

BEFORE THE ARBITRATOR

In the Matter of the
Interest Arbitration between

CITY OF RICE LAKE

And

INTERNATIONAL UNION
OF OPERATING ENGINEERS LOCAL 139

Case 75 No. 65513
Int/Arb-10625
Dec. No. 31757-A

INTEREST ARBITRATION AWARD

Appearances:

Attorney Richard Ricci, Weld, Riley, Prens & Ricci, on behalf of the City.

Mr. Randy Patrow, Business Representative, on behalf of the Operating Engineers, Local 139.

The above-captioned parties, hereinafter referred to as the City and the Union respectively, have been parties to a series of collective bargaining agreements throughout the years. The parties were able to resolve most issues for the 2006-2007 successor agreement with the exception of wages and a work rule regarding paid morning and lunch breaks. The City filed a petition with the Wisconsin Employment Relations Commission wherein it alleged that an impasse existed between it and the Union. The City requested that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties. The undersigned was selected as arbitrator from a panel provided by the Wisconsin Employment Relations Commission. Hearing was held in Rice Lake, Wisconsin on November 14, 2006. No stenographic transcript of the proceedings was made. All parties were given the opportunity to appear, to present testimony and evidence, and to examine and cross-examine witnesses. The parties completed their post-hearing briefing schedule on December 15, 2006. The record was closed upon receipt of the last reply brief. Now, having considered the evidence adduced at the hearing, the arguments of the parties, the contract language, and the record as a whole, the undersigned issues the following Award.

FINAL OFFERS OF THE PARTIES:

CITY'S FINAL OFFER

Effective 1/1/06 increase all wage rates 1.5% across-the-board
Effective 1/1/07 increase all wage rates 1.5% across-the-board

The City proposes the same wage increase for the temporary laborer classification as it proposes for all of the other classifications (1.5% each year)

With respect to Article XIV – Work Rules, Section 1.B – Break Period during Winter Work Weeks

The City offer maintains the status quo language as follows:

It is recognized that, due to the uncertainties of climate, winter workweeks (November 1 through March 31) may be variable. In lieu of a definite workweek, the City shall guarantee eight hours of work or eight hours pay in lieu thereof to all employees called in before 7:00 a.m. on any given day. A thirty (30) minute unpaid meal period shall be provided as close as possible to the middle of the shift.

UNION'S FINAL OFFER

Effective 1/1/06 increase wage rates for equipment operator, truck driver and mechanic classifications by \$.52 (3%)

Effective 1/1/07 increase wage rates for equipment operator, truck driver and mechanic classifications by \$.54 (3%)

Effective 1/1/06 increase the temporary labor classification wage rate from \$12.51 to \$16.40 (31%)

Effective 1/1/07 increase the temporary labor classification wage rate from \$16.40 to \$16.89 (3%)

With respect to Article XIV – Work Rules, Section 1.B.- Break Period during Winter Work Weeks

The Union proposes revised language as follows:

It is recognized that, due to the uncertainties of climate, winter workweeks (November 1 through March 31) may be variable. In lieu of a definite workweek, the City shall guarantee eight hours of work or eight hours pay in lieu thereof to all employees called in before 7:00 a.m. on any given day. In addition, any employee who is required to start his or her shift at 2:00 a.m. or earlier, will receive a morning coffee break of 30 minutes at 6:00 a.m. to be paid by the City and a mid-morning break of 30 minutes at 9:00 a.m., to be paid by the City. The 30 minute unpaid meal period shall be provided as close as possible to 12:00 noon.

SUMMARY OF DISPUTE:

The dispute between the parties for a successor agreement is limited to a disagreement on wages and language involving midmorning and morning paid coffee breaks during winter workweeks.

STATUTORY CRITERIA:

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70(4)(cm), Wis. Stats., as follows:

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.
- 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 under subd. 7r.
- 7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized in this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:
 - a. The lawful authority of the municipal employer.
 - b. Stipulations of the parties.
 - c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
 - d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of employees performing similar services.
 - e. 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.
 - f. 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.
 - g. The average consumer prices for goods and services, commonly known as the cost of living.
 - h. 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.
 - i. Changes in any of the foregoing circumstances during the pendency of the arbitration.
 - j. Such other factors, not confined to the foregoing, which are normally or traditionally taken in 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.

