STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of SHEBOYGAN WATER UTILITIES EMPLOYEES, LOCAL 1750-A, AFSCME, AFL-CIO To Initiate Mediation-Arbitration Between Said Petitioner and CITY OF SHEBOYGAN (WATER UTILITIES)	Case L No. 32892 MED/ARB-2658 Decision No. 21723-A

I. APPEARANCES

Helen M. Isferding, District Representative, AFSCME, Council 40 on behalf of the Union.

John M. Loomis and E. Vanessa Jones, Attorneys at Law - Krukowski, Chaet, Beck & Loomis, S.C. on behalf of the Employer.

II. BACKGROUND

The Union and the City have been parties to a collective bargaining agreement covering the wages, hours and working conditions of the employees which expired on December 31, 1983. On December 1, 1983, the parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the expired agreement. Thereafter, the parties met on three occasions in efforts to reach an accord on a new collective bargaining agreement. On February 3, 1984, the Union filed a petition requesting that the Commission initiate Mediation-Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On March 20 and May 21, 1984, a member of the Commission's staff conducted an investigation which reflected that the parties were deadlocked in their negotiations. By May 21, 1984, the parties submitted to the investigator their final offers, as well as a stipulation on matters agreed upon. Thereupon, the investigator notified the parties that the investigation was closed.

The Commission, on May 30, 1984, ordered the parties to select a mediator/arbitrator. The undersigned was so selected and was notified by the Commission of his selection on August 27, 1984.

The Arbitrator met with the parties on October 4, 1984, in an effort to resolve the dispute through mediation. Those efforts were unsuccessful. The Mediator/Arbitrator then served notice of his intent to resolve the dispute by final and binding arbitration. The parties waived their respective rights to written notice of such intent and their right to withdraw their final offer as extended by Section 111.70(4)(cm) Wis. Statutes.

An arbitration hearing was conducted on October 4, 1984 at which testimony and written evidence were received. The parties agreed to submit post-hearing briefs which were due November 2, 1984. The exchange of briefs was completed November 6, 1984. The parties reserved the right to exchange reply briefs, the exchange of which was completed November 16, 1984. Based on a review of the evidence, the arguments of the parties and criteria set forth in Section 111.70(4)(cm), Wis. Stats., the Mediator/Arbitrator renders the following award.

III. FINAL OFFERS AND ISSUES

There are several items at issue. The following identifies those items at issue and briefly describes the differences in the parties' offers:

A. Duration

The Union, as part of their final offer, proposes the contract be of one-year duration being effective from January 1, 1984 to December 31, 1984.

The Employer proposes a two-year agreement being effective January 1, 1984 through December 31, 1985.

B. Wages

The Union proposes a 3% increase effective January 1, 1984, and a 1% increase July 1, 1984.

The Employer proposes no increase in wages for 1984 and a 4% increase effective January 1, 1985.

C. Hospital Surgical Insurance

Both parties' offers are identical with respect to the amount to be paid under the major medical policy ($250,000). The limit under the predecessor contract was $50,000.

The primary difference in the offers regarding hospital surgical insurance relates to language governing changes in the policy carrier. The former contract stated:

> "Any changes in the policy or carrier during the term of this Agreement shall be by mutual agreement by and between the Employer and Union."

The Union proposes the following language:

> "The Employer shall pay the entire premium for the Hospital and Surgical Insurance program ($250,000 Major Medical and $100 Diagnostic X-Ray and Laboratory (DXL) for the single and family plans. The insurance program (employees being eligible for coverage after 30 days of employment) shall be as in the Blue Cross-Blue Shield United of Wisconsin Hospital Contract Series 2000, and Surgical and Medical Contract SM-100 with Major Medical coverage, the Employer at present being part of the City of Sheboygan Group. During periods of authorized special leave of absence, employees shall be entitled to continued coverage under the Employer's insurance plan, provided on the condition that the employee timely pays the cost of the single or family plan premiums to the Employer who shall forward the premium to the insurance carrier. The Employer may change the carrier provided the coverage is equal or better than what is presently in effect."

The Employer proposes the following language:

> "The Employer retains the sole and exclusive right to change carriers provided comparable coverage is provided."

D. Dental Insurance

The differences here relate in general to the last sentence of Section 9.10 (Dental Insurance) and specifically to the issue of rate increases. The last sentence of Section 9.01 of the predecessor contract stated:

"Any premium increases during the term of this Agreement shall be charged to and paid by the covered employee."

The Union's final offer on this point states:

"The Employer shall pay the cost of the family and single plan except the Employee shall pay $3.48 on the family plan and $1.00 on the single plan. Any premium increases during the term of this Agreement shall be charged to and paid by the Employer."

The Employer's final offer states:

"The Employer will pay the premiums which were effective upon implementation of dental insurance (July 1, 1982); any premium increase shall be charged to and paid by the employee."

E. Clean-up Time

The Union proposes adding a new section to Article VI - Hours of Work. It would be identified "Section 6.6 - Clean-up Time" and would state:

"Construction-Maintenance Employees shall be allowed ten (10) minutes clean-up time at end of shift."

F. Fair Share

The Union proposes adding the following to Article VIII - Fair Share:

"The union shall indemnify and save the Employer harmless against any and all claims, demands, suit, orders, judgements or other forms of liabilities that shall arise out of or by reasons of actions taken by the Employer under this section."

G. Miscellaneous Issues

There is also an ancillary dispute over the appropriate comparable employers outside the Sheboygan community. The parties agree that the following municipal employers (water departments) are comparable:

Eau Claire
Janesville
Oshkosh
LaCrosse
Fond du Lac
Manitowoc

The Union contends the following additional cities (water departments) are comparable:

Green Bay
Racine
Kenosha
Wauwatosa
West Allis

The Employer proposes in addition to those agreed to by the Union, the following:

Appleton

There is also disagreement over the comparability of other employers within the Sheboygan community.

IV. ARGUMENTS OF THE PARTIES

1. Comparable Employers

A. Union

The Union argues that its pool of comparables is substantially equal in population, relevant personnel, full value of all taxable general property, per capita full value and in the case of Green Bay, geographical proximity. They emphasize proximity as a factor of comparability. In this regard, they cite City of Two Rivers, WERC, Dec. No. 17722-A, (9/80) Haferbecker. Moreover, they note the City of Sheboygan sits approximately in the middle of the chart on per capita full value of the Union's comparables.

With respect to non-water department employers, the Union notes that the Employer relies on the settlements for the Department of Public Works employees and the City Hall employees as has the Union. However, the Union also contends that the professional employees, firefighters, and transit employees settlements cannot be ignored and must be given weight. They also believe weight should be given settlements with the school district and the county employees. Among their entire group of comparables, the Union believes that equal weight should be granted other employees employed in a water utility in other areas of the Union's pool and other City of Sheboygan units of represented employees in the Department of Public Works, City Hall, professional employee units, transit local, fire and police. Beyond this they suggest weight should be given in descending order to settlements in the school system , the county, and other municipal employers within the county.

B. The Employer

The Employer believes that the only truly comparable water utilities employers are those communities which have similar populations, i.e. those within approximately 15,000 residents and those communities which are not in close proximity to the City of Milwaukee and the metropolitan area which includes Milwaukee County, Kenosha, and Racine and thus do not reflect this influence. They selected their seven comparable communities based on these criteria. Accordingly, for the same reasons, the Employer rejects Green Bay, which has a population in excess of 89,000 while the population of Sheboygan is 47,802, and they reject Racine, Kenosha, and Wauwatosa due to their proximity to Milwaukee.

