In the Matter of an Interest
Arbitration Between:

MILWAUKEE COUNTY (Airport Fire Department)

and

Case 584
No. 65417
MIA-2704
Dec. No.31600-A

MILWAUKEE COUNTY FIRE FIGHTERS' ASSOCIATION

APPEARANCES:

Davis & Kuelthau, s.c., by Mr. Mark L. Olson, appearing on behalf of the County

Mr. Joseph M. Conway, Jr., Vice President, IAFF 5th district, appearing on behalf of the Association

ARBITRATION AWARD

Milwaukee County, hereinafter the County or Employer, and the Milwaukee County Fire fighters' Association, hereinafter the Association or Union, reached impasse in their collective bargaining for a 2005-2006 collective bargaining. They submitted their final offers to the Wisconsin Employment Relations Commission and the Commission certified their impasse/final offers on January 31, 2006 and provided them with a panel of ad hoc arbitrators from which they selected the undersigned to hear and resolve their bargaining impasse. A hearing in the matter was held on June 26, 2006 in Milwaukee, Wisconsin and the parties filed post-hearing briefs the last of which was received on April 11, 2007.

BACKGROUND:

The Milwaukee County Fire Department consists of 15 Firefighters/Equipment Operators, three Captains, one Assistant Fire Chief, and one Fire Chief. Their primary responsibilities are to provide emergency response to the Milwaukee County Airport with

regard to aircraft fires and emergencies, structural fires, hazardous material incidents, and emergency medical responses. They respond from one fire station, staffing three "Crash Vehicles" and an assortment of other support vehicles. The Firefighters/Equipment Operators and Captains are included in the bargaining unit, whereas the Fire Chief and Assistant Chief are not in the bargaining unit. The 18 members of the bargaining unit are evenly split into three shifts with a Captain in charge of each shift. The members work a reoccurring shift consisting of one 24-hour shift on duty, followed by two 24-hour shifts off duty. There is a minimum of four bargaining unit personnel on duty each and every day of the year.

Milwaukee County employs all members of the Fire Department which fall under the Division of Airport Operations, which is under Milwaukee County Department of Public Works. The airport operation falls within the overall Milwaukee County budget but is unique from other operations in that it does not impose a tax levy upon the residents of Milwaukee County. The revenue to operate the airport is generated through airline landing fees along with other incidental revenues such as parking and usage fees.

The parties were unable to reach a voluntary settlement and have submitted final offers on three matters that are in dispute–salary, EMT specialty pay, and the sick leave benefit. Their offers are set out below:

Union:

1. Section 2.01 Salary

   Effective July 1, 2005 wages of bargaining unit employees shall be increased by five-and-one-half percent (5.5%).

   Effective January 1, 2006 wages of bargaining unit employees shall be increased by five-and-one-half percent (5.5%).

2. Add New Section

   Those employees who are licensed as Emergency Medical Technicians shall receive a premium of one-and-one half percent (1.5%) above their base pay.

3. Section 2.15 (12)(a)(b) Retirement Benefits Sick Allowance Balance Upon Retirement: County proposal with the following modification:

For calculation purposes, sick leave earned ~~before~~ **on and after**<Note: Insert date of the contract by the County> shall be used prior to sick leave earned ~~on and after~~ **before** <Note: Insert date of contract ratification by the County> for all hours of sick leave used prior to retirement.

County:

1. 2.01 Salary

   Effective November 6, 2005 wages of bargaining unit employees shall be increased by two percent (2%).

   Effective July 2, 2006 wages of bargaining unit employees shall be increased by two percent (2%).

2. Sick Leave Allowance Balance Upon Retirement

   (a) Employees who became members of the Employee Retirement System prior to January 1, 1994 shall receive full payment ~~of~~ for all accrued sick allowance hours earned before <Note: Insert date of contract ratification by the County> at the time the employee retires. Twenty five percent (25.0%) of any remaining accrued sick allowance hours earned on and after <Note: Insert date of contract ratification by the County> shall be paid out at the employee's final hourly rate of pay. For calculation purposes, sick leave earned before <Note: Insert date of contract ratification by the County> shall be used prior to sick leave earned on and after <Note: Insert date of contract ratification by the County> for all hours of sick leave prior to retirement.

STATUTORY CRITERIA:

Section 111.77(6)

* * *

(6) In reaching a decision the arbitrator shall give weight to the following factors:

(a) The lawful authority of the 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 these costs.

(d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:

1. In public employment in comparable communities.

2. In private employment in comparable communities.

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

(f) 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.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

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

POSITIONS OF THE PARTIES:

Union Arguments:

The lawful authority of the Employer is typically something that is not in dispute when it comes to interest arbitration and it is not in dispute in this arbitration. Under the lawful authority of the County they have established an enterprise fund for operation of

General Mitchell International Airport. In doing so, they have entered into a lease agreement with the various airlines that utilize the airport. Consequently, unlike other County employees, the funding source for the wages and benefits of the Milwaukee County firefighters are derived fully from the revenues generated from the user fees for the operation of General Mitchell International Airport.

The parties stipulated, or agreed to, four items in the course of bargaining a successor agreement. The first being the term of the agreement in which there is no specific advantage to either party. The second, changing the sick leave balance pay out from 100% to 25% for all sick leave days accrued from the date of the arbitration award forward, is a clear concession from the Union. The third stipulation is the elimination of the DROP program for individuals hired after the date of the arbitration award, again a concession from the Union. And finally, the fourth item which is a number of changes in the health insurance program, further concessions on the part of the Union. These health insurance changes total a proposed savings to the Employer that is projected at $18,206 based upon the changes agreed to. Using the Employer's baseline 2004 total base salary for the bargaining unit of $768,050, the $18,206 shift in health care costs to the employees equates to a 2.37% reduction in base salary for the two-year period of the collective bargaining agreement. Using the Employer's proposed wage increases employees would receive $2,415 in 2005 and $8,077 in 2006 for a total increase of $10,492. Taking the $18,206 in health insurance cost shifting the employees are left with a loss of $7,714 for the two-year period.

Regarding the DROP program for the two-year period covered by this contract, the Union voluntarily agreed to a benefit change that will eliminate a future pension liability for the Employer and the Union should therefore receive a pro-rated quid pro quo for the significant future savings to the Employer. That pro-rated quid pro quo comes in the form of adopting the final offer of the Union, a final offer that begins the process of catching up to the average pay of its external comparables.

Regarding the agreed change in the sick leave pay out from 100% to 25%, the Employer estimates the savings of $2,001 in 2005 and $2,060 in 2006, for a total savings of $4,061 in the two-year period that this contract would encompass. This has an immediate estimated cost to employees of $4,061 or a loss of 0.5% from the 2004 baseline

of $768,050 for the entire bargaining unit. Adding the health insurance changes the identifiable advantage of the stipulations in this two-year agreement goes to the Employer at 2.87%. When the stipulations from the partial tentative agreement are weighed by the Arbitrator it will be clear that the Union's final offer is more in line with the statutory criteria than that of the Employer's and must be selected. Two witnesses called by the Employer representing Milwaukee County and the Air Transport Association both testified to the financial crisis of their respective organizations. Also, the Union is not questioning the Employer's Exhibits 18, 23 and 24 which paint the dismal financial picture of the County and the airline industry, but the Union does question the Employer's lack of testimony and exhibits describing the financial situation of the airport itself, the financial situation of the enterprise fund that provides for the wages and benefits of this bargaining unit. Although the members of this bargaining unit are employees of Milwaukee County, the outcome of this arbitration will have no direct impact on the Milwaukee County budget nor will it add an increased financial burden to the taxpayers of Milwaukee County. Unlike other County employees, the funding source for the wages and benefits of the Milwaukee County firefighters are derived fully from revenues generated from the user fees for the operation of General Mitchell International Airport. In stark contrast to the finances of the County, the airport is doing very well. The Employer makes the argument that Milwaukee County cannot afford this additional burden because it is financially strapped. While Milwaukee County certainly has many financial issues to deal with, the cost associated with the Milwaukee County firefighters are passed entirely on to the financial solvent General Mitchell International Airport and its users. Also, the Employer's expert witness from the airlines, when asked what impact there would be on the airline industry if the Union prevailed in this arbitration, responded: "I could not identify any specific consequence of that action". He also testified "it's hard to say that there will be any particular consequence of this in isolation. It is just part of the total cost picture." The Union believes the testimony of the airline industry expert witness as to the financial health of the airline industry should carry no more weight than the specific consequences that this arbitration will have on the airline industry as a whole.

The Union contends that historically arbitrators have imposed a relatively high burden of proof upon employers who assert an inability to pay. Unwillingness to pay

arguments, whether raised as an ability to pay or under the interest and welfare of the public criteria, in the past has been considered by other arbitrators. Wisconsin arbitrators have expected employers to prove, rather than simply assert, the economic limitations on their ability to meet the final offer. Arguments in the City of Franklin (Police Department) and Teamsters Union 695 were rejected by the arbitrator who held it was incumbent upon the City to demonstrate that it was in a unique situation as compared to other Wisconsin municipalities. Here, the County, is in a unique situation because it is not the taxpayers that fund the fire department, it is the airlines. Nothing in the record demonstrates that Milwaukee County's airport will find itself less competitive if the Union prevails in this proceeding. Conversely, there is ample evidence that the Milwaukee County firefighters will be less competitive if the Employer prevails.

