In the Matter of an Arbitration
of a Dispute Between

CITY OF MADISON

and

DANE COUNTY, WISCONSIN,
MUNICIPAL EMPLOYEES UNION,
LOCAL 60, AFSCME, AFL-CIO

Case 250
No. 64064
INT/ARB-10283

Decision No. 31217-A

Appearances:

Mr. Mike Deiters, Labor Relations Manager, and Mr. Brad Wirtz, Labor Relations Specialist, Human Resources Department, City of Madison, City-County Building, Room 501, 210 Martin Luther King. Jr. Blvd, Madison, WI 53703, appearing on behalf of the City of Madison.

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Dr, Madison, WI 53717, appearing on behalf of Dane County, Wisconsin, Municipal Employees Union, Local 60, AFSCME, AFL-CIO.

ARBITRATION AWARD

The City of Madison (City or Employer) is a municipal employer maintaining its offices at the City-County Building, 210 Martin Luther King, Jr. Blvd, Madison WI 53703-3345. Local 60, AFSCME, AFL-CIO, (Union) is a labor organization maintaining its offices at 8033 Excelsior Dr., Madison, WI 53717. At all times material herein, the Union has been the exclusive collective bargaining representative of certain employees in a bargaining unit consisting of position classifications listed in the collective bargaining agreement who are employed by the City, excluding managerial, supervisory and confidential employees.

The City and the Union have been parties to a series of collective bargaining agreements, including one covering the 2002-03 term. On October 11, 2004, the instant petition was filed with the Wisconsin Employment Relations Commission (Commission) requesting that the Commission initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. An investigation was conducted by a member of the Commission's staff which reflected that the parties were deadlocked in their negotiations. On December 27, 2004, the parties submitted their final offers to the Investigator, as well as a stipulation on matters agreed upon. The Investigator notified the parties that the investigation was closed and the Commission that the parties remain at impasse. The Commission certified that the conditions precedent to the initiation of arbitration as required by statute had been met. On January 24, 2005, the Commission ordered the parties to select an arbitrator from a panel of arbitrators submitted by the Commission. In a letter dated February 21, 2005, the

Commission advised the undersigned that he had been selected as the arbitrator in this matter to select the total final offer of either the City or the Union. Hearing was held on May 9, 2005, in Madison, WI, at which time the parties were afforded the opportunity to present evidence and make arguments as they wished. The hearing was transcribed. The parties filed briefs and reply briefs. Full consideration has been given to the testimony, exhibits and arguments of the parties in issuing this Award.

FINAL OFFERS

City:

Wages: increase 2% effective the pay period that includes July 1, 2004, and 2% effective the pay period that includes July 1, 2005.

Paid Leave: modify the Holiday sections as listed below:

14.03 HOLIDAYS:

The following days are established as paid holidays for permanent full-time and permanent part-time employees: New Year's Day, Martin Luther King, Jr's. Birthday (the third Monday in January), Memorial Day (the last Monday in May), Independence Day, Labor Day, Thanksgiving Day, December 25th, and Three and one half (3.5) Floating Days. . .

The three and one half (3.5) floating holidays are to be taken on days selected by the employee and subject to the approval of the department head.

14.09 PAID LEAVE TIME:

1. The day after Thanksgiving shall be a paid leave day and ~~City offices and departments shall be closed from 12 o'clock noon for the remainder of the day on Good Friday.~~ City offices and departments, unless otherwise required, shall be closed ~~on the day after Thanksgiving~~. ~~In those cases where persons performing required duty cannot be granted this time off on Good Friday, one-half (½) day compensatory time off shall be granted at a mutually agreeable time. The intention of this provision is to grant each employee one-half (½) of their respective work day off with pay. For the day after Thanksgiving, a full day shall be granted off.~~ Employees who are required to work the day after Thanksgiving will be granted one (1) day of compensatory time off.

Union:

Wages: increase 2.5% effective the pay period that includes January 1, 2004, and 2.5% effective the pay period that includes January 1, 2005.

ARBITRAL CRITERIA

Section 111.70(4)(cm) MERA states in part:

7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

1. The lawful authority of the municipal employer.

2. Stipulations of the parties.

3. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

4. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

5. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

6. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and

conditions of employment of other employees in private employment in the same community and in comparable communities.

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

8. The overall compensation presently received by the municipal employees, 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.

1. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

10. 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 on Brief

The Union argues that the comparable pool should include the city of Milwaukee, as well as the other ten largest cities; that neither the Madison School District nor Dane County should not be included in the comparison grouping; that in terms of the arbitral criteria of the factor given greatest weight, there are no state laws or directives that limit the Employer's ability to pay for either offer; that in regard to the factor given greater weight, the local economic conditions are more favorable in Madison relative to the comparable communities; that the Union's offer is strongly supported by external comparisons; that the Union's offer better reflects the cost of living; that the internal settlement does not establish a controlling pattern; that the City's offer is inferior to the internal settlements; that the City is improperly attempting to change the status quo through arbitration; that arbitrators place a heavy burden on the proponent of a change in the status quo; that neither the Shabaz decision nor the letter from the Freedom from Religion Foundation establish a need for the Employer's proposed change in the status quo in this case; that the external comparisons demonstrate support for the Union's position; and that no need for a change is demonstrated.