With respect to other employers within the Sheboygan community, the Employer notes that the means by which the Employer funds its operation is unique among units of local government. In this respect the Water Utility is technically distinct from the City of Sheboygan. In addition, the service which the Employer provides and the jobs performed by its employees are different from most public sector jobs and services. For this reason, they believe the "wages, hours and conditions of employment" of public employees in the Sheboygan community generally are not directly comparable to those of the Water Utility employees. The numerous exhibits presented by the Union of contracts for other City of Sheboygan, County of Sheboygan and City of Plymouth employees are of extremely limited value for comparison with the Water Utility. In this same view they believe the comparisons made by the Union to the Sheboygan police officers, firefighters, bus drivers and school district employees are of limited value. This is true in their opinion because the police officers, firefighters, and bus drivers, in addition to being represented by different unions, provide no services similar to those provided by the Water Utility employees. The teachers' aides, clerical and custodial employees of the Sheboygan School District, while represented by AFSCME locals, also do not provide services similar to those provided by the Water Utility's employees. The same lack of similarities exist with regard to public employees referred to by the Union such as those employed

by the County of Sheboygan in its institutions, highway department, Courthouse and law enforcement unit. Tax revenues are available to fund wage increases in all of these units, unlike the Water Utility.

On the other hand, the Employer believes of the units of represented employees within the City of Sheboygan, only the Labor and Trades Group represented by AFSCME, Local 2039, and the Sheboygan City Hall employees represented by AFSCME, Local 1564 present the possibility for direct comparisons. Both units are represented by the same union which represents the Water Utility employees. AFSCME Local 2039 represents 133 public employees in the City of Sheboygan and AFSCME Local 1564 represents 69 employees in the City of Sheboygan.

2. Duration

A. Union

Initially, the Union aruges that a one-year contract duration is more appropriate with respect to other water utilities since no 1985 settlements are evident to which comparisons can be made. In the same view there can be no comparisons made for 1985 with other public employers in the same community since no 1985 settlements have occurred as the result of wage freezes or reopeners.

In terms of rebuttal, the Union contends that the Employer's argument that a two-year contract is the most reasonable fails for the following reasons: (1) the time frame of the contracts of two-year duration are not for the same years of 1984-1985. (except for the City of Sheboygan in its unique position of wage freeze for unit security and ability to negotiate wages); (2) a one-year agreement is not "unique" in either the comparables offered by the Employer or the Union; and (3) the Employer has placed unfounded emphasis on comparing AFSCME units to AFSCME units. No criteria in the law restricts comparisons of only the units represented by the same union, nor has the Employer supported this "unique" argument.

Additionally, the Union notes that the Employer states in its brief that "requiring annual collective bargaining" between the Employer and the Union would place "an unnecessary and costly burden on the Employer." The Union finds this statement totally unsupported by testimony or evidence of the cost of such an allegation. They ask rhetorically: What is there to say one-year agreements could not be reached in one meeting? Where is the evidence that the Union's negotiation team loses work time? What is the cost incurred by the superintendent through lost hours or hiring a negotiator for one year versus two years?

They also assert the Employer's statement "that it is common practice among governmental units in both the City and County of Sheboygan" is an unsupported statement, in that previous contracts for two years were not in evidence. Again repeating that no loss of productivity or costs or evidence that a "one year agreement 'threatens' the Employer's economic recovery" was testified or supported by evidence, the Union urges the Arbitrator to disregard this line of argument. The Union contends that their offer regarding both duration and wages and cost of negotiating a one-year agreement is not going to make or break this utility.

B. The Employer

The Employer believes that their offer on duration is most reasonable because it is in keeping with the practice of the parties in past collective bargaining agreements. Since at least the early 1970's the relationship of the parties has been governed by two-year contracts. On the other hand, they contend the Union's proposal should be rejected for two reasons. First, the governmental units in the City of Sheboygan and Sheboygan County, and the

comparable communities cited by both the Union and the Employer have agreed in overwhelming number to two-year contracts. They detail this argument employer by employer. Second, requiring annual collective bargaining between the Employer and the Union would place an unnecessary and costly burden on the Employer.

Additionally, the Employer contends that the Union's insistence on a one-year contract goes against not only the established pattern and practice in the industry, but also against the efficient operation of a small municipal water utility. The effect of a one-year contract would be to assure virtually continuous collective bargaining within the unit. The hours required to negotiate a contract are considerable and, of necessity, cut into the productive time of the negotiators which would otherwise be contributed to operating the utility. The management staff of the utility is small and the burdens of collective bargaining are not shared proportionally by all managerial staff members. The persons responsible for collective bargaining must take considerable time away from their other duties. To require this process to take place every year would be particularly burdensome to the Employer, as Robert Culver, Sheboygan Water Utility Superintendent, testified at the arbitration hearing. There is no escaping the fact that annual contract negotiations would add to the operating expenses of a water utility which is valiantly attempting to recover from a two-year deficit. The Union's proposal should be rejected because it threatens the Employer's economic recovery.

3. Wages

A. Union

With respect to other water utility employers, the Union believes their offer is supported by a comparison to even the more limited set of comparables set forth by the Employer. They make a comparison at three different positions which they suggest comprise the bulk of the unit. The comparison is as follows:

CONSTRUCTION-MAINTENANCE

1983		1984	
Eau Claire	9.40	Manitowoc	10.57
Oshkosh	9.02	Eau Claire	9.94
Fond du Lac	8.95	Oshkosh	9.42
Manitowoc	8.94	Fond du Lac	9.29
Sheboygan	8.72	Sheboygan	9.07 *
Janesville	8.53	Janesville	8.80
		Sheboygan	8.72 **

* Union offer
** Employer offer

OPERATOR

1983		1984	
Manitowoc	9.70	Manitowoc	10.38
Eau Claire	9.40	Eau Claire	10.35
Sheboygan	9.34	Sheboygan	10.13 *
Oshkosh	9.02	Sheboygan	9.34 **
Fond du Lac	8.85	Fond du Lac	9.29
Janesville	8.53	Oshkosh	9.28
		Janesville	9.23

* Union offer
** Employer offer

METER READER

1983		1984	
Manitowoc	9.39	Manitowoc	10.05
Eau Claire	8.94	Eau Claire	9.45
Sheboygan	8.72	Sheboygan	9.07 *
Oshkosh	8.94	Oshkosh	8.89
Fond du Lac	8.34	Sheboygan	8.72 **
Janesville	8.28	Fond du Lac	8.68
La Crosse	8.02	Janesville	8.54
		La Crosse	8.34

* Union offer
** Employer offer

Based on this data, the Union asserts that (1) the Union offer either maintains rank order, at the most, without increase in the position of Sheboygan while the Employer, in two out of three comparisons, loses position, and (2) all employees in 1984 got wage increases.

