification and both have proposed replacing it with new job titles. It is the arbitrator's opinion that the Union's proposal to

align the food service position to the higher pay rate of the long vacant nutrition site manager position is more far-reaching than the County's basic offer of retitling the position and using the 1995 base for a 3% increase in each of the three years of the contract. It is therefore held that the Union has the burden of proving the necessity of the significant wage increment.

The usual questions addressed when one party proposes changes in changes in the contract language have been cited in the Union's brief (p. 22), however, this case is not one involving language changes per se, e.g., a subcontracting clause, but rather is one of economics, job classifications and pay rates. Thus there is no need to consider compelling need to change contractual provisions or to determine if the proposal is reasonably designed to effectively address that problem. Rather what must be determined is whether the Union's economic offer, a substantial increase from the status quo, is reasonable. In bargaining when one party attempts to gain a benefit which it previously did not have, there is traditionally a trade-off or buy-out for that benefit--a quid pro quo. Interest arbitration is, or should be, an extension of the bargaining procedure with the arbitrator treading gently to avoid the wholesale granting of benefits based upon his or her values or beliefs in what is equitable. In the instant case there is no indication that the Union offered any quid pro quo for the reclassification of these part-time employees. Nor has the Union made out a case which would show that the site workers' duties are similar to those of the former nutrition site manager's.

The arbitrator agrees with the Union that reliance on the comparable counties is not appropriate in this instance since of the ten comparable counties in only one, Washburn, are meal site managers covered by a collective bargaining agreement. Thus the wages and

benefits received by the non-unionized employees are not the product of the give and take of collective bargaining but represent the unilateral power of the employer to determine the level of compensation offered to employees. While some arbitrators have held that comparisons with nonunion support staffs may provide "limited guidance on the economic package" (e.g., Arbitrator Flagler, Union Brief, p. 10), this arbitrator believes that the economics of wages are better analyzed by comparison with organized workers. Employer Ex. 40 indicates that only one of the ten comparable communities is organized; this is insufficient data from which to draw any conclusion.

The arbitrator recognizes that the goal of the Union was not only to eliminate the part-time wage classification, but to move food service workers to a higher wage classification, most likely to remedy what it perceives as past injustices. The arbitrator, however, cannot do equity; she is limited by the statutory guidelines as well as the certain evidentiary standards. As detailed in the discussion above, the arbitrator does not believe that the Union has not met its burden of proof as it applies to the site workers. Thus the County's final offer is adopted.

b. Commodity Clerk: The County's final offer creates a new grouping of positions, i.e, Commodity Clerk, Food Service Driver, and Site worker with pay rate based on the former rate of $8.33 per hour plus a 3% adjustment in each year of the contract. The Union's offer also creates a new "Commodity Clerk" classification along with Van Driver, and Site Manager and places them in the same pay grade as the Nutrition Site manager classification. The Union's proposal for placement onto the wage schedule for these part-time employees occur incrementally over the three-year contract period. The parties agree that there is no equivalent full-time position.

The County argues that as in the case of the Site Worker position, the Union's offer will result in an increase of $2.16 per hour over the 1995 wage rate by the third year of the contract, i.e., the Clerk will be making $10.49 per hour. The County asserts that the Union has provided no evidence to justify such a dramatic increase.

The Union contends that its proposal moves the Commodities (sic) Clerk to the lowest non-part time wage rate in the contract equal to the Nutrition Site Managers. The incremental approach should eliminate any charge of greed on the part of the Union and will not unreasonably burden the other party.

Again the Union supports it position on the basis of equity, i.e., maintaining equality between the two positions of Nutrition Site Managers and the Commodities Clerk. The arbitrator notes that the record is devoid of any explanation of the duties of the Clerk and what, if any, similarities exist between the defunct Nutrition Site Manager position and that of the Clerk's. Without supporting evidence, the Union's position cannot be sustained. The Arbitrator further finds that the County has provided little support for its position on wages for this newly created position.

For these reasons, the arbitrator cannot reach a conclusion on which of the party's positions is preferable as it relates to the Commodity Clerk position.

c. Van Driver/Food Service Driver

The County currently has one full-time Van Driver, Scott Welcome, who was paid at the contractual classification wage rate of $10.75 per hour. He is required to have a Commercial Drivers' License (CDL) and is responsible for the transportation of elderly and disabled individuals, delivery of bulk and home delivered meals, and has responsibility for the safe operating condition of all Human Services vehicles (Position

Description, Joint Ex. 36 A & B). Two part-time driver positions filled by Irene Kilness and Joe Stoetzel also require CDLs and involve the transportation of developmentally disabled individuals (Employer Ex. 37,38). A third part-time position, filled by Arvid Johnson, does not transport people, but delivers meals to the County's nutrition sites and to the home-bound elderly (Employer Ex. 39). Mr. Johnson does not have a CDL. Under the expired contract the three part-time drivers were paid $8.33 per hour.

