STATE OF WISCONSIN

Before the Interest Arbitrator

In the Matter of the Petition of City of Beaver Dam Police Association Local 206, LAW, INC For Final and Binding Arbitration Involving Law Enforcement Personnel in the Employ of City of Beaver Dam	Case 90 No. 64445 MIA-2652 Decision No. 31704-A Raymond E. McAlpin Arbitrator

APPEARANCES

For the Association: Ben Barth, Labor Consultant, LAW, Inc.
Jason Ganiere, Consultant, LAW, Inc.
Corey Johnson, Pres., Beaver Dam Professional Lease Assn.

For the City: Bradley Fulton, Attorney
Mindy Buenger, Attorney
Jack Hankes, Mayor
John Somers, Finance Director
Gary Dummer, City Clerk/Personnel Officer

PROCEEDINGS

On July 24, 2006 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.77 (4) (b) of the Municipal Employment Relations Act, to resolve an impasse existing between City of Beaver Dam Police Association Local 206, hereinafter referred to as the Association, and the City of Beaver Dam, hereinafter referred to as the Employer.

The hearing was held on January 10, 2007 in Beaver Dam, Wisconsin. The Parties did not request mediation services and the hearing proceeded. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on June 11, 2007 subsequent to receiving the final briefs.

ISSUES

The following are the issues still in dispute between the Association and the City:

ASSOCIATION'S FINAL OFFER

II. STATEMENT OF ISSUE

The question is whether the Arbitrator should incorporate the final offer of the Association or the final offer of the City as final and binding upon the parties.

The Arbitrator in the present case has been asked to rule on the following final offers. The final offer of the Association is listed as Association Ex. No. 300 and the City's final offer is listed as Association Ex. No. 400.

The 2002 – 2004 collective bargaining agreement will continue on into 2005 – 2007 with the following modifications.

1. The tentative agreements reached by the parties and dated 1-13-05 included herein on page 4.

2. Article IX - Salaries

Page 9, Section 9.01.	Effective 1-1-05	2.0% across the board
	Effective 7-1-05	1.0% across the board
	Effective 1-1-06	3.0% across the board
	Effective 1-1-07	3.0% across the board

3. Article XIII - Vacations

Page 13, line 4. Add the following language.

Whenever an employee notifies the City of the employee's intent to retire, the City shall prepare a statement identifying the benefits that will be paid out upon retirement. This summary of benefits shall be provided to the prospective retiree, the Local Association President and the Labor Association of Wisconsin prior to the date of retirement.

4. Article XIV - Sick Leave

Section 14.07 - Sick Leave - Retirement: Rewrite to read as follows. "Each full-time employee who retires from active employment with the City (receives a lump sum payment, including a retirement benefit and/or annuity payments pursuant to Chapter 40, Wis. Stats.) shall convert his accumulated sick leave into paid-up health insurance. A retired employee shall be entitled to health insurance similar to the plan which is in effect for active employees. The amount which an employee has available for sick leave health insurance conversion shall be determined by multiplying the employee=s straight-time hourly wage rate at the time of retirement, excluding premiums, by eight and one-half (8-1/2) hours per day, times the number of days of sick leave which the employee has accumulated~~. The maximum amount of which the City is obligated to pay for health insurance premiums for the retired employee is computed by multiplying either the family premium rate or the single premium rate (to be determined by the coverage for which the employee was eligible at the time of retirement) by sixty (60) months.~~ The retired employee ~~may~~ shall apply the amount of accumulated sick leave conversion to offset health insurance premiums, and to fund a Health Savings Account, as allowed by law, on behalf of the retired employee, if the retired employee has selected the high deductible health insurance plan, until the monies are exhausted, which may include a Medicare supplement plan if any monies are left in the retired employee's account when the retired employee turns the age of Medicare eligibility (currently age 65)"

5. Article XV – Insurance

Page 15, Section 15.01. - Health Insurance. Effective January 1, 2005, all employees shall be covered by the Unity Health Plan. The City shall pay ninety-two and one half percent (92.5%) of the total monthly premium cost, both single and family coverage, and the employee shall pay seven and one half percent (7.5%) of the total monthly premium cost, both single and family coverage, of whichever Unity Health Plan option the employee selects: HMO or Point Of Service. The employee=s share of the monthly premium cost shall be paid by means of payroll deduction. As soon as practicable following a voluntary agreement or an arbitrator's award, all employees shall be covered by the Unity Health Plan and have the choice

of selecting coverage under either the High-Deductible Health Insurance and Health Savings Account ("HSA"), Choice Plus Point of Service ("POS"), or High Option HMO ("HMO").