More specifically, the Union argues that the main issue in this dispute is the wage issue; that the issue has three sub-issues: the identity of the comparables, the amount of the increase, and the timing of the increase; that with respect to the comparables, the Union has established a strong justification for continuing to use the formula that has been long used by the parties: a comparison grouping comprised of the ten largest cities in the state; that the City's attempt to engage in "comparable

shopping" should be rejected; that with respect to the increase, the external comparables provide overwhelming support for the Union's offer of 2.5% each year; that additional support is provided by consideration of the growth in the cost of living; that the City's offer is indefensibly low when compared both with the external comparables and when compared to the growth in the cost of living; and that the City's proposal to delay the timing of the increase by approximately six months each year is contrary to the bargaining history of the parties; and that it is likewise not supported by the external comparables.

Finally, the Union argues that the only shred of support for the City's offer is the fact that three bargaining units have agreed to terms which include those offered by the City here; that the notion that a small minority of bargaining units, covering less that one-third of represented employees, can establish a pattern that can be imposed on all the other employees should be rejected out of hand; that, moreover, upon closer inspection, it is evident there is more "tucked away" in those agreements than the City has included in its offer here; and that, thus, the City is not even offering what it purports to be an internal settlement pattern.

In regard to the secondary issue, the City is proposing to modify the status quo by eliminating the paid leave day for Good Friday and replacing it with a floating holiday; that the justification offered by the City for this change is a mistaken notion that a decision by Federal Judge Shabaz has relevance to the facts at issue here; that the Union has demonstrated through the cross examination of the City's witness and the argument above that the bases for the City's concern are lacking: that the contract, unlike the statue found unconstitutional, does not contain any purpose to promote religion; and that the City offices are not closed and services are not stopped on Good Friday, and will not be, regardless of the offer selected by the arbitrator.

In conclusion, based on the record as a whole and the reasoning contained herein, the Union requests the arbitrator to find that the Union's final offer more closely adheres to the statutory criteria and that the arbitrator order the inclusion of the Union's final offer into the 2004-2005 labor contract.

District on Brief

The City argues that, while it will make specific arguments based on the pertinent statutory criteria, ultimately the City's position with regard to wages is based on one basic arbitral principle; that the principle is that the arbitrator should not break the internal pattern of settlements; that the Union failed to provide any evidence of a compelling reason to break the pattern; that while the City recognizes that the internal comparable criteria is not controlling, in this case there has been no evidence presented indicating the need for catch-up pry or loss of position when compared to any set of external comparables; that percentage increases among comparable employers should not carry the day when under the City's proposal, employees in the most populated position within this bargaining unit move to the number one spot in terms of actual wages paid and remain in that position for the duration of the collective bargaining agreement; that all of the ills associated with a break in an internal pattern are well documented in interest arbitration decisions; that the damaging impact of a break in pattern cannot be overstated; that the City and the unions representing City employees have

been very successful in negotiating amicable agreements with regard to wages for several decades; and that the City begs the arbitrator not to jeopardize that relationship in order to provide an extra half percent per year to arguably the highest paid municipal employees performing similar duties within the State of Wisconsin.

In evaluating the criteria of economic conditions within the jurisdiction, the City also argues that arbitrators tend to give greater weight to the wage increases negotiated by municipal employers within the jurisdiction of the employer; that in comparing the City's proposed wage increase to the Madison Metropolitan School District (District) and Dane County (County), the City wage offer falls in the middle of the two employers in terms of both cost and lift while the Union's offer exceeds the negotiated wage package of both the District and the County; that under the City's offer, City employees move from being paid $186.31 less per year than County employees performing similar duties in 2003 to $5.78 more per year in 2005; that the City continues to pay employees over $400 per year more than the District; that the massive loss in state aid, coupled with dramatic increases in health insurance costs, have a direct impact on the City's economic conditions; that in terms of this criterium, the City is very near the average in terms of median household income and unemployment rate; and that the City's wage proposal is right in line with the other public sector employers within the City's jurisdiction.

In terms of the stipulations of the parties, the City argues that, unlike many of the comparable proposed by the Union (i.e., Green Bay, Eau Claire, and Oshkosh), the City agreed to continue to pay for the full cost of health insurance premiums; that this is not just another run of the mill, status quo stipulation, as is witnessed by nearly every recent interest arbitration decision in Wisconsin; that the City is under tremendous pressure, both economic and political, to achieve such concessions through collective bargaining and interest arbitration, if necessary; that the City did not agree to this stipulation because it is somehow blind to the spiraling costs of health insurance; that in negotiations with the Police Union, Teamsters, and SEIU, this agreement was made as a quid pro quo for the wage increases of 2% in July of each year of the contracts; and that to now give this Union a greater wage increase and the same health insurance benefits as the other internal comparables would undermine each of these negotiations and the quid pro quo that made an agreement possible.