The Union next compares the offers with other City of Sheboygan employees, school district employees and County employees. They acknowledge that three groups of the City of Sheboygan's employees took 0% increases in 1984 with a reopener for 1985. They were the Department of Public Works, City Hall, and City Hall Professionals. However, they emphasize there is an important distinction here. These employees took a wage freeze in exchange for a two-year guarantee of no layoff. That guarantee was the quid pro quo for no increase. In this instant proceeding no guarantee, no quid pro quo was given to the employees of the Sheboygan Water Utility. The Employer is simply saying no wage increase; they will give 4% the second year, will not talk about dental insurance which will remain the same as in the year 1982. No guarantee of what the dental insurance will go up over $24.96 for family or $7.14 single even in the year 1984. It is possible that the employee in 1984 could lose money on the dental insurance, still in 1984, or face an increase in 1985 with money coming either out of his pocket in 1984 or a dissolving of the 4% out of his pocket to pay a dental increase. Moreover, there is no settlement which supports that 4% increase and will be an "in the ball park" figure for 1985.

With respect to other City employees, they note that the firefighters show at least a 3% cost with a 5% lift the first year, at least 2% the second year with an additional 5% lift. The second year also provides reopening on "two reopener provisions exclusive of the across-the-board wages." The police were on a wage and insurance reopener for 1984 and that settlement resulted in at least a 3% increase without any increase in health and dental pick up for 1984. The transit union will receive a 10.7% increase for the period 6-1-84 for two years. In the Union's opinion, it is clear from these settlements that the final offer of the Employer falls short and does not fit any pattern of settlement for City of Sheboygan employees.

The Union also analyzes settlements for the School District of Sheboygan. They note the School District of the City of Sheboygan are one-year contracts with increases ranging from 6.4% for teachers' aides, 3% for custodial-maintenance, and a two-year contract for clerical with 2.1% in wages the second year. The insurance increases varied from $22.11 to $23.06 for family to an additional $8.95 on single.

With respect to public employees of and within Sheboygan County, the Union notes the county highway department had a wage reopener resulting in 4.8% as did the Courthouse 4.8%, institutions 4.9%, and law enforcement 4.8%. Other units of public sector in

Sheboygan County having settlements of one year were City of Plymouth police at 4.5% and Department of Public Works at 4.5%. The Plymouth units included an additional $42.27 on the family plan and $19.68 on the single plan health insurance.

The Union also attacks the Employer's ability to pay argument. They draw attention to the fact that the Employer, at the hearing, was asked directly if he was claiming an inability to pay. The answer from the Employer representative to the Union was that he was "not in the traditional sense." In what sense he was claiming an inability to pay was never put forth clearly, however, the unwillingness to meet the cost of the Union's proposal came through loud and clear. The Union contends that unwillingness and inability are two different things. The Arbitrator, by statue, is to address inability not unwillingness. In this regard they cite School District of Gilmanton, Dec. No. 18201-A (1981). The Union suggests that the Employer must prove their inability to pay argument with more than assertion. In the Union's opinion, they have failed to do this. For instance, they draw attention to the fact that missing from the Employer's exhibits was a copy of the budget for the Sheboygan Water Utility. Balance sheets for 1982, and 1983 show where money was spent, not where there could be flexibility allowing for wage increases for 1984 nor an explanation of where they could get the money from in 1985 of 4% under their proposal. Employer exhibit 32 shows appropriated funds for plant expansion (account 125) January 31, 1984 through January 31, 1986 with a total of $442,500.00, however, in review of the December 31, 1983 balance sheet this same amount appears as left over from the year 1983. The Union can only surmise that the money was already appropriated in the budget. No testimony was put forth that there could not be flexibility in the items shown on Exhibit 32, for example the water meter change-out program of $53,500.00, that some maintenance or repairs could be sacrificed or postponed, etc. At the time of the hearing two positions were not filled, there is a cost savings there which allows higher paid workers to be replaced (if the Employer even desires to do so) with lower paid workers.

In examination of Employer Exhibit 31, the Union notes that the Employer gained $104,169.20 through August of 1984 (8-month period). This averages out to $13,021.15 per month and projected at that rate for another four months would result in an additional $52,084.60 for a total gain of $156,253.80 for the year. That $52,084.60 is more than the Employer's costing of $31,328.00 of the Union's final offer.

Moreover, the Union contends that the Utility has a control over the amount of income they can produce. They are not in a taxing limitation situation, and they are not restricted by how many times they can go to the Public Service Commission for a rate increase. Yet, the Union maintains, they seem hesitant to approach the volatile electorate of the City Council who appoints them. In their opinion, there are remedial efforts that are not exhausted. For instance, they direct attention to the following comment of the Utility Superintendent in a letter to the local newspaper:

> "...If we establish a lesser rate of return at this time, it would force us in sooner next time at more expense to the Utility and water users of Sheboygan. Most larger Wisconsin Communities are requesting a rate increase on the average of every one to two years in order to meet their commitments and maintain proper service to their customers. Compared to other large communities, our water rates are among the lowest in the State."

They also suggest if they know they can cover a 4% increase the second year, there is no reason why they can't finance a 3 1/2% increase the first year.

Last, the Union argues that their wage offer is most consistent with the cost of living criteria. The cost of living index

shows a 4% increase in small metropolitan areas, 4.2% increase in the United States and 3.8% increase in Milwaukee. The purpose of exhibit 74 was to show that even though some of the comparables in the Union's pool are not small metro areas, most of the above-mentioned areas incur relatively equal increases and that there are increases in the C.P.I. for 1984, and the employee, via the Employer's final offer, will receive no offsetting money. Based on the increases, the Union's final offer is more reasonable.

B. The Employer

In general, the Employer contends their proposal should be adopted as the preferable solution to the impasse between the parties. The offer is representative of what the Employer will be able to pay over the next two years. The benefits of increased employee wages must be weighed against the benefit of operating the Water Utility with a positive cashflow instead of the deficit which currently exists. The Employer's final offer is a possible compromise which will allow the Employer to make significant progress toward eliminating the deficit while guaranteeing a 4% wage increase to employees after January 1, 1985. Further, more specific to the ability to pay criteria, the Employer notes they are currently operating with a substantial deficit. Accordingly, the one-year wage freeze is proposed to allow a return to financial health. In this respect, they contend that the Employer is not asserting a traditional inability to pay argument, although it has presented evidence of an existing deficit. Instead, the Employer is arguing that because of its immediate financial condition, it can more easily sustain a 4% increase in labor costs at the beginning of 1985 than it can sustain a 3% increase at the beginning of 1984 and a 1% increase in July of 1984.

The Utility's financial condition in the Employer's eyes must be viewed in light of its uniqueness. Unlike other units of government, the Employer cannot tax to accomplish its goal. In this respect, a municipal water utility is a unique unit of local government. In many ways it is like a private sector employer because it has no taxing authority and must generate the revenue to cover its expenses by charging for a product. The revenues which are received by the water utility come from the rates charged for water and any increases in those rates must be approved by the Wisconsin Public Service Commission (PSC) and are also subject to agreement from City Hall (Wis. Stat. Ch. 196 (1981)). The Sheboygan Water Utility has received only two PSC-approved rate increases in the last five years. The first rate increase was granted to be effective in October, 1980, at a 5.5% increase over the rate of return. The increase was subsequently reduced to 4% on the basis of the testimony of the Sheboygan Mayor before the PSC. In spite of the reduction in the rate increase, the Water Utility was able to operate at a profit for the fiscal years 1980 and 1981. However, as Superintendent Culver testified, the Water Utility incurred a drastic decline in water pumpage in 1982 which lasted through the first half of 1983 and had a significant negative effect on the Water Utility's income. In 1982 the Water Utility lost $82,815.84 and in 1983 the Water Utility lost $138,670.65.

