

**STATE OF WISCONSIN
BEFORE THE ARBITRATOR**

**In the Matter of the Arbitration of
a Dispute Between**

**Beaver Dam Professional Fire Fighters
Local 3432**

and

City of Beaver Dam

**Case 95
No. 65286
MIA-2696
Dec. No. 31706-A**

Appearances

Patrick Kilbane, 5th District Field Service Representative, International Association of Fire Fighters, 6847 E. County Road N, Milton, WI 53563, on behalf of the Beaver Dam Professional Fire Fighters, Local 3432.

Bradley C. Fulton, Attorney-at-Law, DeWitt Ross & Stevens, Capitol Square Office, 2 E. Mifflin Street, Suite 600, Madison, WI 53703-2865, on behalf of the City of Beaver Dam.

ARBITRATION AWARD

The City of Beaver Dam and the Beaver Dam Professional Fire Fighters, Local 3432 have been party to a series of collective bargaining agreements, the last of which expired on December 31, 2004. The parties exchanged initial proposals and bargained on matters to be included on a successor agreement

A petition was filed with the Wisconsin Employment Relations Commission alleging the parties had reached an impasse and requesting compulsory, final and binding interest arbitration. Wisconsin Employment Relations Attorney/Mediator Raleigh Jones conducted the statutorily required investigation and mediation of the alleged impasse, and became satisfied that an impasse had been reached within the meaning of Section 111.77(3) with respect to the issues that remained in dispute between the parties. On May 26, 2006, the Investigator closed the investigation and recommended that the Commission issue an order requiring arbitration, and the Commission did so.

Following the Commission ordering the parties to compulsory, final, and binding arbitration, the parties selected A. Henry Hempe as the impartial arbitrator to arbitrate the dispute and to issue a final and binding award pursuant to Wis. Stats. 111.77(4) of the Municipal Employment Relations Act. The arbitrator conducted a hearing in Beaver Dam, Wisconsin on December 11, 2006, at which time the parties were afforded the opportunity to present testimony, other evidence and arguments, as they chose. The

hearing was not transcribed. The parties agreed to submit briefs, reserving the right to submit reply briefs. Reply Briefs were submitted, the last of which was received by the arbitrator on or about March 12, 2007. By mutual agreement, each party also submitted a Supplemental Brief, each of which was received by the arbitrator on May 15, 2007.

Based on Wis. Stats. 111.77(6), and full consideration of the arguments of the parties, and the entire record herein, I issue the following award.

BACKGROUND

The City of Beaver Dam, hereinafter referred to as City or Employer, and the Beaver Dam Professional Fire Fighters, Local 3432, International Association of Fire Fighters, AFL-CIO, CLO, hereinafter referred to as Union, Fire Fighters, or Local 3432, are parties to a collective bargaining agreement that expired on December 31, 2004.

Beaver Dam is a pleasant community in south-central Wisconsin located in Dodge County. Dodge County is adjacent to Columbia County on the west, principally Fond du Lac County on the north, Washington County on the east, and principally Jefferson County on the south. Beaver Dam has an elected mayor-common council form of government.

In the City's Initial Brief, it is described as "well-managed," and its citizens described as "hard-working, law-abiding taxpayers," [who] "are not a wealthy group."¹ The City's Initial Brief asserts that ". . . the citizens of Beaver Dam are fed up with excessive municipal spending" and that "(o)ver the last several years, the voters have elected fiscal conservatives to the Beaver Dam City Council and have elected and re-elected (by substantial margins) a mayor who has made fiscal responsibility the central theme of his administration."²

The Beaver Dam Fire Fighters Local 3432 represents "all Full-time Members of the Beaver Dam Fire Department, including employees in the job classifications of Fire Fighter, Driver, and Battalion Chief, but excluding the Fire Chief, Deputy Fire Chief, volunteer fire fighters, elected officials and all other employees of the City. It is one of six represented bargaining units in Beaver Dam. Of the six, the Water Utility and Paid-On-Call Fire Fighters units have reached voluntary settlements with the City. A third unit, the AFSCME-represented bargaining unit of public works (and other) City employees, is covered by an interest arbitration award issued by Arbitrator James W. Engmann on November 8, 2006. At the time of hearing in this matter, the bargaining units representing police and dispatcher employees, respectively, appeared to be proceeding to interest arbitration.

Local 3432 represents some 14 full-time fire fighters divided into 3 shifts, with a work schedule of 24 hours on and 48 hours off. The work schedule for this bargaining

¹ City's Initial Brief, p. 7.

² Supra, pp. 1-2. (In a footnote on p. 1, the City's brief indicates, "The term "fiscal conservative" is meant to be party-neutral – it is not a reference to either Republican or Democrat.")

unit averages 56 hours per week, and 2,912 hours per year. The full-time fire fighter unit is supplemented by a separate bargaining unit of Paid On-Call fire fighters that respond to fire calls as needed, on a paging system. The on-call employees do not staff the fire station.

Included in the duties of the Local 3432 bargaining unit are traditional fire protection services to not only residents of the City of Beaver Dam, but, by contractual arrangement, in surrounding townships, as well. The full-time fire fighters also provide fire inspection services for both structures and underground tanks, emergency medical services (EMS), extrication services (of victims from collision-damaged motor vehicles), clean-up services of hazardous material spills, and fire prevention services through public education. Regular training of the full-time fire fighters maintains competency in these areas.

FINAL OFFERS OF THE PARTIES

City:

The City's Final Offer is annexed hereto as Appendix A and incorporated by this reference as if fully set forth herein.

Union:

The Final Offer of the Union is annexed hereto as Appendix B and incorporated by this reference as if fully set forth herein.

Stipulations:

The parties agree that the term of the collective bargaining agreement shall be three-years and, further, that the provisions of the 2002-2004 collective bargaining agreement shall continue through 2005-2007 (except as may be modified by the respective proposals of the parties), but shall also include:

1) A Memorandum of Understanding executed by both parties in January 2006,³ which modified Sections 12.1 (Health Insurance), 6.12, and added 12.6 and 12.7 of the collective bargaining agreement then in effect. By its express terms, said Memorandum of Understanding became effective February 1, 2006 and is to remain in effect through December 31, 2007, the reaching of a successor agreement, or conclusion of the mediation arbitration process.

2) Any further tentative agreements reached by the parties during the negotiations for a successor 2005-2007 agreement.

³ Annexed hereto as Appendix C.

Summary of Differences between Respective Proposals:

There are two issues remaining between the parties, namely, 1) salaries, and 2) retiree health insurance set forth in Sec. 12.3 of the parties' CBA.

Salaries:

The City proposes a 3% ATB increase effective January 1, 2005 and 1% ATB increases on January 1, 2006 and January 1, 2007.

The Union proposes 2% ATB increases on January 1, 2005, January 1, 2006, and January 1, 2007. In addition, the Union proposes additional 1% ATB increases on July 1, 2005, July 1, 2006 and July 1, 2007.

Retiree Health Insurance

The City proposes eliminating Sec. 12.3 in its entirety (and renumbering as appropriate). The Union proposes deleting only the last two paragraphs of Section 12.3. At issue is continuation or elimination of a Sec. 12.3 provision relating to the City's contribution to health insurance premiums for retired bargaining unit members. The City's Section 12.3 obligation is in addition to those contained in Section 6.12 (accumulated sick leave health insurance conversion for retired bargaining unit members).

External Comparability Pool

The parties do not agree on a pool of external comparable communities. See **External Comparability Pool**, below.

RELEVANT STATUTORY PROVISIONS

As set forth in their supplementary briefs dated May 14, 2007, the parties agree and the arbitrator concurs that the following statutory provisions govern this matter:

Wis. Stats. 111.77(4)(b): * * * The arbitrator is required to "select the final offer of one of the parties and shall issue an award incorporating that offer *without modification*." (Emphasis supplied)

Wis. Stats. 111.77(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.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

- (d) Comparison of the 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, arbitrations or otherwise between the parties, in the public service or in the private sector.

RELEVANT CONTRACTUAL PROVISIONS

Article 1 – Recognition and Purpose of Agreement

- 1.1 The City recognizes the Full-time Members of the Beaver Dam Fire Department, Local 3432 International Association of Fire Fighters, AFL-CIO-CLC as the authorized bargaining representative of all Full-time members of the Beaver Dam Fire Department including employees in the job classifications of Fire Fighter, Driver and Battalion Chief, but excluding the Fire Chief, Deputy Fire Chief, volunteer fire fighters, elected officials and all other employees of the City.

EXTERNAL COMPARABILITY POOL

Neither party has experienced an arbitration proceeding with the other, so no comparability pool has ever been established for them.

Union Proposal re: Comparability Pool

The Union proposes the following public sector external comparables: Town of Beloit, Kaukauna, Neenah-Menasha, Portage, Two Rivers, Watertown and West Bend. The Union contends that this slate consists of six cities and one township with which to make comparisons, and that its selections were based on factors such as population, geographic proximity to the City of Beaver Dam, size and make-up of the fire department, hours of work, and whether or not the city or township had been used by other arbitrators as comparable to the city of Beaver Dam. Each community is within a radius of 75 miles of Beaver Dam. Neenah-Menasha, although separate cities, together operate a joint fire department. No comparable nominated by the Union is immediately adjacent to a major metropolitan area. The Union argues that the City's objections ignore the requirements of the statutes.

City Proposal re: Comparability Pool

The City rejects any of the Union-proposed public sector comparables, except for Kaukauna. The City argues that the unit represented by Local 3432 is unique in that none of its members are fire fighters. The City contends that all of the fire fighting duties are performed by members of the Beaver Dam On-Call Fire Fighters Association – a separate bargaining unit.

According to the City, the bargaining unit personnel consist only of persons who drive the fire fighting equipment and serve as emergency medical personnel. As such, says the City, it is very difficult to find appropriate public sector comparables. In particular, the City argues that the communities of Portage, Town of Beloit, Two Rivers and Watertown do not have any substantially similar positions to those in this unit, because this unit consists only of “Drivers” identified in Schedule A of the CBA, but no fire fighters. Therefore, says the City the data from these communities is irrelevant and worthless.⁴

The City additionally asserts that almost none of the Union proposed comparables are even remotely similar to Beaver Dam in population of citizens served, economic conditions, geographic proximity, relevant department personnel, and wages and benefits.

The City also contends the inclusion of the Neenah-Menasha department is inappropriate because that department serves a population more than 2 ½ times the size of Beaver Dam, and collective and individual values are significantly higher in the areas of tax levies, equalized values, shared revenues, and income. The City raises a similar objection to the inclusion of West Bend.

Through this process of elimination, the City finds only Kaukauna to be an acceptable comparable.

