In the Matter of the Final and Binding
Interest Arbitration of a Dispute Between

BEAVER DAM CITY EMPLOYEES
UNION AFSCME LOCAL 157

and

CITY OF BEAVER DAM

Case 92
No. 64553
INT/ARB-10408
**Decision No. 31687-A**

Arbitrator: James W. Engmann

Appearances:

Mr. Bradley C. Fulton, Attorney at Law, at hearing and on brief, and Ms. Mindy Rowland Buenger, Attorney at Law, on brief, DeWitt, Ross & Stevens, S.C., Two East Mifflin Street, Suite 600, Madison, WI 53703-2865, appearing on behalf of the City of Beaver Dam.

Mr. Lee Gierke, Staff Representative, AFSCME Council 40, P.O. Box 727, Thiensville, WI 53092, appearing on behalf of City of Beaver Dam Employees Union Local 157, AFSCME, AFL-CIO.

## ARBITRATION AWARD

The City of Beaver Dam (City or Employer) is a municipal employer which maintains its offices in the Beaver Dam City Hall, 205 South Lincoln Avenue, Beaver Dam, WI 53916. Beaver Dam City Employees Union, AFSCME Local 157 (Union), is a labor organization which maintains its mailing address at P.O. Box 727, Thiensville, WI 53092, and which, at all times material herein, has been the exclusive collective bargaining representative for employees of the Department of Public Works, Parks and Recreation Department, Wastewater Treatment Utility, City Hall, Engineering Department, and Non-professional Library employees, but excluding supervisory, confidential, temporary and seasonal employees, law enforcement and fire fighting employees, Water Treatment Utility employees, and elected and appointed officials of the City of Beaver Dam, with regard to wages, hours and conditions of employment.

The Employer and the Union have been party to a series of collective bargaining agreements, the last of which expired on December 31, 2004. The parties exchanged their initial proposals and bargained on matters to be included in the 2005-06 successor agreement. On February 28, 2005, the Union filed a petition with the Wisconsin Employment Relations Commission (Commission) requesting the Commission to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA). An investigation was conducted by a member of the Commission staff on October 13, 2005, which reflected that the parties were deadlocked in their negotiations. On or before May 8, 2006, the parties submitted their final offers and stipulation on matters agreed upon, after which the Investigator notified the parties that the investigation was closed. The Investigator also advised the Commission that the parties remained at impasse. On May 15, 2006, the

Commission certified that the conditions precedent to the initiation of arbitration as required by statute had been met and ordered the parties to select an arbitrator from a panel of arbitrators submitted by the Commission.

The parties selected the undersigned to serve as the impartial arbitrator in this matter and advised the Commission of its selection. On June 5, 2006, the Commission appointed the undersigned as arbitrator to issue a final and binding award, pursuant to sec. 111.70(4)(cm)6. and 7. of MERA, to resolve said impasse by selecting either the total final offer of the Employer or the total final offer of the Union. Hearing was originally scheduled for July 11, 2006, but was postponed by request of the parties. Hearing was held on July 24, 2006, in Beaver Dam, WI, at which time the parties were afforded the opportunity to present evidence and make arguments as they wished. The hearing was not transcribed. The parties filed briefs and reply briefs, the last of which was received September 18, 2006, after which the record was closed. Full consideration has been given to all of the testimony, exhibits and arguments of the parties in issuing this Award.

## FINAL OFFERS

**Union**

| | | |
|---|---|---|
| Wages: | Effective January 1, 2005 | 3.0% across the board increase |
| | Effective January 1, 2006 | 2.0% across the board increase |
| | Effective July 1, 2006 | 1.0% across the board increase |

Language Addition:

Employees who have their required CDL suspended will continue to be employed by the City to the extent the department supervisor has determined that work within the employee's job description is available and provided the employee is expected to regain his/her CDL at the end of the suspension period. The decision of the department supervisor is final and cannot be grieved unless the decision is arbitrary and capricious.

No more than two (2) employees are eligible for the accommodation described above at one time; however this number may be waived by the City. If more than two (2) employees need an accommodation at any one time, the City has the sole discretion to decide whether to provide an accommodation or terminate the employment of the affected individual. Employees with the most seniority shall be the employees eligible for the accommodation.
In the event the employee is not expected to or fails to regain his/her CDL by the end of the suspension period, the employee shall be terminated. In no event shall the time exceed thirteen (13) months from the date of suspension or revocation of the

CDL. During such suspension, the employee must be able to obtain a Class D occupational license and be able to operate Class D vehicles within their normal working hours. Employees who have had their CDL suspended will not be eligible for overtime assignments if those assignments require a CDL.

If the disqualification offense involves alcohol and/or drug use, the disqualified CDL employee shall complete an alcohol and/or drug education program approved by the employer at the employee's expense and on the employee's own time.

If the disqualification offense involves alcohol and/or drug use while operating a City owned commercial motor vehicle, the employee shall be terminated.

All employees who are required to have a valid CDL have an affirmative duty to report any offenses, tickets, or violations they receive to their department supervisor as soon as possible if it could result in disqualification of the employee's CDL. Failure to report violations on a timely basis will make the employee ineligible for the provisions of this agreement, and may result in discipline up to and including discharge.

**Employer**:

1. ARTICLE XIII – DEPARTMENT OF PUBLIC WORKS, PARKS AND RECREATION DEPARTMENT

    2. **13.01 - Hours of Work**: insert the word "typical" before the word "regular" so that the first sentence reads, "The typical regular schedule of hours for full-time employees shall be eight (8) hours per day (7:00 a.m. to 12 noon and 12:30 p.m. to 3:30 p.m.), Monday through Friday, forty (40) hours per week." and add the following second sentence: "The City, however, reserves the right to adjust employees' work schedules, from time to time, as needed to avoid unnecessary overtime costs."

2. ARTICLE XXII – CLASSIFICATION AND WAGES

| | |
|---|---|
| Effective January 1, 2005 | 3.0% across the board increase |
| Effective January 1, 2006 | 1.0% across the board increase |

## 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 Employer wants statute 111.70 to be ignored; that the external comparability group should include the following municipalities: Fort Atkinson, Hartford, Monona, Oconomowoc, Portage, Sun Prairie, Watertown, Waupun, and Whitewater; that secondary comparables should consist of Horicon, Mayville, and Dodge County; and that the external settlements support the Union's offer.