A. High-Deductible HSA. The City shall pay ninety-two and one half percent (92.5%) of the total monthly premium costs for single or family coverage, as selected by the employee, and the employee shall pay seven and one half percent (7.5%) of the total monthly premium costs for single or family coverage. The City shall also fully fund the deductible, for either single or family coverage, as defined by law for the covered insured to qualify for an HSA.

The City shall fund the deductible for each covered employee on the 1st of January each year. For any employee entering the plan after January 1, the City shall fund the deductible in a prorated manner for the remainder of that calendar year. Any employee who leaves employment for any reason shall reimburse the City in a prorated manner for the City's prior funding of the deductible for the remainder of the calendar year. The City may make deductions from an employee's final paycheck to recover that portion of the deductible subject to reimbursement by the employee.

The 92.5% monthly contribution by the City for single or family coverage, as appropriate, combined with 1/12 of the appropriate deductible, shall be referred to herein as the "City's Monthly Health Insurance Contribution." This definition includes prorated contributions for those employees who enter either health insurance plan after January 1 of a given year.

B. Choice Plus POS or HMO. For employees/retirees who choose the Choice Plus POS or the HMO, the City shall contribute ninety-two and one half percent (92.5%) of the total monthly premium costs for single or family coverage, as selected by the employee/retiree, and the employee/retiree shall pay seven and one half percent (7.5%) of the total monthly premium costs for single or family coverage. The employee/retiree will be responsible for the difference between the City's monthly health insurance contribution and the monthly premium charged by the insurer.

Delete the existing Section 15.02 upon implementation of the new insurance plan with a voluntary agreement or an arbitrator's award and replace with the following.

15.02. The City shall pay $246.40 per month to each qualified employee who does not participate in the City's health insurance plan. Employees shall be required to sign a

waiver opting out of the City's health insurance coverage and must provide proof that they have coverage under another employer-sponsored health plan. Employees who "opt out" of the City health insurance plan and later decide to enroll must follow the procedures established by the insurance carrier and be in compliance with applicable state and federal law. This provision does not apply to spouses who both work for the City, *i.e.*, an employee cannot "opt out" under this provision and receive the monthly payment while being covered under the City's plan through the employee's spouse.

15.03: Change the date by deleting May 1, 2000 and insert the date the new plan goes into effect which will be determined upon a voluntary agreement or arbitrator's award.

15.05. Delete entirely and replace with the following. "Employees covered by this Agreement shall have an IRS Section 125 program available to them as follows: For those employees who elect the High Deductible HSA, the program shall include qualified health insurance premium costs and dependent care expenses; For those employees who elect the Choice Plus POS or HMO, the program shall include qualified health insurance premium costs, medical expenses and dependent care expenses."

6. Article XXXVII - Term of Agreement

This Agreement shall be effective as of January 1, 2005 and remain in full force and effect through December 31, 2007, and shall automatically renew itself from year to year, unless either party gives notice in writing to the other not later than September 1, 2007, or September 1st of any year this Agreement is in force.

CITY'S FINAL OFFER

ISSUES

The parties are in agreement on a three-year duration for the contract. See City Exhibit 31. The following issues remain in dispute:

1. Wages. In 2005, a non-levy limit year, the City proposes a 3% increase, while the Association proposes a 2/1 split. In 2006 and 2007, the first two years of the State-imposed levy limits, the City proposes a 1% wage increase each year, and the Association proposes a 3% wage increase each year. See City Exhibit 31.

2. Modifications to Health Insurance Language. The parties have identical language regarding the principal terms and conditions of implementing the High-Deductible Health Insurance and Health Savings Account ("HSA") plan. In addition, the City has proposed to give up its right to unilaterally select the health insurance carrier. The City has also proposed changes to the sick leave provisions consistent with the changes in the health insurance provisions. Lastly, the City's proposal includes deletion of Section 15.04, as the condition precedent to receiving the benefits outlined therein no longer exists.

3. Association Proposal to Eliminate 60-Month Cap on Retiree Health Insurance Payments. The Association proposes to eliminate the 60-month cap on retiree health insurance benefits paid for by the City. The Association does not offer a quid pro quo for this added benefit.

4. Severance Payments. The City has offered severance benefits in the event it consolidates the services provided by the Association with another governmental entity.

5. Vacations. The Association requests that the summary of benefits currently provided to a prospective retiree also be provided to the Association President and the Association itself prior to the date of retirement.

STATUTORY CRITERIA

Section 111.77(6), Wis. Stats., as follows:

(6) In reaching a decision the Arbitrator shall give weight to the following factors:

(a) The lawful authority of the Employer.

(b) Stipulations of the parties.