POSITIONS OF THE PARTIES

Union:

Memorandum of Understanding – Health Insurance

The Union opens with the observation that it played an instrumental role in bringing all the City employee unions together to labor collaboratively with the City on the health insurance issue. The effort resulted in agreement to a Memorandum of Understanding that established a new health plan, which the parties have agreed will be included in the 2005-07 labor contract between Local 3432 and the City. The Union further notes that it acceded to the City’s request to implement the new health plan in February 2006, even though there were still other bargaining issues to be resolved for inclusion in the successor CBA. The Union believes its leadership in negotiating a new

⁴ City Initial Brief, p. 19

health plan and its agreement to early implementation has resulted in substantial savings to the City, instead of substantial increases in premium contributions by the City. a

Wage Offers and the Consumer Price Index

The Union notes its wage offer is 2% effective January 1 and 1% effective July 1 for each year of the proposed 2005-07 agreement. The Union describes this as providing a 3% lift at a cost of 2.5% the first year and 3% for the next two years. The total lift for the three years is 9% at a cost of 8.5%.

The City's wage offer is 3% effective January 1, 2005 and 1% effective January 1 2006 and January 1, 2007 with costs identical to the lifts. The Union computes the average lift under the City's offer at 1.67% per year. The total lift is 5%, with a cost of 5.5%.

The Union shows the CPI percentage increase from 2004 to 2005 to be 3.18%. The percentage rose slightly to 3.22% for the first half of 2005. The Union states there was insufficient data to determine the annual percentage increase from 2005 to 2006

The Union acknowledges the City's wage offer for 2005 is close to the CPI, but finds the City's 1% offers for 2006 and 2007 to be well below the apparent CPI trend for 2006, and unlikely to be in line with the CPI for 2007.

The Union believes its own wage proposal, in contrast to that of the City, to be consistent with available CPI figures.

Internal Comparables – Wages

The Union notes there are six represented bargaining units within the City, namely, Water Utility, Police, Dispatchers, Public Works, Paid on-call Fire Fighters (new unit as of 11/27/06), and the full time fire fighters. Only the Water Utility and Paid On-Call Fire Fighters reached voluntary agreements with the City.

The Union contends that if a pattern for internal wage settlements exists, it clearly favors the Union.

Water Utility

The Union describes the agreement with the Water Utility bargaining unit as a two-year (2005-06) agreement that provides for an ATB wage increase of 2% effective July 1, 2005 and 3.5% effective January 1, 2006, providing a total lift of 5.5% for the two-year period. The Union notes that this provides a 0.05% higher lift for the two-year period than the 5% lift the City proposes for Local 3432 over a three-year period. The Water Utility employees also agreed to implement changes in the health insurance plan.

Paid-on-call fire Fighters

The Union notes the description given by Beaver Dam Mayor Hanks of the wage settlement in a two-year (2006-07) agreement for this group as 1% in 2006 and 1% in 2007. The Union charges that the Mayor omits mention of the \$350 payment found in the Memorandum of Understanding attached to the agreement, which was to be made to the Paid-on-call Fire Fighters upon execution of the agreement.

The Union finds no evidence in the written agreement what the actual increase is, whether it applied to the base wage, the hourly wage or both. Neither does the Union find any evidence of what the 2005 or 2006 wages were. This makes actual increase calculations impossible, the Union charges. The Union says that using the pay chart found in Sec. 4.1, the \$350 payment represents anywhere from 11% to 22% of the base wages listed. These increases are 4 to 8 times the CPI figures of the Union. If this unit is used as a comparable for purposes of establishing a wage settlement pattern, the 11% and 22% wage increases alone heavily favors the Union's wage proposal.

Dispatchers

The Union reports that the Dispatcher unit was in the final stages of the mediation arbitration process at the time of hearing for this unit and thus presents no basis for comparison. The Dispatchers did not agree to implement any health insurance changes.

Police

The Union reports the police bargaining unit is also unsettled. As with the dispatchers, the police unit did not agree to the health insurance changes.

Public Works

The Union reports that the AFSCME Public Works unit arbitrated with the City and received a decision from Arbitrator James Engmann. Arbitrator Engmann selected the offer of the AFSCME union to be incorporated in the parties' 2005-06 CBA.

The Union describes this unit's final offer on wages as 3% ATB effective January 1, 2005; 2% ATB effective January 1, 2006; 1% ATB effective July 1, 2006.

The Union calculates the total cost to the City of this award is 5.5% with a 6% lift.

External Comparables -- Wages

The Union also finds support for its wage proposal in the external comparables it proposed.

Union exhibits compare annual base wages (including EMT) for firefighters, motor pump operators and fire officers.⁵

Union exhibits 13(a), (b), and (c) show annual base wage comparisons (including EMT wages) for fire fighters, motor pump operators and fire officers, respectively.

Union Exhibit 13(a) shows the pay figures for fire fighters.⁶ The Union calculates the average pay for fire fighters at the top level (Beaver Dam excluded) as \$46,383.31 in 2005, \$47,826.68 in 2006 and \$49,300.70 in 2007. In this comparison, even under the Union's offer with 3% annual lifts, Beaver Dam fire fighters are the lowest paid in the "top" category at \$41,861 in 2005 (-\$4,522.17), \$42,279.75 in 2006 (-\$4,720.21), and \$44,389.16 in 2007 (-\$4,911.54). Under the City's offer of a 1% increase in each of the last two years of the contract, the 2005 disparity is the same as under the Union's proposal, but grows significantly in 2006 and 2007.

Union Ex. 13(b)⁷ compares pay levels of motor pump operators in the comparable communities. (The Town of Beloit is excluded) The Union explains that the average pay for motor pump operators at the top level (excluding Beaver Dam) is \$46,186.59 in 2005, \$48,060.03 in 2006, and \$49,631.41 in 2007. In this comparison of pay for these positions, Beaver Dam fire fighters rank third of six under the Union's offer, which provides a 3% lift per year, and exceed the average pay of the comparables by \$2,003.20 in 2005, \$1,564.95 in 2006, and \$1,471.82 in 2007. In contrast, the Union calculates, while unit motor pump operators would maintain their number three position in the group of comparables under the City's offer, they would fall from \$1,564.95 above the average in 2006 to \$473.01 below the average in 2007 based on the 1% lift for each of those years.

Union Ex. 13(c)⁸ compares the pay of fire officers. Under the Union's final offer, the Beaver Dam fire officers would rank fourth of eight in 2005, fifth of eight in 2006, and fifth of eight in 2007. The average pay for fire officers at the top level (excluding Beaver Dam) is \$50,127.77 in 2005, \$51,823.09 in 2006, and \$53,483.59 in 2007. Under the Union's offer, Beaver Dam fire officers pay would be less than the average of the comparables (\$578 in 2005), (-\$787 in 2006) and (-\$916 in 2007). The Union calculates

⁵ The Union explains that the EMT pay it cites is the pay received by fire fighters in the comparable communities for providing emergency medical services at the same level as provided by the fire fighters in Beaver Dam. The Union explains certain anomalies: e.g., City of Portage firefighters do not provide services as EMTs and therefore do not receive any additional pay; City of Kaukauna fire fighters do not receive EMT pay since all of its fire fighters are required to be certified at the Paramedic level; there is no pay level for fire fighters listed for the City of Portage because all of the fire fighters there are trained at a minimum to the "motor pump operator" level (referred to in the Portage CBA as "engineers.")

⁶ In its initial brief the Union supplies the missing 2005 figures for Neenah/Menasha as follows: Starting = \$38,748 and top = \$50,371.

⁷ In its initial brief the Union supplies the missing 2005 figure for Neenah/Menasha as \$52,167.

⁸ In its Initial Brief, the Union supplies the missing 2005 figures for the Neenah/Menasha fire officers as follows: Starting = \$54,005; top = \$55,922. The Union further notes that Kaukauna, Town of Beloit, Watertown, and Beaver Dam have only one level of pay for fire officers, therefore the starting rate is also the top rate. The Union also notes that regardless of whether the job title of "Captain" or "Lieutenant" is used, the job functions of each are essentially the same.

that under the City's offer, Beaver Dam's rankings would remain the same, but Beaver Dam disparities from the average would increase to -\$1,778 in 2006 and -\$2,938 in 2007.

External – Selected Benefits.

The Union also compares benefits received by Beaver Dam fire fighters and fire fighters employed in the comparable communities in the areas of vacations, holidays, sick leave, longevity, and clothing allowances. The Union concludes its career vacation benefit is mid-range with the comparables. Sick leave is more complex for comparison purposes: Beaver Dam fire fighters accumulate sick leave at the rate of 24 hours per month for the first 12 years of employment and 12 hours per month thereafter, with no limit, which compares favorably with other comparables.⁹ The comparables also vary as to paid holidays, e.g., the number of paid holidays varies from 9 to 13 (Beaver Dam fire fighters receive 10). Reduced to dollar figures, the Union reports that paid holidays are worth an annual \$1,547.43 to Beaver Dam fire fighters, and that this figure is \$1,892.19 below the average of the comparable cities. Union figures appear to reflect a mixed picture of longevity pay, depending on the point at which longevity is compensated and whether payment is a percentage of base pay or a fixed figure. The Union reports that at the 25-year point Beaver Dam fire fighters are ahead of the average of the comparables by \$765.67 per year. Clothing allowances for uniforms, cleaning and uniform repairs are also paid by all of the comparables except West Bend, and Beaver Dam leads the average by \$115 annually. As to educational incentive bonuses, the Union reports there is no contractual provision for this benefit for Beaver Dam fire fighters. In contrast, it appears that fire fighters in each of the other comparable communities receive some sort of financial compensation for additional education, but the values of these benefits vary considerably and are virtually impossible to compute, the Union reports.

Health Insurance

The Union reports that due to the collaborative efforts of the City and the Union, both are now paying fewer dollars for health insurance coverage than most of the premiums. Both the Union and the City are near the average percentage that each contributes to the premiums, with the City 0.64% lower and the Union 0.64% higher.

The Union reports the monthly 2006 health insurance premium contribution paid by the City was \$652.97 (92.5%), and that paid by employees, \$52.94 (7.5%). Although the percentage of premium amount contributed by the City falls within a range of 90% to 100% paid by the comparables, the dollar amount paid by the City is substantially less than that paid by any other comparable. Put another way, the comparable communities are paying from \$157 to \$863 more for health insurance premium contributions. However, Beaver Dam is also contributing \$175/month to a Health Savings Plan (HSA).

⁹ The Union correctly notes that the value of sick leave depends on if and how it is used. According to the Union, sick leave has added value in most of the comparable cities for retirees.

Retiree Health Insurance

The Union argues that the City is attempting to eliminate a benefit for retirees by deleting it without offering a *quid pro quo*. The Union says it received the benefit in the negotiations for a successor CBA for 1996-97 in exchange for its agreement to an additional (lower, longer) salary schedule for new fire fighters hired after January 1, 1996.

By the time negotiations for the 2000-2001 successor CBA rolled around, the Union continues, all of the bargaining unit employees hired before January 1, 1996 had been employed long enough to be at the top of the salary schedule. Therefore, according to the Union, the parties agreed there was no longer any need to show the “Hiring Rate Through Year 4” wage rates for a fire fighter or a driver, and eliminated it from the successor CBA. The Union asserts there was no intent to remove the *quid pro quo* the Union had originally received for its agreement to the additional salary schedule, and the City has continued to enjoy the savings of the lower cost wage schedule

The Union asserts that the *quid pro quo* it received for agreeing to the additional (lower, longer) salary schedule for new (after January 1, 1996) employees is the benefit language contained in Sec. 12.3. That section, says the Union, requires the City to make contributions to retiree health insurance in the manner and amounts therein specified (until the employee becomes eligible for Medicare).