The Employer has incorrectly calculated the Union's final offer as a 14% increase over two years. The actual lift is only 12.5% not 14%. The EMT increase is inappropriately attributed twice, both in 2005 and 2006. The EMT premium does not compound by 1.5% each year. If one were to use that same reasoning the across-the-board increase of 5.5% in 2005 should be added to the 2006 calculation, making an increase of 7% the first year and 12.5% in the second year, for a total of 19.5% for the two-year package, this is absurd. What should be analyzed is the increased cost to the Employer as compared to the previous year. The increased cost in 2004 under the Union's offer is a 1.5% increase for the EMT pay premium effective January 1, 2005, and one-half of the 5.5% across-the-board increase because it is effective on July 1, 2006. Adding those two numbers results in an increase of 4.25% above the expenditures in 2004 for 2005. Since the EMT increase was already factored in 2005 the increase attributed in 2006 over 2005 is the other half of the 5.5% received in 2005 for a total increase of 8.25% in 2006. Adding 2005 and 2006 together the total increase to the Employer for the Union's final offer over the two-year period is 4.25% plus 8.25% or 12.5%.

The Union also contends that the Employer has failed to prove an internal settlement pattern. The County had only settled with 1252 of the 5,392 represented employees prior to the AFSCME settlement, which occurred after the initial briefs were filed. This amounts to only 23% of the represented employees, clearly not an established pattern. The Employer should not be rewarded by employing a bargaining strategy that

bullies and exploits the smaller bargaining units in an attempt to take down the larger units in arbitration.

Secondly, the bargains already achieved are not identical. This can best be illustrated by reviewing the tentative agreement with the deputies. In addition to the pattern wage increases and health insurance changes, the deputies eliminated the first two steps of their pay scale, gained an additional week of vacation and added a new holiday. In addition, the Employer clearly states that the quid pro quo for achieving the pattern wage increases are the changes in the health insurance sick leave pay out and DROP program. The deputies were afforded the pattern wage increase without providing the quid pro quo being required by the Employer of the firefighters. Clearly, the deputies have received an overall greater wage and benefit package without as many concessions as has been already agreed to by the firefighters in the partial tentative agreement.

The Union contends that its list of external comparables are more reasonable and support the need for "catch-up" pay. The Milwaukee County firefighters are unique in the fact that they have two sets of external comparables, the first is those fire departments within Milwaukee County and the second are those fire departments that service airports of a similar size to General Mitchell International Airport. Regarding the first group of external comparables, those within Milwaukee County, the Employer and the Union agree on the list which identifies Cudahy, Franklin, Greendale, Greenfield, City of Milwaukee, North Shore, Oak Creek, St. Francis, South Milwaukee, Wauwatosa, and West Allis. With regard to the second group of external comparables, those that provide service to airports, the Employer and Union have no common comparables in their respective pools. The Employer bases its list on those in the Midwest in addition to Burbank, California, and includes Cleveland, Columbus, Detroit, Indianapolis, Oklahoma City, St. Louis, and Burbank. The Union uses a comparable list originally developed during the reallocation study. At that time, the Union and Employer agreed to use the seven airports immediately larger than and the seven airports immediately smaller than, General Mitchell International Airport. For purposes of accuracy, only airports of similar governance to the General Mitchell International Airport were included. In updating that original list the Union arrives at the following list of airport comparables, Austin, San Antonio, Fort Myers, Hartford/Springfield, West Palm Beach, Albuquerque, Dallas (Love Field), Reno, and

Jacksonville. The Employer's list is contrary to the previously agreed upon methodology between the Employer and the Union and should be given no weight. The Employer and the Union also disagree on the inclusion of the military units of the Milwaukee 128th and the Milwaukee 440th. The Union has included both of those military units in its exhibits in order to have a comprehensive list identifying all fire departments within the confines of Milwaukee County and those that service similar size airports. Given the exhibits and evidence, most specifically the agreement of the external comparables in the reclassification/reallocation study, statutorily, the Arbitrator must select the Union's list of external comparables over that of the Employer.

Examining the list of Union comparables it is abundantly clear that Milwaukee County firefighters lag behind the average compensation of those external comparables. It truly isn't close; in 2006 in Milwaukee County a fire captain will make 35.64% below the average of the external comparables. The 2006 Union wage offer closes the gap to 21.87% while the Employer's 2006 wage offer keeps the gap at 30.38%. Thus, the Union's final offer is a more reasonable attempt to bring their wages in line with the average wage of comparable employees than that of the Employer's final offer.

When weighing the final offers as they relate to the cost of living, using the consumer price index, it is clear that the Union's final offer is more reasonable. On its face, the Employer's 2005 final offer of 2% on November 6, 2005, translates into nothing more than a 0.33% increase for all of 2005, approximately 2.47% below the lowest CPI as used by the Employer. The Union's final offer of 5.5% effective July 1, 2005, translates into a 2.75% increase for 2005, approximately .05% below the 2.8% CPI benchmark listed in the Employer's exhibits. Add in the Union's proposed EMT premium of 1.5%, the Union's final offer ends up being 1.45% above the lowest benchmark for the CPI.

The Employer's final offer of 2% effective July 2, 2006, translates into a 1% increase for the year, approximately 1.5% below the 2.5% mid-year benchmark. The Union's final offer of 5.5% effective January 1, 2006, is approximately 3% above the 2.5% CPI benchmark. On a limited analysis, the Employer's final offer seemed to be more reasonable when applying the statutory criteria as it relates to the cost of living in 2006. However, this analysis did not present a clear and accurate picture for the Arbitrator to

fairly weigh the statutory criteria of how final offers compare to the increase of the price of consumer goods in a given year.

There are two arguments that the Arbitrator should consider when determining which offer is more reasonable when applying this statutory criteria. First is the Union's argument of "catch-up". It is inherent that a final offer that includes some form of "catch-up" will naturally exceed the CPI for a given year. The Arbitrator must first determine if "catch-up" pay" is appropriate, and determine the amount of ""catch-up" pay" that is reasonable. The second argument, is the totality of the final offer, more simply put, there was agreement reached on a number of items in the tentative partial agreement. If there was a monetary quid pro quo for gains and concessions for either party that monetary quid pro quo should not be used as an argument for weighing a salary adjustment as it relates to the cost of living. The Employer stated that their wage offer was a quid pro quo for the concessions gained and the changes to the sick leave pay out, the DROP program and health insurance changes. It stands to reason, based on the calculations earlier in this brief, that the Employer is effectively offering no cost of living increase.

The Union also argues that the reclassification reallocation study supports the need for ""catch-up" pay. On October 6, 2000, the Union and the County reached a tentative agreement to create a "reclassification/reallocation" study committee "for the express purpose to evaluate the total compensation level". This was incorporated into the collective bargaining agreement as Section 5. It was the understanding of the Union that a wage increase would result from the study. Union President Scott Wisniewski testified to the fact that no wage increase materialized and with that, the Union filed a grievance to implement the intent of Section 5.04. Ultimately an arbitration hearing was held and the arbitrator denied the grievance and no change to the Union's wage schedule was made. The study was an attempt to support the Union's argument of the need to provide ""catch-up" pay" and the County's realization of that need and an attempt to provide such ""catch-up" pay".

The study concluded "the pay rates for both Fire fighters/Equipment Operators and Fire Captains are not comparable to the averages developed from the survey. Although there was no agreement in the study committee on the amount employees were to receive the Department of Human Resources recommended adding two 3%

steps to each classification along with a 1% across-the-board increase effective 12-22-02 based upon the findings of the study. It is evident at this point that the Department of Human Resources concluded there was a need for the Union to receive "catch-up" pay. Subsequently, the airport administration in a memo stated "I did review the proposed dollars with Barry and we are in agreement". Scott Wisniewski in his undisputed testimony confirmed that the Union and the airport administration came to an agreement on a reduced pay increase from that of the Department of Human Resources proposal. Although it was less, it was a compromise that the Union agreed to. Although no wage increase was ever implemented, as a the result of the study it is clear that the Employer believes the Milwaukee County firefighters are underpaid and require "catch-up" pay to be competitive with the study's agreed list of external comparables.

The Union's EMT proposal is also supported by the external comparables. Although the 1.5% EMT pay proposal is used as part of the Union's "catch-up" argument, it is consistent with the external comparables EMT pay. Of the 11 municipal fire departments within Milwaukee County six provide for EMT pay. The EMT pay ranges from a low of $300 in Cudahy to a high of $1280 in Oak Creek annually. The average for those six departments is $641. The average EMT pay for the 18 members of this bargaining unit in 2005 would roughly be $684 ($12,303.13 divided by 18) which is $43 above the average but still below South Milwaukee at $870 and Oak Creek's $1,128. Also, the Union's proposed 1.5% annual EMT pay of approximately $684, is $613 below the average of the external comparables.