In terms of health insurance, the Union recognized the problem of rising health care costs; that the Union played an active role in multi-party discussions about how to address this issue; that once the discussions reached a consensus on a positive way to approach the health insurance issue, the Union moved forward; that both parties recognize the savings that resulted from this change to a high deductible Health Savings Account; that the Union could easily have tactically forestalled this change to use this savings as a tool in an attempt to get the City to move on the wage issue; that two other bargaining units did not accepted this change and that the savings that the City had projected from health insurance was lost; that the 92.5% premium sharing arrangement that the City had previously negotiated with this unit is extremely favorable to the City among the comparables; and that not only does the City have the most favorable premium sharing arrangement of the comparables, but in 2006, it also had the second lowest cost of any of the comparables.

The Union also argues that its wage proposal is in line with the comparables; that the City falls in the middle of the comparables in terms of new construction; that despite the comparables including some with higher and some with lower levy limits with which to deal, not one has a wage proposal

as low as the one from the City; that every one of these municipalities also saw increases in the cost of the employer portion of the health insurance premium; that the City has no basis for its claim that it cannot afford a modest wage increase, accompanied by a decrease in the health insurance cost that offsets the wage increase; that internal settlements do not support the Employer's offer; that only one of the City's units has settled; that it is the smallest unit with only seven members, less than 10% of the represented employees; that the City has no financial problem with supporting the Union's offer; that the facts support the assertion that the City is in very good financial condition; that the unit's membership has shrunk from 40 to 33 employees over the past three-plus years; that wastewater employees are not covered under tax support; and that the cost of living criterium favors the Union wage proposal.

In addition, the Union argues that the City is attempting to change a long standing provision of the labor agreement; that the Union is arguing for the status quo; that the City's proposal would have a dramatic impact on the employees; that the City's proposal has the potential to reduce overtime that is earned by these employees; that the City would expect to wake up employees in the middle of the night, have them go out in the worst conditions of the winter, and receive no additional compensation; that the City has offered no quid pro quo for this elimination of a bargained benefit; that alteration of the status quo carries a substantial burden for the moving party; that arbitrators have consistently found that changes to the status quo should not be achieved in arbitration; that the Employer's proposal fails the test to meet the burden in this case; that the Employer has not demonstrated a need to alter the status quo; that the status quo is supported by external comparables; that the City's testimony regarding internal contracts is disingenuous; and that the City's exhibits should be given little weight as they provide little clarity to the instant dispute.

In conclusion the Union asserts that its offer is the more reasonable; that it is the arbitrator's role to attempt to place the parties in the same position as that which they would have achieved if they had been able to reach a voluntary agreement; that the Union has responded to the City's concerns of rising health care costs by agreeing to a significant change in the health insurance plan; that the change implemented on January 1, 2006, produces a savings that offsets the Union wage proposal for 2006; that there is no consistent internal settlement pattern with only the smallest of the local unions settled and the other four in interest arbitration; that external comparable are supportive of the Union's proposal; that the total cost of the Union offer in 2006 is less than the cost for 2005; that the City's financial situation is strong; that the Union's response to the change in the CDL regulations are workable and address the issue; that the City has done nothing to substantiate a need for a change in the "hours of work" language; that the City has not offered a quid pro quo; and that the City's offer ignores both the internal and external comparables on this issue.

**Employer on Brief**

The City argues that the statutory arbitral criteria, especially the factor given greatest weight and the factor given greater weight, heavily favors the City's wage proposal; that the City's hands are tied because of the levy limits; that the factor to be given greatest weight in these proceedings is the imposition of the levy limits by Governor Doyle and the Wisconsin Legislature; that levy limites

only allow a municipality to raise its levy in proportion to its net new construction from the preceding year with a floor of 2%; that the levy limits are in effect for budget years 2006 and 2007; that the City was allowed to raise its 2005 levy 3.17%; that the most the City could increase its levy for its 2006 budget was $188,108.45; and that the City can not raise its levy beyond that amount without suffering significant financial penalties from the state.

The City also argues that the economic conditions of the City are not favorable; that 2005 was not a good year; that the City's 2005 budget did not include wage increases for any employees; that, nonetheless, the City suffered a loss of $194,684; that 2006 health insurance costs are significantly over-budget; that the City's 2006 budget only provides for a 2% wage increase in 2005; that this does not cover the City's 2005 wage increase in its final offer; that, thus, no matter which final offer is selected, the City will be over-budget with respect to the Union's 2005 wages; that the City's citizens are hard-working, law-abiding and tax-paying individuals; that they are not a wealthy group nor is the City a wealthy community; that building permits are down for 2006; that the City cannot afford the Union's final offer; that as long as levy limits are in place, the days of automatic 3% wage increases are over; that the public is best served by the City's final offer; that the citizens of Beaver Dam are already over-taxed; and that the City's tax burden is 9.8% higher than the state average.

In addition, the City argues that a review of wages and benefits paid to comparable employees heavily favors the City's final offer; that all unrepresented employees, including all members of the City management, received no greater than a 2% wage in crease in 2005 and a 1% increase in 2006; that in terms of the private sector comparables, the Union's members are vastly overpaid; that only 17% of Dodge County's private employers pay more that 90% of their employees' health insurance premiums; that in terms of public sector comparables, the City argues that in the age of levy limits, public sector comparables are no longer relevant; that to the extent the Union's brief attempts to rely on the alleged public sector comparables identified during the hearing, the City will distinguish those communities; that the City will fully address the issue in its reply brief; and that the City does not believe that any of the proposed external comparables identified by the Union are true comparables for purposes of the Arbitrator's analysis.

Further, the City argues that the 2006 health insurance changes are of tremendous monetary value to the employees; that the premium savings and payments to employees are equivalent to a 1.25% across-the-board wage increase for the Union; that employees get to keep their HSA dollars if they do not use them; that there are no out-of-pocket costs for those employees who stay within the Unity plan; and that the improved flex plan provides even greater benefits for employees.

