

## BEFORE THE ARBITRATOR

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

COLUMBIA COUNTY

and

COLUMBIA COUNTY HIGHWAY  
EMPLOYEES UNION, LOCAL 995,  
AFSCME, AFL-CIO.

Case 281  
No. 68206  
INT/ARB-11216  
**Decision No. 32671-A**

Arbitrator: James W. Engmann

### Appearances:

Mr. Joseph Ruf III, Corporation Counsel/Human Resources Director, Columbia County, 120 W. Conant St., P.O. Box 63, Portage, WI 53901, appearing on behalf of Columbia County.

Mr. Neil Rainford, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Dr., Suite B, Madison, WI 53717-2900, appearing on behalf of the Columbia County Highway Employees Union, Local 995, AFSCME, AFL-CIO.

## ARBITRATION AWARD

Columbia County (County or Employer) is a municipal employer which maintains its offices at 120 West Conant Street, Portage, Wisconsin. The Columbia County Highway Employees Union, Local 995, AFSCME, AFL-CIO (Union) is a labor organization which maintains its offices at 8033 Excelsior Drive, Suite B, Madison, Wisconsin. At all times material herein, the Union has been the exclusive collective bargaining representative for all of the employees of the Columbia County Highway Department, except the Assistant Highway Commissioner, the Highway Commissioner, the Shop Superintendent, the Patrol Superintendent, the Operations Manager, and confidential clerical personnel.

The Employer and the Union exchanged their initial proposals and bargained on matters to be included in the 2008 collective bargaining agreement. On August 8, 2008, the Union filed a petition requesting the Wisconsin Employment Relations Commission (Commission or WERC) to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA). On September 24, 2008, and December 18, 2008, a member of the Commission's staff conducted an investigation which found that the parties were deadlocked in their negotiations. By February 2, 2009, the parties submitted their final offers, 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 February 10, 2009, the Commission certified that the conditions precedent to the initiation of arbitration as required by Sec. 111.70(4)(cm)6 of the Municipal Employment Relations

Act (MERA) had been met and ordered the parties to select an arbitrator from a panel of arbitrators submitted by the Commission to issue a final and binding award to resolve the impasse existing between the parties.

By a process of elimination, the parties were left with the undersigned to serve as the impartial arbitrator in this matter and so advised the Commission. On February 19, 2009, 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 Columbia County or the total final offer of the Columbia County Highway Employees Union Local 995, AFSCME. AFL-CIO. Hearing was held on June 24, 2009, in Wycena, WI, at which time the parties were afforded the opportunity to call and examine witnesses, present exhibits and evidence and make arguments as they wished. The hearing was transcribed, a copy of which was received on July 6, 2009. The parties filed briefs and reply briefs, the last of which was received on September 2, 2009, 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

### County

1. 8.01 and Appendix A Wage Rates  
2008 – 2.9%
2. Appendix A. Assistant Sign Person reclassified from Grade 4 to Grade 3 (same as Sign Person)
3. Article 17 – New Commercial Driver’s License Language (based on Marquette County language):

#### 17.02 Leave of Absence if CDL is Suspended or Revoked

Leaves of absence in the event of suspension or revocation of an employee’s commercial driver’s license (CDL) shall be granted as follows:

- (a) If an employee’s CDL (including endorsements) is suspended or revoked arising solely from one or more incidents, and an occupational license is not granted, the employee may be granted up to fourteen (14) months leave of absence. A leave of absence under this provision shall be unpaid. During the leave of absence, health, dental and life coverage will be available if the full premiums are paid by the employee in accordance with County Policy.
- (b) In the event of a suspension for sixty (60) days or less, the employee shall be

permitted to use vacation or sick time in lieu of unpaid leave. In such case the employer shall continue its contribution for health insurance benefits.