© The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

(d) Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

1. In public employment in comparable communities.
2. In private employment in comparable communities.

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

(f) The overall compensation presently received by the 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.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) 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."

ASSOCIATION POSITION

The following represents the arguments and contentions made on behalf of the association:

the parties are apart on a number of issues, the first being wages. The association used the comparables established in two previous interest arbitration decisions and it is the association's proposal that is consistent with wage increases of police bargaining units in comparable communities. Including the lift the association has proposed a 3% increase effective in each year of the 3-year contract. The city offered a 1% increase in each of the last 2 years of the agreement. This proposal is not consistent with the comparables for the cost of living for 2006. The city's offer is also not consistent with the internal comparables.

The third proposal of the Association asked if the retirement benefit statement account provided to retirees is also disseminated to the Association. This is to make sure that the Association members understand the benefits they are entitled to when they retire.

The fourth proposal has multiple parts to it. The Association wants to add "at the time of retirement" to clarify what pay rate is used for the sick leave health insurance conversion. This is a housekeeping provision and does not require a quid pro quo. The second change under the fourth proposal is to delete the maximum amount the City is obligated to pay for health insurance for retired employees. Currently the limit is 60 months. This is a minor clarification based on the time it would take an officer to receive a 60-month calculation and does not require a quid pro quo. The third change in the Association's fourth proposal is also a housekeeping change. The Association would like the retired employees to be able to use their sick leave conversion money not only to offset health insurance premiums but also to fund an HSA and/or Medicare supplement until the monies are exhausted. There was an arbitration case wherein the City's position was that they could take back the money in this account. The Police and Fire Commission disagreed and, therefore, the clarification of this section is important. Since this proposal only codifies the grievances which were upheld by the Police and Fire Commission on August 1, 2006, no quid pro quo is necessary.

The fifth proposal proposes minimal changes to the health insurance language contrary to the City's proposal. All the language changes reflect agreements made between the Health Insurance Coalition and the City.

The sixth and final proposal of both the Association and the City requested a 3-year agreement between the Parties covering the years 2005 to 2007.

The City's proposals are radical compared to the Association's offer. The first and sixth proposals are identical to the City's. The third proposal essentially carves out retirees from receiving health insurance from the City upon retirement, a substantial benefit retirees now enjoy. In the City's fourth proposal the Arbitrator is asked to eliminate Sections 15.03 and .04 of the health insurance provision. That effect would be to eliminate health insurance and retirement benefits for retired officers who have served the City for decades. Extreme benefit changes such as those proposed should only be gained through collective bargaining, not in an arbitration award. The elimination of the City's obligation to pay 25% of the family premium is a major change that was recently subject to a grievance. The City is attempting to completely cut the benefits of the retirees without any quid pro quo at all.

The Association believes that the controlling factor in this interest arbitration is whether or not the City has offered the Association an adequate quid pro quo in return for the significant modifications in Articles XIV and XV. Not only does the City fail to offer a quid pro quo, but also proposes changes in the wage offer which are substantially below internal and external comparables.

With respect to the comparables the Association proposed Oconomowoc, Fort Atkinson, Sun Prairie, Winona, Portage, Wapon, Watertown and Whitewater as the primary set and Dodge County, Mayville and Horicon as the secondary set. These were established by Arbitrator Oestreicher in 1991. The City stated that there was going to be some dispute as to the appropriate set of comparables, however, the City offered no comparison of wages, hours or conditions of employment for any other internal or external comparables. The Association believes the City intentionally left this out since it would not

support its final offer. Section 111.77(6)(d) requires that parties present evidence regarding comparable communities. This is especially important when one of the parties attempts to change the list of comparable communities that have been mutually agreed to by the parties and used during the negotiation process to establish wages, hours and conditions of employment for nearly two decades. Because the city has not put forth any evidence into the record to the contrary, the association respectfully requests that the arbitrator in this case agree that the communities proposed by the association are the most comparable communities.

As noted above the City's final offer lacks an adequate quid pro quo. The Association provided a number of citations in support of this position. The changes proposed by the City would have enormous impact upon officers who take up employment in retirement because police officers tend to retire earlier than other public employees. Under the City's proposal, if a retired officer worked for an employer who offered any health insurance plan, the retiree would lose his City benefits. In addition the City proposed to eliminate the partial payment of health insurance for retirees. The City is asking to eliminate two contractual provisions which it is currently not recognizing. The Association filed and won grievances. Even so, the City has failed to recognize the award. The Association has filed a prohibited practice. The City has responded with a lawsuit. The popular venue for these is not interest arbitration, and the Association asked that the Arbitrator recognize this fact when issuing his award.