In terms of internal comparables, the City has settled contracts covering 805 union employees for 2004 and 2005; that these contracts include the same wage package that the City proposed in its final offer to this Union; that the City has maintained a consistent internal settlement pattern for over ten years; that the City strongly disagrees with any arguments that, because this Union is the largest unit, following the internal pattern would constitute "the tail wagging the dog;" that the City has settled contracts with the second and third largest unions representing employees of the City; that this group includes the second largest Police Officers Association and the largest Teamster Local with the State of Wisconsin; that these are not just a couple of pushover, management directed unions that the City was able to strong-arm, trick, or otherwise coerce into making a bad deal; that if the arbitrator was to give this Union the same health benefits and a larger wage increase, it would not only undermine the City's ability to negotiate in the future, but it would insult the intelligence of the labor leaders who have already agreed to the package; that if there is a need to make an adjustment in order to keep

pace with comparable employers and stay competitive in the job market, the City is willing to make that adjustment through negotiations; that arbitrators, through their decisions in interest arbitration, have required employers to do this by clearly indicating that they will break an internal pattern when actual salaries fall below that of the comparables; that there are no market concerns and no concerns that employees' wages will fall below the wages paid by comparable employers; and that, given this reality, Local 60 employees should receive the same wage increase as the other settled units.

The City also argues that the selection of external comparables is of extreme importance to both the parties; that although the City argued for the use of the top ten most populated cities within Wisconsin in a previous Award, between these parties, Decision No. 28147-B (Flaten, 1995), the Award provides no evaluation, no analysis, and no recognition of any comparable set of employers; that it may be to the City's detriment in future negotiations, given the fact that the City pays substantially more than the comparables provided by the Union, but the City argues that a smaller set of comparables is more appropriate; that the City believes it would be remiss to exclude the County from the list of comparables; that it is not unprecedented to include both counties and cities in a list of external comparables, citing Decision 29595-A (Bellman); that although the incorporation of a school district may be less common, the City insists that the MMSD is an appropriate comparable for many reasons; and that the City argues that the five comparables it proposed at hearing are the most appropriate, but for the sake of argument, the City will discuss the wages of employees in Appleton and Waukesha, the next two cities nearest in population to the City.

In terms of the external comparables, the City employed a very commonly used method for evaluating wages within bargaining units that cover a wide variety of positions; that the City identified the most heavily populated classification with the bargaining unity and compared it to similar positions among the proposed comparable group; that 62 employees within Local 60 are classified as Administrative Clerk 1, the most populated classification; that there are nearly twice as many employees in this classification as there are in the next most populated classification; that under the City's wage proposal, employees with the selected classification move from number three in terms of base wages among the comparables in 2003 to number one in 2005; that the average percentage increase among this group of employers was 4.3% for the two years in dispute; that this is closer to the City's 4% lift than the Union's 5% lift; that two of the comparable employers incorporated split wage increase with a 0% increase for one of the two years; that in terms of both cost and lift, the City's proposal ranks number four out of six in total percentage increase, while the City ranks number two under the Union's proposal; that although the City of Madison may be in the bottom half of the comparables in terms of percentage wage increases, the City achieves and maintains the top spot in terms of actual wages paid under the City's wage offer; that this is arguably the reason why the Union has focused their entire case on percentages and side stepped any discussion of actual wages paid; and that percentages should not act to break the internal pattern, especially given the face that the City's percentage wage offer can not be seen as totally out of line, having offered more in terms of both cost and lift than the City of Kenosha and Dane County for the 2004-2005 contract term.

In terms of the Good Friday issue, the City argues that its proposal allows an employee the choice of taking a half-day off on Good Friday or using their half-day floating holiday at another time during

the year; that the State of Wisconsin defended the Good Friday holiday law in court; that in a federal court decision, it was found that Wisconsin's Good Friday holiday has the undisputed effect of favoring Christianity over other religions in violation of the First Amendment; that the City understands that this ruling is not controlling; that the City's Labor Relations Office and City Attorney's Office determined that the City's half day paid leave on Good Friday could be construed in a court of law to favor Christianity, thereby violating the Establishment Clause; that in addition to the State, Dane County and the Madison Metropolitan School District have changed their collective bargaining agreements in order to eliminate the Good Friday holiday; that the State exchanged the half-day holiday for a half-day floating holiday, very similar to the actions proposed by the City; that, therefore, the City has shown a compelling need exists to make the change it proposed; that the City asserts it is hard to imagine any undue hardship associated with allowing employees a choice of days off as opposed to mandating Good Friday as the appropriate day for leave; that the City has offered a reasonable quid pro quo; that the three units settled with the City, none continue to have any benefit associated with Good Friday; and that employees represented by the Teamsters and SEIU now have an addition half-day floating holiday instead of a paid leave half day on Good Friday.

In conclusion, the City argues that its final offer is consistent with the statutory criteria and other arbitral standards considered in determining the more reasonable of the two final offers; that, therefore, the City requests that the Arbitrator select the City's final offer for inclusion in the 2004-05 collective bargaining agreement between Local 60 and itself.

Union on Reply Brief

The Union argues that the City's benchmark analysis based on only one position is a woefully insufficient basis to make any conclusions about the merits of the offers of the parties; that the fact that the position may be the most populated position in the unit does little to overcome this problem; that the City asserts the existence of an internal pattern of wage settlements when, in fact, there is no such internal settlement pattern; that the City claims that it has maintained a consistent internal settlement pattern for over ten years, citing City Exhibit 8; that a review of City Exhibit 8 shows plainly that over this period of time, the unions indicated received the same increase in only four of those years; that in the other six years, the differences were as much as one percent per year; that the other interesting fact to note is that City Exhibit 8 only lists the police, transit, nurses, and the unit at issue here; that no data is indicated about how the laborers, firefighters, building trades, attorneys and the two library units settled over those years; and that not only has the City actually proved that a consistent internal settlement patter is the exception rather than the rule, it raised questions about its presentation of this data by not including all of the City's units in the exhibit.