Union Summary

The Union finds no inability on the part of the City to pay the Union’s Final Offer. The Union describes the City as having a strong and robust business base, a progressive city government, two business/industrial parks and a quality of life in which the local citizens take pride.

The Union points out that the City chose to lower its mill rate in 2005. The Union agrees that lowering the mill rate makes future budgeting more difficult, but it is a “self-imposed” difficulty that was unnecessarily imposed by the City on itself. Even with this, the Union argues, “the City still has a healthy general fund balance and healthy unreserved fund balance.”

The Union notes the City’s bond rating has improved from A3 to A2 and the City is paying off its TIF districts faster than projected. The Union argues that this indicates the City is able to pay its bills.

The Union argues its offer is more in line with the CPI and internal wages. It also contends that its offer will more closely preserve the *status quo* ranking of among the comparables, while the City’s offer would greatly diminish that ranking.

The Union accuses the City of attempting to alter the *status quo* by eliminating Sec. 12.3 of the existing CBA without offering a *quid pro quo* for it. The City has not met its burden in trying to change the *status quo*, the Union asserts.

Finally, the Union underlines its leadership and success in its collaborative efforts with the City and other city employee unions to ease the rising costs of health insurance. These efforts, the Union says, have resulted in saving the City thousands of dollars that it would otherwise be spending on bargaining unit members' health insurance premiums.

City

The City concedes the Consumer Price Index factor favors the Union offer. But this, says the City, is the only factor that favors the Union's offer.

The main thrust of the City's argument is that the City is experiencing hard times, from a municipal finance standpoint. Everyone – employees included – says the City, must recognize that sacrifices are required for the continued economic viability of the City. It accuses the fire fighters of being unwilling to make those sacrifices.

The City argues that its hands are tied because of the state levy limits and that more is needed to finance the Union's offer than the City is permitted to levy.

The City describes its economic conditions as not favorable:

- Even though its 2005 budget did not include any wage increases for its employees, the City suffered a loss of \$194,684 (City Ex. 15). 2005 was not a good year for the City.
- 2006 health insurance costs ran significantly over-budget, for which the City blames two of its city employee unions' refusal to switch to the new HSA (health insurance) Plan without a "Global Settlement" in place (as to their respective successor CBAs).
- Beaver Dam is not a wealthy community, as evidenced by a "Credit Comparison" (City Ex. 14) prepared by RBC Capital Markets in conjunction with community bond ratings. (Beaver Dam's bond rating is A2.)¹⁰
- Moreover, the per capita income of Dodge County taxpayers is only 86% of the state average and 83% of the national average (City Ex. 22); the City's population has declined in the last 5 years (City Ex. 24); and Dodge County is one of the poorest counties in the state (53rd out of 72 in per capita income and 61st in per capita property values when looking at growth in these categories for the last 20 years (City Ex. 23).

¹⁰ The City argues this document shows that when compared to similarly bond-rated communities across the Wisconsin and the country, Beaver Dam lags behinds in: full value per capita; per capita income as % of State; per capita income as % of U.S.; median family income of % of State; median family income as % of U.S.; population change 1990-2000; median home value, and average increase in full fall. The City also notes that Beaver Dam's "poverty rate" was significantly higher than in comparably rated communities.

The City asserts that despite top-quality leadership in the City, Beaver Dam was in the red in 2005 and given the additional \$90,000 in additional health insurance costs and employee wages to be paid over and beyond budgeted figures, will probably be in the red in 2006, as well.

The City says it cannot afford to pay the Union's wage proposal for 2006. It can only afford a 1% wage increase in 2006. The City points to its 2006 Budget (City Ex, 3), which depicts additional costs and expense of \$188,261 and an allowable 2005 Levy Increase for the 2006 Budget expenses of \$188,109.45 The City makes the same argument with respect to 2007, explaining the primary variable is the dramatic jump in health insurance premiums.

The City finds the monetary difference between its final offer and that of the Union to be \$40,488, and rhetorically inquires, "Where is that money supposed to come from?" The City cannot raise taxes any higher and claims it has significantly reduced every category of expense it can control. "Unfortunately, says the City, "(it) is not in the business of printing money."

The City argues that its Final Offer maintains the current level of dollars allocated to wages and benefits (72%) for 2006, and increases this allocation to 73% in 2007.

Quoting the City's Finance Director, John Somers, the City argues it would be fiscally irresponsible to fund the offer out of the General Fund and to do so would adversely affect the City's bond rating. The City asserts that the only way to stay within budget with the levy limits in place is to reduce services or costs. The City claims it has done both.

The City argues that the public is best served by the City's Final Offer. Accusing the Union of wanting the City to spend an even greater percentage of taxpayer moneys on wages and benefits for its employees, the City says it is simply trying to preserve service levels and maintain the *status quo*. Unfortunately, continues the City, maintaining the *status quo* necessarily means neglecting its investment in " City infrastructure." In support of this contention, the City quotes Mayor Hanks as testifying that the average age of public works vehicles is 12 years, that at the current rate of street replacement it will take 200 years to replace all of the City streets, and that the City is in dire need of an updated police station to better meet the public safety demands of the City. The Mayor concludes that the City cannot afford the upgrades.

The City also referred to its Ex. 18. According to Mayor Hanks, in the last 16 years the amount of the City's budget spent on wages and benefits has increased 11%. If this current trend continues, in just 6 years more than 84% of the budget will be spent of wages and benefits, the mayor projects. (The City's historic construction volume has been about \$15 million a year.) In addition, the mayor continues, the City's mill rate is anticipated to go down as a result of levy limits, and new construction will yield less

revenue in terms of value. This means, the mayor concludes, “By 2008, we will have to triple (emphasis in original) our historic construction value just to break even.”

The City argues its citizens are already over-taxed, and recently defeated a proposed school referendum issue by a 4 to 1 margin.

Internal Comparables

Unrepresented Employees

The City argues that all of the *unrepresented* employees of Beaver Dam received no greater than a 2% wage increase for 2005 and a 1% increase for 2006 and 2007. The City points out that this is less than the City is offering the Union.

Water Utility

The City notes the Union wants a greater wage increase than that received by the Water Utility employees, although the City offers a comparison caveat that the Water Utility is an inappropriate internal comparable because it is not tax-payer funded.

Beaver Dam Paid-On-Call Fire Fighters Association

According to the City, its settlement with this unit strongly supports its offer to Local 3432. The City refers to Mayor Hankes’ description of the settlement as a 1% wage increase in 2006 and a 1% wage increase in 2007.

Public Works and Other City Employees (AFSCME)

The City claims Arbitrator Engmann’s award in the interest arbitration case involving the public works employees¹¹ is “distinguishable” for a variety of reasons. According to the City, the most important reason that the arbitrator found for the Union in that case is that the total cost for the unit in 2006 was less than the 2005 cost. The City claims the simple cause for this is that the Union had fewer members in 2006 than in 2005. Therefore, the arbitrator found the savings from the agreed-upon insurance changes were enough to offset the wages in the Union’s final offer without costing the City any additional dollars. But, says the City, that is not the case in the instant matter.

By extrapolating information from City Exhibits 6, 11 and 12, the City argues the net cost savings to the City by changing to the HSA (new health insurance) plan amounts to \$15,762. (This includes the money paid to the employee who opted out of health insurance coverage.) The City concedes this saved the City considerable dollars, but contends the Union is asking for a total of \$22,265 for 2006 wage increases, which is in excess of the savings by 6,503. The City also points to the \$5,800 in savings the Union employees have received under the new health plan. When this is added to the \$22,265 in the wage increase offer of the Union, there results “a grand total of \$28,065.

¹¹ *City of Beaver Dam (AFSCME)*, Decision No. 31687-A (11/06, Engmann)

This does not take the Union's 2007 proposals into account, the City continues. Pointing to its Exhibit 9 (in which the City has budgeted to within 97 cents of the allowable levy limit for 2007, the Union wants an additional \$23,000 in wages.

The City says none of these factors were in play in Arbitrator Engmann's decision.

The City also attacks Arbitrator Engmann's analysis as "misplaced." Bargaining units do not exist in a vacuum, says the City. They are part of a larger municipal entity whose overall financial condition and ability to pay a proposed wage increase must be taken into account. According to the City, the Engmann decision declares that levy limits are irrelevant, the City's inability to pay is irrelevant, and the City should borrow the money, take it out of its general fund or lay off workers or reduce services.

Private Sector Comparables

The City finds its private sector comparison (City Ex. 21) with the existing 2002-2004 CBA of the Local 3432 bargaining unit (City Ex. 30) "incredibly telling." It describes the 2004 hourly rate (without longevity) at \$23.02 – significantly higher, the City says, than the average rates identified in City's Ex, 21. The City argues a similar picture exists when average benefits provided by private sector enterprises in Dodge County are compared to two benefits enjoyed by the Local 3432 fire fighters bargaining unit, and specifically notes health insurance and sick leave provisions.

External Comparables

As previously reported (pp. 5-6), the City also argues that not a single member of Local 3432 is a fire fighter. The City does not nominate its own pool of comparable communities, claiming it is very difficult to find appropriate public sector comparables.

The City contends that the City of Kaukauna is the only appropriate comparable proposed by the Union. As such, using only that community for comparison purposes, the City asserts that the public sector comparables factor "heavily favors the City's Final Offer."

Health Program Changes of Tremendous Value to Union Employees

Looking at the new health insurance program to which the parties agreed to implement in February 2006, the City avers that the premium savings and payments to employees are equivalent to a 0.87 ATB wage increase for the Union in 2006. The City says that each employee had an additional \$459.62 in his 2006 paychecks, which resulted from moving to the HSA (new health insurance) plan. That, says the City represents another 0.87% of an effective wage increase for employees.

The City explains that it funds the HSA up to the full amount of the deductible under the HSA. Under the parties' bargain as set forth in City Ex. 28 and 29, the City elaborates, the employees get to keep the HSA dollars in their account, if the amount is carried over from year-to-year. If not used by the time of retirement, the amount can be converted into retirement dollars. The accounts earn tax-free interest and employer contributions are not taxed as wages. In addition, the City adds, there are no out-of-pocket costs for those employees who stay within the Unity plan, and the improved flex plan has even greater benefits for the employees.

Retiree Health Insurance

The City argues that its proposal to eliminate Sec. 12.3 is not only consistent with the expressed, unambiguous terms of the contract, but would maintain the status quo and effectuate the language that was put into the CBA back in 1996.

The City recites the Sec. 12.03 language of the 2002-04 CBA between the parties (City Ex. 30, pp.7-8)

The City finds this language clear and unambiguous. To the City, the language means that if there is no separate wage program, the City has no obligation to pay the benefit set forth in the section. Citing two Wisconsin Supreme Court cases the City finds supportive, the City believes the arbitrator should apply the "literal meaning" of this language as written, even [if] the parties may have placed a different construction on it.