The City also proposed eliminating Section 15.03 which provides protections to the Association from unilateral insurance changes. The City contended that it is giving up its

right to select health insurance coverage, but the Association is not convinced. The City hinted that the Health Insurance Coalition would be able to select a plan. Therefore, instead of eliminating the section, the section should be modified to that effect.

The City made a weak attempt at a quid pro quo to offer members a lump sum if the City were to eliminate the Police Department. This is more of a threat than a quid pro quo. In addition the City never proposed any modification to Article XXX-Seniority at the bargaining table.

In addition the Association suggested and agreed to the implementation of a health savings account, therefore, the new health savings account language is not a quid pro quo. The Association was willing to implement the HSA but the City was not. The simple fact was the City was unwilling to make an adequate wage offer during negotiations, mediation or arbitration and, therefore, the HSA was not implemented. If this had been implemented in 2006, the City would have been able to offer an appropriate wage increase and still have had money left to put in the City budget. The failure to implement the HSA is problematic for the City since it was built into the budget as a savings before collective bargaining was completed.

The failure of elected officials to manage the tax levy and budget and the Mayor's political promises should not be at the expense of the City's police. The City's exhibit and testimony are replete with inferences to financial hardships and problems attributed to the levy caps imposed by the passage of Wisconsin Act 25. The City attempted to blame this legislation for its low wage offer. The facts are that the city failed to raise the levy and even

reduced the levy year after year although the City continued to grow. Therefore, what we have here is a politically imposed and not state imposed tax levy reduction by the City which has had compounding effects. Because the City failed to budget for adequate increases, the wages must now come from the City's general fund. The City used this dooms day approach to taking wages from the general fund and now blames the Association for the general fund's reduction.

It is the Association's position that its offer does not violate any of the criteria in Section 111.77(6). The City has not proven that it cannot afford the Association's final offer or that the interest and welfare of the public would be adversely affected. While the City has provided evidence and testimony regarding its financial status, it has not produced any credible evidence that it cannot afford the Association's final offer, nor is there anything in the record that firmly demonstrated that it will have difficulty in meeting the Association's final offer. There was never a claim of inability to pay. The Mayor's testimony did not provide any of these required proofs. The Association asked the Arbitrator to ignore exhibits which are not based on facts and, in particular, Exhibit 25.

The Association would note that the interest and welfare of the public, which is a criterion under the statute, is well served if the citizens of the City of Beaver Dam are provided with public servants who are well paid and of high spirits and morale. Police officers are well aware of wage increases and benefits received by counterparts in the comparable communities since they interact professionally on a daily basis. Based on this wage increases received within other comparable police departments should be given substantial weight as provided for in the statute. It is the Association's offer that is

consistent with Wisconsin statutes and, therefore, should be accepted as the appropriate offer in this matter.

The Association also had the opportunity to reply to the City's initial brief and its arguments are as follows:

Contrary to the City's initial brief this arbitration occurs under Wis. Stat. §111.77 which applies to protective employees. The Arbitrator must give weight to all of the factors listed above. There are no factors given greatest weight or greater weight as in the part of the statute that applies to non-protective arbitration.

The City argued that its hands are tied because of levy limits. The City reduced its levy in the years prior to the levy limits. If it had not done so, this would not be a problem. This was politically imposed, not state imposed, tax levy reduction. To compound the problem the city reduced the levy without budgeting for wage increases. There was no evidence provided by the City that it cannot afford the Association's final offer. It may not like to pay the Association's final offer, but it definitely can afford it.

The Mayor's exhibits and testimony were all based on assumptions and not specifics. The Mayor has only been in the public sector since April, 2004. The Mayor's calculations were based on his own fabrications, speculations and assumptions.

The City stated that the internal and private sector and public sector greatly favor the City's final offer. The facts are that the City provided no statistical basis based on the facts of other comparable employees who perform similar services. The City stated that it had issues with the comparables, yet the City has failed to inform the Association or the Arbitrator what exactly those issues are. The Association and the City have been to arbitration multiple times and the comparables have been set since 1991. There has never been a disagreement as to what constituted the appropriate comparables. The drafters of the statute recognized the need to distinguish the special characteristics and needs of law enforcement employees when compared to employees holding other positions within the same community. If the City had used the right statute and the right comparables, it would have realized how far in left field its final offer was. The patrol officers of Beaver Dam have been somewhat above the monthly average for a number of years. If the Association's offer is selected, that will continue. The wage proposals by the City for the final two years do not meet the comparable criterion.

The City argued that the elimination of Section 15.04 maintains the status quo. This is a matter that has been subject to other litigation. This is a major retirement benefit and to eliminate it does not maintain the status quo.