The Union argues that the Employer goes too far in attempting to implement the FIFO sick leave usage methodology. In its partial tentative agreement the Union has agreed to change the future sick leave pay out from 100% to 25%. In doing so, two banks of sick leave are established, the "old" bank in which the sick leave pay out is at 100% upon retirement and a "new" bank in which the retirement pay out is 25%, this the Union and the Employer have agreed upon. What the parties disagree on is which bank is depleted first when future sick leave is taken. The Employer's final offer uses the "first in first out" or FIFO method. Under this scenario when sick leave is taken it comes off the "old" 100% pay out sick leave bank. Only when the "old" bank is exhausted will sick leave days be taken

from the "new" 25% sick leave bank. On the flip side, the Union's final offer adopts the "last in first out" or LIFO method. Under this scenario when a sick day is taken it comes off the "new" 25% pay out sick leave bank. Only when the "new" bank is exhausted will a sick leave day be taken from the "old" 100% sick leave bank.

This proposal affects 11 of the 18 members of the bargaining unit upon retirement. Neither party differs in their assessment of the impact of the sick leave pay out change and the difference between the LIFO and FIFO methods. The Union puts it in a dollar format while the Employer puts it in an hour format. The impact of the Union proposed LIFO change from the status quo is roughly a loss of $80,000 for those 11 members affected. It's an additional loss of $21,950 if the Employer's FIFO program is implemented. The real issue here is whether or not the Employer has offered an adequate quid pro quo for both the initial change in the sick leave program and the implementation of the FIFO methodology. The answer to that question is no.

In its reply brief, the Union notes that the County has argued in its initial brief that all of the bargaining units have reached or are being offered "identical settlements" making the firefighters final offer unreasonable. The facts as we know them now do not support such an assertion. On its face it appears that all of the other County bargaining units received the 2% and 2% increase in 2005 and 2006. However, in the case of the building trades that isn't exactly correct because their rate is tied to a factor of what the private sector building trades receive as a wage increase. Second, the attorneys in addition to their 2% and 2% will receive effective 1-1-2006 a $600 per year seminar reimbursement. Nurses, in addition to the 2% and 2% get a new step in 2005 that is $.50 above the previous maximum step and get an additional new step in 2006 that is also $.50 above the previous maximums step. In the case of the deputies, they will have their first two steps of the pay schedule eliminated. And finally, AFSCME employees in addition to the 2% and 2% increases will receive the rescission of 106 layoffs along with the LIFO usage method for sick leave in conjunction with pay out at retirement. Thus, it is clear that the wage settlements among the bargaining units are not identical. Also, the Union's wage offer is consistent with the proposals made by the County and the airport in response to the reclassification/reallocation study that was never implemented. The Union's proposal is one of legitimate "catch-up" and is reasonable given the statutory criteria.

Regarding the sick leave pay out, the County can no longer argue that its "FIFO" sick leave final offer is reasonable given the agreement with AFSCME District Council 48 that included the "LIFO" sick leave proposal that is the same as the Milwaukee County firefighters "LIFO" sick leave proposal. The County's "FIFO" proposal is now inconsistent with the majority of County employees even though five County employee unions had agreed to the "FIFO" proposal those unions represent only a fraction of the County's 5,000 unionized employees. In re-reading the sections of the Union's initial brief, it is clear that its arguments there more accurately represent the facts as they are today given the County's settlement with AFSCME District Council 48. In the County's brief it argued "internal settlements are the most compelling and important comparability factor in the present circumstances". Those present circumstances are such that the Union's "LIFO" proposal is consistent with the internal settlement of the largest union, AFSCME District Council 48. Based upon this fact alone, the Union's final offer is the more reasonable and must be selected by the Arbitrator.

The County's argument with regard to labor peace is no longer valid. The County contends that the Arbitrator is being asked to depart dramatically from the clearly established pattern and is being encouraged to ignore the settlements reached by the six other bargaining units. With there now being seven settled bargaining units and clearly the settlement pattern has changed dramatically, changed in favor of the Union's "LIFO" proposal, labor peace is now best served by the Arbitrator selecting the Union's final offer which, as it pertains to the "LIFO" proposal, is consistent with the majority of County employees and does not depart from the new settlement pattern that was established with the AFSCME settlement.

The County also argues that arbitration is not a substitute for collective bargaining itself and should not undermine the bargaining process. Therefore, it argues the Union should not be rewarded in this case for refusing to reach voluntary settlement, especially in view of the fact that all other County bargaining units have voluntarily settled for the same wage increase and sick leave package that is being offered by the County. This argument might be true if all of the unions within the County were treated with the same respect afforded the largest union, AFSCME District Council 48. But, it is abundantly clear that the County uses the smaller units as nothing more than "pawns" against each other to set an

internal pattern that will be used as a basis to bargain with the "King" of the group, AFSCME District Council 48. The Union is not looking for a reward for delaying the settlement of contracts. The Union is looking for a fair settlement given the statutory criteria. There is nothing fair in the Union settling for a sick leave package that is inconsistent with the package negotiated with AFSCME District Council 48. There is nothing fair in this Union settling for a wage package that is woefully below its external comparables, especially when the Employer recognizes the need for "catch-up" pay. There is nothing fair in the County forcing the Union into arbitration and then claiming the Union has no right to be in arbitration. It is the County that has undermined the bargaining process and is attempting to be rewarded for refusing to reach a voluntary settlement especially in view of the fact that the Union's LIFO sick leave proposal is the exact same proposal that the County agreed to with AFSCME District Council 48.

Regarding the County's arguments concerning the financial impact of the "catch-up" wage offer of the Union with an average wage of $18.03 per hour based upon a 40 hour week, the annual cost of rescinding a 106 AFSCME layoffs would be $3,975,254 not including benefits. If the taxpayers of financially strapped Milwaukee County can absorb almost $4,000,000 additional costs above the 2007 adopted County budget then it would not be unreasonable for the County airport, which is not financially strapped, to absorb the additional $92,000 sought by the Union to bring its wages up a modest amount, an amount that begins to close the wage gap with its comparable airport and area fire departments. The County also goes to great lengths in its brief to ignore the robust financial shape that the Milwaukee County airport is in. The airport is expanding, growing and generating revenues far in excess of its expenses. The Union's offer is more reasonable given the financial success of the Milwaukee County airport.

Regarding the County's arguments with respect to total compensation and that case law establishes total compensation as a true measure of reasonable offer, the Union would agree. However, the problem is that the County does not provide a combined wage and benefit package analysis in its brief. The County simply regurgitates the charge from Employer Exhibits 27 through 30 and makes sweeping statements such as the County sick leave benefit is one of the richest benefits that exists among the comparables. The County also fails to recognize that the Union already agreed to modify the sick leave pay out from

100% to 25%. Also, the County fails to recognize the Union's agreement to modify the health insurance program, which provides for the highest premium share of all of its comparables of $75 for singles and $150 for families. Finally, the Arbitrator should also note from the Union's comparisons that the Milwaukee County firefighters were consistently behind the average total compensation package by from $10,000 to $18,000.

The County further argues in its brief regarding the reclassification and reallocation study that "it would be apparent from the bleak financial outlook of the County that this round of negotiations would not be an appropriate time for the Arbitrator to reopen past history". The Union's question to that argument is if not now, when. The timing was wrong 2002-2001because there was no mechanism to implement the results of the study committee, and certainly the timing will be wrong in 2007-2008 because of the "me-too" agreement on wages that the County reached with the AFSCME bargaining unit. Given the fact that the County cannot reach a settlement with the firefighters Union on "catch-up" pay for 2007-2008 because it would have to afford the AFSCME union with that same percentage wage increase, and given that fact alone this is the only appropriate time to begin to "catch-up" the Milwaukee County firefighters wages with their external comparables.

COUNTY ARGUMENTS:

The County is proposing a wage and benefit package that has been agreed to by virtually every other County bargaining unit with the exception of one. The Union is proposing a wage and benefit package which is extraordinarily more expensive for the County, which is not supported by the internal County settlements and which is not supported by the external fire department settlements within the metropolitan Milwaukee area. With regard to wages, the County has settled with the Milwaukee County attorneys, nurses and health professionals, Association of Machinists, technicians, engineers and architects, and the County sheriff's association, and as well the building and construction trades council for the identical wage increases which it is proposing in this dispute. The Union's wage proposal, to the contrary, would increase each fire fighters salary by 7% per year, for a total of a 14% lift over the two-year term of the contract. This increase is not supported by any other comparable settlements, whether internal or external. An

unprecedented increase of this magnitude is indefensible and would cause residual shock waves throughout Milwaukee County, which would continue far into the future.

The County is also fully supported in its sick leave pay out proposal with the six other settled bargaining units. In its 2005 negotiations, the County modified an archaic and extremely costly benefit that paid out accumulated unused sick leave at 100%. The modification which the County negotiated with its other bargaining units calls for a 25% pay out of accumulated unused sick leave which is earned prospectively. The earned sick leave in place prior to December 15, 2005 would continue to be paid out at 100%. The Union has agreed to this modification; however, the methodology of calculating and prospectively applying this benefit is in dispute. The Union is proposing that any future sick leave days used by employees would be taken from the new accumulated sick leave. The County, in an attempt to decrease its future liability, is proposing that any future sick leave used by employees first be drawn from the old sick leave bank, i.e., that which is accrued at 100% pay out. The County's final offer on this matter is consistent with all of the settled County contracts to date.

Regarding the costing of each party's final offer, the County argues that the cost difference between their offer quickly snowballs from the first year, 2005, to become a total cost difference between the parties' offers of $317,662. This amount is enormously significant given the size of the bargaining unit, 18 members. With only 18 members in the bargaining unit, the cost difference per firefighter between the two offers is $17,648.