POSITION OF THE PARTIES:

City

The City believes that its final offer compares favorably with the wage rates and the wage increases received by external comparables even when the Union's proposed comparable cities are used and is consistent with the increases that have either been voluntarily accepted or proposed in arbitration to each of the other four internal employee groups. It maintains that the Union's wage demands exceed the pattern among the external comparables and that its two other proposals are unsupported among the external comparables.

The City insists that the comparable pool established in the 2001 firefighter interest arbitration is no appropriate for this unit. The City proposes a set of comparables consisting of six cities which, it maintains, are similar to Rice Lake both in terms of population and other various key economic factors. Those cities are Antigo, Ashland, Rhinelander, Portage, Shawano, and Tomah. The Union, relying upon six cities established as comparables in a 2001 interest arbitration between the City and its firefighters unit, believes the appropriate comparables should be Antigo, Ashland, Rhinelander, Menomonie, Merrill, and Chippewa Falls. The City takes no issue with the three cities in both comparable pools but asserts that Menomonie, Merrill, and Chippewa Falls are not appropriate comparables. Noting that the City has been to interest arbitration many times before with its police and fire units, the City points out that this is the first interest arbitration with the Street Department Unit. It is true that arbitrators generally prefer previously established comparables to encourage bargaining stability. However, where no such previously established comparables exist, arbitrators will review the standard economic and demographic factors traditionally considered when making comparability determinations. The City argues that the comparables for the Street Department Unit have not yet been established and it cannot be said that the City is proposing to change an existing set of comparables. In the City's view, this is a case of first impression.

As a case of first impression, the arbitrator is required to consider the appropriate evidence to establish a list of comparables citing economic indicators, population, the geographic proximity, labor market from which the municipalities recruit, and the type of community as being some of the criteria to be considered. These are the criteria, the City utilized in establishing its proposed comparable grouping.

While all of the City's comparables closely resemble Rice Lake in populations, the three proposed by the Union for inclusion are considerably larger. Recognizing that Rice Lake is a rural "service center" community insulated from the next major urban area by about 50 miles, the City argues that the Union's proposed comparables are much

closer to another urban center. Looking at the population density of the counties in which the comparables are located, the City claims that if the community is located in a highly populous county, it would not be appropriate to include it as a comparable. Because the Union's three comparables are all in highly populated counties in which there is a bigger city, they are not appropriate. With regard to the per capita sales, this indicator reflects the character of a community. Whether a community is retail and/or service-oriented in nature can be a crucial factor in determining socio-economic comparability.

Equalized value and property tax levies support the City's comparables because the Union's comparable cities have considerably larger equalized values, especially Chippewa Falls and Menomonie. The property tax levies show a similar disparity with the Union's average being much higher than that of the City's proposed comparables. The City's proposed set of comparables is more appropriate as measured against the traditionally accepted standards of comparability such as population and equalized value. Finally, it is significant to note that the City has used these six cities in every budget cycle since 2002 and for major policy decisions. The Union's proposed comparables are based on an arbitration decision that was issued for a different bargaining unit back in 2001, prior to the City Council's 2002 directive to the City Administrator to conduct an updated review of comparables.

The City's wage proposal reflects severely decreasing financial reserves, yet maintains the City's longstanding practice of internal wage consistency while at the same time keeping pace with the external comparables. While the City's proposal may appear somewhat conservative, it is the result of a mandate from the City Council to reduce expenditures in light of recent drastic reductions in the City's budgetary reserves

Utilizing the fund accounting method in which normal operational services such as the City hall, streets, police and fire departments do not have their own separate funds, the City pays out of the general fund. After the separated funds receive their share, the leftover funds flow into the general fund to fund the above departments. If there are insufficient funds, the City can either increase the amount of the tax levy or decrease the share of property taxes received by the separated funds and transfer that amount to the general fund.

In the late 1990's to make up the difference caused by a reduction in State share revenues and the growth requirements of a rising infrastructure, the City began to increase property tax levies. The increase in the property tax levy for 2001 was \$4.13 million. By 2002, the City determined that its tax rate was a third higher than the average of the six comparables upon which it has relied and that this was unacceptable. It instituted a program to decrease property taxes in order to lower the rate to at least the average of the comparables. By 2006, the City, having received only about \$2 million in shared revenues, was faced with paying 2006 expenses with revenue streams that were 13 years old, i.e., base upon shared revenues, and 5 years old in the case of property taxes. Because the City's equalized value has continued to increase, which helped in reducing the 2006 property tax rate to levels in line with its comparable communities, the City is now much close to the average of its comparables.