The County's offer will move the two part-time driver positions requiring CDLs to the regular Van Driver classification effective January 1, 1996, resulting in a wage increase from $8.33 per hour to $11.07 per hour. The third part-time driver position will be classified as "Food Service Driver" with a pay rate based on the former rate of $8.33 plus a 3% adjustment in each year of the contract.

The Union proposes that all van drivers should be paid at the full-time pay rate for van drivers. It argues that the County has not submitted evidence as to the intrinsic value of the Commercial Drivers License and therefore Arvid Johnson should not be excluded from receiving the higher rate.

The County believes that the Union's proposal to delay wage equalization until 1999 would negatively effect Ms. Kilness and Mr. Stoetzel despite the Union's earlier contention that the current part-time employees deserve their money immediately. The County asserts that the Food Service Driver position held by Mr. Johnson is not similar to the work performed by the Van Drivers. No evidence was provided by the Union as justification for equating the wage rate of Mr. Johnson with that of Mr. Welcome.

In addition the County argues that Meal Delivery Drivers in Pierce County are eligible for many benefits which similarly classified employees in comparable counties are

not (Employer Ex. 35).

The arbitrator notes that none of the Meal Delivery Drivers in the comparable counties are represented by labor organizations; in fact, in four counties, Burnett, Dunn, Polk, and Washburn, volunteers are utilized for this work. Based on the earlier discussion regarding comparing organized to non-organized units, no weight will be given to this exhibit.

After reviewing the extensive argument presented by the party, as well as testimony at hearing, the arbitrator believes that the distinction between the "Bus Driver" position description (see, e.g., Welcome, Employer Ex. 36, 36a; Joint Ex. 36a; Kilness, Employer Ex. 37; Stoetzel, Employer Ex. 38) and the Meal Delivery/Driver (Johnson, Employer Ex. 39) is clear and unambiguous. Although the Union attacks the County's motivation in relying on the CDL at the present time, it nonetheless is a requirement for those transporting people as opposed to the Meal Delivery position which is limited to picking up bulk and packaged meals from contractors and delivering to meal sites and home-bound elderly. Thus employees Kilness and Stoetzel will be recompensed at the regular bus/van driver rate on a prorata basis under the County's offer. Despite the Union's wish for equality of wage rates among all of the driver positions, the record evidence does not support a finding of similarity of duties. The County's position on the Van Drivers' issue is held to be the more reasonable.

5. Elimination of certain other classifications: The parties agree to the elimination of five classifications, i.e., part-time, Homemaker I, Homemaker II, Production Coordinator, Client Specialist, and Clerk I. The County wishes to eliminate the Typist II (no one is in this classification); the Union states it wishes to retain the position although no one is

presently filling it.

The County points out that the Union did not include Type II in its final offer, Item #11, in which it proposes a reclassification grouping. The former contract combines Typist II with Clerk II; the Union specifically reclassified the Clerk II, but did not address the Typist II. The County objects to the Union now claiming that its offer actually was to reclassify both the Clerk II and Typist II positions and states that ambiguous proposals such as this should not be placed into a contract through arbitration.

Very little substantive discussion has been provided which would give the arbitrator a basis for making a reasoned decision on this issue. Since the final outcome of this interest arbitration, i.e., the selection of one of the party's final offers, will not be influenced in a significant way by a determination of this issue, the arbitrator will make no ruling on it.

6. Mileage reimbursement: The expired contract provided reimbursement at the rate of $.21 1/2 per mile, or the state rate (now $.26) for the first 600 miles driven, with a $25 per month car allowance for miles over 600. The County's proposal is to maintain the current language. The Union's offer calls for the $25 allowance to become effective after 200 miles per month.

The Union's position is that it does not believe that the highly paid Professional unit should get a better mileage benefit for driving their personal vehicles on behalf of the County than the lower paid non-professional human service employees. The County claims that the Union's proposal is not supported by either internal or external comparables (Employer Ex. 43 and 44). It charges that the Union seeks to change its mileage reimbursement after 17 years (from the time this unit withdrew from the Teamsters

Professional unit) without any explanation, justification, or quid pro quo.

The arbitrator appreciates the Union's desire to have the workers it represents paid for use of their automobiles on County business at the same rate as that received by the Professionals since they are both involved in providing service to the community. However, the arbitrator is without authority to select an offer based upon a party's wish, no matter how commendable, to provide an enhanced benefit to members of the bargaining unit. There is nothing in the record which would indicate that the Union, the entity seeking to change the status quo, has offered a quid pro quo for the change. Further the weight of the evidence regarding the comparables favors the County. Thus, the arbitrator must select the final offer of the County on this issue.

Other arguments by the parties have been considered, but need not be specifically addressed since, with two exceptions where neither position was given weight, the County has prevailed on all of the unresolved issues in this proceeding.

IV. AWARD

Based upon the discussion above, the final offer of the Employer, Pierce County, shall be adopted and incorporated in the parties' Collective Bargaining Agreement for 1996-1998.

Dated this 7th day of November, 1997 at Milwaukee, Wisconsin.

Rose Marie Baron, Arbitrator