The dire financial condition of the County in and of itself would prohibit the selection of the Union's final offer.

Regarding the internal comparables, the County argues that identical settlements have been reached with six other bargaining units in the County and that alone is sufficient evidence that the County's offer is reasonable and fully supportable. No other unit in the County has received a settlement addressing either wages or benefits similar to that which the Union is seeking in this case. There is no indication that any other County bargaining unit has even proposed a package that would support the Union's arbitration position. No other County bargaining unit has sought or achieved a two-year total package increase of 17.76% yet that is what the Union is asking this Arbitrator to approve. The unreasonable

nature of the Union's offer is both self-evident and in view of any arbitrable standard unacceptable.

Regarding the proposal concerning sick leave pay out, while the Union did agree to establishing a pay out rate of 25% on sick leave earned after December 16, 2005, it also has illogically proposed that the employees be allowed to retain all of the earlier accrued sick leave that is valued at 100%, but when utilizing future sick leave the employees would draw on the newly accrued sick leave which is valued at 25%. This Union proposal would drastically alter the effectiveness of the negotiated sick leave change and would result in a significant diminution of any savings which this change was expected to generate. Manske testified that the County's FIFO sick leave final offer, which is identical to that of all settled agreements in the County to date, would create a balance between the accrued sick leave hours of pre-1993 and post-1994 employees resulting in a static/flat sick leave balance for all bargaining unit employees. In contrast, the Union proposal would continue to create an increase in the County's balance of sick leave pay out liability, an increase which is wholly inconsistent with the fiscal needs of the County as reflected in all other settled bargaining units. The Union's proposal digresses from the County's established settlement pattern and seeks to enrich just one group of employees with no justification for their special treatment. Manske also testified that the County's proposed FIFO method of sick leave pay out is specifically predicated upon the method which the County has traditionally used for the purpose of overtime and holiday pay calculation. Therefore, not only is the County's FIFO sick leave offer internally consistent with other County settlements, it is also historically consistent with the previous County benefit calculation methods. An award which would deviate from this established settlement pattern with six other bargaining units would result in a windfall sick leave pay out benefit only for firefighters and would serve to create irreparable morale problems among the bargaining units. Moreover, and perhaps more significantly, the Union has not provided the County or the Arbitrator with any valid or cognizable reason why its members should be provided not only with a wholly incongruous and unsupportable salary increase of 14% for 2005 and 2006, but also with a sick leave pay out calculation which fails to conform to all other County settlements and to the demonstrated fiscal needs of the County.

The County's offer is supported by arbitral authority on maintaining internal consistency. Case law encourages and supports consistent settlement terms and the importance of internal consistency and adherence to an established internal pattern has been stressed by arbitrators over the years. There could be no question that Wisconsin arbitrators favor adhering to the pattern established through collective bargaining with the Employer's various internal bargaining units. Here, the 2005-2006 salary and sick leave pay out settlements, which have been struck between Milwaukee County and five other bargaining units should not and cannot be ignored or disregarded. The Union has provided the County and the arbitrator with virtually no reason, which justifies such a deviation from the established pattern of settlements in Milwaukee County. Similarly, the Union cannot establish any reason for the Arbitrator to deviate from the overwhelming weight and authority of prior arbitration decisions.

Furthermore, the importance of maintaining labor peace within the jurisdiction of a municipal employer has been emphasized in numerous public sector decisions. In this case, the County seeks a result that is fair to fire department employees and fair to all Milwaukee County employees. Maintaining internal consistency is a means of maintaining labor peace. In this case, to break the settlement pattern which has been established in the County would trigger major labor negotiation disputes in the future between the County and the labor organizations in the County that have already settled their contracts. It is, quite simply, in the best interest of the public for the County offer to be selected in the subject dispute, in order to maintain stability in labor relations between the County and the various bargaining unit representing its employees. Furthermore, as Milwaukee County continues to face new challenges in funding public services it is all the more critical to the public welfare that labor negotiations be conducted based on the County's unique fiscal characteristics. The public interest, labor peace, employee morale and job satisfaction would all be significantly undermined if the Union is allowed to disturb the settlement pattern within the County. The County's offer is the more reasonable of the two offers presented, and therefore, should be selected by the Arbitrator.

Furthermore, arbitral precedent clearly establishes that if an internal pattern of settlement is to be disregarded such a settlement must be voluntarily negotiated. Here, the Union seeks to obtain terms that are more advantageous to its unit members than those

provided in other County settlements despite the rational nature of its offer. Arbitrators have determined that interest arbitration is not a substitute for collective bargaining and should not be used as a reward to delaying the settlement of contracts. The Union should not be rewarded in this case for refusing to reach a voluntary settlement, especially in view of the fact that all other County bargaining units have voluntarily settled for the same wage increase and sick leave package that is being offered by the County. The Union has not and cannot provide any justification for a salary offer which exceeds all other County settlements by 10% and which is wholly inconsistent with the FIFO sick leave pay out agreements which have been voluntarily achieved with all other settled County bargaining units.

The record established on June 26, 2006, and subsequently, shows that the County is in a critical financial condition. The County has sought diligently to cut costs by reduction of its budget in all possible areas. This critical cost reduction goal has been noted by constituents of the County as well as by the press. Significantly, it is within the context of this universally recognized fiscal crisis that this dispute arises and the County submits to the Arbitrator that the fiscal crisis the County now faces and continues to face as a result of improvident employee benefit decisions by prior County administrations cannot be realistically disregarded. At a time in which the County's unfunded liabilities exceed one billion dollars, can any union or any responsible union blithely seek a two-year salary improvement of 14%?

Public opinion acknowledges the County's financial distress and supports moderation in spending as evidenced by the articles introduced into evidence in this matter. A local newspaper has published numerous articles which specifically address the County parks deficit. But, the Parks Department is not the only area in which the County has experienced significant fiscal shortfalls. Many of the published documents detail the untenable and devastating cost of the pension plans and retiree benefits including future sick leave pay out liability. Prior to the end of 2005 the County was seeking $10.8 million in budget reductions to avoid ending the year in a deficit. Those cuts called for a hiring freeze, as well as a 5% cutback. The articles and opinions on which programs and services should be cut in Milwaukee County are prolific and varied. All, however, impart the universally accepted belief that many features of the County's employment culture must

change. Perhaps the most disturbing observation is that provided in County Exhibit 18-AF in which it is accurately reported in an article dated June 20, 2006, only six days prior to the hearing in this case, that the County's 2007 contribution to its employee pension fund must be $59 million dollars, more than double that which was contributed in 2006 such that 2007 pension would have catastrophic consequences to County services and infrastructure and would necessarily compel deep service cuts and a downgrade of the County's bond rating, all of which will inevitably operate to the detriment of County residents and employees.

Although it would be both fiscally problematic and politically troublesome, the County could (on a limited basis) increase taxes to offset increasing employment costs. The question then becomes "it is prudent or fiscally responsible to increase property taxes?" As evidenced by the prevailing economic condition in Wisconsin, and especially Milwaukee County, any increase in property taxes in order to continue current employment practices and benefit levels would not be prudent, nor would it be fiscally responsible. Significantly, the County has elected not to increase taxes, which has resulted in the fiscal restraint, which is reflected in the six County settlements which precede this arbitration. The Union proposal is clearly and irresponsibly inconsistent with the fiscal constraint and economic sacrifice which is now necessary at all levels of County government if Milwaukee County is to survive the disastrous potential consequences of its present situation. The County as a major component of its need to continue to provide services to its citizens must control its labor costs. If the County is forced to layoff employees, or to eliminate positions, the level of services, which are currently provided by the County, will not be able to be continued.

Arbitrators have traditionally upheld in the importance and significance of moderation in spending when Wisconsin municipalities have been subjected to financial difficulties. The county respectfully submits that the dire economic climate within Milwaukee County clearly supports its final offer, while underscoring the untenable nature of the Union's final offer.

On August 24, 2004, the Government Accounting Standards Board ("GASB") issued Statement No. 45, Accounting and Financial Reporting by Employers Post-Employment Benefits Other Than Pensions. The statement requires municipalities to report and account

for all future liability, which will be incurred as a result of providing post-employment benefits to its employees. In prior years, post-employment benefits were not accounted for on a municipality's books. For this reason, GASB 45 will now require retiree benefits to be calculated and accounted as a separate liability of the County within the overall costs, reports, and budgets of the County. This process of including retiree costs in its reports will clearly impact the County's ability to meet its future financial obligations. The county's ability to obtain financing and bonding for long-term capital expenditures will be significantly impacted by the additional debt, which it will be required to carry on its books, as a result of these GASB 45 accounting obligations. GASB 45 demands a new, stringent accounting system, which only serves to point out the necessity for fiscal responsibility.

Pursuant to a June 26, 2006 stipulation of the parties, the County submitted a post-hearing exhibit, Milwaukee County Retiree Health Care and Life Insurance Actuarial Valuation Report, which was prepared by the Cambridge Advisory Group, Inc. In that report the County's financial condition is assessed relative to medical and life insurance liabilities. The unfunded liability for medical insurance alone has been determined to be $1,283,352,000. The report goes on to calculate the unfunded liability including both health insurance and life insurance at a total of $1,313,632,000. The annual required contribution based upon a 30-year amortization schedule is $109,160,000. The results of this study clearly mandate that the County implement significant and responsible fiscal restraints. It is imperative to the County's future and to the future of residents and employees of the County that it attempt, in every way possible, to exercise control over its future financial costs - many of which were incurred in years during which the County's economic climate was vastly more prosperous and prior to the 2000 granting of the pension and sick leave benefits which have resulted in the present untenable situation which the County faces as a result of the crushing level of unfunded liability which is represented by these benefits and by other economic circumstances.