- (c) If the employee does not regain the CDL or obtain an occupational license by the end of fourteen (14) months, the employee's employment shall be terminated.
- (d) The employee's seniority will continue throughout a leave of absence granted under this provision. The employee will not be allowed to sign for any open position until after his or her return from the leave of absence.
- (e) This leave of absence applied to a first offense only.
- (f) No more than two (2) employees shall utilize this leave of absence at the same time.

4. 18.01 Term. 1 year term – January 1, 2008 - December 31, 2008.

## **Union**

1. ARTICLE 17 - COMMERCIAL DRIVER'S LICENSE. Create a new Section 17.02 as follows:

17.02 Loss of License. The parties agree that it is in best interest of the Employer, the Union and employees to preserve and protect the employment status of employees whose Commercial Drivers License (CDL) is suspended, revoked, or disqualified due to circumstances arising outside of work, provided the employee is expected to regain his/her CDL at the end of the penalty period. Should an employee lose his/her CDL, as noted herein, the County shall make every reasonable effort to assign available, non-safety sensitive, bargaining-unit work to said employee, for which s/he is qualified. The County shall determine the work to be performed which shall not be subject to the job posting procedure or seniority considerations. For a period of up to fourteen (14) months from the date of the loss of the CDL, the employee shall be paid at rate for the position(s) assigned. When an employee has the CDL restored, s/he shall be returned to position s/he held prior to the loss of the CDL.

If non-safety sensitive work is not available the employee shall be placed on an unpaid leave of absence. However, the employee may substitute vacation and holiday time, if available. While on an unpaid leave of absence, the employee will not accrue benefits. Insurance benefits will be made available, however, an employee on an unpaid leave of absence must pay the applicable premium(s). An employee on an unpaid leave of absence will not be required to return to work for intermittent work assignments, unless the employee makes him or herself available for such work.

The County shall not be required to provide non-safety sensitive work assignments under this provision to more than two (2) employees at a time. In the event all slots are filled the more senior employees shall receive the benefits of this provision. Up to two (2) additional junior employees shall be placed on unpaid leaves of absence as specified in this provision.

If the CDL is not restored to the employee at the end of fourteen (14) months, the employee shall be placed on layoff, subject to recall to available positions which s/he is qualified. The employee shall maintain all rights under the contract available to laid off employees.

[Implementation note for Section 17.02 - Loss of License: This provision shall be effective January 1, 2008, except that the County's obligation to "...make every reasonable effort to assign available non-safety sensitive work to said employee, for which s/he is qualified" shall be implemented the first Monday following the date that the arbitration decision is received by the parties.]

2. ARTICLE 18 - DURATION:

18.01 Term. This Labor Agreement shall be in effect as of January 1, ~~2006~~ 2008 and shall remain in full force and effect through December 31, ~~2007~~ 2008. and from year to year thereafter unless altered or amended by further negotiated agreements.

3. APPENDIX A - JOB TITLES, WAGE RATES

- a. Delete the Assistant Sign Person classification, and re-designate current Assistant Sign Person as an additional Sign Person.
- b. Increase all rates by two and nine tenth percent (2.9%) effective January 1, 2008.
- c. Back-pay made in a separate check.

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

## **POSITIONS OF THE PARTIES**

### **Union on Brief**

The Union argues that the County's offer regarding loss of CDL does not guarantee a leave of absence; that the County reserves the right not to grant any leave of absence; that the County's proposal does not indicate what criteria the County might use to exclude any individual employee from the leave of absence benefit; that, therefore, the County's offer is fatally flawed; that it should be rejected for its lack of completeness; that, moreover, the County's offer should be rejected because it fails to address with any certainty what will occur if an employee's CDL is temporarily suspended or revoked; that the County's offer reserves to the County the unilateral right to decide whether any accommodation at all will be made for an employee; and that the County's offer does not allow for the accommodation that the employee be assigned non-CDL work during the period of suspension.