In 1983, the Sheboygan Water Utility again requested a rate increase in a hearing before the PSC. That rate increase was granted on February 21, 1984 and ultimately was approved by the Sheboygan City Council. Nevertheless, the Water Utility still must recover $117,317.29 before it can again operate at a profit. Operating costs are not the Employer's only financial concern. In addition, the Water Utility must continually replace and repair the equipment necessary to operate a water utility. For the Sheboygan Water Utility such expenditures could amount to $442,500 before January 31, 1986. The Sheboygan Water Utility has proposed a freeze on the wages of its employees until December 31, 1984. The

freeze is proposed to allow the Water Utility to recover from the losses it sustained in 1982 and 1983. The Employer proposes its wage freeze only as an interim measure of short duration while the economic stability of the Utility is regained. In the Employer's opinion, it is in the best interest of the public, the Water Utility and its employees for the Employer to regain its financial stability. In addition, they note a significant portion of the deficit is attributable to uncontrollable expenses, such as electricity. The electrical cost for pumping is of particular concern. Every time a fire occurs in the area served by the City of Sheboygan Water Utility, the enormous increase in electricity used to supply water represents a substantial cost. Payment for the increased electricity use must be made by the Employer over the remainder of the year.

They note that the Union has suggested that the Water Utility has other options available. Specifically the Union has mentioned seeking another rate increase from the PSC, or alternatively, seeking bonding authority. The Employer contends that the Union ignores the uncertainties inherent in both options and the adverse consequences of each. While it is true that there is no limitation on the frequency with which a utility can request rate increases from the PSC, such increases are not automatic, and as Superintendent Culver testified, the Sheboygan City Council has already achieved one reduction in a rate increase requested by the Employer and is unlikely to support another increase so soon after the last one. Furthermore, the rate increase granted in February 1984 can ultimately prove sufficient to put the Utility back in a profit-making position. A wage freeze for the rest of 1984 would simply allow the Utility to regain its financial stability that much sooner. To impose yet another PSC rate increase on water utility consumers would not serve the public interest where the first increase is sufficient. The possibility of bonding is similarly uncertain and likely to be ineffective. Superintendent Culver testified that the Sheboygan Water Utility has no bond rating at the present time, and with two years of negative income, the Utility is not likely to receive a good rating for the purpose of selling bonds, should it request such a rating.

To illustrate how the Union's offer would stifle their attempts to gain financial stability, the Employer notes that even if the Union's costing is accurate, its proposal will cost in excess of $26,000 in 1984. This figure represents more than 22% of the amount which the Utility must still recover to break even. No public interest is served by forcing the Employer to assume additional financial obligations when it is attempting economic recovery. The Employer is not refusing to increase the wages of its employees. Instead, the Employer is proposing a 4% increase at the beginning of 1985 when it anticipates that it will have the financial security to pay such increased wages. It is apparent that the Employer must operate in a stringently economical fashion until it recoups the losses sustained in 1982 and 1983 and postponing a wage increase is a rational and necessry economizing measure. No viable alternatives are available because the Employer does not benefit from increased taxes, and seeking another rate increase and bonding are not workable solutions.

In terms of rebuttal on the ability to pay issue, they note the Union insists that the Employer is able to incur increased labor costs without any adverse impact. The Union proposes that the Employer consider sacrificing or postponing maintenance and repairs or request a rate increase from the PSC, but fails to demonstrate how these suggestions would benefit the public interest and welfare. The repairs and maintenance performed by the Water Utility directly affect the service which the Employer provides to the Sheboygan community.

The Employer next directs attention to comparisons between the Utility and the only city bargaining units which they believe to be directly comparable. These two units they note are also repre-

sented by AFSCME and therefore a large number of public employees in the City of Sheboygan will receive no wage increase during 1984. Furthermore, unlike the Water Utility employees under the Employer's offer, the employees represented by AFSCME Local 2093 and 1564 are not guaranteed a 4% increase in 1985. They are left with the uncertain outcome of a wage reopener. At the arbitration hearing, the Union maintained that these 202 employees will go without a wage increase in 1984 and only a wage reopener in 1985, for the sake of job security language which Water Utility employees do not have. However, on cross-examination, the Union admitted that no request for job security had ever been made of the Employer during negotiations or at any other time. Furthermore, Superintendent Culver testified that the possibility of layoffs from his 23 person force was so minimal as to be non-existent. Culver did admit that at the time of the hearing, only 21 of the 23 positions were filled, but stated that the Utility was in the process of hiring employees to fill the two vacant positions.

Further, the Employer believes the contracts negotiated by AFSCME locals with the City of Sheboygan should be given the most weight as comparables, followed by water utility contracts in comparable communities. Wisconsin Statute 111.70(4)(cm)7 does not assign priority or weight to the eight factors which it lists for the Arbitrator's consideration. Nevertheless, in the Employer's opinion, there is evident logic in the order with which the factors are listed. Thus, the ability of the Employer to pay for any proposed settlement precedes the wages, hours and conditions of employment for comparable units of employees in the list of considerations. Additionally, the Statute lists comparisons with other employees performing similar services in the same community before employees generally in public employment in the same community and before employees performing similar services in comparable communities. The structure of the Statute dictates the logic of considering the contract settlements for the Department of Public Works and City Hall employees before considering the contract settlements for other public employees in the Sheboygan community and Water Utility employees in comparable communities. The Union maintains that the Employer's final offer does not fit any pattern of settlement for the City of Sheboygan employees, and ignores the fact that the Employer's final offer does fit the pattern which the Union itself established in its contract settlements with the City of Sheboygan. In fact, the Employer's offer is more generous because it guarantees a 4% increase in the second year of the contract and increases major medical coverage by $200,000.00 The Employer has previously argued that the Public Works employees and City Hall employees units are more comparable to the Water Utility than the police, firefighters, and school district employees and that the City of Sheboygan is not in the same financial situation with respect to its funding mechanism as the Water Utility. The Union, on the other hand, has given no reason for its blanket assertion that equal weight should be given to all units of public employees in the City of Sheboygan and units of Water Utility employees in comparable communities.

Further, in respect to a comparison to Local 2039, the Employer's argument implies that it should be given special emphasis because of the similarity between certain positions. They note Local 2039's contract covers the wastewater treatment plant operators and the plant maintenance mechanics. These positions are paid at rates of $9.05 an hour and $9.32 an hour respectively (Employer Exhibit 13). In the Water Utility, an operator is paid $9.74 an hour, a relief operator earns $9.40 an hour and an operator helper earns $9.09 an hour. Water Utility employees will still outearn their counterparts in the City wastewater treatment plant if their wages are frozen for the remainder of 1984.

Regarding other city units, the Employer notes that the Union attempts to minimize the two contracts containing wage freezes. Instead, it is attempting a comparison between the Water Utility employees and units where there are no comparable positions or

services offered, such as police and fire and where other unions have negotiated the collective bargaining agreements. The same union which represents the Water Utility employees has agreed to wage freezes in two other municipal units which it represents. It should not be allowed to use the coattails of other unions to obtain a wage increase for the Water Utility employees which it was unable to obtain for two other units of government employees.