Among the factors which the Arbitrator is bound to consider are "the interests and welfare of the public" and "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." The County in crafting its offer is compelled to take into

account the interests and welfare of the public by considering the financial health of the County government in general. The operations of the Milwaukee County airport in particular, and the ultimate impact of the two final offers on the citizens of the County. Unlike the direct taxation model present in the majority of municipal arbitration cases, the cost of running the airport are, for the most part, borne by the airlines who service the airport. Thus, the costs of operating the airport are a direct tax on the County's corporate citizens and an indirect, but no less real, tax on the County's individual citizens. The County anticipates that the Union will argue that this contractual obligation on the part of the airlines allows Milwaukee County to simply agree to any of the Union's economic proposals without concern about any economic consequence to the County or its residents and taxpayers. Unfortunately, the County cannot, and must not, succumb to the shortsighted, expedient Union argument. The reality is, as demonstrated by Heimlich's unrebutted June 26, 2006 testimony, that there real and damaging consequences which would be created by the Union's proposed unrestrained spending by the County with respect to airport expenditures.

The Union's argument that the airlines' obligation to pay the cost of the wage proposal rationalizes and justifies the Union's final offer is fundamentally flawed in several respects. First, the Union erroneously assumes that the airlines have an unlimited ability to pay any costs, which are presented by an airport authority. Second, the Union incorrectly assumes that alleged "small" shifts in costs do not matter to the airlines. Finally, the Union erroneously assumes that any impact on corporate entities such as airlines (as opposed to individual County citizens) will have no impact on local economic conditions. The County, here, does not argue that the financial condition of airlines obviates the need for a fair final offer. Rather, the County asserts that the Union's argument, i.e., that the Union's extravagant package proposal is reasonable in light of the airline industries obligation to pay the cost, is inequitable, plainly false, and is based on erroneous assumptions.

The airline industry is not in a financial position to write blank checks to the Union. Heimlich, the Vice-President and Chief Economist of the Air Transport Association of America (ATA), a trade association which represents the majority of airlines serving the airport, provided extensive testimony regarding the underlying economic reality which undercuts the Union's citation to the Master Lease as an excuse in justification for the

Union's proposed exorbitant wage increases. The historic and continuing pattern of financial losses has had a dramatic and damaging effect on the airline industry. A number of airlines have filed for bankruptcy protection under both Chapter 11 and Chapter 7. These bankruptcies have not only impacted the large traditional carries, but have also impacted the non-traditional, "low cost" carriers. In response to these financial pressures the airlines have taken drastic steps, including massive layoffs, in an effort to keep these labor costs under control.

The County also argues that its airport firefighters are more highly compensated than fire fighters at other Midwest airports having a similar number of outbound passengers. The exhibits in evidence establish that County firefighters enjoy wages, which exceed the average at both the minimum and maximum wage rates. There are nine airports, including Milwaukee County's Mitchell Field Airport, which are contained in the County's wage comparison. Under the County's offer for 2005, the minimum wage rate exceeds the annual average by $3,325 and the maximum wage rate exceeds the annual average by $7,670. The minimum and maximum amounts of the County's offer would be $1,053 in excess of the average at the starting wage rate and $7,074 in excess of the average at the maximum wage rate. This variance would be even greater if the Milwaukee Air Force fire fighting units were removed from this equation. It is the County's position that the Air Force firefighters operating at Milwaukee's Mitchell Field Airport should not be considered to be in any way comparable to the Milwaukee County firefighters.

Regarding the pool of external comparables, the County argues that it does not believe the external comparable pool to be the most important consideration in this dispute, given the irrefutable and precise alignment of the County's offer with settlements in all other internal County units. Nonetheless, the County would submit that the Arbitrator should accept the County's pool of comparables. That pool includes virtually all the fire departments in Milwaukee County and all of these municipalities, despite differences in staffing size, have a common system of governance, are members of the same demographic/geographic recruitment pool, and are geographically proximate to one another and to the Milwaukee County airport at which these employees are situated and employed. The Union also submits the same group of comparable municipalities as used

by the County, but adds the Milwaukee 440th and 128th military fire fighting groups that the County does not believe should be included in the pool of external comparables.

The County also argues that it is the leader in its combined wage and benefit package among the external comparables. It contends that arbitrators have long held that wage rates alone are not the only yardstick in establishing whether an offer is the more reasonable. That is, all of the fringe benefits provided by the employer must be considered in concert with the respective wage offers, in order to assess the reasonableness of each party's offer. By proposing a package offer which far exceeds any other internal or external package increase, the Union has distinguished and disqualified its offer from any of the "reasonable" benchmarks. The County has provided a comparison of its fringe benefits with those offered by the comparable municipalities. These fringe benefit comparisons, and the case law determining the reasonableness of the County's offer, support the argument that the County's offer is in fact the more reasonable of the two respective final offers. The County's sick leave and sick leave pay out is one of the richest benefits, which exists among the comparables. The County has proposed to modify this benefit prospectively. These modifications do not alter previously earned sick leave, and do not alter the pay out of that previously earned sick leave.

Regarding the Union's EMT pay proposal, the County argues that it would affect all of its firefighters inasmuch as they all are presently EMTs. The EMT pay being proposed by the Union is 1.5% above each firefighter's base pay for each year of the two-year contract. The County presently pays for training time for firefighters to obtain and maintain this certification. This additional pay requested by the Union's offer is not justified or warranted when comparing Milwaukee County with other comparable employers. As noted above, only two of the employers, including Milwaukee County, provide paid training time. Five of the comparables have additional pay for EMT certification, while the majority Franklin, Greendale, Milwaukee, North Shore, St. Francis and Wauwatosa do not. This means that 54.5% of the comparable employers, excluding Milwaukee County, do not pay an additional stipend for EMT certification. If Milwaukee County is added to that equation, 63.6% do not pay additional monies for EMT certification. This calculation clearly supports the County's proposal to maintain the status quo with regard to EMT pay. Significantly, the unit has offered the County and the

Arbitrator no rationale or justification, and no quid pro quo, which will support the additional 3% EMT salary enhancement, which it seeks.

The Employer has also argued that the Union has inappropriately introduced a wage study as justification for its higher wage offer and various documents related to the 2000-2001 reallocation/reclassification study committee. But, there was no obligation on the part of the County to implement any of the recommendations proposed by the Union as part of this process. As noted in the record, the Union proposed 2000-2001 salary increases that the County did not agree to implement, challenged the County through a grievance and the arbitrator concluded that the Union was not entitled to a significant salary readjustment. Even if the statutory criteria which requires consideration of the entire 2005-2006 package offer were to be disregarded it would be apparent from the bleak financial outlook of the County that this round of negotiations would not be an appropriate time for the Arbitrator to reopen the past history represented by the Union claim here.

Last, the Milwaukee – Racine consumer price index for 2005 indicates a 2.8% increase for all urban consumers and a 3.2% increase for all urban wage earners and clerical workers. The County's final offer at 4%, 6.14% package, is closer to the CPI than is the Union's offer for 7% (5.5% wage increase plus 1.5% EMT certification pay). For each of the two years of the contract, the County's offer, therefore, emerges as the most reasonable and the most defensible.

In its reply brief, the Union incorrectly determines that the minor health insurance modification agreed to by the parties results in a saving. As specified in County Exhibit 17, the cumulative cost increase of the County's offer is 9.38% through 2007. The cumulative cost increase to the County under the Union's final offer would be 20.20% for the same period. The Union's costing is certainly creative, but the savings "projection" is not an accurate or complete picture by any means. Cost savings to an employer created by changes in insurance or other benefits, do not translate into a dollar for dollar reduction in employees salaries. The Union's claim that such a cost analysis pertains to this bargain is neither accurate nor financially realistic. This observation is especially true where, as here, the insurance savings are predicated upon structural changes, such as co-payments for prescription drugs, for office visits, and other deductible and co-payment increases, which are not realized or borne by all employees in the bargaining unit. The Union effort to

equate these insurance savings to the actual salary increases proposed by the County, and then reduce employees salary increases by those savings at a dollar for dollar basis, is inaccurate, misleading, and not supported by any arbitral authority.

Next the Union addresses the DROP program loss wherein current employees do not suffer "any loss" due to the grandfather change in the pension backdrop benefit. Indeed, the Union concedes this very point in its initial brief. How then can the Union credibly claim that employees who give up nothing under the tentative agreements of the parties are entitled to a quid pro quo for this change? By the Union's own argument the County will not realize any cost savings for 30 years. Yet, the Union would have the Arbitrator impose upon the County a current quid pro quo consisting of a 20.2% package for 2005-2006, a package that is totally inconsistent with any internal or external package settlements for this time frame.