In terms of its flex-time proposal, the City argues that this simply codifies existing practice of not paying overtime when work is not available; that summer painting crews' hours change periodically from the hours of work established in the collective bargaining agreement; that the City's street sweepers are on the same sort of flexible schedule embodied by the City's offer; and that, as such, the City is not asking for a deviation from the status quo but, rather, a codification of existing practices.

Regarding the Union's CDL language, the City argues that it is unnecessary; that the City has

implemented a CDL policy which is, of course, subject to the protections for all unit employees contained in the collective bargaining agreement; that the Union's CDL language is incomprehensible; that the Union's language is very ambiguous; that it leaves a lot to be desired; and that it is unnecessary as the current collective bargaining agreement provides ample protection for the unit's employees.

In conclusion, the City argues that times are tough right now in Beaver Dam; that there is no doubt about it; that sound financial decisions by City leadership are an incredibly important variable but that, at the end of the day, the City only has an additional $188,109.45 to spend in 2006; that those dollars are gone; that when the State imposed levy limits on local government, the message was loud and clear: you must spend taxpayer dollars more wisely; that this is exactly what the City has done and what the City is proposing in its final offer; that the days of the automatic 3% wage increases are over; that, indeed, those 3% wage increases have set the City back decades in terms of equipment, facilities, infrastructure, and systems; and that the citizens of Beaver Dam demand and deserve better.

**Union on Reply Brief**

The Union argues that the City misrepresents the financial impact of the offers; that the City mis-characterizes the overall City financial picture; that the City does not acknowledge the savings that have been generated by the reduction in the number of employees in the bargaining unit; that the City does not acknowledge the fact that there is a significant cash reserve available to the City at its own discretion to use as it sees fit; that the City's painting of a bleak economic picture is not included when the City prepares a prospectus and is not revealed in the Consolidated Financial Reports; and that in all of the analysis that the City portends to have done to demonstrate that it cannot afford the Union offer, no where does it acknowledge the fact that the wage increase is more than offset by the savings generated by the agreed upon changes in the health insurance.

In addition, the Union argues that the City use of comparables is outside of arbitral opinion; that in regard to the comparables, the City stated on brief that it would "fully address the issue in its reply brief;" that if the City had a position on the external comparables, it should have addressed it in its brief; that if the City comes forward with new arguments in its reply brief, the arbitrator should disregard all of them as they should have put forward in the City's brief; and that this tactic is unacceptable; and that the private sector data is not supported by any information regarding the nature of the work and whether the employees are represented for purposes of collective bargaining.

The Union asserts that the City claims on brief that there is no need for the change in the hours of work language; that the City leaps from that position to the conclusion that, therefore, the change is justified; that the City has failed to justify that a change is needed; that the City's arguments on CDL language are not on mark; and that the Union has attempted to formulate a reasonable policy that is workable for both parties to address a situation prior to it happening so as to avoid unnecessary and expensive grievances and arbitrations.

**City on Reply Brief**

The City argues that it has offered the Union significantly more than the 2006 health insurance savings; that the total cost of the Union's offer is $98,103; that the total cost of the City's offer is $64,700; that the health insurance savings for this unit was only $33,425; that, using the Union's figures, the cost of the wage packages increases dramatically; that the statutory criteria heavily favors the City's final offer; that from the Union's perspective, external comparables criterion is the only factor that matters; that, obviously, the Legislature disagrees; that there is a factor to be given "the greater weight," a factor to be given "greater weight," and a list of "other factors" to be considered; and that external public sector comparables are only a portion of one of the many "other factors" to be considered.

In addition, the City argues that it cannot afford the Union's offer; that taking money out of the general fund to pay ongoing wages is fiscally irresponsible; that it would drain the City's savings account and tremendously hurt the City's bond rating, thus hampering its ability to borrow money at more favorable rates; that the Union's argument that because the number of employees in this unit has decreased over the years affects the City's ability to afford the Union's proposal makes no sense whatsoever; that the workforce will only need to be reduced more if the City's proposal is not selected; and that if the Union's offer is chosen, some combination of the City using its general fund, workforce reductions and ignoring infrastructure upgrades will have to occur.

In terms of external comparables, those identified by the Union are not "comparable" communities to Beaver Dam because the City's tax rate is higher than a number of other communities; its equalized values of property in the City is significantly lower than a number of the proposed comparables; that the City's growth in equalized values over the last five years is significantly less than most of the other proposed comparables; that the average income tax return in the City is significantly lower than many of the proposed comparables; that there is not one comparable with a 4.25% wage increase; that they all fall somewhere between 2 and 3%; that this is consistent with the City's offer of 2.25%; that, quite frankly, with the imposition of levy limits, what some community 50 miles away agreed to pay for 2006 back in 2004 is irrelevant to the arbitrator's analysis; that, interestingly, however, three of the communities most similar to Beaver Dam – Whitewater, Horicon, and Mayville – are either unsettled for 2006 or have a smaller wage settlement than the City's proposal; that, nonetheless, an examination of external public sector comparables is not even a factor of its own; and that, as such, instead of placing intense focus on this factor, as the Union does, the law requires that it only be analyzed within a portion of one of the "other factors."

In regard to other issues, the City argues that how much inflation has risen over the last year is irrelevant with the imposition of levy limits; that, moreover, it is also irrelevant given the tremendous increase in energy costs over the last year; that those rising energy costs, combined with the levy limits, are the principle reasons why the City cannot afford the Union's proposal; that the health insurance savings to the Union's members are worth an additional 1.25% wage increase for 2006; that the Union admits on brief that its CDL policy is unnecessary; that the Union admits that the City's language on flexible work time is consistent with the status quo; and that, unlike the Union, all of the City's exhibits are supported by testimony from the hearing.

In conclusion, the City argues that when Governor Doyle and the Legislature imposed the levy limits, they did not, unfortunately, make any changes to the collective bargaining laws to soften the levy limits' impact on municipal employees; that while doing so certainly would be in the best interests of all parties in this dispute, the changes, unfortunately, did not happen; that, therefore, the parties must live with the law as it is – good or bad; that, in some ways, the levy limits are very good' that municipalities that are not as well-managed as Beaver Dam have been forced to get their spending under control; that it is also, obviously, a good thing that property taxes have remained relatively steady; that, however, levy limits leave municipalities such as Beaver Dam with an inability to pay anything more than a small wage increase; that certainly, the City wishes it could afford a 3% wage increase for its employees as that would undoubtedly result in, among other things, higher employee morale and job satisfaction; that City employees are honest, hard-working individuals who certainly have a right to pursue the best compensation package they can obtain; that, however, they need to be realistic; that the City has done all it can to proivide the wage increases contained in its Final Offer; that the 1% for 2006, coupled with the 1.25% wage increase from the health insurance savings, results in a generous increase of 2.25% in the days of levy limits; and that the City simply cannot afford the Union's final offer.