The Employer next analyzes the offers relative to the wages, hours and conditions of employment in comparable communities. They assert the Employer is currently paying wages which are more than competitive when compared to those paid by other communities. Moreover, the wages of Sheboygan Water Utility employees will continue to be competitive even if the Employer's proposal is adopted. In the list of comparable communities presented by the Employer, Sheboygan's population is larger than only those of Fond du Lac and Manitowoc and yet in 1983 its minimum and maximum wages were behind only those of Appleton and Eau Claire. In 1984, even with a wage freeze, Sheboygan will still pay a higher minimum rate than Manitowoc, Janesville, and La Crosse. It will pay a higher maximum rate than Oshkosh, Janesville, La Crosse, and Fond du Lac. Even with a one-year freeze, the Employer will pay higher wages than larger comparable communities. This assertion is based on the following data:

OPERATOR

1983		1984	
Sheboygan	9.34	Eau Claire	10.35
Eau Claire	9.40	Sheboygan	10.13 *
Appleton	9.13	Sheboygan	9.74 **
Oshkosh	9.02	Appleton	9.00
Janesville	8.53	Oshkosh	9.00
La Crosse	8.31	Janesville	9.23
		La Crosse	8.65

* Union Offer
** Employer Offer

OPERATOR HELPER

1983		1984	
Sheboygan	9.74	Sheboygan	10.13 *
Eau Claire	9.40	Eau Claire	9.94
Appleton	9.05	Appleton	9.53
Manitowoc	9.04	Manitowoc	9.67
Oshkosh	8.89	Sheboygan	9.74 **
Janesville	8.53	Oshkosh	8.89
		Janesville	8.80

* Union Offer
** Employer Offer

METER READER

1983		1984	
Manitowoc	9.39	Manitowoc	10.05
Eau Claire	8.94	Eau Claire	9.45
Sheboygan	8.72	Sheboygan	9.07 *
Oshkosh	8.49	Oshkosh	8.89
Janesville	8.28	Sheboygan	8.00 **
La Crosse	8.02	Janesville	8.54
		La Crosse	8.34

* Union Offer
** Employer Offer

CONSTRUCTION-MAINTENANCE PERSON

1983		1984	
Appleton	9.80	Appleton	10.28
Manitowoc	9.48	Manitowoc	10.14
Eau Claire	9.40	Eau Claire	9.94
Oshkosh	9.02	Oshkosh	9.42
La Crosse	8.79	La Crosse	9.15
Sheboygan	8.72	Sheboygan	9.07 *
Janesville	8.53	Janesville	8.80
		Sheboygan	8.72 **

* Union Offer
** Employer Offer

ACCOUNT CLERK

1984	
Eau Claire	9.01
Sheboygan	8.73 *
Sheboygan	8.40 **
Oshkosh	7.95

Based on their wage data, the Employer believes their proposal will have an inconsequential effect on the wages of its employees relative to their counterparts in comparable communities and should be adopted because of its long-term benefit of providing the Water Utility with economic stability, a benefit for both employees and the Employer. The effect of the proposed wage freeze will last for only one year, or until December 31, 1984. At that point the employees are guaranteed a 4% increase. If the Employer's offer is accepted, Sheboygan will be the only Water Utility at the present time guaranteeing its employees a 4% increase through the end of 1985. Employees will have this guarantee in addition to job security. Recent increases in the Consumer Price Index have been small. Therefore, Water Utility employees will not lose significant real income over the course of the Employer's two-year proposal.

The Employer also believes their wage offer is most reasonable when compared to wage packages in the private sector and particularly in private construction because much of the work in the Utility is similar, such as building and repairing water mains. In the construction sector, collective bargaining in 1984 on a nationwide average has resulted in a wage freeze throughout the industry. The Sheboygan Water Utility, like the construction industry, has suffered the ills of the recession. Like the construction industry, a wage freeze will prove a substantial factor in allowing the Water Utility to recover economically. It is vital that both the Water Utility and the construction industry maintain economic stability because each serves an integral social purpose - ensuring that the infrastructure which supports the country remains sound and operates smoothly. In terms of other private sector employees, the Employer asserts the economic condition of industries in the Sheboygan community also indicate that a one-year wage freeze would not put Water Utility employees out of step with private sector wage earners. In many instances they will remain in much better shape. For instance, in the fall of 1983, the Armira Leather Tanning Company left Sheboygan leaving 200 people without employment (Employer Exhibit 38). Thonet, a furniture manufacturer, also left the community as Superintendent Culver testified. Another furniture manufacturing concern, R-Way Furniture Company, sustained a strike early in 1984. The strike lasted more than six months and the contract which was ratified by Union members in late September of 1984 contained both wage and fringe benefit cuts (Employer's Exhibits 39, 40, 41 and 42). A comparison with the private sector

indicates that the Employer's proposed one-year wage freeze is not drastic, but is a common sense cost containment measure necessitated by two years of deficits.

4. Hospital Surgical Insurance

A. Union

The Union considers the wage issue the most important, however, almost of equal importance is the insurance (health) issue language. They don't address the increase to $250,000 in the major medical since both offers are identical in this respect. They concentrate instead on what they consider to be flaw in the Employer's final offer. They note that the Employer's final offer states:

> "4. Add the following to Sec. 9.9 (paragraph 1) 'the Employer retains the sole and exclusive right to change carriers provided comparable coverage is provided.'"

The Union points out that (1) the preceding sentence in 9.9 which was not deleted in the Employer's final offer would read:

> "Any changes in the policy or carrier shall be by mutual agreement"

and (2) the Employer's final offer would still contain the words in the 2nd sentence:

> "The insurance program (employees being eligible for coverage after 30 days of employment) shall be the Blue Cross-Blue Shield United of Wisconsin Hospital Contract series 2000, and Surgical and Medical Contract SM-100 with major medical coverage, the Employer being a part of the City of Sheboygan Group."

Based on this analysis of the superimposing of the proposed language on the existing language, they submit that the Union's offer is more reasonable because of several reasons. First, it does not contain contradictions. The Employer's additional sentence is not reconcilable to the previous sentence that was not deleted. Future problems could arise with the Union claiming mutual consent is still required because the sentence was not deleted. Secondly, the Union uses the language "equal or better coverage" whereas the Employer has tied himself into "comparable." The Union argues what happens if the Employer finds equal or better coverage at a cheaper rate - must he be prohibited from implementing such a plan because it has all the benefits at equal levels plus additional benefits? It would be unreasonable to deny this to the Employer. The Union language offers the Employer a wider range as it would be the employee's decision to better a benefit, while still maintaining what has already been negotiated. The Union opines their language must be deemed more reasonable.

B. The Employer

The Employer believes their offer in this respect is most reasonable because first, it provides a five-fold increase in major medical coverage. This is a substantially increased benefit. Statistics show that medical care is one of the most rapidly increasing costs in the Consumer Price Index. Other surveys have shown that health care costs are requiring an ever increasing portion of Employer's payrolls (Employer Exhibit 48). Secondly, it is reasonable because their offer is made in conjunction with their proposal to grant the Employer the right to change insurance carriers as long as it provides comparable coverage to the employees. This is a proposal which will have no impact on the employees' compensation package at all. In effect, the Employer's

proposal simply provides it with a mechanism by which it can attempt to contain costs in a field of fringe benefits which is increasingly expensive. It must be noted that, here too, there are other options available to the Employer. One of the most popular, which this Employer has rejected, is requiring employees to begin paying percentages of their health bills (Employer Exhibit 49). Instead, the Employer has agreed to pay full major medical coverage.