Also, the County has not asserted an inability to pay under the Union's offer, but rather asserts that it would irresponsible to pay under that offer. The County has an obligation to make a responsible decision on behalf of its citizens and other employees of the County. It is this consideration which prohibits the County from agreeing to the Union's excessive and unsupportable proposals. The County cannot, despite the unconvincing arguments of the Union, provide this bargaining unit with a two-year package increase of 20.2%, an increase which would exceed any other County settlement by over 400%. The County must also consider the morale of all of its employees. Evenhandedness, fairness, and consistency are not just desirable, those elements are crucial to the welfare of the County, to the citizens whom it represents, and to all other employees on the County payroll.

Furthermore, the Union's claim that the costs are pass through costs and would not have an affect on the County is a seriously skewed and distorted view of the situation which exists. The relationship between the County and the airlines is based on the County's fiscal restraint in controlling the financial costs of maintaining and funding a firefighter unit at the airport. It does not allow the County to wholly disregard its responsibility to maintain a fiscally responsible environment on behalf of the airlines operating out of the airport. The Union's final offer would place this relationship between the County and the airlines at significant risk and could well jeopardize the continued use

of General Mitchell Field by these airlines and thus disregards the welfare of all persons who rely upon the airport for travel and/or for employment. The County also argues that the Union has improperly equated Mr. Heimlich's testimony that he could not identify a specific consequence of the Union's proposal with the idea that there is no consequence to precipitous wage increases and resulting increases in landing fees. Heimlich's testimony was clear on this point "There has to be a consequence" to passing along costs to the airlines. As Mr. Heimlich's testimony evidenced there are direct consequences to economic vitality of Milwaukee County and its residents. The consequences are not simply a matter of the potential for reduced airline service but the corollary affect of lost jobs and economic development that could result.

The County also argues that its final offer is supported by the internal settlement pattern. The Union attempts to discredit this claim by pointing out that the deputy sheriffs' union did not receive the same settlement with respect to sick leave pay out and the DROP program. It points out that the deputy sheriffs do not receive any sick leave pay out and are not eligible for the DROP program. That is entirely correct. The deputy sheriffs have never received those benefits but, instead, negotiated for other contract items that they perceived to have more value. The fire fighters, likewise, have arrived at the wages they now receive by way of past negotiations.

More significant, however, is the recent settlement between Milwaukee County and Council 48 AFSCME. As can be noted in the settlement document the parties agreed to a 2% increase effective July 2, 2006, and a 2% effective October 8, 2006. The timing of the July 2, 2006 increase was exactly the same for all other County units. However, the other units also received a 2% increase effective 11-6-05 while the Council 48 employees received a 2% increase, but the implementation date of that increase was deferred until October 8, 2006, almost one year later that the 2% received by all of the other County bargaining units, including the 2% increase which the County final offer would provide to fire fighters on November 6, 2005. The two-year settlement reached with District Council 48 AFSCME amounts to a two-year package increase of 1.78% for 2005-2006 and clearly highlights the absurd nature of the Union's 2005-2006 package increase of 20.2%. Not only does the Council 48, 2005 settlement approximate the settlement pattern cited by the County in support of its final offer it actually lowers the settlement pattern as a result of the

2% salary increase which is deferred until October 8, 2006. Under these circumstances the Union can no longer claim that the County settlement pattern for 2005-2006 should be discounted or disregarded by the Arbitrator in the subject case since that pattern has been duplicated and, in the case of Council 48, diminished for the overwhelming majority of county employees, none of whom has received a 2005-2006 package increase of 20.20%. The 2% 2% wage agreement reached with Council 48 overwhelmingly supports the final offer of Milwaukee County in the subject dispute.

Also, the Union has asserted the need for "catch-up" pay. The Union should not be able to repeatedly bargain over the years for language and benefit concessions in lieu of more substantial wage increases and then later claim it is behind its comparables in wages. In fact, the current wage rates are the result of prior agreements between the County and the Union and the Union has had access to the arbitration procedure that is provided in Section 111.77 for over 30 years and could, if it believed that its wages were too low, have used this procedure at any time to seek redress. In those prior negotiations a give and take process was utilized. In effect, the wages arrived at are the result of concessions and bargaining on the part of both parties. Moreover, as County Exhibit 30 clearly demonstrates, the benefits which are provided to these employees equal or exceed the benefits which are provided to employees among the external comparable fire departments. This is especially true of the retiree health insurance benefit that is virtually unlimited and life-long for employees hired prior to January 1, 1994. To focus only upon comparable salary, as the Union would have the Arbitrator do here, is to ignore the value to these employees (and the cost to the County) of the fringe benefits which have been granted to these employees during prior bargains. Is the Union proposing, here, to concede and surrender the fringe benefits that were an integral part the prior settlements that created these benefits? If not, there can be no value or credible basis for the "catch-up" that the Union asserts. Arbitral precedent also demands that these prior negotiations be considered when assessing a union's rank among comparables.

The County also argues that EMT pay is not received by a majority of firefighters in the external comparable pool. The County has noted in its exhibits that only 5 of the 12 comparable fire fighting units receive EMT pay. This analysis clearly does not support the Union's offer. The Union's argument that its proposal is supported by the external

comparables conveniently ignores the fact that EMT pay is not provided at all in 5 of the 11 comparable fire departments cited by the Union. Under such circumstances, and in view of the absurdly high salary and package increases sought, without any quid pro quo offered by the Union, the Union attempt to "average" this EMT pay is especially unconvincing and unsupportable. Notably, any "average" EMT pay would have to factor in the zero dollars provided in 5 of the 11 comparables, yet the Union argument fails to observe this mathematical necessity.

The County's FIFO method of calculating future sick leave usage is logical and supported by the remaining internal bargaining unit settlements. As of June 26, 2006, there was no internal support for the Union's position of calculating sick leave on the LIFO method. The County's offer remains the most reasonable because it is more economically sound, follows prior and current methodology used by the County, and was accepted as fair and equitable by almost all of the other units in reaching settlement. The December 26, 2006 settlement reached with AFSCME District Council 48 can easily be distinguished because the parties agreed to an additional two years in its settlement, 2007 and 2008. The 2007-2008 settlement package between the County and District Council 48 resulted in a number of other cost cutting concessions by District Council 48 during the 2007-2008 contract term including salary, health insurance and prescription drug concessions which have not been made by this Union as of the date of submission of this brief. Consequently, District Council 48 settlement regarding sick leave pay out cannot be viewed as dispositive and the County reiterates its argument that the FIFO method which virtually all of the settled County contracts adopted as of June 26, 2006, must be considered to be the more compelling internal comparable.

DISCUSSION:

This case is somewhat unique in one respect. Subsequent to hearing in this matter the County and District Council 48 submitted their bargaining impasse to interest arbitration as well. The undersigned was selected to arbitrate that dispute also, and during the course of the proceedings in that matter a mediated settlement was reached for the 2005-2006 contract as well 2007-2008. Subsequent to ratification of those contracts the

parties filed reply briefs in this matter, and argued the impact of that settlement upon this dispute.

Comparables:

The parties are not in agreement as to which are the appropriate external public and private sector comparables. Both sides agree that municipal fire departments within Milwaukee County should be considered among the public sector external comparables. Those municipalities are Cudahy, Franklin, Greendale, Greenfield, Milwaukee, North shore, Oak Creek, St. Francis, South Milwaukee, Wauwatosa, and West Allis. However, the Union also would also include the two military units bases at the airport–Milwaukee 440th and Milwaukee 128th. The county opposes their inclusion within the pool. I agree with the county that these two units are not appropriate for inclusion within the pool of public sector comparables. First, they are military units, and second there is no evidence that their wages and benefits are the result of collective bargaining. Thus, I am nor persuaded that should be included in the pool of public sector comparables.

The other are of dispute regarding appropriate comparables involves other airports. The Union's proposed airport comparable pool includes the 7 airports closest in size to Milwaukee County's but larger and the 7 airports closest in size to Milwaukee County, but smaller; and whose operations are funded in the same manner as Milwaukee County. This methodology for deciding which other airports should be included in the comparable pool was adopted by the parties' representatives on the Reclassification/Reallocation Study Committee in 2001-2002. For purposes of accuracy, only airports of similar governance to the General Mitchell International Airport were included. In updating that original list the Union arrives at the following list of airport comparables, Austin, San Antonio, Fort Myers, Hartford/Springfield, West Palm Beach, Albuquerque, Dallas (Love Field), Reno, and Jacksonville. The County proposes that the airport comparable pool should be made up of airports located in Midwest based upon outbound passenger miles. The airports it uses in its comparison chart at Exhibit 22 included the following: Burbank, Cleveland, Columbus, Detroit Indianapolis, Oklahoma City, Outagamie County, and St. Louis. However, the County has not presented any persuasive rationale for why the comparability pool that was agreed to and used by the parties in the Reclassification/Reallocation Study Committee in 2001-2002 should not be used in this proceeding. And there is no record

evidence establishing that the rationale employed by the parties in reaching agreement in 2001-2002 on the comparable pool to be surveyed is no longer valid. Therefore, the airport comparables proposed by the Union is adopted for this proceeding.