The City quotes City Clerk and Personnel Officer Gary Dummer as testifying that the language at issue was written in such a way that the benefit would come out of the contract when the two-tiered wage scale came out – that the benefit was never intended to be in perpetuity. The City further quotes City Clerk Dummer as stating the language in question was put in the 1996 agreement simply to get the contract settled.

The City urges that since there is no separate wage program, there is no ongoing obligation to pay out the 12.3 benefits specified therein.

Of greatest importance to the City is the testimony of City Finance Director John Somers to the effect that if the Union's position on Sec. 12.3 is accepted and Sec. 12.3 not eliminated in its entirety, the City will be exposed to millions of dollars in additional, unplanned health insurance costs in the future, for which the Union is offering no *quid pro quo*.

City Summary

The City writes: "Times are tough right now in Beaver Dam . . . The City has only an additional \$188,109.45 to spend in 2006 and \$273,580.97 in 2007, but those dollars are gone."

The State's levy limit imposition on the cities sent a loud and clear message, the City says: "You must spend taxpayer dollars more wisely."

The City claims this is exactly what it has done and what it is proposing.

"The days of automatic 3% wage increases are over," says the City, and adds: "Indeed, those increases have set the City back decades in terms of equipment, Infrastructure, and systems."

Union Reply

The Union argues that the levy limits are not the only factor contributing to the City's "claimed financial woes." The City alleges that the unfavorable economic conditions the City claims are largely self-inflicted.

The Union does not dispute the City's 2006 and 2007 budget figures, but points out that both of those figures could have been larger if the City had inserted a 3% wage increase in its 2005 budget instead of the zero percent that it used. In addition, the Union notes, the City could have collected more dollars by not reducing its mill rate four years in a row.

The Union points out that the additional 2006 health insurance costs of which the City complains were not the fault of Local 3432, which had agreed that the new health insurance package could be implemented in February 2006. The fire fighters should not be penalized because two city employee unions did not agree to implement the new health package.

The Union questions the City's comparing itself to other "similarly rated communities" across the state (City Ex. 14), asserting that the similar rating refers to the City's A2 bond rating. The Union believes the statutes require comparison of the economic conditions of similar communities, not communities with the same bond ratings.

The Union accuses the City of making the same arguments in its arbitration proceeding with the AFSCME public works bargaining unit as it is in this proceeding, and in rebuttal quotes Arbitrator Engmann's award in favor of the AFSCME unit. [Decision 31687-A (11/06, Engmann.)] The Union believes the Engmann award offers a strong precedent that should be given weight by the arbitrator in the instant proceeding.

The Union denies any evidence in the record demonstrating that the "principal reason" for Arbitrator Engmann's award was a shrunken AFSCME bargaining unit in 2006. The only employee reduction reference by the City in this matter, says the Union, was testimony "that the City reduced its work force by eliminating three non-union positions."

The Union takes issue with the City's argument that the health insurance savings do not cover the Union's wage offer. The Union reiterates its arguments in its Initial Brief that the savings from the health insurance changes are greater than the costs of the 2005 and 2006 wage proposals. The Union further attacks the City's calculations in this area as "misleading," in that the City uses the 2005 health insurance rates from the old plan for comparison with the 2006 rates of the new plan – as if the Union says – there were no 2006 rates for the old plan. The 2006 rates for the old plan do exist, the Union states, and are being paid by the City – for the two unions that did not agree to implement the new plan!

The Union denies the City's argument that it cannot afford the Union's Final Offer. The Union asserts that the City's calculations have 1) failed to include the new health plan savings and 2) added a cost that won't occur until 2008 – beyond the putative term of the successor CBA. When these two issues are taken into account, the Union says "the real difference in cost between the two offers over the three year term of the successor CBA is \$4,338.05 or \$1,446.02 per year. The Union does not believe the City will need to borrow money or lay-off employees to meet this additional cost.

At the same time, the Union points out that it has not been indifferent to the concerns raised by the City and has tailored its offer to be extremely comparable in cost to the City's Final Offer while attempting to provide its members the ability to keep pace with the cost of living.

The Union finds the City's arguments with respect to internal comparables to be flawed. On the one hand, says the Union, the City argues that the Water Utility bargaining unit is not comparable to Local 3432, citing in support an interest arbitration award [*Sturgeon Bay (Police)*, Decision No. 31080 (7/05, Eich)]. Nonetheless, the Union points out, the City still compares the wage settlement of the Water Utility unit with the Union's proposal in this matter and argues the Union's proposal herein is \$5,000 more expensive. The Union notes as well that the City used the Water Utility settlement in its recent arbitration case settled by Arbitrator Engmann's award.

The Union also disputes the City's analysis of its settlement with the Paid-On-Call Fire Fighters Association. Specifically, the Union continues to take issue with the City's claim that this unit received only 1% increases for 2006 and 2007, and points out that the City provided no listing of wages for 2005. Moreover, the Union points out, the Paid-On-Call bargaining unit employees actually work for the City only a small amount of time, and suggests that if any internal comparable is not an appropriate comparable, it is the Paid-On-Call Unit. But if that unit is to be included as a comparable, the Union reiterates that its members received wage increases from 11% to 22%.

With respect to the *unrepresented* city employees, the Union argues that the inability of this group of Beaver Dam city employees to bargain collectively makes it an inappropriate internal comparable.

The Union believes the City grossly misrepresents the compensation of Local 3432 members. The Union assails the City's claim that the 2004 hourly compensation of Local 3432 members (without longevity) is \$23.02, and that this rate is significantly higher than the average rates identified in City Ex. 21. But the City is misreading its Exhibit 30 the Union says. [Exhibit 30 is a copy of the 2002-04 CBA between the parties.]

The union explains hourly rates identified in Schedule A of City's Exhibit 30 (p. 31 of the exhibit)) are based on a 38.5 hours work week – 2018 hours per year. Union members, explains the Union, have a 56-hour work week or 2912 hours per year. The normal hourly rate for employees identified by the City is \$15.95, as shown on Schedule B (p. 32) of the CBA.

The Union calculates the average rates set forth in City's Exhibit 21 (Dodge County Private Sector) is actually \$19.89. Assuming an overtime rate of time and one-half, the overtime rate would be \$29.84. At time and one-half, the overtime rate for Union members, the Union posits, is \$23.93.

The Union concludes that the data on private sector wages actually supports the Union's Final Offer.

As to the external comparables the Union does not disagree that comparable communities may be difficult to find. The Union reiterates that the City's comparisons of Beaver Dam with communities across the state and country with a bond rating of A2 provide no meaningful comparisons not only because the make-up of the communities are impossible to ascertain, but comparisons of wages, hours and conditions of employment of employees within those communities are also impossible to discover. The Union asserts the statutory directive as to "comparability" means comparing communities that are similar, but not necessarily identical, and cites Arbitrator Engmann's recent *Beaver Dam* Award in support.

The Union avers that every member of Local 3432 is a fire fighter, contrary to the City's assertion. The Union notes that there are two levels of fire fighters, Fire Fighter I and Fire Fighter II. Under Wisconsin Department of Commerce regulations, only certified Fire Fighters II can become certified to operate the various items of emergency equipment. The Union strongly believes that the comparison of fire fighters in Local 3432 and fire fighters in the Union's selected comparables is appropriate.

Finally, as to the Sec. 12.3 issue, the City accuses the City of embellishing the testimony of City Clerk Dummer. The Union denies the City Clerk testified the parties agreed the benefits would cease when the two-tiered wage scale came out of the agreement. The Union asserts that City Clerk Dummer testified that his only recollection of the negotiations between the parties when the two-tiered scale was removed was that he couldn't remember if he was present or not for those negotiations.

The Union also recounts City Finance Director John Somers' testimony that he is and was fully aware of the provisions of Sec. 12. 3, and that "nothing in the language tells him to stop paying the benefit."

The Union continues to assert that the City is attempting to change the *status quo*.

City Reply

In reply, the City finds significant that the Union's Initial Brief failed to address levy limits and the City's inability-to-pay-argument. The City identifies these as the two most important issues in this proceeding.

The City acknowledges that Beaver Dam has been growing and there are various developments spring up around the City. However, those developments do not result in additional tax dollars to pay wages today. The City recounts the testimony of Mayor Hankes that these dollars will not come to the City for many years and therefore the pending development is irrelevant to the City's current financial situation.

The City reiterates that it was in the red in 2005 and its 2006 health insurance costs were significantly over budget.

The City denigrates a November 9, 2004 letter from the Union's consultant, Kelly Parks, that painted a picture of good financial condition for the City, noting that the letter was based on data that was four years old. Neither did the letter contain any reference to levy limits or other constraints currently imposed on the City. The City further notes that the letter was solely intended to counter an "inability-to-pay" argument and that its author was not available for cross-examination. The City suggests that the Union did not obtain more up-to-date information about the city because the current economic outlook for Beaver Dam would not be as optimistic as Mr. Parks found it to be in 2004, based on 2003 data.

Interests and Welfare of the Public and City's Ability to Pay

The City reasserts that the interests and welfare of the public and the financial ability of Beaver Dam to meet the cost of any proposed settlement are best met by the City's Final Offer. The City describes its Final Offer as simply trying to preserve service levels and maintain the *status quo*. Implementation of the Union's Final Offer will result in a significantly higher percentage of dollars going to wages and benefits while other numerous needs of the city will continue to be ignored.

The City continues to claim, "Most importantly, the City cannot afford the Union's Final Offer." The City notes the Union's claim that it generates some \$600,000 in revenues for the Fire Department. The City claims this is a misleading fact – that over half of those dollars are simply shared revenue dollars that return to the City from the surrounding townships.

Comparable Employment (Internal)

The City repeats its belief that the internal comparables strongly support its Final Offer, referring to the Water Utility employees and those represented by the Paid-On-Call-Fire Fighting Association. The former unit (which the City continues to maintain is not an appropriate internal comparable because it is not tax-payer funded) received less in terms of a wage increase than the Union is proposing. The latter also accepted less of a wage increase in 2006 and 2007 than the Union is proposing for its members. The City asserts that Mayor Hankes testified that the settlement for the Paid-On-Call Unit, including a one-time \$350 payment, represents a 1% increase in 2006 and 1% in 2007, all of which fall within the budgeted amount for this group of employees of 1% increases for each year.

Comparable Employment (External)

Continuing to cite the City of Kaukauna as its only public sector model, the City of Beaver Dam concludes the public sector comparables strongly support the City's Final Offer. The City accuses the Union of trying to blur the lines between fire fighters and EMTs in its analysis. But the City asserts that it is entirely inappropriate to compare this group of employees with a fire fighting unit elsewhere.

Private Sector Employment

The City simply reasserts that the private sector comparables strongly favor the City's Final Offer. According to the City, "Union employees are far better compensated than the private-sector citizens they serve."

Average Consumer Prices for Goods and Services (Cost of Living)

The City concedes the Consumer Price Index figures continue to favor the Union's offer.

Other

The City again maintains that the 2006 health insurance changes are worth the equivalent of a 0.87% ATB wage increase to employees.