In order to achieve its property tax reduction goal, the City engaged in various cost reduction efforts, but these were insufficient to bring expenditures into line with decreasing revenues. Therefore, the City implemented several budgetary stopgap measures. The City in 2004 utilized debt service money that it had accumulated for making a balloon payment on outstanding loans for its general operations. The 2004 "balanced budget" was achieved through the use of a one-time source of funding, the raid of the debt service fund. The City borrowed still more money to make the 2004 balloon payment. In 2005, the City once again faced a deficit, expenditures exceeding revenues by about \$675,000, and the City had to start paying on the new debt. This led to the need for a tax levy for debt purposes of \$889,000. That year it raided the general fund balance. In 2005, the City used about one-third of the entire fund balance to cover the budget shortfall that year.

In 2006, the City is faced with a serious imbalance between revenues and expenditures with a projected shortfall of about \$ 1.5 million. After cutting a police-liason position, the City reduced levying for its capital improvements fund and shifted funds set aside for this purpose into the general fund to be used for operating expenses. The problem of balancing the 2006 budget was solved by raiding an existing fund, the capital improvements fund. Although this type of strategy may work in the short run, each time it is employed, it leads to greater difficulties in balancing future budgets because it leads to dangerously low fund balances. If the City returns to the previous method of funding capital improvements in 2007, the forecasted revenue shortfall will be about one million dollars. If staff cutbacks were utilized, the City would need to cut about 15 employees to effectuate the necessary savings, and staff numbers are already at their lowest level in 10 years. The only remaining source of money is the general fund, but if it is utilized, the fund balance will be reduced to only \$550,000, a level which is unacceptable to the City.

Because the money must come from somewhere, the City has adopted a four-part strategy for funding future budgets. It will reduce its capital spending, borrow more frequently, increase its tax levy for debt repayment, and control its operating costs. A key component in this strategy is to hold all employee wage increases to 1.5% for 2006 and 2007. It is not simply a negotiations wish but a mandate from the City Council. This is what is being offered to every single employee group and for 2006, the non-represented staff and the transit unit received a 1.5% wage increase. These two groups total 36 of the 73 City employees. The remaining employees in the streets, firefighter and police bargaining units are all in arbitration for 2006 and the City's offer is the same for each of these units. The situation is the same for 2007. The City's offer is consistent with its longstanding practice of providing uniform wage increases to all employee groups. Where there is a history of providing the same increases to each employee group, arbitrators place great weight on the comparables.

Anticipating that the Union may argue that no internal pattern exists because only two employee groups have settled at the City's proposed wage increase and one of them is a non-represented group, the City stresses that these two groups represent one-half of

the City's total work force. Moreover, the fact that the City applied the 1.5% to its non-represented staff underscores the high priority the City has placed on holding all wage increases to 1.5%. Not only has the City sought internal consistency in wages, but it also has taken great pains to maintain internal consistency in fringe benefits such as health insurance, dental insurance, life insurance, holidays, length of probationary period and longevity payments.

The Union's 3% offer for each year exceeds the pattern among the external comparables, while the City's offer is closer to the patterns -even when the Union's proposed comparables are used. The City's current wage rates are extremely competitive, particularly at the benchmark position of truck driver where more than half of the bargaining unit members are employed. For 2006 only one city, Ashland, provided a 3% wage increase while all the other cities provided significantly lower wage increases. For 2007, none of the settled comparables agreed to a wage increase as high as 3%. The settlements were significantly lower with the average for 2006 being 2.05% and for 2007 being 2.15%. To rebut the Union's argument that the CPI supports the Union's proposal, the City argues that local settlement patterns provide a better indicator of cost-of-living considerations than the CPI. Inflation is no more "eating up" Rice Lake employee wages than it is any of the other comparable employee wages.