The City stated that, because there is a separate wage program, there is no ongoing obligation for the City to pay out the benefits and, therefore, the selection of the City's final offer would put the issue to rest once and for all. There is a wage differential for patrol officers hired before January 1, 1996 and those hired after. During the 2002-2004 contract the Parties agreed to eliminate the old wage schedule that provided for 4 steps to top pay

because there were no employees in those steps. This was merely a housekeeping situation. When the contract had two separate wage schedules, both received the same percentage increase each year.

The City stated that it generously included in its final offer the elimination of its unilateral right to select a health insurance carrier. The elimination of Section 15.03 says a lot more than the City has the right to select the carrier. In the current language the City must also provide substantially comparable benefits and coverage. This would be eliminated under the City's proposal.

The City stated that the Association has not been even remotely responsible in its negotiations. If it had done so, the City would have agreed to implement the HSA plan. The Association did bring forth a proposal to switch to the HSA plan. The City held up bargaining with all groups so that the Parties could investigate the possibility of new insurance. The City agreed that this was the plan that everyone would accept subject to individual bargaining. The City had provided reasonable proposals. The HSA plan could have been reached by voluntary agreement.

Finally, the City stated that the public is best served by the City's final offer. It is the Association's position that the citizens of Beaver Dam are best served by providing public servants who are well paid and of high spirits and morale. If the City's final offer is selected, this will send a message to other comparable communities that major changes to benefits are obtainable through arbitration and would consequently be a deterrent to engage in meaningful contract negotiations. The members of the Beaver Dam Police

Association have been willing to forego a wage increase since 2004 in order to fight for a wage increase that is fair and equitable.

Based on the above again the Association stated that its offer should be selected.

CITY POSITION

The following represents the arguments and contentions made on behalf of the City:

In July, 2005 Governor Doyle signed a levy limit legislation into law which brought in a new chapter in municipal bargaining. Gone are the days of the automatic 3% increases and excessive municipal spending. The taxpayers of Wisconsin convinced their legislators and Governor Doyle that it was necessary to impose statewide levy limits in order to control local spending.

The citizens of Beaver Dam are fed up with excessive municipal spending. The voters have elected fiscal conservatives to the City council and have elected and reelected a mayor who has made fiscal responsibility the central theme of his administration.

In the Fall of 2004 the City asked its five Associations to come together and form the Health Insurance Coalition to address the escalating cost of health insurance. The Parties agreed to a health insurance plan that saves everyone involved tens of thousands of dollars. Three of the bargaining units agreed to implement the plan effective January 1, 2006 without a voluntary agreement in place. The unrepresented employees moved to the plan at that time.

This Association, however, refused to move to the plan without a 3% wage increase. As a result, the Association's own members have been paying significantly more for health insurance out of their own pockets just in an effort to hold the City hostage on this issue. The Association's fiscal irresponsibility is further underscored by its proposal to eliminate the 60-month cap on retiree health insurance benefits under Section 14.07 of the contract. Not only would this proposal expose the City to significantly higher retiree health costs, but also the Association has offered no quid pro quo for its proposal.

The City cannot afford the Association's final offer. From a municipal finance standpoint these are very trying times. Everyone including employees must recognize the sacrifices that need to be made. This group of employees, however, is unwilling to make such sacrifices. Instead they want more. This sort of reckless approach to difficult municipal decisions is not what the governor and the legislature had in mind when enacting levy limits.

The enumerated factors weigh heavily in favor of the City's wage proposal. The levy limits have tied the City's hands and the economic conditions of the City are not favorable. The 2005 budget did not include wage increases, nonetheless the City suffered a loss. The 2006 health insurance costs were significantly over budget. Beaver Dam is not a wealthy community, and the City provided statistics in support of that position.

The City cannot afford the Association's final offer since it cannot afford more than a 1% wage increase in 2006. In 2006 the city cut back in every category that it could directly control. Revenues for non-property tax levy revenues were down over $100,000 for 2006.

With respect to 2007 health insurance premiums increased 19.5%. The City eliminated three positions from the work force and significant cuts in garbage and recycling services to the citizens.

The difference between the City's final offer and the Association's final offer is $64,000. Where is this money supposed to come from? The City cannot raise taxes any higher and has already significantly reduced every category of expenses it can control. The City's final offer maintains the current level of dollars allocated to wages and benefits and actually slightly increases this allocation for 2007. The Association acknowledged that the City has no money in the budget but suggested that the City should take money out of the general fund. However, this is bad fiscal practice. The only way to stay within budget with levy limits in place is to reduce services or costs. The City has already done both.