In terms of the comparables, the Union argues that they indicate that the County's approach is not sound; that it is not in the interests and welfare of the public; that it is not consistent with the approach taken by the vast majority of the comparable employers; that in an analysis of the first important difference between the parties' offers, i.e., whether an accommodation of at least a one-year leave of absence is guaranteed, the Union's offer enjoys overwhelming support from the comparable settlements; that on this basis, it should be selected; that in terms of the second important issue, whether an option to perform work during the loss of CDL period is included, the Union's offer is also much more consistent with the comparable settlements; that six provide the possibility employees will be able to continue to perform non-CDL work during any periods that they would lack a CDL; and that, again, six out of eight of the comparable are closer to the Union's offer than the County's.

### **County on Brief**

The County notes that all permanent highway and transportation positions require a CDL; that while individual tasks might not require an employee to use the CDL, attempting to find and assign tasks to keep an employee without a CDL productively occupied places an impractical burden on management; that it would violate the Article 3 Management Rights provision of the agreement; that the County proposal provides a fair benefit to employees who have lost their CDLs and jeopardized

their employment as a direct result of their own serious misconduct; that the County's proposal is both easy to understand and administer; that when an employee faces a potential job loss based on a serious offense, it is enough that the employer provide job preservation through an unpaid leave of absence; and that it is not the employer's obligation to provide over a year of paid leave, special assignments and light duty as the Union proposes.

The County argues that under the Union's proposal, the County would be required to hire additional CDL qualified employees which would cost the County approximately \$57,000 at 2007 wage and benefit rates per employee; that because the Union's proposal used many undefined terms and phrases, it will encourage grievances; that the internal comparable of the Solid Waste Department does not contain any such provision; that an employee whose CDL was suspended would have to be terminated; that the external comparables show that half offer only unpaid leave or unpaid leave if sufficient non-CDL work is not available; that two offer only a reduced pay rate while on leave; that only one guarantees a fully paid leave; that the administration of the loss of CDL leave provisions are solely or largely management rights decisions in seven of the eight comparables; and that when all of the external comparables are considered, it is clear that the County's proposal is more consistent with the external comparables than the Union's proposal.

#### **Union on Reply Brief**

The Union argues that the County has taken a radical position in the formulation of its final offer concerning CDLs by reserving absolute discretion regarding the right of an employee to an unpaid suspension; that the County attempts to sugar coat its radical position; that the County reserves the right to summarily fire any employee whose CDL is suspended or revoked; that there is no evidence that the Solid Waste Department would terminate an employee in this situation; and that the Union's offer provides a workable solution that is more consistent with comparable settlements in that it provides security from summary termination and keeps the employee performing non-CDL work.

#### **County on Reply Brief**

The County argues that its proposal is neither unreasonable nor extreme; that the County's proposal is supported by more than one external comparable; that the County is not required to shield employees from the consequences of their illegal off-duty conduct; that the County is not required to change or create new job descriptions or work assignments to accommodate employees who lose their CDLs; that the Union CDL proposal will increase costs while simultaneously decreasing operation and economic efficiency; and that where the Union's proposal will create unnecessary hardships and future disputes, the County's proposal provides a controversial but important employee benefit without eroding management rights.

### **DISCUSSION**

In this case, there is no health insurance issue, the wages are settled, the term of the contract is resolved, the external comparables are set, and the contract at issue has already expired. So what are the parties fighting about? There are two minor issues and one major issue. But this major issue is

made up of various disagreement such that it is difficult to compare the two proposals with each other, as well as with the external comparables when viewing the proposals as a whole. But two of those disagreements incorporate the major differences between the parties and the outcome of those two disagreements will decide this case.