Since only two of the eight bargaining unit employees are employed in the heavy equipment operator classification, it is the truck driver classification that should be given more weight. Here, the wages are extremely competitive. The City's rate for this classification is higher than all of the other cities except Portage. This ranking will be maintained under the City's offer for 2006 and will likely be maintained in 2007 although only two settlements exist for 2007. Even using the Union's proposed comparables, the City's wage rates emerge as competitive with respect to truck drivers. When combined with a generous longevity program, the City's wage rates are even more competitive. No other proposed comparable provides such a generous longevity benefit as does the City. In sum, the City's final offer will maintain wage rates that are highly competitive with the external comparables regardless of which comparables are selected. When all of these factors along with the City's health plan are considered, the City's offer emerges as the more reasonable.

In addressing the Union's argument that the City has a history of equalized value increases, the City points out that the statutory levy limits are based on increases in new construction, not equalized value, and that the Union's own exhibit confirms that the City's increases in new constructions have been much lower than its equalized value increases. For 2006 and 2007, the City may only increase property tax levies by the greater of 2% or the percentage change in new construction. Thus, the Union's attempt to equate equalized value increases to a corresponding increase in the City's ability to raise revenues is misplaced. Although the City's equalized value has increased from year to year, the amount of additional taxes generated by such increases is directly tied to the tax rate and the City's determination to reduce the tax rate by one-third would generate a much lower tax levy. Despite significant increase in equalized value, a municipality can actually come away with less money due to reduced tax rates, and that is what is

occurring with respect to Rice Lake. Although the City's equalized value has been increasing the past 4 years, during the same time period the City has reduced its tax rate each year in order to bring the rate closer to the average of the comparables and the lower rates have produced lower tax revenues which when combined with the steady decline in shared revenues has led to the City's current fiscal crises. The mere fact that the City's equalized value has been increasing simply does not translate into the ability to raise revenues by a corresponding amount especially when the recently enacted levy limits are added to the mix. The City's historical growth as applied to property values has been slowing in recent years.

The City's final offer will keep its wage rates close to the average for the equipment operator position and significantly above the average for the truck driver classification. When combined with the statutory limitation on the City's ability to raise revenues, the "greatest weight" criterion favors the City's wage offer. The City is not claiming a strict inability to pay here, but rather an unwillingness to pay the Union's higher wage demand in light of its serious financial difficulties. The City has come up with a carefully crafted 4-point plan which includes a cap on employee wage increases so that its limited financial resources can be devoted to shoring up the current budgetary deficit. The City's current financial difficulties are a clear indication that the 2006-07 contract is a time for fiscal restraint. The City's offer must be evaluated against the backdrop of previous budgetary shortfalls that the City Council has no choice but to now address. When comparing its offer against the Union's final offer which demands a wage increase that is twice as high as that offered by the City along with a 34% increase in the wage rate for the temporary laborer position and improvements in the current break period language, the City's offer emerges as the more reasonable.

With respect to the 34% increase to the temporary laborer wage rate, there is absolutely no support among the comparables. There is no evidence of any difficulty filling the temporary laborer classification on the rare occasion when one is needed.

The City claims that on the rare occasions when employees had been called in early, it was common for employees to take an extra break around 6:00 a.m. The situation arose when some of the employees who did not take the extra break requested additional pay for the time they had worked through the break period. In denying the requests for the pay, the City notified employees that break periods would be provided pursuant to the express contract language. Because only some of the employees requested additional pay, the City believed that the most equitable way to deal with the issue was to administer break periods pursuant to the express contract language. In addressing the Union's safety claim, the City disputes the Union's contention that employees may have to work from 1:00 a.m. to 9:00 a.m. without a break, noting that the City has the discretion to set an earlier break time if it so desires. Not only does the Union's proposal add an additional break but it also removes the City's administrative discretion as to when the winter breaks will be taken. This is a significant management right. To support its proposal a substantial burden of proof is required. Not a single comparable enjoys such language nor has the Union proposed a quid pro quo for its modification of the existing language. It should therefore be rejected.

Union

With respect to the appropriate comparables to be adopted, the Union notes that the comparables upon which it is relying are the very same comparables submitted by the City in the 2001 arbitration involving the firefighters. The Union maintains that the comparisons with its group of comparables show similarity in pensions and health benefits with Rice Lake wages being slightly lower on average. The only significant difference is that the City employs only half as many employees as the other cities, leaving Rice Lake with twice the tax base per employee.

With respect to its proposal on wages, the Union cites the U. S. Department of Labor Statistics for the year 2006 as of September for the entire United States with respect to the inflation rate. It notes that the rate was 4%. For cities in the Midwest with populations under 50,000, the inflation rate as of August of 2006 was 3.4%.