Wages:

Both party's 2005 and 2006 salary offers provide for delayed implementation. In other words the salary increases are not necessarily scheduled to take effect on the first day of each contract year–January 1st. The Union's first salary increase is proposed for July 1, 2005 and its second year increase is proposed for January 1, 2006. The County's salary proposal provides that its proposed first year increase is scheduled for November 1, 2005 and its proposed increase in the second year is scheduled for July 2nd. Because of delayed implementation of the increases the cost of the increase in each year where implementation is delayed beyond the first day of the contract year is necessarily less than it would be were the increase effective on the first day of the contract. In the case of the County offer, the cost of its 2% proposed first year increase is .33% not 2%, and in the second year the cost of its proposed 2% increase is 1%. Obviously, the wage lift over the 2 years is still 4%. The Union's first year proposed 5.5% wage increase has a cost in the first year of the contract of 2.75%. Its proposed second year increase of 5.5% scheduled for January 1, 2006 has a cost of 5.5% in the second year. The wage lift of the Union's two-year proposal is 11%.

There are 8 represented County bargaining units including the County Airport Fire Fighters and Fire Captains. At the time of the hearing in this matter, June 26, 2006 the County had reached voluntary agreements for the period 1/1/05-12/31/06 with six of those bargaining units – Building Trades (275), Attorneys (47), Nurses (335), Machinists (20), Technicians/Engineers/Architects (39), and Deputy Sheriffs (536). The County had not reached agreement with AFSCME District Council 48 or this bargaining unit. This fire fighter bargaining unit comprises less than 1% of the total of County represented employees, the other settled bargaining units comprise 23+% of the represented employees, whereas the AFSCME District Council 48 bargaining unit comprises 76% of the represented County employees. Clearly, the AFSCME bargaining unit is the elephant in the room in terms of internal comparables, whereas this bargaining unit represents the

fewest employees of any of the bargaining units and cannot, standing alone, ever be a pattern setter in negotiations with the County. Indeed, it highly questionable whether all of the bargaining units taken together, excluding AFSCME District Council 48, have the ability to establish a pattern settlement when they comprise only 24 % of the represented employees. As this case illustrates, and will be discussed later, the AFSCME District Council 48 settlement did not follow the "pattern" established by the other 6 bargaining units on the sick leave issue. And, on the issue of wages the settlement did not follow the pattern with respect to the effective dates of the wage increases even though the sizes of those increases were the same as the "pattern" (2% 7/2/06 and 2% 10/15/06). But, in that case, there were other factors at work (pending layoffs) which impacted the settlement.

The Union argues that the reason its wage proposal is significantly greater than that of the County is because it contains an element of "catch-up". It has argued that County Fire Fighters/Heavy Equipment Operators and Captains are paid substantially less than Firefighters and Captains in municipalities located in Milwaukee County as well as comparable airports around the country. It claims this fact was recognized by the Reclassification/Reallocation Study Committee in 2002 and although the Committee did reach a consensus upon a recommendation to be presented to the Airport Director for submission in his 2002 budget both the firefighters and the County Human Resources Department made recommendations to the Director for "catch-up" adjustments. However, the County's final offer in this case does not contain a proposal with regard to "catch-up". The County asserts that its wage proposal is supported by the wage/salary settlements it has bargained with all of its other represented employees and that the undersigned should find that fact controlling of the outcome of this dispute

The undersigned agrees that generally internal comparability is entitled to significant if not controlling weight when an employer has successfully negotiated the same ATB wage/salary increases with its other bargaining units. I have so stated in other decisions. However, this case involves more than just ATB salary proposals. The Union's final offer on salaries contains a "catch-up" component which distinguishes this case from those where the dispute is over, for example, the size or timing of the ATB increase or the proposed modification of a fringe benefit. It is also the case that while the County touts the uniformity of the settlements it negotiated with six other bargaining units, the Union

has pointed out that while the size and timing of the ATB wage increases may be the same there were other changes negotiated as part of those settlements that undermine the County's claim of a uniform pattern. In the case of the Deputy Sheriff contract the County agreed to drop the bottom two steps of the salary schedule in 2006, which effectively increases the beginning wages and reduces the length of time it will take to reach the top of the salary schedule. The Deputies also received an additional week of vacation and added a new holiday. The Nurses bargaining unit also was granted a new maximum step in 2005 valued at $.50 per hour and an additional new step in 2006 also valued at $.50 per hour. The Attorney bargaining unit was also granted, in addition to the 2% and 2% ATB salary increases $600 per year for seminar reimbursement. Also, the Building Trades bargaining unit wages are driven by the wages paid those trades in the private sector in that their wages are a percentage of the "prevailing rates" and as such not directly negotiated with the County. Only what percentage of the "prevailing rates" will be paid to County employees is negotiated. So, while the County urges the undersigned to conclude a clear settlement pattern exists the evidence is to the contrary. Also, even if one concludes that an internal settlement pattern has been established for the ATB salary increase, it cannot be the case that, therefore, consideration of the Union's claim that a salary catch-up adjustment is warranted in this bargaining unit is precluded.

Turning then to the issue of the Union's proposed "catch-up" salary adjustment proposal, the facts are that in 2000 the parties agreed in bargaining to the creation of a Reclassification/Reallocation Study Committee (Article 5.04) "for the expressed purpose to evaluate the total compensation level of Firefighters/Equipment Operators and Fire Captains". The agreement also provided that "the study shall be completed in time for adoption in the Airport's 2002 budget". The agreement also provided that the "study shall not result in the reduction in any existing employee's salary". Ultimately, on July 19, 2002 the Deputy Director of the County Human Resources Department sent a memo to the County Airport Director and attached the Report of the Reclassification/Reallocation Study Committee. That Report set out the purpose, methodology, and conclusions of the Committee. In the report under the heading "RESULTS" it states " the committee has concluded that the pay rates for both Fire Fighters/Equipment Operators and Fire Captains are not comparable to the averages developed from the surveys". It also stated

> "The members of the Committee could not reach a consensus as to either the method of making a change or the timing of any adjustments". In an attempt to strike an equitable balance, the Fire Fighters' Union representatives have requested that their enclosed recommendations be submitted, and the Committee, as a whole, has agreed to submit the Fire Fighters' proposals for consideration. This proposal includes retroactive adjustments to June 24, 2001. Additionally, the Department of Human Resources is including a less radical proposal providing for prospective adjustments only. Both proposals are herein incorporated for consideration of the Airport Administration."

Neither of the recommendations was adopted by the Airport and the Union filed a grievance contending that an agreement had been reached in bargaining that an adjustment would be granted to employees as a result of the study. The grievance proceeded to arbitration and was denied by the arbitrator.

However, the significance of this is that the County Human Resources Department agreed in 2002 that some adjustment to wages over and above the across the board wage increases was warranted. Its recommendation to the Airport Director provided for a "catch-up" adjustment of 1% in addition to the 3% across the board increase and added two new steps (11 and 12) of 3% each beyond the then step 10 top step effective 12/22/02. It also provided that those employees then at step 10 "will go immediately go to step 11". The Department's proposal amounted to an adjustment of 7% to wages in excess of the across the board salary increases for 2003 and 2004. Interestingly, 7% is the value of the Union's proposed "catch-up" adjustment for 2005-2006 (5.5% minus the 2% ATB salary increase proposed by the County in 2005 = 3.5% and 5.5% minus the 2% ATB salary increase proposed by the County in 2006 = 3.5%). Thus, the Union's "catch-up" salary proposal for 2005-2006 mirrors the value of the adjustments proposed by the County in 2002. However, the Union's proposal in this case, unlike the Human Resources recommendation in 2002, which would have resulted in 6% being added to the top of the salary schedule in the form of two new steps and adjusting all steps by 1%, would lift all steps by 3% in each year of the two year proposal. But, the evidence regarding the municipal comparables shows that the number of salary schedules steps for Fire Fighters range from 3 to 7 steps and for Fire Captains the number of salary steps ranges from 1 to 6 steps for Fire Captains

as compared with the County's 10 step schedule. Clearly, Fire fighters and Fire Captains at the municipal comparables get to the top salary quicker than do County Fire Fighters and Fire Captains.

The evidence also establishes that there is a significant disparity in the salary of County Fire Fighters and Fire Captains *vis-à-vis* their counterparts in both the municipal units in Milwaukee County and other comparable airports. For 2005 the average Fire Fighter top step salary among the 11 Milwaukee County municipal fire departments (excludes Milwaukee 440th and 128th) was $54,729 (the median was $54,541) whereas the Milwaukee County Fire Fighter top step salary under the County proposal would be $48,712 and $50,383 under the Union's final offer. In the case of the Fire Captain the average top step salary among the municipal fire departments in 2005 was $65,474 (the median was $65,432) and under the County's final offer the County Fire Captain top step salary would be $51,237 and under the Union's proposal would be $52,995. The evidence regarding the salaries among the 9 comparable airports (excludes Milwaukee 440th and 128th) for 2005 shows that the average top step for Fire Fighters was $59,250 (the median was $59,275) and for Fire Captains it was $69,601 (the median was $74,479). For 2006 the Fire Fighter average top step salary among the municipal fire departments was $56,446 (the median was $56,172) and under the County's final offer the County Fire Fighter top step salary would be $49,686 and under the Union's final offer it would be $53,154. For Fire Captains the average top step among the municipal fire departments was $67,775 (the median was $67,395), and under the County's final offer the Fire Captain top step would be $52,261 and under the Union's proposal it would be $55,910. The evidence regarding the salaries among the 9 comparable airports (excludes Milwaukee 440th and 128th) for 2006 shows that the average top step for Fire Fighters was $60,753 (the median was $59,342) and for Fire Captains it was $76,106 (the median was $74,786). The obvious conclusion to be reached from these numbers is that the Milwaukee County Fire Fighters and Fire Captains lag far behind their municipal and airport comparables.