The public is best served by the City's final offer. The citizens deserve sound financial management of their taxpayer dollars. The Association wants the City to spend an even greater percentage of taxpayer dollars on wages and benefits for its employees. The City is simply trying to preserve service levels and maintain the status quo. Since the City has been devoting a disproportionate amount of its resources to wages and benefits, its investment in the City infrastructure has decreased dramatically. The total capital outlay is only 45% of what it was 30 years ago. The average age of a public works vehicle is 12

years and the current rate of street replacement will take 200 years to replace all of the streets of the city. The City is in dire need of an updated police station to meet the public safety demands of the City. In addition to the above, the City is spending a disproportionate share of its budget on wages and benefits even in the face of the declining value of property due to levy limits. The citizens of Beaver Dam are already over taxed.

A review of wages and benefits paid to comparable employees heavily favors the City's final offer. All of the unrepresented employees received no greater than a 2% wage increase for 2005 and a 1% increase for 2006 and 2007. This is less than the City is offering the Association. The Association wants an even greater wage increase than received by the employees of the Water Utility Department which is not even an appropriate internal comparable because it is not taxpayer funded. How this Association can expect a greater wage increase is beyond imagination.

Private sector comparables also favor the City's position, particularly in the area of health insurance premiums. These Association employees are far better compensated than the private sector citizens that they serve.

With respect to public sector comparables the City readily acknowledged that its offer of 1% wage increases in 2006 and 2007 is below the going rate, however, that does not mean that the City can afford any higher wage increases. Many of the communities identified by the Association as comparables simply are not. The cities such as Oconomowoc, Sun Prairie, Winona and Whitewater are much better off financially and,

therefore, not comparable communities whatsoever. Therefore, the factor of comparability should rest in the internal and private sector areas and not the public sector.

The Association's refusal to implement the agreed upon HSA plan requires rejection of its final offer. Instead of implementing the plan, the City was obligated to pay a significant amount of additional expenses under the old plan.

The City's proposed elimination of Section 15.04 is consistent with the expressed and unambiguous terms of the contract. Elimination of this section maintains the status quo and effectuates the intent of the language that was put into the Collective Bargaining Agreement back in 1996. The language is clear and unambiguous. The benefit is only to be paid if there is a separate wage program in Article IX. There is no such separate wage program.

The Association offered no quid pro quo for the elimination of the 60-month cap on retiree health insurance benefits. The 60-month cap results in significant savings to the City that would not occur if this cap were not in place. The City would be exposed to significantly higher retiree health care costs that it simply cannot afford. The Association has proposed no quid pro quo whatsoever for this increased benefit.

The other issues favor selection of the City's final offer. The City has included the elimination of its unilateral right to select a health insurance carrier. The City has proposed this because it found a Health Insurance Coalition format to be the most productive. The Association seemed to have a difficult time understanding this. The City's final offer also

included a very generous severance provision in the event the City decides to consolidate services provided by the unit with another governmental benefit. This offer was made to be consistent with its dispatcher unit.

The Association will no doubt attempt to rely on the decision of Arbitrator Engmann - November 8, 2006. The principal reason the Arbitrator found for the AFSCME unit was that the total cost for the unit in 2006 was less than the 2005 cost. The reason for this was that the unit had fewer members. The Arbitrator found the savings from the agreed upon health insurance changes were enough to offset the wages in the Association's final offer. In addition the case is distinguishable because the Arbitrator's analysis was misplaced. Bargaining units do not exist in a vacuum. They are part of a larger municipal entity. It is irresponsible to ignore the effects of the City's overall financial condition.

Based on the above the City stated that its position should be the one found most supported in the record.

The City also had the opportunity to respond to the Association's initial brief:

The Association has no apparent regard for the financial well being of the citizens that its serves. These citizens cannot afford the Association's final offer with levy limits in place and the Association's refusal to implement the HSA plan. The Association argued that City leaders are to blame for this predicament since the City did not raise taxes enough in the years prior to levy limits so as to have some sort of cushion. The City noted that under the statute there is a significant financial penalty were the City to tax its citizens in a

manner inconsistent with the law. Even the Association president understood that the City's hands are tied. Had the Association agreed to implement the HSA plan in 2006, it could at least argue that the savings should be returned to it in the form of wages. However, it did not. Growth is irrelevant for the purposes of whether the City can afford the Association's final offer for 2005-2006 and 2007. The City may have more money available in the 2008 budget, but it doesn't make the Association offer any more affordable over the relevant time. Of course, the City is best served by having a police force that is most satisfied with its jobs, however, it has not attempted resolve the issues in this matter in a way that would allow the city to be more generous.

The statute requires that the Arbitrator look at public employment in comparable communities and private employment in comparable communities, not just police departments in the allegedly comparable communities. There is nothing in the statute that limits the analysis to other police departments.