Utilizing the U.S. Department of Labor Statistics "Real Wage" calculator, even if the employees receive the Union's wage proposal, they will still be falling behind the rate of inflation and have less buying power than they had in 2004.

With respect to the City's financial ability to pay for the Union's proposal, the Union points out that the City's equalized value is growing very quickly, in some years growing by double digits. In reviewing the City's proposed budget, the City only intends to levy a tax increase of 2.4% in 2006 and 7.4% in 2007, for an average of 4.9% over the two years of the collective bargaining agreement.

Insofar as the proposed language with respect to the issue of winter morning breaks, the Union claims that the second break should be considered a safety issue. It has been the past practice for over 20 years to allow employees to have a 6:00 a.m. break when starting to plow snow before 2:00 a.m. This practice did not interfere with employees getting their work completed in a timely fashion.

Citing Chapter 274.01 and 274.02 of the Wisconsin Administrative Code, the Union stresses that it is not safe to have workers work shifts of more than 6 hours without a 30-minute break. Under the Union's proposal, employees starting after 2:00 a.m. would still have to work until 9:00 a.m. without a break. Only those who started at 2:00 a.m. or earlier would receive a 6:00 a.m. break.

In summary, the Union submits that its break proposal is justified on the grounds of safety and its request for 3% in wages each year is nothing more than a cost of living increase.

DISCUSSION:

This Union and the City have never been to interest arbitration before. They are unable to agree on all of the external comparables but both parties agree on the cities of Ashland, Antigo, and Rhinelander as comparables.

The City has been involved in arbitration with other bargaining units previously; the last arbitration being in 2001 with the Fire Fighters unit. The City strenuously asserts that because the two parties have never been to arbitration before, the undersigned should consider the comparables as a case of first impression and decline to look at comparables established for any other of its bargaining units. The Union points to the comparables accepted by Arbitrator Krinsky in the 2001 Fire Fighter arbitration award as the appropriate comparables to be adopted here. It would include the three other cities referred to in that award: Menomonie, Merrill, and Chippewa Falls. The City argues that these comparables are not appropriate for this bargaining unit and make the case for three other cities which it believes more closely resemble Rice Lake in all the criteria that are traditionally utilized. These cities are: Portage, Shawano, and Tomah.

Two recent arbitrators have been presented with this very issue, Arbitrator James Engmann in City of Beaver Dam, (Dec. No. 31687-A issued on November 6, 2006), and Arbitrator Andrew Roberts, in Oneida County (Highway Department), (Dec. No. 31582-A) issued on November 24, 2006. Arbitrator Roberts observed that arbitrators generally believe that it is important that the same set of comparables be used for the different bargaining units of the same municipal employer. This is presumably the case so that should the municipal employer decide that internal as well as external consistency in economic offers is important, it will be comparing itself with employees from the same set of external comparables for all of its units. Arbitrators resort to the same comparables previously found appropriate for other units in order to provide consistency, reliability, and stability in negotiations. It is noteworthy that the criteria under both 111.70 and 111.77 of the Municipal Employment Relations Act for like-situated municipalities are substantially similar. Therefore, unless, a compelling case can be made for adopting some other comparable group where the party establishes bona fide differences which would support that determination, cities previously found comparable for other units of the municipality should serve as the primary comparables for consideration by the arbitrator.

The City has been clear that it compares itself, at least for tax purposes, to its six proposed comparables and that this decision to do so was made after the last arbitration in 2001. However justifiable that determination may be for tax purposes, two of the municipalities with which it desires to compare itself are simply inappropriate for collective bargaining purposes. Shawano and Portage are too distant from Rice Lake and do not draw from the same labor force. Shawano is located in northeastern Wisconsin and Portage is located in central Wisconsin. Shawano's economic climate is more closely allied with activities occurring in Wausau and Green Bay, cities located in central and northeast Wisconsin. It draws its labor force from northeastern Wisconsin. Portage is more closely allied with Madison and economic activity in south central Wisconsin.

Tomah, while in the western part of the state, is not geographically proximate to Rice Lake either. It shares economic activity and a labor force more closely allied with the La Crosse, western Wisconsin area. By contrast, the Union's proposed comparables are geographically located in northwest Wisconsin in much closer proximity to Rice Lake. They more closely share the same labor pool and have already been found comparable to Rice Lake for comparison by at least one other arbitrator.