Proposed Elimination of Section 12.3

The City charges the Union with seeking to change the status quo by modifying the language of Sec. 12.3. The City notes that this is not the only retiree health insurance benefit in the contract, and refers to Sec. 6.12 that enables employees to receive up to five years of paid health insurance by using accumulated, unused sick leave that accrued at the time of retirement.

The City asserts “the added retiree health insurance benefits set forth in Sec. 12.3 were limited in purpose and scope and tied directly to the existence of a two-tiered wage schedule in the CBA that no longer exists.”

The City emphasizes that elimination of the Sec. 12.3 benefit would not result in the elimination of all health insurance benefits. But, says, the City, the Union wants to keep all the retiree health insurance benefits despite the clear and unambiguous language of Sec. 12.3.

Conclusion

The City concludes with the observation that in some ways levy limits are very good. “Municipalities that are not as well-managed as Beaver Dam have been forced to get their spending under control.” But, the City concludes, levy limits leave cities like Beaver Dam with an inability to pay anything but a small wage increase.

“The City simply cannot afford the Union’s Final Offer.

Supplemental Briefs

Each party submitted a supplemental brief further discussing the appropriate arbitral factors. Each party identified the factors to be applied by the arbitrator in this matter as those contained in Sec. 111.77(6).

Union Supplemental Brief

The Union asserted that it had provided substantial evidence and argument to demonstrate that the City has the ability to pay the Final Offer of the Union, without undue financial hardship, particularly in light of the Union’s cooperation with the health insurance issue. The Union also suggested that the interest and welfare of the public is best served when due consideration is given to the Union’s efforts to cooperate with the City in voluntarily resolving the health insurance issue. This says the Union, will likely lead to further cooperation between the parties in the future. The Union avers that the “Greatest Weight” and Greater Weight” factors found in Sec. 111.70(4)(cm), Wis. Stats. are not controlling factors in reaching a decision in this case.

City Supplemental Brief

The City finds the factors contained in Sec. 111.77(6) and 111.70(4)(cm), Wis. Stats. are substantially similar, but acknowledges that they are not identical. The main distinction, the City explained, is that “Sec. 111.77(6) does not prioritize the factors as ‘factor given greatest weight,’ ‘factor given greater weight,’ and ‘other factors considered’ as Sec. 111.70(4)(cm) does. Instead, Sec. 111.77(6) directs the arbitrator to consider each of the factors delineated in sub. (6) equally.”

That said, continues the City, there is little substantive difference between the relevant factors set forth in the two statutes.

Specifically, the City concludes that its arguments in regard to levy limits, economic conditions of the City, affordability, as well as its argument relating to how the public is best served, are all appropriate factors for consideration under sub. (6)(c), the interests and welfare of the public and the financial ability of the unit of government to meet these costs, as well as sub. (6)(h). Likewise, the City adds, its review of internal, public sector and private sector comparables is directly relevant to the factor listed in sub. (6)(d). Finally, the City concludes, its discussion on the 2006 health insurance change is a factor for consideration under sub. (6)(f) relating to the overall compensation and benefits received by the employees, as well as sub. (6)(h).

DISCUSSION

Determination of Comparables

Other than its agreement to include Kaukauna as a comparable, the City offers no other candidates to replace the nominees of the Union to which the City objects. In effect, the City is nominating a pool of external public sector comparables consisting of only one community.

Certainly, comparing the respective final offers by the parties to the wages, hours and conditions of employment of public sector employees in only one other community would greatly simplify the task of the arbitrator. But the instruction provided by Sec. 111.77(6) (d) 1. of the Wisconsin Statutes is not to make a comparison between the subject community and only one other, for this can create a view as skewed by the narrowness of its scope as the confusion that can be created by an overly broad panorama of dissimilar communities. Instead, Sec. 111.77(6) (d) 1. simply requires, *inter alia*, the arbitrator give weight to a “(c)omparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of employees performing similar services and with other employees generally:

1. In public employment in *comparable communities*; (plural, emphasis supplied)
2. * * *

As Arbitrator James Engmann points out, “comparable” does not mean “identical.” Engmann adds:

“But there is, of course, no such thing as an identical community, not even one, so we are forced to look at communities that are similar in nature, based upon location, size, wealth and other factors, comparing the entity in

question to those similar communities which become the community's comparables.¹²

Actually, analysis of the Union's data reveals similarities between Beaver Dam and Kaukauna. But they are by no means identical. The City's data also reveals certain differences between Beaver Dam and some of the communities (including Kaukauna) proposed by the Union.¹³ But the data also reveals similarities, as well, sufficient to allow their use for comparability purposes.

I am favorably impressed that all of the communities nominated as comparables by the Union have a geographical proximity of 75 miles or less to Beaver Dam, and thus reject the City's assertion to the contrary. I am also impressed that none of them are immediately contiguous to a major metropolitan area. Union Ex. 3. I have some discomfort in noting that West Bend supports a substantially larger department and has a higher equalized value than Beaver Dam. This is also true for the combined Neenah/Menasha municipalities, which jointly support a substantially larger number of fire fighters than does Beaver Dam and also have a higher equalized value. However, this appears to be balanced, to some extent, by the fact that City of Portage and Town of Beloit fire departments are significantly smaller than that of Beaver Dam.¹⁴

With respect to community populations (Union Ex. 4), I note that Beaver Dam (15,545) fits fairly well with a grouping of Watertown (21,598), Menasha (17,282), Kaukauna (14,515) and Two Rivers (12,555). West Bend (30,090) and Neenah (25,430) are substantially larger. Portage (9,963) and the Town of Beloit (7,348) are significantly smaller.

Equalized value comparisons among the communities (Union Ex. 5) on the Union's proposed slate suggest similarities between Beaver Dam (\$882,042,700), Menasha (\$912,179,300), and Kaukauna (\$798,476,200). Watertown (\$1,260,204,500) is not far distant. Predictably, West Bend (\$2,192,151,600) and Neenah (\$1,678,101,600) lead the pack. Two Rivers (\$516,023,00) and Portage (\$547,736,800) are somewhat lagging, with the Town of Beloit (\$395,959,300) in last place. The average equalized value of all the proposed comparables is \$790,986,970.

The City objects to the inclusion of Neenah/Menasha as a comparable community. The City is correct that the single department serves a total community more than 2 ½ times larger than Beaver Dam, with one of the municipal partners to this shared operation having an equalized value substantially higher than that enjoyed by Beaver Dam. At the same time, the other municipal partner to this joint venture has a population and equalized value quite close to those of Beaver Dam, which – with allowances made for its larger wealthier partner – may provide helpful insights.

¹² *City of Beaver Dam (AFSCME)*, Dec. No. 31687-A (Engmann, 11/06)

¹³ City Ex. 33.

¹⁴ Union Initial Brief, p. 16.

The Value/Population column presented by the Union shows marked similarities among all of the proposed comparables, except for Two Rivers (smaller), West Bend (larger) and Neenah (somewhat larger). The figure listed for Beaver Dam (56,741.25) is almost identical to the average of the figures shown for the others (56,868.46).

I am impressed that when Beaver Dam's figures in each column are matched with the average of the figures shown for the other communities in the same column, (except for municipal and county tax rates) Beaver Dam is very close to the average.¹⁵

In its Reply Brief, the Union responds to the City's contention that not a single member of this unit is a fire fighter, but either drives the fire-fighting equipment or serves as medical personnel. The Union points out that operating fire-fighting apparatus to and from emergency scenes and during training sessions is an integral part of fire fighting.

The Union further notes that the Wisconsin Department of Commerce regulates municipal fire departments and requires that members of any fire department be certified as competent fire fighters before they can perform the functions of a fire fighter. The Union states that there are two levels of fire fighters, specifically, Fire Fighter I and Fire Fighter II. According to the Union, it is only after attaining certification as a Fire Fighter II plus additional training and certification that a member of the fire department is permitted to operate emergency apparatus.

Based on the foregoing, I am not persuaded by the City's argument that Local 3432 members are not fire fighters. To become a driver or fire fighter apparatus operator, it appears one first needs to qualify not only as a fire fighter, but a Fire Fighter II.

Although these particular parties have not been involved in an interest arbitration case with each other, this Employer and its police union have.¹⁶ More recently, this Employer and the AFSCME Local 157 city employees have also been involved in an interest arbitration case.¹⁷ When the parties failed to agree on a pool of comparable communities in each of those cases, the respective arbitrators determined the comparables. Two of the communities named in each of those cases have also been nominated in this case by the Union: Watertown and Portage. As previously noted, Watertown is somewhat larger than Beaver Dam; Portage is substantially smaller, only slightly exceeding half the size of Beaver Dam. Neither is identical to Beaver Dam; both are comparable. Moreover, continuing them offers the parties greater predictability as to which communities ought to be viewed for guidance in settlement levels with employees.

I have some concern about the proposed inclusion of West Bend and the Town of Beloit, only because of the disparity of their respective sizes with Beaver Dam. The

¹⁵ The municipal and county tax rates columns (Union Initial Brief, p.16) show a wide variation, not necessarily predictable. For instance, Beaver Dam's municipal tax rate of \$7.91, which heads the list, is almost identical to West Bend's (\$7.90), but less than Menasha (\$10.91). Four of the proposed Union comparables are fairly close to the Beaver Dam county (Dodge) tax rate of \$5.64. Neenah and West Bend both have relatively low county rates which lowers the average for this group to \$4.89

¹⁶ *City of Beaver Dam (Police Department)*, Dec. No. 26548-A (Oestreicher, 1/91)

¹⁷ *City of Beaver Dam (AFSCME)*, Dec. No. 31687-A (Engmann, 11/06)

West Bend community is twice as big as Beaver Dam, with more than twice the equalized valuation (and twice as large a department force); the Town of Beloit is half the size, with less than half the equalized valuation (and slightly more than half of personnel strength of Beaver Dam). While the disparities I note may reduce the weight to be accorded to a direct one-on-one comparisons with them, each also has features that are comparable with the subject community of Beaver Dam. Using one as part of a pool of comparables without including the other could arguably present an unbalanced picture. Using both as components of a multi-comparable slate probably corrects that potential imbalance, particularly in comparing Beaver Dam with *averaged* figures of the entire slate.

In summary, I reject the City's urging that Kaukauna be used as the sole comparable in this matter, but include Kaukauna as one of the seven comparables suggested by the Union. I also include the communities of West Bend and the Town of Beloit for the reasons discussed above. Particularly based on the similarities between Menasha and Beaver Dam, I am not persuaded that the Neenah/Menasha communities should be excluded.¹⁸

Neither am I persuaded by the City's argument that data from Portage, Town of Beloit, Two Rivers and Watertown is useless to the analysis of public sector comparables in these proceedings. The argument is based on the City's view that Local 3432 represents only drivers and EMTs, not fire fighters, which is a view I reject. A threshold requirement of operating emergency equipment is certification as a Fire Fighter II. Drivers and other equipment operation certifications follow after that.

Moreover, under the "Recognition and Purpose of Agreement" clause of the parties' CBA (Article I), "fire fighters" are specifically recognized as one of the job classifications exclusively represented by Local 3432, IAFF, AFL-CIO-CLC. The fire fighter job classification is again given specific recognition in the Salary Schedules of the CBA. In effect, the City's argument has similarities to the allegations of a Petition for Bargaining Unit Clarification, which, of course, interest arbitration is an inappropriate forum.