The cost of living also supports the City's final offer. The Association's offer including items other than wages far exceeds the CPI over the relevant time. The City's offer is much more consistent with CPI.

With respect to overall compensation the cost per Association member was over $72,000. When you add to that the exceedingly generous vacation policy, the unlimited amount of sick leave officers received under Article XIV and the ability of officers to convert unused sick leave to paid up health insurance benefits at the time of retirement and the

Cadillac Health Insurance Program, it is entirely paid for by the City. This factor strongly favors the selection of the City's final offer.

With respect to other factors, the City would again note that it has generously included in its final offer the elimination of its unilateral right to select the health insurance carrier. Even the Association president understood that the City is offering to give up a unilateral right. In addition the City offered a generous severance package if the City determines to consolidate its protective services with other municipal entities. The Association claimed that the City never offered the Association the opportunity to meet and discuss this, however, the Association admitted under cross examination that this representation was untrue and is a benefit not currently available to the Association.

The City's proposed elimination of Section 15.04 is consistent with the expressed and unambiguous terms of the contract and was fully argued in the initial brief. The City would further note that this simply will maintain the status quo.

Again, the City noted that the Association offered no quid pro quo for the elimination of the 60-month cap on retiree health insurance benefits. This quid pro quo should be offered in order to defer the expense involved in eliminating the cap. This elimination would expose the City to significantly higher retiree health care costs, costs it simply cannot afford.

Based on the above it is the City's final offer that should be selected and incorporated into the 2005-2007 Collective Bargaining Agreement.

DISCUSSION AND OPINION

The role of an Arbitrator in interest arbitration is substantially different from that in a grievance arbitration. Interest arbitration is a substitute for a test of economic power between the Parties. The Wisconsin legislature determined that it would be in the best interest of the citizens of the State of Wisconsin to substitute interest arbitration for a potential strike involving public employees. In an interest arbitration, the Arbitrator must determine not what the Parties would have agreed to, but what they should have agreed to, and, therefore, it falls to the Arbitrator to determine what is fair and equitable in this circumstance. The statute provides that the Arbitrator must choose the last best offer of one side over the other. The Arbitrator must find for each final offer which side has the most equitable position. We use the term "most equitable" because in some, if not all, of last best offer interest arbitrations, equity does not lie exclusively with one side or the other. The Arbitrator is precluded from fashioning a remedy of his choosing. He must by statute choose that offer which he finds most equitable under all of the circumstances of the case. The Arbitrator must base his decision on the combination of 11 factors contained within the Wisconsin revised statute (and reproduced above). It is these factors that will drive the Arbitrator's decision in this matter.

Prior to analyzing each open issue, the Arbitrator would like to briefly mention the concept of status quo in interest arbitration. When one side or another wishes to deviate from the status quo of the collective bargaining agreement, the proponent of that change

must fully justify its position, provide strong reasons, and a proven need. It is an extra burden of proof placed on those who wish to significantly change the collective bargaining relationship. In the absence of such showing, the party desiring the change must show that there is a quid pro quo or that other groups comparable to the group in question were able to achieve this provision without the quid pro quo. In addition to the above, the Party requesting change must prove that there is a need for the change and that the proposed language meets the identified need without posing an undue hardship on the other Party or has provided a quid pro quo, as noted above. In addition to the statutory criteria, it is this concept of status quo that will also guide this Arbitrator when analyzing the respective positions.

Finally, before the analysis the Arbitrator would like to discuss the cost of living criterion. This is difficult to apply in this Collective Bargaining context. The weight placed on cost of living varies with the state of the economy and the rate of inflation. Generally, in times of high inflation public sector employees lag the private sector in their economic achievement. Likewise, in periods of time such as we are currently experiencing public sector employees generally do somewhat better not only with respect to the cost of living rate, but also vis-a-vis the private sector. In addition, the movement in the consumer price index is generally not a true measure of an individual family's cost of living due to the rather rigid nature of the market basket upon which cost of living changes are measured. Therefore, this Arbitrator has joined other arbitrators in finding that cost of living considerations are best measured by the external comparables and wage increases and wage rates among those external comparables. In any event, both sides have agreed that

the wage increases for this bargaining unit would exceed the cost of living percentage increases no matter what source.