It is recognized that Chippewa Falls and Menomonie have larger populations than Rice Lake and that economic distinctions in property values, taxes, and other appropriate factors can be made based upon those large populations as the City as pointed out. However, the two reasons for continuing to utilize these cities as comparables along with Merrill are that Chippewa Falls and Menomonie compete with Rice Lake in the same labor market and Merrill, while located to the east of Rice Lake, continues to resemble Rice Lake in population and economic activity. Given their utilization by a previous arbitrator and the City's failure to demonstrate a compelling reason for adopting its proposed comparables, it is concluded that the Union's proposed external comparables are more appropriate and they will be utilized in the analysis.

Although the Union seeks a substantial language change with the addition and scheduling of a second morning break during the winter months, it is the wages that are the major issue in this arbitration and the reasonableness of the parties' wage offers vis-à-vis the statutory criteria that will dictate the outcome.

The Union's proposed language change with respect to winter morning breaks will be addressed first.

Winter Morning Break Proposal

The current contract language provides for one morning break, the timing to be at the discretion of the City. The parties concur, however, that it has been an existing past practice to permit the employees who are called out early to plow snow, i.e., between 1:00 and 4:00 a.m. to take an extra paid break around 6:00 a.m. During the course of the previous contract, on one occasion some of the employees took the extra break, while others – presumably too busy snowplowing did not. Those that did not take the extra break sought compensation by filing a grievance which was denied by the City. As a result of the grievance, the City responded by eliminating the second break altogether and relying upon the status quo contract language providing for only one paid break to be taken at the discretion of the City supervisory staff that currently existed in the contract.

The Union, citing both safety concerns and the fact that it is essentially trying to codify an existing past practice, proposed new language granting the additional break and setting the time when both breaks should be taken. The Union's proposal impacts both economically and upon the City's managerial discretion. This language is the type of language that should be gained at the bargaining table and should not be granted by an arbitrator without a serious rationale for establishing its necessity and an offer of a *quid pro quo* by the party proposing such language. Had the Union merely proposed to codify

the second break on winter mornings that had existed as a past practice over a long period of time, its arguments with respect to employee entitlement and safety would be more persuasive. Here, however, the Union seeks to gain a significant benefit, a *second paid break*, and also seeks to limit managerial discretion in determining when both morning breaks are to be taken. The City can address any safety concerns by scheduling the single break to which the employees are currently entitled earlier using the discretion which it currently possesses. Without an accompanying *quid pro quo*, even though several of the bargaining unit employees are upset by the City's tough stance in resorting to the current contract language, the Union's proposal on this issue cannot be found more reasonable than the existing *status quo*. The City's offer is preferred.

Wage Proposals

The City has gone to great pains to make the case that it has raided its general fund and capital improvement funds in recent past years to balance its budget. It insists that its residents have paid more in taxes than those of its comparable cities. Its determination to reduce the taxes paid by its residents in the future is a noteworthy goal. The Union, pointing to the equalized value of Rice Lake's real estate and the fact that there are half as many employees to support on the City's tax base as those of the comparable cities, claims just the opposite. It argues that Rice Lake is financially healthy compared to its comparables and enjoys twice the tax base as that of any other comparable city. It maintains that if 2005 comparisons are considered, Rice Lake's wages are below those of the comparables while its pension and health benefits are the same. The Union has not, however, provided evidence as to the financial status of those cities upon which it relies as external comparables.

The City does not make an inability-to-pay argument based upon its financial condition, but does make an "unwillingness-to-pay" argument. This argument, when all of the economic factors which affect the City's budget are taken into consideration, essentially boils down to an unwillingness to levy taxes upon its residents at the level needed to fund the Union's proposal. There is no doubt that these are tough times for municipal employers given decreasing state revenues and the increasing costs to operate municipal governments. A conservative offer which does not substantially impact upon the position of its employees vis-à-vis the external and internal comparables would support the City's offer under criteria 7 and 7g if it can be established that this is the case.