I recognize the City's apparent disenchantment with the use of public sector external comparables, particularly given the City's intense focus on what it regards as its poor economic position and state levy limitations. Yet, it is clear that Sec. 111.77(6) is a data-driven process that relies, in part, on data from comparable external public sector communities,¹⁹ and cannot be ignored.

¹⁸ I note that City's Ex. 33, the publication *Municipal Facts 06*, pp. 17-25, prepared by the Wisconsin Taxpayers Alliance, includes Beaver Dam, Neenah, Menasha, Watertown and West Bend in the same grouping of Wisconsin municipalities with populations of 15,000 to 30,000. Population, of course, is not the only comparable factor to consider. It does offer a helpful starting point.

¹⁹ Unlike the factors listed in Wis. Stats. 111.7(4)(cm), as the parties herein agree, the factors in Sec. 111.77(6) for application by the arbitrator in certain police and fire fighter interest arbitration disputes (including this one) do not reference any "Greatest Weight" or "Great Weight" factors relating to levy limits or local economic conditions.

The disagreement between the City and the Union with respect to which comparables should be named certainly is not an unusual topic of debate between municipal employee labor unions and municipalities. Although an alternate proposed pool from the City may have been useful in determining which party's set of comparables to use (or intermingle), the City is under no obligation to nominate its own slate in this proceeding. Moreover, both parties agree that selection of comparables to serve in this matter is difficult. I do not disagree.

I am cognizant that the City compares itself to unspecified cities in Wisconsin and the United States based on similarity in bond ratings (City Ex. 14). Contrary to the Union's argument, in my opinion similar bond ratings can provide a basis of comparability among communities. But City Ex. 14 fails to identify any particular community in Wisconsin or the United States with which Beaver Dam is purportedly being compared. Neither does it contain any specific salary, benefit or conditions of employment information as to either private sector or public sectors employees in these unidentified communities. Under these circumstances, clearly the utility of this document as a "comparable" in these proceedings is quite limited.

The City has mounted objections to the Union's proposed pool, to which I have given due consideration. I do not suggest that the Union's proposed pool is necessarily the *only* appropriate pool of comparables for use in this matter, by any means. But the fact that the City chose not to propose its own set of comparables to replace the ones suggested by the Union to which the City objects undeniably bolsters the Union's proposed pool.

For all of the reasons expressed above, the external primary comparables I will use are West Bend, Neenah/Menasha, Watertown, Kaukauna, Two Rivers, Portage, and the Town of Beloit, as proposed by the Union.

Final Offers

The parties agreed to a successor labor contract, with the exception of two issues: 1) salaries; 2) retiree health insurance (Sec. 12.3 benefit)

Salaries

I turn first to the issue of salaries.

The City proposes a 3% ATB increase effective January 1, 2005 and 1% ATB increases on January 1, 2006 and January 1, 2007.

The Union proposes 2% ATB increases on January 1, 2005, January 1, 2006, and January 1, 2007. In addition, the Union proposes additional 1% ATB increases on July 1, 2005, July 1, 2006 and July 1, 2007.

External Comparables

The external comparables cited by the Union support the Union's wage proposal. When compared to the average pay of the comparables at the top level, under the Union's proposal Beaver Dam fire fighters would still be the lowest paid in 2005 by approximately \$4,500. In 2006 and 2007, still under the Union's own proposal, the deficit between the average of the salaries of fire fighters in the "top" category of the comparables is approximately \$4,700 and almost \$5,000, respectively.

In contrast, under the City's offer, the disparity would remain the same in 2005, but would significantly increase in 2006 and 2007.

With respect to salaries for motor pump operators, when the salaries for this position paid by the comparables at the top level are averaged, Beaver Dam operators rank third of six in this comparison, under the Union's proposal. Under the City's proposal, Beaver Dam motor pump operators would remain in third place, but would fall from being some \$1,565 *above* the average in 2006 to \$473 *below* the average in 2007.

Salary figure comparisons for fire officers yield a similar result, when analyzing Union and City offers. When compared to the average pay for fire officers at the top level (excluding Beaver Dam), Beaver Dam officers rank fourth of eight, fifth of eight and fifth of eight in 2005, 2006 and 2007, respectively, under the Union's offer. They retain the same ranking under the City's Offer for those years, except that in 2005 the disparity remains the same, but in 2006 and 2007 grows substantially.

Fringe benefits for the Beaver Dam unit, including retiree health insurance benefits, appear to be unremarkable when compared to those enjoyed by fire fighters in comparable communities – except for the new health insurance plan installed in Beaver Dam. With the exception of the new health insurance plan, none of these areas appear to impact significantly on the wage issue.²⁰

Moreover, the City does not appear to dispute the external comparable figures the Union offers, except to argue that the comparables themselves (except for Kaukauna) are inappropriate. Besides Kaukauna (which the City finds pays less) the only external comparable to which City does compare itself is a generalized group of Wisconsin and United States communities that share an A2 bond rating with Beaver Dam (City Ex. 14). According to the City's Ex. 14, Beaver Dam taxpayers lag behind taxpayers in other (unidentified) Wisconsin and U.S. communities in areas such as per capita income, median family income, and median home value. The exhibit also shows a higher poverty rate for Beaver Dam than the other rated communities.

The lessons to be drawn from the exhibit are not plain. Some of the data shown in the exhibit is extrapolated from 1990 census figures. No data is more recent than the year

²⁰ Beaver Dam fire fighters benefits appear to be higher in average than some of the comparables (e.g., longevity pay at 25 years, clothing allowance)), lower in average than others (e.g., holiday pay), and at the midpoint of the remainder (e.g., vacation).

2000, and is also taken from census figures. While apparently identical municipal bond ratings can form a basis of comparability among municipalities, generalized statistics as to an unidentified number of communities across the state and country that do not reflect specific wages, hours and conditions of employment of employees performing similar services to those performed by employees in the subject group are of marginal assistance in the context of an interest arbitration dispute.

In this case, when compared to the average top rankings of the comparables, Beaver Dam fire fighters rank last, even under the Union's proposal, but would recede further back under the City's proposal. Operators and fire officers would retain their respective rankings under either offer, but would fall further back under the City's offer.

The City argues that with the reduced health insurance premium contributions from Beaver Dam employees, Local 3432 members retain more of their gross pay and that, in effect, amounts to an additional 0.87% increase. But "what is sauce for the goose . . ." for the City has also saved and will continue to save literally thousands of dollars under the new health insurance plan – a plan that was collaboratively constructed by the Union and the City, as well as other bargaining units.

Certainly, based on its participation in not only the crafting of a mutually acceptable new plan, but its willingness to accept an early implementation, the Union is entitled to a fair share of the health insurance premium savings. Thus, I am not persuaded by the City's argument that the reduced health insurance premiums for individual Beaver Dam employees should be credited as additional 0.87% wage increase.²¹

In my opinion, comparison of the wages, benefits and conditions of employment of public employees in comparable communities performing similar services to those performed by the Beaver Dam Fire Fighters, Local 3432 members favors the wage offer of the Union.

Internal Comparables

Unrepresented Employees:

The City asserts that all of the unrepresented employees of Beaver Dam – including all management members – have received a wage increase no greater than 2% for 2005, 1% for 2006, and will receive a 1% increase for 2007. This is less than the amount offered to the Union.

I take the view that, in general, salary figures for unrepresented employees are entitled to little weight, simply because the unrepresented employees have not had the opportunity to bargain collectively. Their salary levels have been unilaterally determined

²¹ Part of these savings are produced by higher deductible costs – which will come out of the pockets of policy claimants – making an computation of an additional wage increase attributable to lower premium payments a more complex and challenging exercise.

by their employer, and may simply reflect the employer's greater leverage in making salary decisions.

Water Utility

Notwithstanding its initial argument that the Water Utility unit is not an appropriate internal comparable because it is not taxpayer funded, the City describes the Union's offer in the instant matter as exceeding the settlement the City reached with the Water Utility unit. That settlement is an ATB wage increase of 2% effective July 1, 2005 and a 3.5% increase on January 1, 2006. This settlement provides a 5.5% wage lift over a 2-year period in contrast to only a 5% lift the City proposes for Local 3432 over a 3-year period. It is worth noting that the Water Utility unit, like the Fire Fighters, had also agreed to implement health insurance plan changes.

I find this unit to be an appropriate internal comparable, regardless of the fact that it is not taxpayer funded. In the end, the unit's funding comes from the same pockets as produce City property taxes. In my opinion, the City's settlement with this group can be used to support both the Final Wage Offer of the Employer and that of the Union.

Paid-On-Call Fire Fighters

This unit, also, is difficult to compare with the unit represented by Local 3432. The Paid-On-Call Fire Fighters, as suggested by its name, are not full-time employees. Presumably they are paid on a call-by-call or fire-by-fire basis, and still require a primary employment source for primary income with which to support themselves or their families.

The City describes its settlement as representing a 1% increase in 2006 and 1% in 2007. The Union is dubious about the figures the City reports as to the settlement level for the Paid-On-Calls, and complains that it lacks sufficient information as to what the 2005 and 2006 base level compensation actually was. The Union speculates that the actual settlement figure for the Paid-On-Call unit may represent a possible range of an 11 to 22% pay increase. The City insists the one time \$350 payment to the Paid-On-Call unit members was included in its 1% figures.

I do not fault the City's ingenuity in creating irregular part-time employment as part of what may be part of its strategy to reduce the costs of fighting fires. Whether the system can be employed without reducing fire-fighting effectiveness or unduly endangering public safety is a matter that appears to within the discretionary decision-making authority of City officials, whose judgment in this matter I have no reason to question.

At the same time, wages paid to irregular part-time employees that work only on an "as needed" basis is a substantially different wage arrangement than the full-time salary arrangements with Local 3432 members. Whether the Paid-On-Calls received 1% increases as the Mayor relates or 11% to 22% increases as the Union speculates, the

difference between an irregular “as needed” employment status and a regular full-time employment status suggests any comparison between the two units would be of limited or no value.

Dispatchers and Police

Neither the Dispatchers nor the Police have reached a voluntary settlement nor agreed to implement the new health plan.

Given the dearth of information concerning these groups there is no available information on which to base an informed comparison.

Public Works and Other City Employees (AFSCME)

This unit comprises 43.5% of the Beaver Dam city employee workforce. In its final wage offer to the City, the Union proposed a 3% ATB increase on January 1, 2005, a 2% ATB increase on January 1, 2006, and a 1% ATB increase on 2006.²² The Union’s offer represents a 6% wage lift and 5-½ % cost over the two year period covered. The City’s wage proposal to the Union was for a 3% ATB increase on January 1, 2005 and a 1% ATB increase on January 1, 2006. Like the Fire Fighters, this unit had agreed to implement the new health insurance changes.

The parties were unable to reach a voluntary settlement and proceeded to interest arbitration. In November 2006, Arbitrator James W. Engmann issued an award incorporating the AFSCME Local’s proposal into the 2005-2006 collective bargaining agreement.