The Union also argues that the City's claim that the employees in the instant unit should not receive the wage increase proposed by the Union is that they are arguable the highest paid municipal employees performing similar duties within the State of Wisconsin; that, apparently, the City is drawing this conclusion for its single-position benchmark which it compared with only two cities, one school district and one County; that, even if it were true that the City of Madison employees were the highest paid in the State, the fact that such standing was the result of voluntary collective

bargaining reflects a mutual believe that these employees merited that status; that, moreover, the mere fact that employees are paid well does not justify providing wage increases that will not keep up with the cost of living, nor does is it justify providing wage increases that are substantially below the external settlement pattern; and that the City is attempting a sort of "catch-down" argument that simply has no factual basis in the record.

In terms of the health insurance issue, the Union asserts that the City argues that the fact that the parties have stipulated to the continued City payment of the full cost of health insurance premiums and that, therefore, its offer is superior to the agreements in other cities, such as Green Bay, Eau Claire, Janesville and Oshkosh; that, for example, the city pays a higher percentage of the premium than does Green Bay, but the Green Bay plan is a better plan; that, furthermore, the City of Green Bay provides a dental insurance benefit that the City of Madison does not provide; that Janesville pays nearly all of the premium for dental insurance, all of the premium for vision insurance, and a substantial portion of the insurance premiums for retirees; that Madison provides none of these benefits to its employees; that in none of these communities has the employer engaged in any wholesale shifting of costs to employees; that, in each case, the employer has at least maintained its effort, and in some cases has agreed to changes which permit employees to avoid costs that they had previously incurred; that in three of the four cities, the employer is paying for additional benefits that are not provided to the City of Madison employees; that despite maintaining effort, despite providing superior plans and additional benefits, these cities were also able to provide for wage increases which reflected the increases in the cost of living; that there is no reason why a city like Madison cannot do likewise; that the City argues that its agreement to continue paying 105% of the lowest cost insurance premium was a quid pro quo for the wage increase of 2% in July of each year of the contracts; that a careful review of the transcript does not reveal any evidence that there was any connection between the two; and that the City never even made this claim at the hearing.

The Union argues that the City's arguments about the strength and quality of representation of the police and transit unions are self-serving and completely irrelevant to the question before the arbitrator in this case; that the police unit received numerous increases in "off the pay schedule" compensation that undoubtedly made the settlement of that contract possible; that there are no such sweeteners offered to the Union in this case; and that, instead, the Union has been asked to swallow the bitter pill without any of the "spoonful of sugar" offered to others.

In terms of the Good Friday issue, the Union asserts that Good Friday has been for decades a "paid leave day" under the Local 60 contract; that the City's concern about a lawsuit regarding Good Friday is greatly overstated; that the action challenged a statute which explicitly stated that the purpose of the holiday was to permit employees to engage in worship; that state offices were closed and services ceased; that none of this applies to the instant matter; and that since that decision, there have been decisions rendered which have permitted a Good Friday holiday to continue.

District on Reply Brief

The City argues that the Union's brief provides misleading information in arguing for the exclusion

of Dane County and the Madison School District from the comparability pool; that the City of Madison went through a series of interest arbitration in the early to mid 1990's regarding residency; that the arbitrators relied heavily on internal comparables in deciding these cases; that none of the arbitrators provided any evaluation or accepted any specific set of external comparables in rendering their decisions; that Local 60 has argued for the inclusion of Dane County and the Madison School District in the comparable pool in the past; that City, County and School District employees live and work in the same community, shop at the same grocery stores, and pay the same price for gasoline; that the economic conditions within the jurisdiction are essentially equal for the employer and employee; and that this should put these two employers head and shoulders above the rest in comparability.

In addition, the City argues that all of the interest arbitrations referenced by the Union took place prior to the incorporation of the "greater weight" criteria in the State Statutes; that this criterion places a premium on the economic conditions within the employer's jurisdiction; that it seems a bit deceptive for the Union to make a big deal about the economic conditions within the City's jurisdiction and, at the same time, vehemently argue against the comparability of any of the public sector employers within that same jurisdiction; that Local 60 has argued for the exclusion of the City of Milwaukee based on size differential in the past; that it seems that the City and the Union have each been inconsistent in their respective arguments regarding the appropriate set of comparables; that in previous interest arbitrations, there has been little indication of which arguments were more convincing; that this is why the selection of an appropriate set of external comparables is of extreme importance to both the City and the Union for many obvious reasons that go well beyond the scope of this arbitration; that the City provided objective criteria for its proposed set of comparables; that the City included two comparably sized public sector employers, operating in the same community, under the same economic conditions and bargaining laws, with represented employees performing similar clerical duties, as well as the three cities closest to the City in population; that this is not comparable shopping; that this is limiting the pool to the most comparable employers; that the fact that the most comparable employers offered the most similar wage increases should not come as a shock; that the further removed from the City of Madison in terms of jurisdiction and populations, the more disparity in percentage wage increases and actual salaries; that this is why the disparity in pay between comparable positions in the City and the County will be as little as $5.78 annually if the City's offer is accepted; that disparity in pay between Madison and Appleton is $6000 plus, even given Appleton's more favorable economic conditions; that limiting the pool to the most comparable communities also makes sense given Madison's distinct position within the state; that Madison is roughly three times larger or small than every city in Wisconsin, with the exception of the three cities that the City originally proposed as comparables; that it is difficult to try to give an arbitrator a good look at the comparability of compensation when the pool is limited to five; and that when the comparable pools of employers start going beyond that, it makes it much more difficult to provide quality information regarding anything other than simple percentage increases in pay, which tell about half the story.