5. Dental Insurance

A. Union

The Union contends that the difference in the offers with respect to dental insurance comes as a result of the two-year duration. Under the Union's final offer, the employee would maintain the payment he has now, it would not be more money out of his pocket. If the Employer's final offer is accepted, any increase in premiums which are not existent now, though no guarantee for 1984, would be picked up by the employee and if future increases in 1985 take place, they also would be picked up by the employee.

Further, the Union notes other City of Sheboygan employees who received no wage increase had a guarantee of the dental insurance increases being picked up through all of 1984 and will not lose out of pocket money. They can then negotiate in 1985 if increases appear. The Employer has not put in exhibits regarding dental comparisons. In review of what the Union offers in Exhibits 31 (comparable cities) and Exhibits 44, 45 and 46 (school board of Sheboygan employees), it is apparent that most pay more toward dental insurance if they have it. Green Bay pays $15 single and $42 family, West Allis pays $7.52 single and $23.44 family, while the Sheboygan School Board pays 90% which is an employer contribution of $33.59 family and $10.30 single.

B. The Employer

The Employer acknowledges that their proposal requires employees to cover any increase in the dental insurance premiums. They note, however, the collective bargaining agreement which expired December 31, 1983, contained a similar provision. Under the language proposed by the Employer, an employee would only be required to pay the increase, not the full amount of the premium. As Superintendent Culver testified, at the time of the arbitration hearing there had been no increases in the dental insurance premiums during 1984. Employees with single plan coverage presently pay a $1.00 increase from 1983 and family plan members pay $3.48. Thus, they assert no unreasonable financial burden is placed on employees under the Employer's proposal to retain the dental insurance provision in substantially the same form. They contend that both the dental insurance and hospital and surgical insurance offers of the Employer are reasonable and should be adopted.

6. Clean-Up Time

A. Union

The Union believes their proposal in this regard is reasonable because it simply codifies a current undisputed past practice. While the Union admits that this language is not seen as critical to the assessment of their offer, they note it could result in a negative impact on the employee. He would have to clean-up on his own time. This would result in the employee giving the employer one sixth of an hour. The Union is not proposing a difference in the status quo. The employees do have 10 minutes clean-up time now and the language is not unique. Union Exhibit 25 exemplifies that clean-up time language exists in the City of Eau Claire, Kenosha, and West Allis.

B. The Employer

The Employer believes the Union's proposal to be unnecessary. In this respect, they draw attention to the testimony of Superintendent Culver. He testified that the construction-maintenance employees are already allowed 10 minutes at the end of a shift for purposes of cleaning up. He testified that this is a well-established past practice of the Employer and no indication has been given that the Employer intends to alter or eliminate the practice. The Union's request for clean-up time language simply reflects a desire to put in writing a practice to which the Employer already adheres. In terms of the proposal's practical effect on the rights and privileges of Water Utility employees, there is none. The Employer contends the proposed language is unnecessary and adds nothing of value to the Union's offer.

7. Fair Share

A. Union

The Union submits that while most arbitrators will not have objection to a fair share agreement in a final offer, they usually include an indemnification clause. This Employer presently has none. However, the reasonableness of the Union's proposal must not be taken lightly. It is possible as there is no guarantee that the present Employer is safe from litigation. The Union feels its responsibility in this area. Without it, the Employer could pay out more than the whole cost of the Union's package in litigation fees. Contracts which contain such a clause in one form or another are the Sheboygan County institutional contract (Union Exhibit 48) entered as a sample of county contracts, Janesville (Union Exhibit 62, page 2), City of La Crosse (Union Exhibit 62, page 14), Racine (Union Exhibit 64, page 3) and City of West Allis (Union Exhibit 66, page 8).

B. The Employer

The Employer argues the Union's proposal for an indemnification clause in the contract is similar to their clean-up time proposal because it has a de minimus effect on the relationship of the parties. The Union does not argue that its proposal is more reasonable because it includes the additional fair share language.

V. DISCUSSION AND FINDINGS

A. The Appropriate Set of Comparables

The parties are in disagreement over the appropriate set of employers for comparison purposes under criteria (D) of the statute. Criteria (D) lists a number of different comparative parameters for the comparison of wages, hours and working conditions. They can be outlined as follows:

1. Comparison with other employees performing similar work.
2. Employees generally in public employment in the same community.
3. Other employees generally in public employment in comparable communities.
4. Other employees in private employment in the same community.
5. Other employees in private employment in comparable communities.

The parties are primarily in disagreement over the composition of two of the comparable parameter groups. First, they cannot agree on a set of employer/employees performing similar work and

second, they cannot agree on a set of public sector employer/employees in the same community.

With respect to the appropriate set of comparable employees performing the same work, the Arbitrator believes the set proposed by the Employer to be more appropriate than those proposed by the Union. The Union agrees that all the cities offered by the Employer are comparable except Appleton. The Union offers that Green Bay, Racine, Kenosha and Wauwatosa are comparable. West Allis is also included in several comparison exhibits and Fond du Lac, Port Washington and Manitowoc are included by the Union as geographical comparisons.

The Arbitrator views Green Bay, Racine, Kenosha and Wauwatosa as much too large relative to Sheboygan to be considered valid comparables. Their populations and/or economic factors are greatly disproportionate to Sheboygan. With respect to West Allis, there isn't enough information given to determine if it is comparable. With respect to Port Washington, it is significantly smaller than Sheboygan, so much that a comparison between the two is not valid. Appleton, on the other hand, is reasonably close in size and other factors. Accordingly, the appropriate set of comparable employer/employee groups performing the same work will be:

Appleton	Eau Claire	Janesville
Oshkosh	La Crosse	Fond du Lac
Beloit	Manitowoc	

With respect to other public employers within the same community, the Union essentially asked that two tiers of relevancy be recognized. The most relevant in their opinion being those employees employed by the City of Sheboygan in the department of public works, City Hall, professional units, transit department, fire and police departments. The next most relevant group in their opinion should be the Sheboygan School District, Sheboygan county employees and other cities within Sheboygan county.

The Employer believes that the City bargaining units represented by AFSCME, i.e. Department of Public Works and City Hall, deserve the most weight and conversely they argue that the settlements in the police and fire departments and external water utilities settlements should be given little weight.

It is the Arbitrator's opinion that in consideration of the issues, that it is appropriate to give weight to employers/employees doing similar work (other water utilities) and public employees in the same community including not only DPW and City Hall, but other groups as well, such as police and fire. Moreover, the Arbitrator does not find that the Department of Public Works and City Hall units should be given any more weight than any other city units. The Employer argues that they should be given more weight because of the similarities in positions between the DPW and the Water Utility. However, the Union correctly points out in rebuttal that this alleged similarity is mostly assertion and not based on any probative or credible evidence such as job descriptions. With respect to union affiliation, the Arbitrator sees no particular reason that union affiliation should have any bearing on the weight to be attached to settlements. The DPW and City Hall are separate locals with, not only technically different employers, but different interests, working conditions, etc. The fact that the local organization chose to affiliate with the same state and national organization and have the same representative is in no way binding in and of itself on the nature of one local's contract negotiations. With respect to Sheboygan County and city employers within Sheboygan, the Arbitrator agrees that they should be given some weight, but not as much as the City employees and should only be relied upon if reliance on other comparables provides an insufficient basis to draw a conclusion about the reasonableness of the parties' offers.