Therefore, as with so many of these cases, the dispositive criteria involve analysis of the "other factors" criteria. The Union is correct that the CPI data favors its offer and is also correct in its analysis that the \$16.85 2004 wage of employees has the same buying power as \$18.10 in 2006 so that its proposal of \$17.88 per hour will not keep up with the cost of living. The cost of living criteria as demonstrated by the CPI under 7rg favors the Union's offer. That being said, the CPI is not necessarily the best indicator of the cost of living in a given area. Local settlement patterns also cast light upon the cost of living in any given geographical area and to the mind of this arbitrator better reflect the context for appropriate wage offers in any given geographical area.

Internal and external settlements establish relevant settlement patterns. The City has offered the same 1.5% for both years to all of its employees, both represented and unrepresented. Given that only one represented bargaining unit has accepted the wage offer, it cannot be said that a pattern has been established. Here the undersigned notes that the unrepresented employees must take what the City offers with no recourse to interest arbitration. Their assent to the City's proposed wage, while demonstrating the City's desire for internal consistency in wages, does not contribute to the establishment of a settlement pattern among the internal comparables. Since there is no pattern established the internal comparables at the time of the arbitration do not support either offer.

The external comparables are, however, a different matter. Wage settlements and wage rates with respect to the two classifications where the majority of employees in this bargaining unit fall will be considered. Percentage increases already agreed to by the external comparables are as follows:

Municipality	Contract Term	2005	2006	2007
Antigo	2004-2006	2.75%	2.5%	Not settled
Ashland	2004-2006	3%	3%	Not settled
Chippewa Falls	2005-2007	1.5% 1/1/05 1.25% 7/1/05	1.5% 1/1/06 1.5% 7/1/06	1.5% 1/1/07 1.5% 7/1/07
Menomonie	2004-2005	2% 1/1/05 1% 7/1/05	Not settled	Not settled
Merrill	2005-2007	2.5%	2.5%	1.5% 1/1/07 1% 7/1/07
Rhineland	2006	2% 1/1/05 2% 7/1/05	0%	Not settled
City's Offer Rice Lake	2004-2005	3%	1.5%	1.5%
Union's Offer Rice Lake	2004-2005	3%	3% except for Temp Laborer 31% for Temp Laborer	3% except for Temp Laborer 3% for Temp Laborer

The maximum wage rates for the truck driver/light equipment operator under the proposals are as follows:

Municipality	Position	2005 Rate	2006	2007
Antigo	Maintenance/Construction Laborer	15.99	16.39	Not settled
Ashland	No Position	17.80	18.33	Not settled
Chippewa Falls	Truck Driver	17.74 1/1/05 17.96 7/1/05	18.23 1/1/06 18.50 7/1/06	18.78 1/1/07 19.06 7/1/07
Menomonie	Sweeper Operator	18.15 1/1/05 18.33 7/1/05	Not settled	Not settled
Merrill	Truck Driver	16.86	17.28	17.54 1/1/07

				17.71 7/1/07
Rhineland	Equipment Operator II	16.79 1/1/05 17.13 7/1/05	17.13	Not settled
City's Offer Rice Lake		17.36	17.62	17.88
Union's Offer Rice Lake		17.36	17.88	18.42

The maximum wage rates for the heavy equipment operator position appear to be as follows¹:

Municipality	Position	2005 Rate	2006	2007
Antigo	Skilled Laborer	16.77	17.19	Not settled
Ashland	Operator I	17.80	18.33	Not settled
Chippewa Falls		17.86 18.08	18.35 1/1/06 18.62 7/1/06	18.90 1/1/07 19.18 7/1/07
Menomonie		18.54 1/1/05 18.72 7/1/05	Not settled	Not settled
Merrill		17.98	18.43	18.71 1/1/07 18.90 7/1/07
Rhineland	Heavy Equipment Operator	17.79 1/1/05 18.15 7/1/05	18.15	Not settled
City's Offer Rice Lake	Equipment Operator	17.36	17.62	17.88
Union's Offer Rice Lake		17.36	17.88	18.42

From the first table, if one looks to the percentage increases granted by the comparables for 2006, they clearly favor the Union's proposal. Of the five settled, Ashland granted 3%, Chippewa Falls agreed to a 3% lift, while Merrill and Rhineland agreed to 2.5%. Only Rhineland agreed to less, in fact settling for no increase in 2006. Because there are only two settlements for 2007, there is not enough information available at this time to draw any meaningful conclusions with respect to 2007.