### **Assistant Sign Person Position Title**

The first minor issue involves the question of whether the position title of Assistant Sign Person should be eliminated by collapsing it into the position title of Sign Person. The parties agree to re-class the incumbent Assistant Sign Person from a Pay Grade 4 to a Pay Grade 3, the same pay grade as the incumbent Sign Person. So the decision here will not change the Assistant Sign Person's wages – the parties have agreed they will be increased to the level at which the Sign Person is paid. The Union wants to eliminate the position title of Assistant Sign Person, pointing to the fact that they will be paid the same amount in wages and, basically, share the same duties. The County wants to keep the position title because it provides a clear organizational structure and assignment of responsibility between the positions. The County points to the Patrolman and Assistant Patrolman positions, both of which are at pay Grade 5, as an analogous situation. And, indeed, it is. The County's position on this issue is totally reasonable and, as the Union offered little in terms of a convincing argument, the County's position is preferred on this issue.

### **Separate Check for Back Pay**

The second minor issue involves payment of the back pay which the employees will receive in this matter. The Union wants the County to make the payment in a separate check. It would seem that cutting a additional check would take time and energy and probably cost more that lumping the back pay into a regular check. The Union does not offer much evidence or argument supporting its position, nor does the County. But this appears to be a deviation from the County's normal method of operation and, as such, the burden is on the Union to convince the arbitrator that such method of operation should be changed in this instance, a burden the Union has not met on this issue. So in terms of the separate back pay check issue, the Count's position is again preferred.

### **Loss of Commercial Drivers License (CDL)**

This is the huge issue in this case and the parties are far from agreement on the major points. As noted by the County, the parties do agree that:

1. A Loss of CDL Leave provision will be added to the collective bargaining agreement where none currently exists;
2. The Loss of CDL Leave period will be limited to fourteen (14) months;
3. No more than two employees will be on Loss of CDL Leave status at any one time;
4. Eligibility for the two Loss of CDL Leave slots will be determined by Union



seniority if more than two employees are without a CDL at any one time; and

5. The Loss of CDL Leave will only apply in situations where the loss of CDL is not work related and the employee is expected to regain the CDL.<sup>1</sup>

While the list of what the parties agree upon is long, it pales in comparison to the list of their disagreements which include:

1. The Union's proposal that the County shall make every reasonable effort to assign available, non-safety sensitive, bargaining-unit work for which the employee is qualified to an employee whose CDL is suspended;<sup>2</sup>
2. The Union's proposal that the County shall be required to provide such work assignments to up to two employees at a time;
3. The Union's proposal that the County shall determine the work to be performed which shall not be subject to job posting procedure or seniority;
4. The Union's proposal that the employee shall be paid at the rate of the position(s) assigned;
5. The Union's proposal that an employee will not be required to return to work for intermittent work assignments unless the employee agrees;
6. The Union's proposal that an employee whose CDL has been restored shall return to the position held prior to the loss of the CDL;
7. The Union's position that if appropriate work is not available, the employee shall be placed on an unpaid leave of absence.
8. The County's proposal that an employee may be granted up to 14 months leave of absence.

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<sup>1</sup> County Brief in Chief at Pages 3-4.

<sup>2</sup> From here on, unless otherwise stated, the term "employee" or "employees" will be used in this discussion to refer only to those employees who have had their CDL suspended.

9. The Union's proposal that an unpaid leave of absence becomes an option only if non-safety sensitive, bargaining-unit work for which the employee is qualified is not available;
10. The Union's proposal that, in addition to the work assignments for two employees, an addition two employee less senior shall be placed on unpaid leaves of absence, if necessary;
11. The Union's proposal that the employee may substitute vacation and holiday time for leave time, regardless of the length of suspension;
12. The County's proposal that an employee shall be permitted to use vacation or sick time in lieu of unpaid leave if the suspension is for 60 days or less;
13. The Union's proposal that if an employee's CDL is not restored at the end of 14 months, the employee shall be placed on layoff, subject to recall and all other rights available under the agreement;
14. The County's proposal that if an employee's CDL is not restored at the end of 14 months, the employee's employment shall be terminated; and
15. The County's proposal that the leave of absence is for a first offense only.