As previously noted above, the City’s attempts to distinguish Arbitrator Engmann’s award from the situation herein. The City argues that the principal reason that the arbitrator favored the Union’s offer is that the agreed upon health plan changes were sufficient to offset the wages in the AFSCME unit’s offer without costing the City additional dollars. The City further argued that Arbitrator Engmann’s analysis was “misplaced,” because it ignored the effects of the City’s financial condition. This, declares the City, “is irresponsible when reviewing the appropriateness and reasonableness of final offers during the arbitration process.”

The Union denies that Arbitrator Engmann anywhere cited a principal reason for his award. The Union further argues that when the same two-year period found in the AFSCME case (2005 – 2006) is examined, the savings from the new health insurance plan exceed the costs of the 2005 and 2006 wage proposals of the Union.

The arbitration award in this matter affected some 43.5% of the city employee workforce in Beaver Dam. The City’s disappointment with Arbitrator Engmann’s award is understandable; however, the award does represent an actual, determinable internal

²² The AFSCME local’s proposal also included a language proposal relating to commercial driver licenses that appears to have no ascertainable economic impact.

comparable involving a sizeable bargaining unit that cannot be ignored. Neither am I persuaded by the City's efforts to distinguish the award as an aberrant disregard of levy limits or inability to pay arguments. Given the size of the bargaining unit involved that the award affects, as an internal comparable, the award gives the Union's offer in *this* matter at least a slight preference, in my view.

Private Sector Employees

City Ex. 21 and 30 appears to offer some support for the City's view that the Beaver Dam Fire Fighters are better compensated than private sector employees in Dodge County. Even if the City has misread Schedule A and B of the parties CBA as to hours of work (the longer hours cited by the Union significantly reduce the normal hourly wage rates that is exceeded by the average private sector rates in Dodge County), other benefits received by the Full-Time Fire Fighters (including health insurance and longevity pay) suggest that they may be, to some extent, ahead of the private sector employees cited in City's Ex. 21.

The problem with this comparison, however, is that none of the private sector employees listed in City Ex. 21 appear to have employment responsibilities comparable to that of a fire fighter. Fire fighters, almost by definition, perform essential tasks for community safety (e.g., suppressing fires, extricating motor vehicle crash victims, cleaning up hazardous waste spillage, and fire prevention), and face higher risks to their own personal safety when performing some of these responsibilities. On the face of it, their jobs require training, practice, physical fitness and courage for which they are compensated.

Certainly, private sector employees also fill positions that require training, practice, physical fitness and courage. But based on the generalized data of City Ex. 21, it is impossible to tell how much the private sector pays the occupants of positions requiring those attributes.

Moreover, because of the need to maintain readiness on a 24/7 basis, fire fighter hours significantly differ from hours of employment for most private sector employees, except for volunteers or "Paid-On-Call" fire fighters.

Based on the foregoing, I find I lack sufficient information to determine whether private sector employment comparable to that of a fire fighter supports the offer of the Union or the offer of the City.

Interest and Welfare of the Public and the Financial Ability of the Unit of Government to Pay.

Ability to Pay

"The citizens of Beaver Dam are already over-taxed," the City asserts. The City further argues it needs new streets, a new police station, more efficient and

updated systems, facilities and equipment “to bring City government into the 21st century.”

The City further argues that it does not have the money to pay for the Union’s offer in both 2006 and 2007 and claims its hands are tied by levy limits imposed by the Wisconsin Statutes.

Indeed, it is fair to say that throughout its presentations and arguments the City has emphasized inability to pay, stemming from what it describes as its poor economic conditions and the state imposed tax levy limitations,

The City describes the Union’s offer as exceeding that of the City by \$40,488 over the putative three-year term of the successor CBA.

The Union, on the other hand, claims the parties’ respective offers are only \$4,338.05 apart over the three-year period or \$1,446.02 per year. The Union claims that City calculations have failed to include the new health plan savings and have also added in a cost that will not occur until 2008. Finally, the Union asserts that City’s Ex. 11 uses 2005 premium rates for the old health insurance plan to compare with the 2006 rates for the new plan.

Specifically, the Union claims that the City has saved \$32,256.95 with this unit alone when the parties agreed to implement the new health insurance plan. The Union also disputes an item the City lists as a cost of the Union offer in the amount of \$3,893 on the grounds that that cost would not occur until 2008.

The City does acknowledge that with the adoption of a new health insurance plan, both the City and the participating unions have saved a considerable amount of money – an amount the City describes as tens of thousands of dollars.

On this state of the record, I am not persuaded that the City’s claimed shortfall for the three-year contract period is as dire as the City appears to believe.

Perhaps, as the City suggests, some of the capital improvements it believes it needs will have to be postponed. Perhaps not. In any event, the City must accept some responsibility for whatever shortfall it may experience, if any, by failing to budget any employee wage increases in its 2005 budget, yet still lowering the mill rate, that year and each of the three previous years. Obviously, this directly affects the permissible tax levies in 2006 and 2007.²³

²³ Perhaps continued zeal to try to keep taxes down accounts for the City’s gamble that that all of its represented bargaining units would agree to implement the new health plan in 2006. But two did not – which, according to the City, accounts for an unanticipated expense of \$90,000 as it struggled to pay the substantially higher premiums of the new health plan. This expense, however, cannot be attributed to Local 3432, for its members agreed to early implementation of the new health plan.

In sum, the *unwillingness* of the City to pay the Final Offer of the Union is understandable. But under the statutory factor set forth in Wis. Stats. 111.77 (6) (c), *unwillingness* to pay does not serve as a synonym for *inability* to pay. Based on the facts and arguments elicited in this proceeding, I am not persuaded that the City lacks the ability to pay the wages proposed in the Final Offer the Union proposes.

Interest and Welfare of the Public

Certainly the interest and welfare of the public is not served by excessive taxation. At the same time, the interest and welfare of the public is advanced by responsible measures of public safety, including the hiring and retention of capable, well-motivated fire fighters, operators and fire officers with high morale and an ethos of public service. On this basis, I find the interest and welfare of the public in this instance to be best served by the wages proposed in the Final Offer of the Union.

That having been said, I note that in its Supplemental Brief, the Union suggests that the interest and welfare of the public is best served when due consideration is given to the Union's efforts to cooperate with the City to voluntarily resolve the health insurance issue "which will likely lead to further cooperation in the future." I do not disagree, but would expand the sentiment to also give the same credence and recognition to the City for engaging in the same collaborative effort to the mutual benefit of all participating parties – the bargaining units and their Employer.

Indeed, one of the distinguishing, salutary features of this case is the collaborative effort made by the parties to address the escalating health insurance costs they were encountering. That effort was not only successful in reaching a solution substantially less costly to both parties, but the Union further distinguished itself by its agreement to the City's request for early implementation of the new health and health insurance plan. This may be a classic example of the principle of "enlightened self-interest," not only for the fiscal relief as to health insurance premium payments it provided both the City and Union members, but the credence it gained both parties in this proceeding.

In my opinion, the mutual recognition by the parties of the mutual health insurance problem they faced and their willingness to reach a mutually acceptable and beneficial solution speaks highly of responsible vision and leadership on this matter from Beaver Dam Mayor Jack Hankes and the Beaver Dam City Council, as well as Union Local 3432 President Matthew Christian and his bargaining unit. Mutual problems are usually best resolved with mutual solutions.

Cost of Living

The City concedes that this factor favors the Union's Final Offer.

Overall Compensation Received by the Employees

This factors neither particularly favors nor works to the disadvantage of either party's offer.

Retiree Health Insurance (Sec. 12.3)

This issue presents two anomalies in that: 1) each party claims its respective offer represents the *status quo*, and that the other party's offer is made without benefit of a *quid pro quo*; 2) a contract language interpretation both parties invite the arbitrator to settle. This (although common enough in grievance arbitrations) is not an exercise normally required in an interest arbitration proceeding such as this.

The parties have no significant differences on the essential facts.

The dispute revolves around the negotiation of Sec. 12.3 of the CBA. That section reads as follows:

- 12.3. Employees who retire under the Wisconsin Retirement System (receive a lump sum payment, including a retirement benefit and/or annuity payments pursuant to Chapter 40, Wis. Stats.) will be allowed to continue in the City's group health insurance program. The City shall pay twenty-five percent (25%) of the family plan premium rate in existence at the time of retirement, which amount shall be frozen at the time of retirement and paid by the City on a monthly basis until the retiree is eligible for Medicare. Provided, however, if the employee is in a single plan and the premium contribution provided for exceeds the single plan premium rate, the City shall be obligated for an amount equal to the full payment of the single premium rate on the date of retirement. The City only shall be obligated to make the twenty-five percent (25%) health insurance contribution rate for a maximum of one hundred twenty (120) months. Any excess payments that may be required shall be paid by the retiree unless the retiree has additional sick leave health insurance conversion benefit pursuant to Section 6.12 of this Agreement. This benefit shall be available to employees upon retirement provided the following conditions are met:
 - a. The employee must be at least fifty (50) years of age or eligible for medical retirement;
 - b. The employee must have ten (10) or more years of continuous full-time service with the City prior to the date of retirement;

- c. The employee shall pay the full cost of the insurance premium to the insurance carrier on a direct billing system;
- d. The employee is not eligible for Medicare or for any other group health insurance program;
- e. The insurance carrier gives its consent to the above program.

The parties agree that City payment of the twenty-five percent (25%) of the family health insurance premium from date of retirement to Medicare eligibility is contingent upon the establishment of a separate wage program for Fire Fighters and/or Drivers hired after January 1, 1996. This wage program (Schedule "A" Salaries) provides a wage differential between existing employees in the Fire Fighter and/or Driver classification and individuals hired after that date. The City's continued obligation for contributions for retired employees is contingent on the following:

- The wage differential between Fire Fighters and/or Drivers hired before January 1, 1996 must be maintained at the same percentage and/or dollar differential. This will be accomplished by applying the same percentage and/or all dollar increase to all steps in the wage schedule unless mutually agreed otherwise.

The City's Final Offer proposes to delete Sec. 12.3 in its entirety. The Union's final offer proposes to delete only the last two paragraphs. Under the City's offer, the benefit provided to retirees in Sec. 12.3 would cease. Under the Union's proposal, the benefit would continue.

Clear and Unambiguous Language

The wage differential referred to in Sec. 12.3 was established in the negotiations for a successor 1996-97 CBA between the parties. It consisted of a two-tiered salary schedule, one applicable to employees hired before January 1, 1996 (Pre 1/1/96, hereinafter PRE), the other to employees hired after January 1, 1996 (Post 1/1/96, hereinafter POST).

PRE consisted of a hiring rate, followed by rates for After Year 1 and After Year 2 for fire fighters. It also showed a hiring rate and subsequent rates for After Year 1, After Year 2, After Year 3, and After Year 4 for drivers.

POST consisted of a lesser hiring rate (than in PRE), followed by lesser subsequent rates (than in PRE) for After Year 1 and After Year 2 for fire fighters. POST also showed a lesser hiring rate (than in PRE) followed by lesser subsequent rates (than in PRE) for After Year 1, and After Year 2 for operators. In addition, POST showed

subsequent rates for operators for After 3 Years and After 4 Years that were less than the After 2 Year rates in PRE. The POST rate shown for After 5 Years for operators (a new listing) was identical to the PRE rate shown for After 4 Years.