With respect to the question whether the employer/employee groups performing similar duties (other water utilities) should be given more weight than public employees in the same community (city employees), it is the Arbitrator's opinion that this cannot be answered in abstract. The Arbitrator does agree that these two comparable groups probably should deserve more weight than others. However, how much weight each of these groups receives is dependent on the individual facts and circumstances of each case. This is because a wage proposal is in reality two things at once. It causes a wage level change and it creates a wage level. This is a precise but important distinction. A wage proposal may result on one hand in wage level changes (increases) consistent with internal comparables (other public employees in the same community), while at the same time creating an inconsistent wage level relative to external employers performing similar duties. In this respect, both parameters are important. External comparables are important to measure appropriate wage levels as well as appropriate wage level changes, while internal comparables, whether they are with the same employer or within the same community, are important even though they may involve dissimilar positions because they help in determining the appropriate wage level change. On one hand the wage level should be consistent with employees doing similar work. On the other hand, where an employer has several groups of employees or where there is a close community of interest among employees groups in the same community (which appears to be the case here even though the utility is technically distinct from the City), a wage increase must also be measured in equity terms relative to its value as it relates to wage level changes. Employees in a close community of interest should experience reasonably similar wage level changes even if their wage levels are dissimilar due to variances in duties and responsibilities.

Accordingly, under the facts from this case, the preferred wage proposal viewed from criteria (D) is the one that strikes a better balance between these two considerations.

B. Wages and Duration

These issues will be combined for the purposes of discussion because, to a great extent, they are inextricably related.

The Arbitrator will proceed by analyzing this issue relative to various statutory criteria and then weigh those findings on each criteria against each other.

1. Ability to Pay

The Employer asserted that it was not presenting an ability to pay argument in the "traditional sense." The Arbitrator is not convinced that they are not arguing ability to pay in the "traditional sense." Regardless whether one views the Employer's ability to pay argument as traditional or non-traditional, it seems they are arguing at least a temporary inability to pay and asks that a wage freeze be granted to give them an opportunity to recover from past deficits.

The Employer's deficit is not to be taken lightly. It is also recognized that there are several factors which influence the deficit situation which are beyond the control of the Employer such as increased electric cost and lower usage.

However, upon careful reflection of the evidence, the Arbitrator cannot give much weight to the Employer's argument that their offer is supported by the ability to pay criteria. There is no question the deficit situation is real. Nor is there any question when an employer faces such a deficit situation that wages and wage increases of employees is one area of expense that must be considered when addressing such concerns.

The problem here is that much of the deficit and the projected deficit and the alleged "necessity" of no increase in 1984 is within the control of the Employer. First, there is no evidence that the Employer is implementing any other remedial or austerity measures. It seems the Employer wishes to have the employees defer a 1984 wage increase ($26,000 cost to the Employer according to Union figures), but they seem unwilling to have considered other alternatives in addition to a wage freeze. For instance, the Employer has an appropriated fund for plant expansion in place for projects between January 3, 1984 to January 31, 1986. This plan was undoubtedly contemplated at the time of the February 13, 1984 rate increase. This plant expansion budget amounts to $442,500. There is no evidence in this record which suggests that some of these projects couldn't be deferred or limited in scope. The following is a list of the appropriated funds for plant expansion.

Appropriated Funds for Plant Expansion (Account 125)

1.	Repairs to interior of Filter Wash Tank	$ 8,000.00
2.	Replace 1975 model pickup trucks #1 & #3	16,000.00
3.	Rebuild and upgrade four filters in plant - #1, #2, #7 & #9	80,000.00
4.	Replace Low Lift Meter	3,000.00
5.	New Two-Wheel Drive Backhoe (to replace 1957 hydrocrane)	40,000.00
6.	Alum Feed Control Pump	4,000.00
7.	Electric Valve Operator	1,000.00
8.	Water Meter (change-out program)	53,500.00
9.	Semi-Automation of controls on #1 through #6 filters	39,000.00
10.	Chlorine Alarm System	2,000.00
11.	Chlorine Mask	1,500.00
12.	Paint exterior of Paine Avenue & Georgia Avenue towers	3,500.00
13.	Structural Improvements to save energy	5,000.00
14.	Blueprint Machine	1,500.00
15.	Shore Protection	4,500.00
16.	New Water Main Construction (1984-1985)	180,000.00
		$442,500.00

It seems that an ability to pay argument deserves most weight when an employer, while attempting to limit the cost impact of a wage increase, is also making reasonable cost containment efforts in other areas. Here they have not. It is simply not reasonable to expect the employees to solely share the burden of the Employer's plans to eradicate their deficit. Another factor that mitigates against the Employer's ability to pay argument is the fact that they admittedly have one of the lowest water rates in the state and have evidently, as a matter of policy, only requested two increases in the past five years where most water utilities request rate increases every one to two years. The ability to pay argument would be given more weight if it could be shown that the water

rates were already near the reasonable maximum. They are undisputedly not in this case.

The Employer did suggest there are practical limits to the number of times that a utility can request rate increases noting that the last rate increase was granted February, 1984. While it can't be denied that there are practical limitations to the number of times that a utility can request rate increases, there is, lurking in between the line of the Employer's argument and final offer, a bothersome element of a self-fulfilling prophecy in the 1984 rate increase request. It is bothersome that there is no explanation as to why the 1984 rate increase could not have contemplated a reasonable wage increase or some increase for employees. In this connection, the Employer's problem with respect to wages seems to be to a certain degree, self-imposed. It is one thing for a utility to have high rates, frequent rate increases, low revenues, and high capital, operating and labor costs, and quite another to have infrequent increases, no austerity program and what would seem to be, an inadequate rate increase contemporaneous with the advent of contract bargaining. In this respect, the rate increase requested and granted amounted to, according to Employer Exhibit 37, $588,700 or a 44% rate hike. Even granting the Union wage proposal, (which is not necessarily reasonable per se) would amount to an additional $26,000. This would have amounted to approximately an additional 2% on the total rate request.

Accordingly, it seems less than reasonable to accept the Employer's ability to pay argument when there is no explanation as to why some kind of wage increase could not have been provided for in the 1984 rate request. The Arbitrator is not suggesting that the 4% and one-year contract is per se reasonable in face of the Employer's difficulties. However, it is, relatively speaking due to this factor, more reasonable than the Employer's 0% and 4% two-year contract.

On duration, while there is some merit to the Employer's argument that two-year contracts add to collective bargaining stability and that there is a history of two-year contracts, it isn't enough to overcome the lack of support evidenced in this record for the 0% and 4% two-year contract based on ability to pay. Furthermore, even though the comparables support the two-year duration concept, the Employer has not established in terms of comparables, wage level or wage increases that a 4% increase is necessarily appropriate in 1985 because there are no 1985 settlements in evidence. On the other hand, the Union's one-year proposal doesn't box the parties into a wage rate increase for 1985. It is purely subject to negotiations.