In terms of the statutory criteria, there is no argument that the Factor Given Greatest Weight and the Factor Given Greater Weight play no role in this matter. Nor is there any argument any of the following will impact the decision in this case: the lawful authority of the County, the stipulations of the parties, the interests and welfare of the public, the financial ability of the employer to meet the costs of the Union's offer,<sup>3</sup> the comparison of conditions of employment for other employees in public employment or employees in private employment, the average consumer price index or cost of living, the overall compensation received by these employees, changes in any of these circumstances during the pendency of this matter, nor other factors, which are traditionally taken into consideration in determining conditions of employment.

This case will be decided by the comparison of conditions of employment of these employees with other employees performing similar services; in other words, the external comparables. These comparables have been set<sup>4</sup> and neither party takes issue with them in this matter. They are the counties of Adams, Dane, Dodge, Green Lake, Jefferson, Marquette, Rock and Sauk. And, of course, both parties claim the comparables support their position. I, of course, do not agree.

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<sup>3</sup> The County does have a financial argument which I will deal with later, but it is not an inability to pay argument.

<sup>4</sup> Columbia County (Highway Department), Decision No. 28983-A (Schiavoni, 9/3/97).

**Table 1 – Work Availability Among the Comparables**

Adams Co	Employee is placed into an open position within the bargaining unit, subject to availability.
Dane Co	Employee continues to be employed for one year.
Dodge Co	Employee’s employment continues for up to 15 months.
Green Lake Co	Employee is assigned duties and tasks that do not require possession of a CDL.
Jefferson Co	Employee may remain employed at a pay rate reduction of 10% and may be assigned to any duties within department, inside or outside bargaining unit.
Marquette Co	No work option.
Rock Co	Union and County shall meet in an attempt to find available work provided loss of CDL is less than 2 yrs.
Sauk Co	No work option.

Of the 15 disagreements listed above, two are the big disagreements which truly separate these parties: one, whether an employee can or cannot be assigned work upon suspension<sup>5</sup> or, in other words, whether the Employer can or cannot be required to assign available work upon suspension; and, two, whether an employee may or shall be granted an unpaid leave of absence or, in other words, whether the Employer can or cannot be required to grant an unpaid leave of absence or, stated differently, whether the Employer can or cannot terminate an employee in lieu of granting an unpaid leave of absence.

These are the two major disagreements between the parties because if the Union’s proposal that the County must make a reasonable effort to assign work is taken off the table, what you have left is how the parties should structure the Loss of CDL Leave provision. When you settle the question of whether the County “may” or “shall” grant a leave of absence, what is left, except for possibly the issue of what transpires after 14 months of leave, appears to be the minutia of the policy which should be resolvable by the parties. And, of course, the minutia of this policy will not an impact on this decision.

But the hard line in this case is two-fold but simple: the Union wants to require the County to assign work to an employee, if available, which the County vehemently opposes, and the County wants to

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<sup>5</sup> The CDL can be lost in ways other than suspension, but I will use that term broadly to include all ways in which the CDL can be lost.

determine if an employee receives an unpaid leave of absence or is terminated, which the Union vehemently opposes.

### **Comparables**

In terms of the comparables, the issue involving loss of CDL is relatively new, having come as a result of substantial changes in the CDL standards in 2005; therefore, this issue has not had the years of bargaining and arbitration which tends to see the more effective and agreeable language survive. Indeed, in this case, the comparables are all over the place.

### **Availability of Work Option**

But while the language and conditions and options vary from comparable to comparable, it is clear that six out of eight comparables contractually provide for the possibility of a work option in one form or another for the employee. See Table 1 above. In Adams, Dane, Dodge, Green Lake, Jefferson, and Rock Counties, an employee who loses the CDL has the possibility that employment will continue with the county, in one form or another. The County's proposal which does not include a work option is found in two comparables: Marathon and Sauk Counties.