## DISCUSSION

### Introduction

Several issues are in dispute in this matter. In terms of wages, the City offers 1% on January 1, 2006, while the Union offers 2% on January 1, 2006, and 1% on July 1, 2006. The City also proposes two changes in language in the hours of work section for the Department of Public Works and the Parks and Recreation Department. First, it proposes adding the word "typical" before the word "regular" so that the sentence would read, "The typical regular schedule of hours for full-time employees shall be eight (8) hours per day (7:00 a.m. to 12 noon and 12:30 p.m. to 3:30 p.m.), Monday through Friday, forty (40) hours per week." Second, the City seeks to add the following sentence: "The City, however, reserves the right to adjust employees' work schedules, from time to time, as needed to avoid unnecessary overtime costs." The Union seeks extensive language regarding loss of CDL for off-duty incidents. The wages are the major issue, though both parties argued long and hard for its language changes. The decision regarding wages is impacted by both the levy limits and health insurance changes. Let us begin there.

### "Greatest Weight" Criterion

Section 111.70(4)(cm)7 of MERA states that the arbitrator shall consider and shall give the greatest weight to any enactment which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The City pointed out at hearing, on brief and on reply brief that, therefore, the factor to be given greatest weight in these proceedings is the imposition of the levy limits by the Governor and the Wisconsin Legislature. The City is absolutely correct, of course. The City notes without contradiction that it is allowed to raise its 2005 levy 3.17%, which translates into $188,108.45 for the 2006 budget.

As noted above, the City also argues that the economic conditions of the City are not favorable; that 2005 was not a good year; that the City's 2005 budget did not include wage increases for any employees; that, nonetheless, the City suffered a loss of$194,684; that 2006 health insurance costs are significantly over-budget; that the City's 2006 budget provides for a 2% wage increase in 2005; that this does not cover the City's 2005 wage increase of 3% in its final offer; and that, thus, no matter which final offer is selected, the City will be over-budget with respect to the Union's 2005 wages.

This is a bleak description, one diametrically opposite to the description stated in a prospectus issued by the City on August 22, 2005, which states, in part, as follows:

> The City continues to enjoy a robust development pace. Building permit data shows that in excess of $180,000,000 of development value has been created in the City over the course of the past nine years. . .2004 was another strong development year for the City. Almost $62 million in building permits were issued and over $56 million of that was for new constructions. . .The City's bright development outlook is further enhanced by the excellent health of its three tax incremental finance districts. TID District #2 is currently projected to dissolve in 2007 and add in excess of $70 million to the general tax base. The remaining districts are both projected to close prior to their mandatory closure date.

Now I know that one puts one's best face forward when it is advantageous, and one's worse when that is beneficial to one's cause. I suspect the truth is a combination of both and lands somewhere in between. What is not explained in the record is why the 2005 City budget did not include wage increases for any employees, causing such wage increases to come out of the 2006 budget. Even without the wage increases in the 2005 budget, the City still came up short by $194,684, adding, the City thinks, to its argument that it is in dire straights. But it is also not clearly explained why the City has reduced its mill rate the last four years and, specifically reduced the mill rate from $8.99 per thousand in 2004 to $8.26 per thousand in 2005, an 8.12% decrease, especially when it had not budgeted for wage increases and was to have a shortfall of $194.684 in its 2005 budget.

**Changing Concepts of Fiscal Responsibility**

The answer appears to be political. Over the last several years, the City's briefs note that the voters of the City of Beaver Dam have elected fiscal conservatives to the City Council and have elected and re-elected by a substantial margin a mayor who has made fiscal responsibility the central theme of his administration.

The problem, as I see it, is that the concept of a fiscal conservative and fiscal responsibility has morphed in the past six to seven years. On the national level, a modern fiscal conservative acting fiscally responsible appears to mean cutting taxes to let people keep more of what they earn, a noble goal, and then borrowing money to pay for the excess spending to keep or even expand programs

and initiate new programs which the people, that is, the voters, who elected the tax cutters want today, resulting, of course, in huge budget deficits. The politicians get the glory for being "tax cutters" while condoning the irresponsible policy of overspending and causing reckless over indebtedness, and the electorate gets to keep more money in their pockets from the noble tax cuts without having to suffer the loss of services such tax cuts require.

The scheme developed between the politicians and the electorate is simple: keep the money now, keep the services now, and foist the huge debt onto voters to come, that is, our children and grandchildren and anyone else who comes after the politicians have left office and the present voters have passed away. Of course the result of a program of tax cuts without spending cuts is that the resulting debt will be paid by voters down the road, with future politicians faced with huge debts incurred years earlier who, in all likelihood, will need to raise taxes and cut services to pay for the excessive spending and/or inadequate funding by those earlier politicians, which decisions were made for their political benefit and to the economic benefit of the voters of their times.

Perhaps I am a bit jaded.

The traditional concept of a fiscal conservative acting fiscally responsible meant, I believe, keeping budgets as lean as possible while providing core services and then taxing people no more or no less than the amount to pay for said budget. What a concept!

The modern concept of fiscal responsibility appears to be at work here, at least in part. The City reduced the mill rate by over 8% in 2005 and ended up $194,684 short of its 2005 budget, NOT including wage increases for its employees, which money was deferred to its 2006 budget. The City's 2006 financial obligations are further stretched because, while it offered a 3% wage increase to employees as their 2005 wage increase, an offer which was accepted, it only budgeted for a 2% wage increase in the 2006 budget. And this situation is compounded because the wage increases for 2006 must also come out of this budget. This seems to be a financial situation of some desperation, but a fiscal condition of the City's own making.