In terms of the internal comparables, the City argues that the number provided by the Union indicating the number of bargaining unit employees that have not settled are inflated; that the Union indicates that Local 60 represents 1169 employees and Local 236 represents 269 employees; that

these numbers include every seasonal employee that was employed at any point during the year, regardless of whether the employee was employed for six months or six minutes; that at no point during the year would Local 60 and Local 236 represent that number of employees, as seasonal employees come and go continually; that City exhibit 7 provides a much more realistic look at the number of employees represented by Local 60 and Local 236; that in Marathon County, Arbitrator Torosian rejected the employer's claim of an internal pattern because the settlements obtained covered four small bargaining units and less than 23 percent of the represented employees; that the City of Madison's internal comparable group includes its second and third largest bargaining units and somewhere between 30 and 38 percent of the City's represented employees; and that there is simply no comparing the internal pattern proposed by Marathon County to the City's current internal pattern of settlements.

DISCUSSION

Introduction

There are two issues in dispute that this arbitrator must resolve in finalizing the parties' 2004-05 collective bargaining agreement.

In terms of the first issue, Good Friday, the Union proposes the status quo which gives employees a one-half paid leave day the afternoon of Good Friday. The City offers a one-half day floating holiday as a quid pro quo for eliminating the contractually specified one-half paid leave day on the afternoon of Good Friday.

In regard to the second issue, wage increase, the Union proposes a 2.5 percent increase in January of each year. In simplest terms, this has a 5.0 percent cost with a 5.0 percent lift. The City offers 2.0 percent increase in July of each year. This amounts to a 2.0 percent cost with a 4.0 percent lift. The Union bases its case on external comparables, while the City is relying on internal comparables.

A third issue which will help decide the second issue is the proper comparable pool. The Union proposes the top ten cities in Wisconsin based on population: Milwaukee, Madison, Green Bay, Kenosha, Racine, Appleton, Waukesha, Oshkosh, Eau Claire, and Janesville. The City proposes Dane County, the Madison Metropolitan School District, and the cities of Green Bay, Kenosha, and Racine. Resolving this issue will need to occur prior to the review of the wage proposals and, therefore, will be discussed after we evaluate the offers regarding Good Friday but prior to the determination of the appropriate wage increase.

Good Friday

The City wants to eliminate the half day paid leave for the afternoon of Good Friday and replace it with a half day floating holiday. The City is concerned that, based upon a court decision involving

the State of Wisconsin,[1] it could become party to a lawsuit regarding its collective bargaining agreement with the Union for designating Good Friday as a paid leave day.

I have no doubt that the City has a valid concern here. In terms of resolving the concern, the exchange of a one-half day floating holiday for the one-half paid leave day on Good Friday afternoon would appear, on its face, to be a benefit for the bargaining unit members, giving them some control over when they take that half-day off. One would think the unit's members would jump at such a choice, cheering that now they can take a half day off on a religious holiday that has significance for them or, more likely, taking that half day off to celebrate their birthday or, less likely, their wedding anniversary.

But the Union opposes it on several grounds. First, the Union asserts that the problem that the federal judge found with the state law is not present in this case. In the state law, the Good Friday time off was given "for the purpose of worship." I find myself agreeing with Judge Shabaz on this occasion because I have no doubts that this violates the Establishment Clause of the U.S. Constitution. And there is no question that this type of language is not included in the contract in question. So on this point the Union is correct.

Nonetheless, that does not mean that the City's specification of Good Friday afternoon as a half day paid leave is free from attack. This contract's language may not be nearly as blatant as the state statute, but it certainly can be attacked, and the outcome is far from clear. Indeed, Good Friday is not like Easter or Christmas, both of which have taken on a secular aspect separate from the religion they sprang from. Easter with its bunnies and eggs and Easter bonnets and Christmas with its Santa Clause and holly and unbelievable commercialism protect these two holidays, somewhat, from attack as advocating Christianity when included in some labor contracts. The same cannot be said for Good Friday which only a has a Christian and therefore religious aspect, with no secular component to protect it. So when those who police such things find this language in this contract, they certainly will have the option of challenging it in court.[2]

Second, the Union also points out that the Good Friday half-day paid leave has been around since almost forever. In this, too, the Union is correct. But the fact that language which might offend constitutional guarantees has been present for a long time does not protect it from being attacked in

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[1] Freedom From Religion Foundation, Inc, v. Thompson, 920 F.Supp. 969 (Shabaz, 1996).

[2] The Union correctly points out that the letter of complaint that brought this to the City's attention had to do with the cessation of services on Good Friday afternoon, something which appears has been rectified without changing the contract.

court or lost in arbitration.

Third, the Union also notes that the court's decision has been out for some time, and that no one has challenged the contract clause, thus arguing that there is no immediate threat, if there is a threat at all. Maybe so, maybe not.

But the City is attempting to preempt a very possible problem, to make the changes necessary to eliminate even the possibility of judicial attack, therefore ensuring the contract's compliance with the Constitution and ensuring that the City will not be dragged into a possibly long and possibly expensive lawsuit to defend this language. Such money, I believe the Union would agree, would be much better spend raising these employee's salaries and benefits than enriching the attorneys who would be involved.