2. Comparables Criteria(D)

The Arbitrator has already indicated that in principle potentially equal weight should be given to all the settlements within the City of Sheboygan. The settlements are as follows:

Unit	Wages	Duration	Other Notable Features
AFSCME 1564 (City Hall)	0% - 1984 Reopener - 1985	2-year	No Layoffs
AFSCME 2039 (Labor Trades Group)	0% - 1984 Reopener - 1985	2-year	No Layoffs
Professional Employees	0% - 1984 Reopener - 1985	2-year	No Layoffs

Fire Dept. IAF Local 483	2% - 1/1/84 2% - 7/13/84 1% - 12/28/84 1% - 1/11/85 2% - 7/12/85 2% - 12/13/85	2-year
Police	2% - 1/1/84 2% - 7/1/84	1-year
Transit	$.22 - 6/1/84 $.20 - 1/1/85 $.20 - 6/1/85 $.20 - 1/1/86	2-year

The Employer relies heavily on the three settlements involving 0% for 1984. However, there is an important distinction to be reckoned with, and that is that these settlements were accompanied by a major quid pro quo, i.e. a two-year guarantee of no layoffs. It is hard to believe that the employees in these units would have agreed to 0% increase without such a quid pro quo. Thus, little weight can be given to a 0% final offer without this or some other significant quid pro quo. The Employer contends that the Union never asked for such a guarantee. The Arbitrator doesn't view this as the Union's responsibility. It is noted that other external utility employees were granted increases, other certain City units received increases in wages and those that did not receive any increase in 1984 have the opportunity to reopen negotiations in 1985 in addition to a major quid pro quo. In this context, the burden is on the Employer to justify the 0% and 4% two-year package. They cannot shift the burden to the Union.

The Employer also counters that one of the reasons they didn't offer a no layoff guarantee is that there are realistically no prospects for a layoff. While this isn't disputed or challenged, there isn't any equivalent or similar quid pro quo offered to justify the 0% increase except the 4% guarantee in the second year compared to the mere reopener of the other units. This suggests that the other units will get less than 4% or no more than 4%. This is speculative.

The absence of a significant quid pro quo diminishes the comparative weight to be given to the other contracts. Accordingly, the settlements with other City units seem to slightly favor the Union's position. The City is seen as fit and able, where no layoff guarantees are offered, to grant wage level increases to other units very similar to those or in excess of the Union offer in the instant case. The two-year transit offer, based on available data, is clearly in excess of the Union offer. The firefighter's two-year package has a first year cost of over 3.1% with a 5% lift. The Union offer here has a 3.5% cost and a 4% lift. The police contract cost the City 3% and resulted in a 4% lift. Thus, the Union offer is quite consistent with other offers made on the same no-layoff or no major trade-off basis.

In terms of comparison to other water utilities, the Union's offers is also most consistent. Under the Union offer, using the Employer data, the employees maintain their rank at the operator helper benchmark, meter reader benchmark and construction/maintenance benchmark. At the operator benchmark, even under the Union offer, they slip one position as they would under the Employer offer. Under the Employer's offer, at all other benchmarks, they would slip in rank significantly (except at the account clerk benchmark, which cannot be determined by the Employer data as there is no data submitted for 1983). Moreover, when one calculated the approximate 1983-84 increases at the benchmarks in the comparables, the Union is again most consistent. It is noteworthy that such a calculation was difficult due to the discrepancies in both parties' data between the exhibits and the briefs. However, a reasonably

good approximation of the 1983-84 increases at the construction, meter reader and operator benchmarks was approximately 4% - 4.4%.

In summary, it is the conclusion of the Arbitrator that the Union's offer is most supported by the Criteria (D) in the respect that it is most consistent with wage levels and wage level increases granted employees performing similar work and most consistent with wage level changes granted to those employees in public employment in the same community.

3. Cost of Living Criteria

The Union also argued that their offer was most consistent with the cost of living criteria in the Statute. Regardless of the index used, the Union's offer is in fact consistent with the increases in the cost of living. This weighs in favor of their offer.

4. Summary of the Wage Issue

Looking at the wage issue from the combined perspective of all the statutory criteria, the Union offer must be considered most reasonable. On the ability to pay criteria, the Employer has failed to fully support his justification for no increase in 1984. On the portion of the criteria relating to employees performing similar work in similar communities, the Union offer is most consistent. The Union offer is most consistent with wage level changes in other utilities and there is no justification why their relative wage level should erode. With respect to the portion of Criteria (D) related to public employees in the same community, particularly the City of Sheboygan, the Union's offer is slightly preferred. This is because the 0% increases relied on by the City are distinguished. Beyond these units, the Union's offer is quite consistent with wage level increases enjoyed by others, particularly the fire, police and transit units. Last, the Union's offer is supported by the cost of living criteria.

Accordingly, the Union's offer on wages is preferred, not only because it is most consistent with wages and wage level changes enjoyed by other employees in public employment in Sheboygan and by other public employees performing similar work, but there has been no meaningful inability to pay established.

C. Hospital/Surgical Insurance

Both offers propose to allow the Employer to change insurance carriers. The real dispute here is over the conditions under which the change can take place. The Union proposes that it take place only when substitute coverage is "equal or better" and the Employer proposes that it can change carriers so long as the coverage is "comparable." The Arbitrator has trouble with both standards. One is quite strict while the other is not necessarily precise. Whatever slight preference might arise upon further reflection, even if it were in favor of the Employer, it is not viewed as having the potential for outweighing preference on the major issue of wages. The Employer is essentially correct in their rebuttal that the general intent of both offers is to recognize their lawful right to change carriers. In either instance, such intent will be accomplished.

D. Dental Insurance

The essential difference here is language which relates to whose responsibility it is to absorb future increases in the dental insurance premium. For 1984, the parties are in agreement that the employees will be paying the same under either offer. It is noted

that the status quo language has it the responsibility of the employee to absorb increases. In this respect, the Union has not particularly justified the need for this change. This established a negative preference on this issue against the Union offer.

E. Clean-up Time and Fair Share

The Arbitrator agrees with the Employer that these proposals are not determinative of the reasonableness of the Union's offer in that they have a diminimus effect on the reasonableness of the packages as a whole.

F. Consideration of the Offers as a Whole

The Arbitrator, as expressed above, does not view the fair share or clean-up time issue as determinative. Nor does he view the differences in health insurance language to be particularly significant in the context of this dispute.

Thus, the two most pertinent issues are dental insurance and wages. The Union has failed to justify its shifting of the burden for premium increase to the Employer. However, in view of the vast differences in wage offers and the fact that the Union's offer on wages is more consistent with the statutory criteria, this negative preference is not fatal and cannot be given more weight than the wage issue which is ultimately more important.

Accordingly, the Union's offer, for reasons expressed above, is the more reasonable offer and is accepted.

VI. AWARD

The 1984 Collective Bargaining Agreement between the City of Sheboygan Water Utilities and the Sheboygan Water Utilities Employees, Local 1750-A shall include the final offer of the Sheboygan Water Utilities Employees, Local 1750-A and the stipulations of agreement as submitted to the Wisconsin Employment Relations Commission.

Dated this 15th day of March, 1985, at Eau Claire, Wisconsin.

Gil Vernon, Mediator/Arbitrator