**Budget Shortfall**

In addition, the City argues that it will have a short fall of over $90,000 in terms of its health insurance budget, and asserts this is another reason it cannot afford to pay the Union's wage offer. But this is disingenuous as this unit did not contribute to this shortfall; indeed, this unit agreed to the changes in health insurance sought by the City, changes that saved the City considerable money, changes that saved the City more than the difference in the wage packages before this arbitrator. The City costs the savings from this unit agreeing to the changes in health insurance as $33,425 while the Union costs it as $39,569. In either case, the Union is not the cause of the health insurance budget shortfall. But, the City would argue, there is still the shortfall, which money must come from some where. But, the Union would argue, why punish this unit when it saved the City from a greater shortfall.

In any case, the record shows that two other City units also agreed to the insurance changes, again saving the City money, but two did not, such that the health insurance overage is caused by those two units choosing not to implement the City's health plan and not, in any way, by this unit. This unit could have held out its acceptance of the health insurance plan for its money package, holding the insurance issue as a carrot for the City to agree to the Union's wage proposal. But it did not. It agreed to implement the health insurance changes and is before this arbitrator defending its wage proposal, the cost of which is made up by the savings the City received from this unit's acceptance of the City's health insurance program.

Let me not be misunderstood here. The elected officials and managers who lead the City of Beaver Dam are sincere in their belief of and their commitment to running an efficient and cost effective city and providing reasonable and responsible tax savings for its citizens. I have no doubt that they care deeply about the City of Beaver Dam and its future, and that they want to be a part of creating a city whose infrastructure is strong and whose standard of living and services offered keeps people living here and draws others to the community.

The change in health insurance is a tremendous example of a fiscally responsible answer to a most complex problem. City officials showed great vision and insight in bringing together its five bargaining units and these City officials employed great skill and competence in working with its represented employees to create an insurance plan that provided savings to everyone. It was a win-win deal, the winners including the tax paying citizens of the City and the employees of the City who agreed to said changes. This success started by City officials and agreed to by the Unions should be emulated by municipal employers and labor organizations around the state.

**Impact of Criteria Given Greatest Weight**

Having said all this and with all of this going on, does the factor given greatest weight impact this decision? Of course. But does this mean that the factor given greatest weight determines this decision, irrespective of the other criteria. Of course not. Levy limits do not mean that an employer can unilaterally determine the amount it wishes to pay its employees and the way it wishes to do so. As arbitrators, we do not roll over and say "employer wins" because the employer has raised the issue of the factor given greatest weight. An employer carries a burden if it chooses to use this factor in support of its final offer, a burden met by showing that the employer has been fiscally responsible, that its offer is a reasonable response to its financial situation and its fiscal limitations, and that said offer meets, as best it can, the concerns and issues raised by the bargaining unit.

Based upon the proceeding, the view here of the impact on the criteria given greatest weight is a cloudy one at best. The Union has shown on this record that the cost of its proposal, including the savings generated by its acceptance of the change in health insurance, is **less** than the 2005 settlement, a settlement to which both the Union and the City are parties. How often does one see that? The City does not have to raise taxes or cut services to pay for this package – it only need allocate the money it agreed to pay for 2005 and it should even have a little change left over.

**Relevance of External Comparables**

So what to do? One way for arbitrators to determine the impact of the factor given greatest weight is to review other municipalities and see how they and their bargaining units came to grips with the levy limits. But wait: the City argues that, in the age of levy limits, public sector comparables are no longer relevant. In essence, it appears, the City is arguing that the arbitrator should give little or even no weight to what comparable communities are settling with their employees in the age of levy limits, to ignore, in essence, one criteria statutorily imposed upon arbitrators to consider in making these types of decisions.

The City notes that when the Governor and the Legislature imposed the levy limits, they did not make any changes to the collective bargaining laws to soften the levy limits' impact on municipal employees. The City argues that while doing so certainly would have been in the best interests of all parties in this dispute, the changes, unfortunately, did not happen and that, therefore, the parties must live with the law as it is – good or bad.

This is true, and yet the City acts as if the law has been changed such that "external comparables are no longer relevant." I do not see that language in the bargaining statute or the levy limits legislation; assuming the Governor and the Legislature knew what they were doing, I must assume that the levy limits were meant to be compatible with MERA, not only in terms of the factor given greatest weight but all of the factors to be considered, including external comparables. So I reject the City's argument that external comparables are no longer relevant to interest arbitration decisions. Let us look at the external comparables now.

**Criterium for Determination of Comparables**

The City argues that none of the proposed external comparables identified by the Union are true comparables to Beaver Dam for purposes of the Arbitrator's analysis. None. Why? Well, the City argues, because the City's tax rate is higher than a number of other communities, its equalized values of property in the City is significantly lower than a number of the proposed comparables, the City's growth in equalized values over the last five years is significantly less than most of the other proposed comparables, and the average income tax return in the City is significantly lower than many of the proposed comparables. Indeed, the County offers no comparables, consistent with its argument, as stated above, that such comparables are not relevant to this determination and that there are, in any case, no true comparables.

I fear the City has confused the concept of comparable with identical. If we had two or three identical communities, then we could review how they settled their collective bargaining agreements and apply those settlements to this community. But there is, of course, no such thing as an identical community, not even one, so we forced to look at communities that are similar in nature, based upon location, size, wealth and other factors, comparing the entity in question to those similar communities which become the community's comparables.

In describing the Union's choice of comparables, the City uses phrases such as "significantly higher

than a number of other communities," "significantly lower than a number of the proposed comparables," "significantly less . . . than most of the proposed comparables," and "significantly lower than many of the proposed comparables." By their very nature, a number of the comparables will be higher than the employer in question in any particular category and a number will be lower. Most or many of the comparables will be less than or significantly lower than the employer in question in other categories. If one looks hard enough, one will find that the comparables are also more or significantly higher than the employer in still other categories.

That is the essence of comparables: they are different in specifics but since they are similar in location, size, wealth and other factors, a review of how they settle with their represented employees gives an arbitrator guidance on what a reasonable settlement should look like.

**Determination of Comparables**

The first place for an arbitrator to look at in determining comparables for any specific employer and bargaining unit is any other arbitration between the parties in which an arbitrator has made such a determination. Once made, arbitrators are loathe to upset the comparable pool, believing stability in comparables offers the parties an on-going gauge by which to judge their own bargaining positions.