But the Union does not see it that way, and has remained adamant that it will not exchange a locked in half day paid leave for a half day floating holiday. As this seems to defy common sense, I need to look at the real issue here from the Union's point of view: that is, the Union believes that the City has not offered a large enough quid pro quo, that other units who made this change[3] received more than a half-day floating holiday in exchange, and that this unit should too, maybe as much as a full floating holiday. Maybe so, though there is not enough evidence to make any findings of fact here.

Even so, if this was the only issue, or if this was the major issue, I would say that it makes only good sense to eliminate the half day paid leave on Good Friday afternoon, that replacing it with a half day floating holiday is a fair exchange, that other governmental units (the State, County and School District) have taken such a step, and that giving unit members a half day floating holiday in place of the half day paid leave on Good Friday is to their advantage.

Therefore, I would say "City wins" and wrap up this Award. But this is not the main issue facing this arbitrator: the money is, though the issue of Good Friday has a financial side to it; nonetheless, the wage increase proposals will decide the outcome of this award.

Comparable Pool

It is amazing that the City of Madison, known for its powerful unions and strong city government, has had very few interest arbitrations. When there have been arbitrations, it has usually been about a specific issue, such as residency. It is also amazing that through the many years of collective bargaining and interest arbitration, no clear-cut set of comparables have been established.[4] The Union argues that Arbitrator Flaten established the top ten cities as the comparable pool, as argued at

[3]And other entities, including the State of Wisconsin, Dane County and Madison Metropolitan School District.

[4] i.e., City of Madison (Public Library), Decision No. 20807-A (Yaffe, 1984), and City of Madison, Decision No. 28147-B (Flaten, 1995).

that time by the City. But the City disagrees that the arbitrator did so, and I do, too. In that Award, the arbitrator mentions the top ten cities as the comparable pool, but no where does he select them to be as such. The Award was not decided based on comparables but on reasonableness.

In terms of creating a comparable pool, the City is correct when it states:

> The City of Madison is an anomaly in the State of Wisconsin when compared to other Wisconsin cities. As the second largest City in the State, the City of Madison is almost twice as large as Green Bay (the number three city in population) and almost three times smaller than Milwaukee (the number one city in population).[5]

Indeed, based upon population, one could make a good argument for excluding all of the proposed comparables. So we have to look past the reasons for excluding them and look for the reasons to include them.

In any case, the City asserts that the pool should include Dane County as they provide some of the same kind of services and, at times, work side-by-side. The Union focuses on how the City and the County are different and, indeed, they are. But the similarities out weigh the differences in this case, so I will include Dane County in the comparable pool. The City also asserts that the comparable pool should include the Madison Metropolitan School District. Here the differences definitely outweigh the similarities, for reasons discussed at length in other awards, so I will exclude the District.

The City also asserts that the City of Milwaukee should be excluded. Other than the fact that Milwaukee is about 2.8 times larger than Madison, the City does not offer any other concrete argument as to why Milwaukee should be excluded, though it does note that at least one time in the past, the Union had argued the same thing. But that type of size comparison between Milwaukee and Madison could eliminate the City of Racine, which the District wishes to include, for Madison is several times larger than Racine.

But in a situation like this, comparable pools are best when the entity in question can be compared to like entities with both greater and lesser population. In this case it is difficult to have higher populated entities as Madison is the second largest city in the state. Including Dane County alleviates this a bit, but as there is no stated reason to exclude Milwaukee other than size and as Milwaukee is the only city larger than Madison, I will include it.

The City and the Union agree that Green Bay, Kenosha and Racine should be included in the comparable pool, and I have no reason to disagree. The Union also proposes the inclusion of the cities of Appleton, Waukesha, Oshkosh, Eau Claire, and Janesville. These cities range in population from 61,000 plus to 70,000 plus. **See Table 1 below.** Having a larger comparable pool has the advantage of negating any aberrations in settlements, but these cities are all smaller than Madison, significantly smaller. I do not have a strong feel for this either way, so I will use them as a secondary

[5] Brief at page 13.

pool, if necessary.

In fact, I don't have a strong feel for the overall question of the comparable pool. There was not enough in the record to make a totally informed decision on this. Perhaps an arbitrator down the road will have a better record and be able to, with more confidence, determine the appropriate comparable pool. As the record is as it is, I will go with the comparables as described above.[6]

Table 1: Comparison of Population and Number of Permanent Employees

	Population: City	Population: Union	Permanent Employees
Milwaukee		586,941	NA
Dane Co.	426,526		2092
Madison	208,054	218,432	NA
Green Bay	102,313	101,467	950
Kenosha	90,352	92,871	772
Racine	81,885	80,266	860
Appleton		70354	NA
Waukesha		66,840	NA
Oshkosh		63,237	NA
Eau Claire		62,496	NA
Janesville		62,496	NA

Internal Comparables

The City argues vehemently that this arbitrator should find for its final offer to increase wages by two percent each July 1, stating that the City's position with regard to wages is based on one basic

[6]The parties also argue about unemployment rates, employment growth rates, medium household income, per capita income, tax levies, and several other statistics, all of which cancel each other out or have no impact on this issue.

arbitral principle. The City requests that the arbitrator not break the internal pattern of settlements because the Union failed to provide any evidence of a compelling reason to break the pattern.