The County argues that now is not the time to be granting any "catch-up" wage increases in light of both the fiscal conditions of both the County and the airlines. The Union counters that if now is not the time 2007-2008 will surely not be the time because the 'me too' agreement the County has with AFSCME District Council 48 for 2007-2008

will prevent the County from granting any salary adjustments for airport firefighters. The undersigned finds the County's arguments unpersuasive for several reasons. First, the County acknowledged the need for "catch-up" in 2002 and it proposed a solution to the Airport Director that was never acted upon for unknown reasons. It is three later and the County still has not proposed any "catch-up" in its final offer. Second, the evidence undeniably supports the Union claim that County Fire fighters salaries lag far behind their comparables, and the Union correctly argues that because of the County's "me too" agreement with AFSCME District Council 48 the County will be unable to voluntarily grant any "catch-up" pay in the next round of negotiations. While a "catch-up" increase would be possible without triggering the "me too" agreement with AFSCME, it could only happen as a result of an arbitration award. But, the parties are in arbitration now and no reason has been advanced as to why the Union should be required to jump through this hoop a second time when the issue has been joined in this case. Not much will likely be different in 2007-2008 other than the employees will have fallen farther behind. Third, while the County is experiencing a fiscal crisis there is no evidence the airport is, and furthermore, the cost of any "catch-up" pay increase will not directly and immediately impact the County's finances as the costs will be absorbed by the airlines utilizing the airport. And, while the airline industry is also suffering financially the amount involved in this dispute viewed in the context of overall airline finances is insignificant. Further, Heimlich, Economist with the Air Transport Association of America testified he could not identify any direct consequence of these costs being passed on to the carriers.

When the "catch-up" aspect of the Union's final offer on salary is factored out its offer tracks the County's (2% and 2%) and is not out of line with the CPI. Clearly, the cost of its entire salary proposal is far in excess of the applicable CPI increases, but in the undersigned's opinion a catch-up adjustment, such as is proposed in this case, need not be evaluated in the context of the CPI. This dispute is not about protecting purchasing power *per se*, but rather is about being compensated comparably with others performing the same work.

Thus, the Union has made the case for a salary "catch-up" adjustment and the County acknowledged the need for catch-up in 2002 and made a proposal to the Airport Director to address the matter. Yet, in its final offer the County does not propose any monies for a

"catch-up" adjustment to salaries, apparently in reliance upon the County and airline financial crisis, and its claim that the Union has voluntarily agreed over the years to the salaries it now claims have fallen out of line with the comparables. The County correctly notes that the Union could have sought redress for this issue in arbitration over the years but has not. But, that fact that does not dictate that merely because it chose not to litigate its prior contracts, therefore, it is not entitled to address the matter in this bargain. The question of whether a catch-up adjustment is warranted and, if so, how much should it be must be addressed on its merits. No persuasive claim has been made that a "catch-up" adjustment is unwarranted or that it will exacerbate either the County or airlines' financial situations. And, when the County's 2005 and 2006 2% and 2% ATB salary increase is subtracted from the Union's 5.5 % and 5.5% proposed salary increases the 7% difference in salary increases over the two year contract period equals the 2003 7% adjustments the Human Resources Department proposed to the Airport Director in 2002 (2 new top steps of 3% each and a 1% adjustment to all steps). While it is true that the Union's "catch-up" adjustment applies to all salary steps and not just the top step and the increases occur earlier in each contract year than under the County offer, when compared with the County's proposal that does not include any "catch-up" adjustment, the Union's salary proposal is the more reasonable in the undersigned's opinion.

Sick Leave – LIFO/FIFO:

Both parties have a proposal for which sick leave bank active employees' sick leave usage should be drawn from first. The County's proposal is referred to as the FIFO proposal, meaning that sick leave days should be taken from the 100% bank until it is exhausted and only then should the days be taken from the 25% bank.[1] The Union's final offer, on the other hand, is referred to as the LIFO proposal, meaning that sick leave days should be taken from the 25% bank until it is exhausted and only then should the days be taken form the 100% bank.

[1] The 100% bank refers to those sick leave days the employee has accrued that he/she will receive full payment for at the time he/she retires and the 25% bank refers to those sick leave days the employee has accrued that he/she will only receive payment for 25% of at the time he/she retires.

As was the case with its salary proposal the County argues that its proposal regarding which sick leave bank a sick day should be taken from, the 100% bank or the 25% bank, matches an internal pattern that has been established by its settlements with six other of its bargaining units. It is true that at the time of the hearing in this case six other bargaining units had agreed to the County's FIFO sick leave proposal. But, as noted earlier herein, the Deputy Sheriff's, Attorney's, and Nurses bargaining units received what could be characterized as a *quid pro quo* in return for their agreement to this proposal. In this bargaining unit the County's offer does not contain any such improvements. More importantly, however, is the fact that the County agreed with AFSCME District Council 48 to the same proposal that is included in the Union's final offer before me. That bargaining unit comprises 76% of the represented employees that bargain with the County and arguably any agreement reached with that, the largest bargaining unit, is more of a benchmark than multiple agreements reached with many smaller units that together comprise only 24% of the County's represented employees. The County argues that if the Union's proposal is adopted in this case it will discourage other units from reaching voluntary settlements with the County before the AFSCME contract is resolved. Maybe that will be so, but in any event that is not a basis for ignoring a settlement the County has reached with the bargaining unit containing 76% of all represented employees in the County that is identical to the Fire Fighters final offer on this item. The fact is the AFSCME settlement significantly diminishes, if not overcomes the persuasive value of the earlier settlements the County reached with the much smaller bargaining units. Should six settlements covering 1270 employees carry more persuasive value that one settlement covering 4122 employees? I think not when one is examining whether a pattern has been established. And, if it is reasonable enough to gain the support of the largest number of represented employees and is a settlement that is significantly more costly to the County than the settlements reached with the other six bargaining units then surely it cannot be said that the Fire Fighter sick leave proposal is unreasonable.

So, when taking into account that other bargaining units that were part of the alleged pattern received additional contractual improvements and that the County settled with its AFSCME bargaining on the same sick leave language as the Union's LIFO

proposal here, the undersigned concludes that the Union's final offer on sick leave should be selected over the County's proposal.

EMT Stipend:

The Union's final offer contains a proposal to pay those Fire Fighters and Fire Captains who are licensed as Emergency Medical Technicians an additional 1.5% of their base salary. The Union's proposal for EMT pay is characterized as part of the "catch-up" it is seeking. All 18 members of the bargaining unit are licensed as EMTs and would benefit from this proposal. The Union contends this proposal will cost $12,303 over the contract term. It argues that its proposal is consistent with the external municipal fire department comparables as 6 of the 11 fire departments provide EMT pay. The County counters that 54.5% of the fire departments in Milwaukee County do not pay a stipend for an EMT certification. It also argues that the County pays employees for the time spent in training to acquire the license, and only one other fire department in the county does so. Also, the County argues that the Union has offered no rationale, justification or *quid pro quo* for its proposal.

The evidence is that 6 of the 11 municipal fire departments in Milwaukee County provide for an EMT stipend. The amount of those stipends range from a low of $300 in Cudahy to a high of $1128 in Oak Creek with the average being $641.17 and median being $549. The Union's proposal of 1.5% of the employee's base salary means that the EMT stipend under the Union's proposal, if adopted, would in calendar year 2005 range from a low of $487.88 to a high of $774.29 per employee for an average of $683.51 per employee. The median payment would be $687.00 for calendar 2005. Thus, the Union's EMT proposal, if adopted, would place Milwaukee County at $42 above the external municipal fire departments' average and $136 above the median of those comparables. While there are only a simple majority of municipal fire departments providing an EMT stipend, the Union's offer does have support among those comparables. There is no record evidence as to whether any of the airport comparables provide an EMT stipend.

In light of how far the County Fire Fighters and Fire Captains salaries lag behind both the external municipal fire department and airport comparables the Union's minimal EMT stipend proposal made as part of what it describes as its attempt to "catch-up" is

reasonable. The Union's proposal is stated as a percentage of base salary and, thus, the cost of the stipend will increase as employees' base salaries increase, and the proposal also increases the "catch-up" percentage increase over the term of the two year agreement from 7%. Nonetheless, I am still persuaded that under the circumstances it is a reasonable proposal and should be adopted.

Summary:

After examining each proposal I have concluded that the on the most significant issue, salary the Union's proposal is more reasonable than the County's, and therefore, is favored and should be adopted. Regarding the second most significant issue, sick leave, I have concluded that the Union's proposal is favored over the County's, and therefore, should be adopted. And, with respect to the least significant of the three disputed items, EMT stipend, the Union's proposal is slightly favored and therefore, should be adopted.

Therefore, based upon the evidence, testimony, arguments, and application of the statutory criteria contained in Section 111.77(6) Wis. Stats. to the facts of this dispute the undersigned enters the following

AWARD

The Union's final offer is selected and shall be incorporated into the parties' 2005-2006 collective bargaining agreement.

Entered this 19th day of June 2007.

Thomas L. Yaeger

Thomas L. Yaeger
Arbitrator