Unfortunately, for the sake of determining comparables, but fortunately, for the sake of a peaceful labor relationship, this Union and this Employer have never been to arbitration before. But this Employer and its police unit have been involved in an arbitration, and in his decision, the arbitrator made a determination of a comparable pool that is relevant to this proceeding.

In that case, the arbitrator included Watertown and Waupun as they are in the same county as the City. The parties agreed to the inclusion of Fort Atkinson, Monona, Oconomowoc, and Sun Prairie and the arbitrator concurred. The Employer argued for the inclusion of Portage and Whitewater, which the Union apparently opposed, but the arbitrator included them. The Union argued for the inclusion of cities of Mayville and Horicon which, it appears, the City opposed; the Arbitrator included them but because of their small size, he designated them as secondary comparables. He also included Dodge County, as argued by the Union, but, again, as a secondary comparable.[1]

Absent any convincing and compelling reasons to the contrary, I accept the comparable pool as previously determined. In this proceeding, the Union proposes the addition of Hartford. As the City's argument that external comparables are not relevant to this proceeding is rejected, and as the City offers no persuasive argument as to why Hartford should not be included as a comparable, and as Hartford appears to be a reasonable addition to the list, I will include Hartford as a comparable. Therefore, the comparables are as follows: Fort Atkinson, Hartford, Monona, Oconomowoc, Portage, Sun Prairie, Watertown, Waupun and Whitewater. If these comparables prove inadequate in resolving an issue, I will use the following secondary comparables: Horicon, Mayville and Dodge County.

[1] City of Beaver Dam (Police Department), Dec. No. 26548-A (Oestreicher, 1/91).

**Final Wage Offers Clarified**

The City offers a 1% wage increase across the board for 2006 while the Union offers a 2%/1% split.

**Table 1: 2006 Health Insurance Premium Paid in Percentages**

| **Primary Comparables** | **Employer** | **Employee** |
|---|---|---|
| Fort Atkinson | 100 | 0 |
| Hartford | 100 | 0 |
| Monona | 95 | 5 |
| Oconomowoc | 100 | 0 |
| Portage | 95 | 5 |
| Sun Prairie | 100 | 0 |
| Watertown | 100 | 0 |
| Waupun | 100 | 0 |
| Whitewater | not settled | not settled |
| **Average** | **98.75** | **1.25** |
| **Beaver Dam** | **92.50** | **7.50** |
| **Beaver Dam Ranking** | **8 of 8** | **8 of 8** |

But through its briefs, the City characterizes its offer as 2.25%, claiming the additional 1.25% comes from savings gained by employees from the change in health insurance. But this "savings" must be balanced by the amount that employees in this unit contribute to their health insurance.

And it is clear from the Table 1 above that employees in this unit contribute a significantly greater percentage of the health insurance premium than employees in comparable units. But it could be argued that even though the employees contribute more than comparable employees, the cost of the plan is so great that the employer is still paying more than comparable employers.

**Table 2: 2006 Health Insurance Premiums Paid by the Employer**

| **Primary Comparables** | **Single** | **Family** |
|---|---|---|
| | | |

| | | |
|---|---|---|
| Fort Atkinson | $399.50 | $995.30 |
| Hartford | $752.51 | $1726.83 |
| Monona | $409.59 | $1048.57 |
| Oconomowoc | $528.50 | $1316.60 |
| Portage | $379.53 | $945.53 |
| Sun Prairie | $337.42 | $787.45 |
| Watertown | $359.60 | $895.60 |
| Waupun | $607.26 | $1414.66 |
| Whitewater | Not settled | Not Settled |
| **Average** | **$471.74** | **$1141.69** |
| **Beaver Dam** | **$333.90** | **$827.97** |
| **Beaver Dam Ranking** | **8 of 8** | **7 of 8** |

By looking at Table 2 above, we see that is not the situation here, that in 2006, the Employer has the lowest or second lowest contribution amount among the comparables. It could also be argued that even though the employees pay a higher percentage for their health insurance, the cost of the plan is so small that they are still paying less for their insurance.

Again, Table 3 below shows that this is not correct, that these employees pay more per month in dollars. In addition, the Employer received significant savings by changing to the health insurance plan. The Union does not argue nor should it that its wage offer is really less than the 2/1% split it has on the table because the Employer saved X% on health insurance and, therefore, their wage offer is 2/1 - X%. So let us be clear that the offers on the table for wages are as follows: City 1% on January 1 and the Union 2% on January 1 and 1% on July 1.[2]

**Table 3: 2006 Health Insurance Premiums Paid by the Employee**

| **Primary Comparables** | **Single** | **Family** |
|---|---|---|
| For Atkinson | 0 | 0 |
| | | |

[2]This is not to say that such savings would not be considered in a total package analysis, but neither party argued from this perspective.

| | | |
|---|---|---|
| Hartford | 0 | 0 |
| Monona | $21.56 | $55.19 |
| Oconomowoc | 0 | 0 |
| Portage | $19.97 | $49.77 |
| Sun Prairie | 0 | 0 |
| Watertown | 0 | 0 |
| Waupun | 0 | 0 |
| Whitewater | Not settled | Not Settled |
| **Average** | **$5.19** | **$13.12** |
| **Beaver Dam** | **$19.98** | **$52.94** |
| **Beaver Dam Ranking** | **2 of 8** | **2 of 8** |

**Comparison of Wage Settlements**

In terms of settlements, Table 4 below shows that the parties came in a little higher than the comparables in their 2005 settlement on both cost and lift than the average settlement of comparables in their 2005 settlement: two-tenths of a percent higher in cost and one-tenth higher in lift.

But in the second year, the year in dispute, the differences are significant. The average cost is 2.8%. The City comes in at 1.0%. Even with the additional 1.25% it claims, the City is still over one-half percent below the average cost. The Union, also, is below the average cost by three-tenths of a percent. On lift the differences are even greater. With an average lift of 3.2%, the City comes in at 1.0% or 2.25%, adding their insurance bump. The Union is much closer to the average, but still below the average.

In terms of the salary dispute, the external comparables strongly favor the Union's offer.