The City also offers an emotional argument to this arbitrator for him to find for the City:

> The City of Madison and all of the Unions representing City employees have been very successful in negotiating amicable agreements with regard to wages for several decades. The City begs the arbitrator not to jeopardize that relationship in order to provide an extra half a percent per year to arguably the highest paid municipal employees performing similar duties with in the State of Wisconsin.[7]

Table 2: Size of Bargaining Units: Two Views[8]

Units: Settled – Number of Members	**City**	**Union**
Teamsters Local Union 695	410	414
Madison Professional Police Officer's Association	270	284
United Professionals for Quality Health Care	35	34
Subtotal	**715**	**732**
Percentage of Total	**34.6%**	**28.3%**
Units: Not Settled – Number of Members		
Dane County, AFSCME – City Unit	709	1169
Fire Fighters Local 311	270	284
Laborers Int. Union of North America - Local 236	235	269
Dane County, AFSCME – Library Clerical Unit	65	71
Dane County, AFSCME – Librarian Unit	40	41
City of Madison Attorneys' Association	13	12
Trades Council of South Central WI	9	8

[7] City Brief at page 4.

[8] The City counts only permanent employees while the Union counts all represented employees, including seasonal employees. Other differences in their counts are hard to explain as both sides said they received their information from the same City office.

Subtotal	**1350**	**1854**
Percentage	**65.4%**	**71.7%**
TOTAL	**2065**	**2586**

The City bases its argument regarding an internal pattern on the fact that three unions have settled for exactly what the City is offering the Union in this matter: two percent each July 1.

The City has ten bargaining units, so three units amount to 30 percent of the units. The number of members in these units vary, depending of whether you use the City's or the Union's numbers. **See Table 2 above.** In any case, the percentage ranges from 28.3 (Union) to 34.6 (City). Giving the benefit of the doubt to the City, that amounts to just a bit over one-third of the permanent employees.

On the other side, seven units or 70 percent of the units and somewhere between 65.4 percent (City) and 71.7 percent (Union) of the employees have not settled. When does a pattern take hold? Certainly, if a majority of an employer's bargaining units have settled at the same pay rate, that gives the employer a strong argument that a pattern has been established. If the majority of the employer's employees have settled at a certain wage increase, most would agree that certainly looks like it might be a pattern. When a majority of the employer's bargaining units incorporating a majority of the employer's employees agree to a wage proposal, that certainly sounds like a pattern.

But those are not the cases here. We have a minority of bargaining units representing a minority of represented employees who have settled at what the City is offering this unit. But, the City argues, two of the three units which settled are the City's second and third largest units. This is true. But the total number of employees in these two bargaining units is less than the number of employees in the unit involved in this arbitration. Throw in the third settled unit, which is the eighth largest (or third smallest, depending on how you want to look at it) of ten units, and the number of employees who have settled, 715, is very close to the number of permanent employees in this unit, using the City's number of 709. But the City excludes from its calculations seasonal employees represented by this unit. When those employees are included[9] this unit outnumbers all three settled units 1169 to 715.

Table 3: Annual Wage History: 1994 - 2005

	94	95	96	97	98	99	00	01	02	03	04	05	Tot.
General Increase	3	3	4	3	3	3	3	4	3	2	2	2	35
Local 695	3	3	4	3	2.6	3	3	4	3	1	2	2	33.6

[9] And shouldn't they be? The City offers no convincing argument why these employees, many of whom have worked for the City for many years, should be excluded from the calculations.

Police Assn	3	3	4	3	2.75	3	3	4	3	1	2	2	33.75
SEIU 1199W	3	3	4	3	3	2.7	3	3.25	3	2	2	2	33.95
Local 60: City	3	3	3.45	3	3	2.95	2.97	4	3	2	**2**	**2**	34.37
Local 60: Union	3	3	3.45	3	3	2.95	2.97	4	3	2	**2.5**	**2.5**	35.37

In addition, there are six other unsettled units with a total membership between 632 and 685, a minimum of 88% of the number of settled employees , which, if the City succeeds in its argument, will also have the City's offer imposed on them.

The City also argues that its unions and itself have had a consistent internal pattern of wage settlements for the last ten years. There are two problems with that argument, both of which show up in **Table 3 above**. First, in actuality, it is only in five of the past ten years that all of the units settled for the same amount.[10] The City asserts that those other five years, some units took comparable money in other ways. The record does not have enough information to validate that assertion. Second, only the three units who have settled for 2004-05 and this unit are included here. There is no data for the other six units so no way of seeing how close the parties have been to maintaining equity in salary settlements for all ten units over the years.

Table 4: Comparable Wage Increases and Effective Date

Unit	2004 % increase	Effective Date	2005 % increase	Effective Date	Cumulative increase
Dane County[11]	0.0[12]	–	1.0 2.5	Jan. 1 July 1	2.25 cost 3.5 lift
Green Bay	1.88	Jan. 1	2.8	Jan. 1	4.68
Kenosha	0.0	–	3.0	Jan. 1	3.0
Milwaukee	3.0	Jan. 1	3.0	Jan. 1	6.0
Racine: DPW	0.0	–	4.25	Jan. 1	4.25
Racine: City Hall/Police	2.5	Jan. 1	3.0	Jan. 1	5.5

[10] In 2000, the difference is only .03%, which is negligible, so it is counted as fitting the pattern.