With respect to the external comparables, the City in both its initial and reply briefs denigrated the external comparables which have been in place since 1991 in the Arbitrator Oestreicher decision. For its part the City does not purpose any other external comparables. It merely stated that it does not like the comparables that are in place. Any change from Arbitrator Oestreicher's decision would be a deviation from the status quo and such deviation should not be taken lightly. The purpose of this is to provide some consistency and continuity in the Collective Bargaining process. It is clear to this Arbitrator that Arbitrator Oestreicher and others that have followed set up a primary and secondary comparable system. There is nothing contained in the record of this case that would allow this Arbitrator to approve a deviation from the status quo as the proponent of any such change must fully justify its position providing strong reasons and a proven need. The City has not met this test in this matter. Therefore, the external comparables remain as determined in 1991 and following.

The City relied to a great extent on its internal pattern and private employers in comparable communities. This Arbitrator has found in a number of arbitrations that internal comparables generally are not directly comparable to police units with the possible exception of firefighters. Police and Fire units are involved in public safety and are often put at great personal risk in carrying out their assigned duties. This Arbitrator has often found that clerical units, court units, Department of Public Work units, even Dispatch units, etc. are not directly comparable to police and Fire units. Therefore, the Arbitrator will

consider the internal settlements brought forward in this matter but, quite frankly, these will not have determinative value in determining which final offer is most appropriate. With respect to the private sector data, a comparison between police officers and private sector employees has no direct comparability based on respective duties.

While once again in interest arbitration in Wisconsin the Arbitrator finds himself in a situation where neither side has completely convinced the Arbitrator that its position is the correct position. With respect to proposals other than wages, the Arbitrator finds that neither side has presented a compelling case or a quid pro quo to change the status quo as noted above. Unfortunately, the Arbitrator does not have the authority to pick and choose among the final offers as presented by the Parties.

In addition to the above, there are two proposals involving Section 15.04 and Article XIII that are currently in other legal forums. The Arbitrator will make no comments on those two proposals other than to say that, since those items are before other tribunals, that is the best place for those issues to be resolved.

Prior to making a final decision in this matter, the Arbitrator would like to comment on the HSA Insurance Program. The City should be commended for its approach to this difficult problem and the fact that most employee groups have chosen to accept this offer. This Arbitrator finds no reason why this bargaining unit should not have done likewise. The Arbitrator cannot blame the City. The Association was using this item as a bargaining chip. The Association should have linked this item to a fair wage increase as it did in bargaining. Unfortunately, the Arbitrator lacks the authority to force the police unit to implement the

HSA Program. The Arbitrator can only urge this unit to do so and do so as quickly as possibly. If the police unit refuses to implement this program, which has proven to be an excellent one, it is this Arbitrator's opinion that this unit will suffer the consequences in the next round of bargaining and/or in any interest arbitration that may come out of the next round of bargaining.

We come now to the decision in this matter. Of the criteria noted at 111.77(6) the criteria that are most pertinent to this matter are the criteria noted at Wisc. Stat. §111.77(6) at letters C, D and F. The City made a number of compelling arguments with respect to the financial impact of the Association's offer on its budget. While the City did not plead an inability to pay per se, it certainly made compelling arguments as to the hardship of the Association's offer on the City's budget, and this Arbitrator would note, may even serve to spur the City's consideration of leaving public safety considerations to another entity. The record shows tough times for the City and some of the dilemma is of its own choosing. The Police unit is a "stand alone" unit and provides no comparison to other City units. A finding in favor of the Association would certainly have some impact on the citizens of Beaver Dam. The Arbitrator would note that, like the City, he is bound by the statutes of the State of Wisconsin and the criteria laid down by the legislature. The Association for its part argued that a happy bargaining unit would serve the purposes of the citizens of Beaver Dam, however, in a review of factor C it certainly mitigates in favor of the City's position.

With respect to factors D and E, which this Arbitrator has noted above finds to be similar, the external comparables certainly strongly favor the Association's position with respect to wages. In fact the City did not even bother to argue the external comparables in

this matter. The City relied on the internal comparables and the private sector. This Arbitrator finds that these comparables have relatively little value in resolving this dispute because of the unique character of public safety employees. However, The City's offer is a radical change in the bargaining relationship without adequate proof or quid pro quo.

Based on the above, the Arbitrator finds that neither the City nor the Association has particularly made a compelling case with respect to any of their proposals other than wages. With respect to wages, it is the Association's position that best meets the criteria expressed in the statute and, therefore, it will be the Association's offer that will be reluctantly awarded by the Arbitrator.

AWARD

On the basis of the foregoing and the record as a whole, and after full consideration of each of the statutory criteria, the undersigned has concluded that the final offer of the Association is the more reasonable proposal before the Arbitrator and directs that it, along with the stipulations reached in bargaining, constitute the 2005-2007 agreement between the Parties.

Signed at Oconomowoc, Wisconsin this _____ day of July, 2007.

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Raymond E. McAlpin, Arbitrator