**Table 4: 2005-2006 Settlements**

| **Primary Comparables** | **2005** | **2006** |
|---|---|---|
| For Atkinson | 1.75 | 2.0 |
| Hartford | 3.5 | 3.0/1.0<br>3.5 cost<br>4.0 lift |

| | | |
|---|---|---|
| Monona | 3.0 | 2.4 |
| Oconomowoc | 3.0 | 3.0 |
| Portage | 2.0/2.0<br>3.0 cost<br>4.0 lift | 2.0/1.0<br>2.5 cost<br>3.0 lift |
| Sun Prairie | 3.0 | 3.0 |
| Watertown | 3.0 | 2.0/2.0<br>3.0 cost<br>4.0 lift |
| Waupun | 3.0 | 2.0/2.0<br>3.0 cost<br>4.0 lift |
| Whitewater | 2.0 | NS |
| **Average** | **2.8 cost<br>2.9 lift** | **2.8 cost<br>3.2 lift** |
| **Beaver Dam: City** | **3.0 cost/lift** | **1.0 cost/lift** |
| **Beaver Dam: Union** | **3.0 cost/lift** | **2.5 cost<br>3.0 lift** |

**Analysis of Other Comparables**

In terms of the other comparables, the City stresses that the internal comparables strongly favor its position. The City points out that one unit that has settled for 2% July 1, 2005, and 3.5% January 1, 2006. The City notes that if the Union's final offer contained this wage increase, its final offer would be decreased by $9000. And that makes sense. The Union's final offer has a 5.5% cost and 6.0% lift over the two years, while the settled unit comes in at 4.5% cost and 5.5% lift. But the City's offer is not the clear shot winner of this comparison. While the City's offer is closer to this settlement on cost at 4.0%, as opposed to the cost of the Union's offer of 5.5%, on lift, the Union's final offer is closer to this settlement with its 6.0% lift, as opposed to the City's 4.0% lift.

In any case, the unit that has settled is the City's smallest of five units, making up only 8.2% of the Employer's represented employees, with the other four units and 91.8% of the represented employees in arbitration. The unit involved here is the largest of the City's five units and it is comprised of 43.5% of the Employer's represented employees. Such a small showing, 8.2% of the employees and one of five bargaining units, does not make for a settlement pattern.

But, the City notes, its unrepresented employees, including managerial employees, received what the

City is offering the Union, adding greatly to the number of employees who received the wage increase that the City if offering here. As these employees are not represented for purposes of collective bargaining, this carries little weight, though if several of the other units had settled at this amount, it would support the City's case in that the City was being consistent with all of its employees. But such is not the case. Therefore, the internal comparables favor the City's offer, but ever so slightly.

In terms of the private sector comparables, the data shows that the Union is higher paid and receives better benefits than those employees in the private sector by far. Therefore, the private comparables strongly favor the City's offer. There is a severe problem with the private comparables, however, in that the data presented does not distinguish between represented and non-represented employees, greatly reducing the impact of the private sector comparables.

**"Greater Weight" Criterion**

Under the statutory criteria found in Section 111.70, Wis. Stats, this arbitrator "shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r."

The City argues vehemently that 2005 was a bad year, not withstanding the prospectus mentioned above to the contrary. Part of the City's argument as to this point goes to the lack of budgeting for the wage increases in both 2005 and 2006 and the health insurance costs coming in over budget. But the greater weight criterion goes to the economic conditions in the jurisdiction of the municipal employer, not to the economic condition of the municipal employer itself. Besides, these issues were discussed above and discounted.

The City specifically argues that it lags significantly behind similar communities in full value per capita, per capita income, median family income, medium home value, and average annual increase in full value, that the City's poverty rate is significantly higher than comparably-rated communities, that per capital personal income is below the state and national average, that the population has declined in the past five years, and that building permits are lower in 2006.

The Union, on the other hand, argues that the City is in the mid-range in general government spending per capita, street maintenance spending per capita, fire and ambulance spending per capita, debt per capita, municipal tax levy per capita, total shared revenue, shared revenue per capita, and residential property tax base.

Overall, this is a wash such that the criteria to be given greater weight favors neither side.

**Interests and Welfare of the Public and Financial Ability of the Municipality to Meet the Costs of the Final Offers**

The City argues that it cannot afford the Union's final offer and, therefore, it is in the best interest and welfare of the public to select the City's final offer. While I do not believe the record shows that

the City's financial shape is as bad as it represents, I do see that it is not flush and will need to make some hard decisions and choices, irrespective of which final offer is selected.

The difference between the two offers is $33,403, according to the City, and $25,542, according to the Union. The savings generated by the change in insurance by this unit is $39,569, according to the Union, and $33,425, according to the City. Even if one uses the City's higher amount for the difference between the two offers and the City's lower amount for the health insurance savings, the difference is plus $22 for the City.

While there may be financial concerns about this unit's wage increases down the road, the wage increase proposed by the Union is less than the savings from the health insurance and, therefore, requires no new dollars to fund it. Therefore, this criterion will not play a part in the final outcome of this decision.

**Consumer Price Index**

The City argues that this factor is somewhat neutral. While acknowledging that the CPI has increased 4.3% since May 2005, the City notes that City wages have increased almost 200% over the past 15 years while the CPI increased only 150% over the same time period. But, more importantly, the City argues that how much inflation has risen over the last year is irrelevant with the imposition of levy limits. It is especially irrelevant, according to the City, given the tremendous increase in energy costs over the last year. It is those rising energy costs, combined with the levy limits, that are the principle reasons why the City cannot afford the Union's proposal, according to the City.

But rising health care costs, in addition to skyrocketing energy costs, are exactly the reason an arbitrator must look at the CPI, for individuals are impacted by these increases as much as or even more than municipalities. Again, underlying the City's argument, is the idea that levy limits make consideration of the CPI unnecessary, a position with which I disagree. Based strictly on the percentages, the cost of living criteria strongly favors the Union's offer.

**Hours of Work**

In terms of the City's proposal regarding changes to the Hours of Work clause for the Department of Public Works and the Parks and Recreation Department, the City argues that the flexible scheduling language merely codifies the existing practice of not paying overtime when work is not available. The specific issue involves employees called in early for snow plowing. The City argues that it wishes to have the flexibility to send employees home after eight hours if there is no work available. The Union argues this gives the City the authority to wake employees in the middle of the night, require them to go out in the worst conditions of the winter, and receive no overtime for this work.