[11] This is for the clerical unit only; information from the highway unit was not provided.

[12] The employees received an additional five days of vacation on a one time basis to use in 2004.

Nonsworn					
Madison: City	**2.0**	**July 1**	**2.0**	**July 1**	**4.0 lift 2.0 cost**
Madison: Union	**2.5**	**Jan. 1**	**2.5**	**Jan. 1**	**5.0 lift 5.0 cost**

The City certainly wants to protect its relationship with the three units that have settled, as well it should; indeed, the policy behind supporting internal patterns is the preservation of employee morale and continued bargaining success, both of which I as an arbitrator want to support. But settling three units of ten comprised of 34.6 percent of the employer's employees doe not make a binding internal pattern that can now be enforced upon the seven bargaining units comprised of 71.7 percent of the City's employees. Therefore, the City's main argument fails.

External Comparables.

In reviewing the settlements among the external comparables, the lift ranges from 3.0 percent to 6.0 percent. City's 4.0 percent lift is on the low end, coming in six of eight, but at least it is in the ballpark. **See Table 4 above.** Because of the lift, the City argues that its offer is the preferable. While a rather shaky argument on its face, the City supports it by offering a benchmark analysis to show that, even under its offer, total salary for City employees moves from being third in the comparables to being first.

For its benchmark analysis, the City picked the single most populated job title, Administrative Clerk 1. There are nearly twice as many employees in this classification as there are in the next most populated classification. The City then presents volumes of information comparing the Administrative Clerk 1 with comparable positions in the City's preferred comparables. From that analysis, it determines that this bargaining unit may be the highest paid employees in the state.

There is a huge problem here. Benchmark analysis is a great way to get a sense of how employees in one unit are being paid compared to employees in the comparables. But here we have only one benchmark, Administrative Clerk 1, and only 62 of the employer's 709 employees or 8.7 percent fill this position.[13]

The benchmark then focuses on said Administrative Clerk 1 position with ten years experience. But for a benchmark analysis to be truly effective, it has to cover a range of positions and experience. While the City had a good start to its benchmark analysis by picking the most populated position in the bargaining unit, we have no sense of how the other 90% plus of the unit's employees line up to the comparables.

[13] Or 5.3 percent of the unit's employees, using the Union's count.

The other major problem for the City's offer comes in the form of cost, which, when stated that way, is framed from the employer's point of view. From the employee's point of view, it is cash in the pocket. The City offered no strong arguments as to why it backed up the start date for its 2% increases to July 1. None of the other comparables did so. And while two of the comparables, Dane County and the City of Kenosha, had a wage freeze in 2004 (though, as noted above, Dane County employees received an additional five days off in 2004), the cost of each of these settlements was higher than the cost of the City's offer, meaning that even though the two comparables had wage freezes in one year of the two year agreement, the amount of money that went into the employee's checkbook was greater than the City's offer by the end of the contract term.

So while the City could have argued that 2% was a reasonable settlement in each of the two years and that its position on Good Friday was the more reasonable of the two, and while I certainly would have looked hard at such an offer and be very tempted to select it over the Union's offer, the July 1 effective date of the wage increase moves the City's position to one which is unreasonable and unsupported by the external comparables.

Other Issues

The parties agree that the "Factor given greatest weight" is not an issue in this arbitration. In terms of the "Factor given greater weight," the parties provided the arbitrator with many documents, charts, tables and statistics. And while shared revenue has decreased and insurance premiums have increased, everything points to the City of Madison having a favorable economic condition.

The lawful authority of the municipal employer, the interests and welfare of the public and the financial ability of the unit of government to meet the costs of either proposal were not argued by the parties and are, therefore, not in dispute. The overall compensation presently received by the employees was argued by the City, but its data was limited to the one position, Administrative Clerk 1, too little to make any findings in this criterium.

Table 5: Offers of the Parties compared to the Cost of Living

	% Increase 12/02 -12/03	Average % Increase 2003	% Increase 12/03 - 12/04	Average % Increase 2004
CPI-U	1.9	2.3	3.3	2.7
	2004 Lift	2004 Cost	2005 Lift	2005 Cost
Employer	2.0	1.0	2.0	1.0
Union	2.5	2.5	2.5	2.5
	Difference	Difference	Difference	Difference
Employer	0.1	-1.3	-1.3	-1.7

Union	0.6	0.2	-0.8	-0.2

In terms of the stipulations of the parties, the City argues that acceptance of the 2% each July 1 by the three settled units was the quid pro quo for the City not seeking increased contributions for health insurance from employees, as the external comparables do. In terms of the quid pro quo, other than the assertion of the City, there is no support in the record for this statement. In terms of the health insurance contribution of the comparables, the Union counters that the comparables not only provide better health insurance, but they also provide dental and vision insurance, something the City of Madison does not provide. These arguments counteract each other. The Consumer Price Index favors the Union. **See Table 5 above.**

The parties made other arguments, all of which have been reviewed and found wanting in one way or another.

For these reasons, based upon the foregoing discussion, the Arbitrator issues the following

AWARD

That the final offer of the Union shall be incorporated into the collective bargaining agreement between the parties for the 2004-05 term.

Dated at Madison, Wisconsin, this 23rd day of September, 2005.

By _____
James W. Engmann, Arbitrator