The second table shows the average ending wage of the comparables in the truck driver position that have settled for 2006 as approximately \$17.53. For 2007, only two comparables have settled, and the average ending wage rate is \$18.38. With respect to end rates in the two predominant classifications, it is evident that insofar as the truck driver classification is concerned, for 2006, both offers are reasonable and the City's

¹ The City did not provide 2005 starting wages for the three cities that the Union proposed as comparables. The Union provided a 2005 base wage rate in Exhibit 9 which has been used for purposes of this table. It should be pointed out, however, that the underlying collective bargaining agreements have not been submitted to support this Exhibit.

offer is above the average settlement. For 2006, the City's offer remains competitive as it affects the Rice Lake truck drivers end wage rate and is preferred over the Union's offer as addressing the issue of keeping Rice Lake truck driver rates comparable to those of other cities in their labor market pool.

With regard to the heavy equipment operator position, the third table demonstrates that the average ending wage rate among the comparables for 2006 is \$18.14. For 2007, utilizing the two settled comparables, the average ending rate is \$19.04. The Union's offer for 2006 comes closest to preserving the traditional comparisons between Rice Lake and the comparables insofar as the heavy equipment operator position is concerned. Only Antigo would be paying a lower wage to heavy equipment operators in 2006. Under either offer, the heavy equipment operator rate will fall below that of the comparables. Here, again, there is insufficient evidence to draw any substantive conclusions regarding 2007, other than to say that the two settled comparables will have a much higher rate than the Rice Lake heavy equipment operators.

The City acknowledges that its offer does not come close to preserving the traditional comparisons with respect to the heavy equipment operator classification but notes that only two of the eight bargaining unit employees are classified in that position. The City also points out that its employees enjoy a generous longevity benefit which no other comparable approximates that brings its employees closer to the comparables when the longevity benefits are included. Neither of these arguments will, however, address an unreasonably low wage rate for this classification in the future and the possible need to "catch-up" in future contracts with respect to this particular classification.

The City's offer for 2006 with respect to the temporary laborer position is strongly preferred over that of the Union as the Union's reasons for raising the rate in anticipation of the inclusion of other City parks employees into the bargaining unit are premature at best. Because there is no one in this classification, and at most, one employee will be hired for some limited time in the future, the City's offer with respect to this position is favored for both years.

For 2006, the external comparables do not favor either party, the City's offer with respect to the truck drivers and temporary laborer position being preferable while the Union's offer with respect to the heavy equipment operators is preferable.

For 2007, the limited information available for all classifications, insofar as settlements are concerned with respect to percentage increases offered and end rates for the three classifications, is inconclusive. The paucity of voluntary settlements for that year, which slightly favor the Union at this time, is insufficient to predicate an ultimate finding that the external comparables favor the Union to such an extent that this factor outweighs other criteria to be taken into consideration.

On balance, the City has made a fairly persuasive case that it is experiencing significant budgetary pressures for 2006 and 2007 that affect its ability and willingness to pay pursuant to the Union's proposal. The City has also shown that it has taken

measures, other than simply failing to provide the average percentage wage increases offered by the other comparable cities, to address its financial difficulties. It has laid off employees, deferred capital expenditures and sought to fund its employment costs from both its general and capital expenditure funds in the recent past. The City's plan also indicates that it expects both represented and unrepresented employees to "share the pain" equally in its attempt to balance its budget and live within its fiscal constraints. There are no internal comparables. The end wage rates for the majority of bargaining employees will remain comparable to other employees in that classification for at least 2006. There is insufficient evidence with respect to the external comparables for 2007. It appears that the overall compensation for Rice Lake employees in the form of health and longevity benefits remains as good or better than those enjoyed by the external comparables. Given these factors, the City's conservative offer in conjunction with its proposed economic strategy is found to be more reasonable. That is not to say that the heavy equipment operator classification may not need to "catch-up" at some time in the future.

CONCLUSION

Given the statutory criteria set forth in 7g and 7r, the City's wage offer, and accordingly, its final offer, is preferred.

AWARD

The City's final offer is to be incorporated into the 2006-2007 two-year collective bargaining agreement between the parties, along with those provisions agreed upon during their negotiations, as well as those provisions in their expired agreement which they agreed were to remain unchanged.

Dated this day 20th of January 2007, in Madison, Wisconsin.

/s/Mary Jo Schiavoni
Mary Jo Schiavoni, Arbitrator