The County argues strenuously that several of these work options are at the sole discretion of the employer. That is true in Green Lake County and, in a modified form, in Dodge County. The other four counties which offer a work option allow no discretion in the matter other than the limitation that work must be available. But even though Green Lake and Dodge Counties have sole discretion as to whether an employee may work during suspension of the CDL, this is significantly different from the County's proposal which offers no such possibility at all, under any circumstances. The County's offer in this case is not, "Work option at the sole discretion of employer" but "No work option available," a position that six of eight comparables do not support. So the discretion granted Green Lake and Dodge Counties to determine if the work option is provided to an employee provides no support for the County's proposal while supporting the Union's proposal.

So six of the eight comparables provide for a work option, consistent with the Union's proposal, while two comparables do not, in line with the County's proposal. And even though two of those six comparables grant the employer sole discretion in providing a work option, the possibility of the work option supports the Union's proposal. So in terms of whether a work option should or should not be incorporated into the collective bargaining agreement, the Union's proposal that it should is strongly favored.

**Table 2 – Employer Discretion in Granting Leave of Absence**

Adams Co	If there is no work available, the employee <u>will be placed</u> on lay off status.
Dane Co	Work provided but no leave language.

Dodge Co	If it is not possible to assign non-CDL work, employee <u>will be placed</u> on an unpaid leave of absence.
Green Lake Co	Work option but no leave language.
Jefferson Co	Work option but no leave language.
Marquette Co	The employee <u>may be granted</u> up to 12 months leave of absence.
Rock Co	If an acceptable alternative work assignment cannot be agreed upon, the employee <u>shall be placed</u> on an unpaid leave of absence.
Sauk Co	Employees who lose their CDL <u>will be granted</u> an unpaid personal leave of absence.

### **Discretion to Grant a Leave of Absence**

The comparables are also clear that, where there is leave of absence language in the contract, only one of the five comparables allows the employer discretion in whether to grant an employee such a leave: Marathon County. See Table 2 above. Indeed, the County’s final offer on the CDL proposal is based upon the contract language in Marathon County. The other four comparables that include a leave of absence provision contractually require the employer to grant such a leave: Adams, Dodge, Rock and Sauk Counties. So, again, the Employer’s proposal is supported by a minority of the comparables, at best, while the Union’s proposal is consistent with the majority of comparables. So in terms of whether the granting of an unpaid leave should be mandatory or discretionary , the Union’s proposal that it should be mandatory is strongly favored.

So on both of the main disagreements, the County’s offer lacks support among the comparables while the Union’s offer is consistent with the vast majority of comparables. While the County’s position was favored for the two minor issues, the Union’s is preferred for the two major disagreements of the parties which comprise the major issue in this case.

### **Other Issues**

The County argues that it will place an impractical burden on management to assign non-CDL work to employees whose CDL have suspended. The testimony and evidence does not support that position. Other than the bare assertion at hearing that this burden will exist, there is nothing in the record upon which to base this position; indeed, if anything, the records shows that it should be relatively easy for the County to incorporate such employees. And we need to remember that the number of employees who will be in this situation is relatively small, based upon the unit’s experience. In addition, a majority of the comparables have found a way to incorporate the work option into it operation.

The County also asserts that an additional CDL employee would have to be hired at the cost of \$57,000 for each employee whose CDL is suspended. But the testimony was clear that there are many more CDL licensed employees that CDL required vehicles and that, at any particular time, there may be one CDL employee driving a CDL vehicle and other CDL employees sitting as passengers or driving non-CDL required vehicles.

The County's assertion on brief concerning the Solid Waste Department is not supported by testimony or evidence. Indeed, none of the other of the County's arguments are persuasive in this matter. While there are too many arguments to answer individually, all the arguments were considered by the arbitrator and found wanting in one way or another. Therefore, based upon the discussion above, this arbitrator finds

### **AWARD**

That the final offer of the Union is the more reasonable of the two offers and shall be incorporated into the parties' 2008 collective bargaining agreement.

Dated at Madison, Wisconsin, this 19<sup>th</sup> day of October 2009.

By \_\_\_\_\_  
James W. Engmann, Arbitrator