The City points to the summer painting crews whose hours change periodically, as well as the street sweepers who, according to the City, are on the same sort of flexible schedule embodied in the City's proposed language. The summer paint crews may begin earlier to lesson the impact of traffic or to avoid the heat of the late afternoon. The street sweepers may do there work at night when there

is no traffic and the streets are clear.

But both of those situations are strikingly different from snow plowing. First, the painting and street sweeper crews can be scheduled days or months in advance to achieve the maximum use of these employees' time. Snow plowing, by its very nature, is not scheduled in advance, or at least not much in advance, such that these employees are in essence on call to perform this work. Second, when the painting and street sweeper hours are changed, they are still doing their normal work under normal conditions. This is not so with the snow plowers. These employees are called in to respond to dangerous snow accumulations, a somewhat unique event during any one year. While snow plowing during the workday is part of their normal routine, it is a small part compared to the other functions these employees perform.

From this record, it appears as if the City has never sent home after eight hours employees who were called in early to plow snow. So does the City, based upon its painting and street cleaning crews, have a binding past practice which would allow it to send home snow plowers after working eight hours? Hmm. I'll leave a grievance arbitrator make that decision, should it ever come to that.

On a more practical note, the Employer wants to save on unnecessary overtime. This is a appropriate goal. We taxpayers do not want to pay for unnecessary overtime. The Union, on the other hand, does not want its opportunity to make overtime taken away. The City says it will only send employees home if there is no work. The Union says there is always work to do. The Employer, in essence, agrees, arguing that the Union, therefore, has nothing to worry about. But then, the Union asks, why have the language. Just in case, the City replies. Hmm.

The Employer offers nothing in exchange for this language. Internal comparables that might support the Employer's position are far from analogous to this rather unique work situation. The external comparables do not support the Employer's language. Perhaps, if this is a serious problem, the Employer and Union can sit down and search for a win-win solution to this. If terms of this case, this arbitrator is not convinced that he should impose language such as this; indeed, the weight of the evidence supports the Union's position on this issue.

**Commercial Drivers License (CDL) Language**

The Union proposes to add a lengthy section to the collective bargaining agreement regarding loss of CDL for off-duty incidents. The Union asserts that legislation effective September 30, 2005, disqualifies an employee from driving a commercial motor vehicle for infractions incurred while driving their own personal vehicles; therefore, the Union argues, the parties need to negotiate rules concerning what happens to employees who are required to have a CDL but who are restricted for a period of time from driving such vehicles.

The City argues that the language is totally unnecessary as the collective bargaining agreement already addresses the basic issue. Specifically, the City points to Section 26.02 regarding the establishment of reasonable work rules, Section 26.04 regarding discipline for just cause, Section 12.01 regarding management's right to determine the workforce, and Section 4.01 regarding layoffs

due to shortage of work.

This kind of issue should be decided at the bargaining table, not in arbitration. The Union asserts that it attempted to do so, that the Employer committed to responding to the Union's language, and that the Employer did not do so. So it may be, but arbitrators are loathe to add new language to a contract.

The City argues that the Union's proposal is incomprehensible and ambiguous and leaves a lot to be desired. While I disagree that the language is incomprehensible, it certainly has its places where it is ambiguous, subject to differing interpretations, not a strong vote for its acceptance. But the City's actions regarding this issue only aggravated the problem. After the legislation took effect, the City implemented a policy which states that, if an employee loses CDL privileges, "said employee shall be deemed to have vacated his or her position unless accommodations by the City can conveniently be made." In essence, this states that an employee who loses CDL privileges will be discharged unless accommodations by the City can conveniently, not reasonably, be made.

Such language is going to motivate a response from the Union. In this case, the response is the language at issue here. This language is comprehensive, a strong point for accepting it, and it refrains from overreaching, including what appears to be reasonable limitations for its use, again, reasons to consider accepting it. And then, no evidence to the contrary, the City never responded to the Union's language, abdicating any opportunity it had to modify it more to its likely, the basic idea behind collective bargaining.

Of course, the City is right – a decision to discharge an employee is subject to just cause. The Union's language attempts to deal with the problem short of arbitrating such a discipline. The Union has some external comparable support, but as the legislation to which this language is a response is relatively new, many employers and their bargaining units have not yet taken up this issue. Again, this arbitrator would prefer to have the parties negotiate this kind of language and find a win-win answer to the problem. As that was not done, based upon this record, the arbitrator finds that the Union does have some support among the comparables for its position so this issue favors the Union's offer.

**Conclusion**

In terms of the wage proposals, the factor given greatest weight has little impact on this decision, especially as both 2006 offers cost less than the agreed upon cost for 2005. The same is true for the factor given greater weight as the evidence goes both ways as to the City's economic condition, making it similar to most cities that have both good and bad economic news.

In terms of wages and the two language issues, neither party argues about the lawful authority of the employer, so that criterion has no impact on this decision. The stipulations of the parties favor neither one's final offer, although it could be argued that by agreeing to the insurance changes, the Union lessened the cost of its wage proposal to the Employer. The criteria regarding the interest and welfare of the public and the financial ability of the unit of government to meet the costs of the offers do not favor either side.

The internal comparables support the City's wage offer ever so slightly. The private sector comparables strongly support the Employer's wage offer, though said support is weakened by the lack of quantified data as to the collective bargaining status of the employees involved. The public sector comparables strongly support the Union on the wage issue and offers some support to the Union on the hours and CDL issues. The overall compensation received by these employees, while argued briefly, was not supported by substantial evidence, though based upon what is in the record, the Arbitrator finds that it favors the City's offer. The cost of living criteria strongly favors the Union's economic offer.

In summation, applying the arbitral criteria to the testimony and evidence presented in this matter and after studying the arguments of the parties, this arbitrator finds that the weight of the evidence supports the Union's offer to a greater extent than it supports the City's offer.

The parties offered other evidence and other arguments, all of which were reviewed and found wanting. For all the reasons stated above, 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 2005-06 term.

Dated at Madison, Wisconsin, this 8th day of November 2006.

By _____
James W. Engmann, Arbitrator