In summary, POST reduced the rates in PRE, made the top rates of each tier in the schedule equal, and required an additional year for drivers to reach the top rate.

Laying out the two-tiered schedule in the CBA appears to have required 3-pages (which may suggest one reason for a “language clean-up”).

The two-tiered salary schedule is shown as continuing in the successor 1998-99 CBA. The same percentage increase was applied to each of the separate wage rates. 3-pages were also required to print the two schedules.

According to Local 3432 President Matthew Christian, in negotiations for a successor 2000-01 CBA, the parties agreed to “clean up the language” by listing only the wage program that was instituted for the employees hired after January 1, 1996. The other rate was not abolished, but had become impossible to apply because all of the employees hired before January 1, 1996 had been employed for the period of years necessary for each to reach the top of PRE – which was identical to the top rate of POST. Continued listing of this schedule had simply become extraneous, because with all of the pre-January 1, 1996 employees finally at the top step of PRE (which matched the top step of POST) the more generous hiring and subsequent steps of PRE up to, but not including the top, no longer had application or relevance to any bargaining unit employees. POST, however, remained in full force and effect.

The City claims what it describes as the clear and unambiguous language of the last two paragraphs of Sec. 12.3 relieves it from the duty of continuing to provide the Sec. 12.3 benefit. The language on which the City relies first recites (that) “City payment of the listed health insurance premiums is contingent upon the establishment of a separate wage program for Fire Fighters and/or Drivers hired after January 1, 1996.” The language then describes the wage program (specifically identified as “Schedule A – Salaries”) as providing a wage differential between existing employees in the Fire Fighters and/or Driver classification and individuals hired after that date. The language then again asserts that “(t)he City’s continued obligation for contribution to the retired employees is contingent on the following: the wage differential between Fire Fighters and and/do Drivers hired before January 1, 1996 and Fire Fighters hired after January 1, 1996 must be maintained at the same percentage and/or dollar differential” and concludes with the following sentence:

“This will be accomplished by applying the same percentage and or dollar increase to all steps in the wage schedule unless mutually agreed otherwise.”

The City interprets this language means the benefit is to be paid only if *there is a separate wage program in Schedule A*.

But the City's words of interpretation are not the words that are actually used in the Sec. 12.3. While the City's interpretation is an arguable one, the actual words of Sec. 12.3 are not so clear and unambiguous as to preclude any others. The Union suggests one as it explains the contract language "clean-up" in 2000-01 labor contract negotiations: it was no longer necessary to continue listing an old wage schedule that passage of time had rendered inapplicable to *demonstrate a separate wage schedule had been established and was still in effect*, as required by the 12.3 language.

Notwithstanding what my notes describe as a personal "impression" of long-time City Clerk Dummer that he now recalls from the 1996-7 labor contract negotiations that the benefit "would go away,"²⁴ I do not find that "impression" clearly and unambiguously" set forth in the resulting CBA.

What is clear to me from the Sec. 12.3 words is that the City was doing its best to insure the adoption and continuation of a wage program that initially provided a wage differential between "existing employees" (hired before January 1, 1996) and individuals hired after "that" (January 1, 1996) date. The wage differential was installed at the starting (hiring) and intermediate steps. But the Schedule A – Salaries on which the City was insisting also contained an *identical top rate* for Fire Fighters and Drivers hired both before and after January 1, 1996.

Surely the parties recognized this when they adopted the two-tiered Schedule A for inclusion in the 1996-97 CBA, for both rates appear on the face of the Schedule. Partly for this reason, it is by no means clear to me that either or both of the parties intended that when the top rate was finally reached by all "existing [pre-1996] employees" and the previously applicable rates and timing became inapplicable to them that the *quid pro quo* the fire fighters had had received to gain their agreement would evaporate. Had that been the intent of the negotiators, it would have been relatively easy to express succinctly. Instead, what was written was the somewhat clumsy, repetitive "contingent on" language, which may have simply expressed the parties' intent that the retiree health insurance benefit was contingent on the structure of the lower starting and intermediate rates remaining in effect.

It further appears that the Sec. 12.3 benefit was raised in negotiations as a police-fire "parity" issue.²⁵ Given the sensitivity of that type of issue to fire fighters, I am by no

²⁴ My notes show the City Clerk (who was present for the 1996-7 CBA negotiations) testified that the benefit was intended to benefit employees hired before January 1, 1996 [which it did]. Dummer also testified to a personal "impression" that the benefit "would go away." But, if the benefit were to "go away," it would no longer benefit the very persons for whose benefit Dummer had just testified the measure had been intended to assist, for the pre-'96 veterans who have not yet retired would be deprived of it.

²⁵ According to City Clerk Gary Dummer, Beaver Dam police had already achieved the benefit reflected in Sec. 12.3 in their own 1996 labor contract negotiations. The 26-year veteran City Clerk said the typical negotiating practice followed by the City in the 1996-7 period was for the City to negotiate first with the City Police bargaining unit, then with the Fire Fighters. The Clerk added that the Fire Fighter contract would then reflect those items contained in the Police settlement. This practice appears consistent with

means convinced that the Local 3432 Fire Fighters agreed to accept a *temporary* benefit supposedly introduced to address police-fire parity in exchange for a lower wage rate of *permanent or indefinite* duration and benefit to the City.

The City argues that City Clerk Dummer also testified that the language at issue was simply a dealmaker, and was never intended to be permanent. This leads to the City's next assertion that the parties agreed that the Sec. 12.3 benefits would cease when the two-tiered schedule came out of the CBA. I have no doubt it was a "dealmaker." But if the bargain was that the benefits ceased when all of the pre-'96 veterans had reached the top step in the old range, the question the City does not answer is both simple and basic: *why did the City continue to pay the Sec. 12.3 benefits for six-additional years?*

According to my notes, Clerk Dummer doesn't recall any discussion with respect to Sec. 12/3 benefits that took place in contract negotiations for a successor CBA four years later.²⁶ Moreover, as noted in the preceding paragraph, even after the so-called "language clean-up" occurred and Schedule A reflected only a one-tier wage rate, *the Sec. 12.3 benefit continued to be paid to Local 3432 employees who had retired, a practice that appears to have continued to date – an additional 6-years..* According to City Finance Director John Somers, this happened because "no one told me to stop!"

My notes reflect the Finance Director then asked rhetorically, "Why would you stop?" His question is a logical one. One answer, of course, is that you would stop only if the negotiators had so intended and so informed you. (In retrospect, one would also think the City Finance Director would be the first person to be advised as to when he should stop making payments that were no longer required.) Another possible answer to the Finance Director's question: you would stop making payments when someone thinks of a new interpretation of ambiguous contract language, even though it may be at (unwitting or deliberate) variance with the intent of the parties that bargained the language.²⁷

Still another possibility is that neither party addressed the interpretation the City now urges either when the language was first added in the 1996-97 CBA or when the pre-1996 employee rate was ultimately dropped from Schedule A 4-years later. Perhaps this

long-standing fire fighter sensitivity to "parity with police" issues – a sensitivity that is common knowledge among municipal labor relations practitioners.

²⁶ I recall Clerk Dummer's testimonial uncertainty as to whether he was present at the 2000-01 contract negotiations. But, whether he was present at the negotiations for a 2000-01 CBA or not, if half of the bargain struck in the City-Union's 1996-97 CBA was about to unravel, it seems unlikely the event would pass without vociferous commentary by the losers. Yet, consistent with Clerk Dummer's inability to recall any discussion about Sec. 12.3 benefits in the 2000-01 contract negotiations (assuming he had been present), Local 3432 President Matthew Christian (who was present) testified specifically there was no intention expressed to remove the Sec. 12.3 benefits *quid pro quo* the fire fighters had received four-years earlier in exchange for the reduced wage rate for new employees. In fact, Christian testified the only reason ever expressed for dropping the higher wage rate from the successor agreement was that all the employees affected by it were now at the top step (which was identical to the top step in the lower wage rate.)

²⁷ Apparently, in 2006 someone did tell the City Finance Director not make a benefit payment that mirrors a Sec. 12.3 benefit to a retiring police officer. The police bargaining unit is grieving that action of the City.

was due to the final sentence of the final paragraph of Sec. 12.3. That sentence indicates precisely how the age differential would be computed – “*unless mutually agreed otherwise.*”

Consideration of this phrase offers another possible interpretation. It suggests that even if the disappearance of the old wage rate from the 2000-01 CBA is somehow deemed a deviation from the manner specified for the creation of the wage differential, by virtue of the parties’ agreement to the successor CBA in which the old wage rate did not appear, the parties did in fact “*mutually agree otherwise,*” as permitted by the original 1996-97 contract language. This, of course, would allow the benefit to be maintained. The City’s continued payments of the benefit for six years following mutual ratification of the 2000-01 CBA offers some support for this view and works to no one’s discredit..

In any event, given the different interpretations that can reasonably flow from the language of the last two paragraphs of Sec. 12.3, I do not find the language as clear and unambiguous as the City contends, and thus find no clear and unambiguous written contractual mandate for the result the City seeks. In sum, I am not persuaded that the language of the parties’ agreement is sufficiently “clear and unambiguous” as to require elimination of the retiree health insurance benefit set forth in Sec. 12.3.

Quid Pro Quo

Continuing the anomalous flavor of this issue, each party expostulates that if the other wants the relief it seeks in this issue it should offer a *quid pro quo*. Each argues that its respective position will preserve the *status quo*. To the City, the *status quo* is the elimination of Sec. 12.3. To the Union, the *status quo* is the continuation of the benefit set forth in Sec. 12.3.

Neither offers a *quid pro quo* to the other. Neither believes it is required to do so. Each asserts the *quid pro quos* were given when the original bargain was struck in the 1996-97 CBA.

I have already found that contrary to the urging of the City, the language contained in the last two paragraphs of Sec. 12.3, by itself, does not relieve the City of the benefit retiree health insurance payment responsibilities contained in said section. Given the basis for that finding and the finding itself, it seems clear that the current *status quo* includes the obligation of the City to continue paying the Sec. 12.3 benefits.

Need for Change

But the City urges fiscal grounds as another basis for elimination of the benefit. Saving this argument for last, the City predicts, “Perhaps most importantly, Mr. Somers testified that if the Union’s final offer is accepted and its proposal to eliminate the last two paragraphs of Sec. 12.3 is made a part of the contract, “this will expose the City to millions of dollars in additional unplanned health costs in the future.”

I note as well that the Sec. 12.3 retiree health insurance benefit is not the only contractual provision that provides retiree health insurance benefits. Sec. 6.12 of the CBA offers retirees the opportunity to convert accumulated sick leave into paid up health insurance under the circumstance therein described. Sec. 12.3 augments these provisions.

In disputes of this sort, arbitrators examine 1) whether the party proposing the change has demonstrated a need for change, 2) if the need has been demonstrated has the party proposing the change provided a *quid pro quo* for the change, and 3) whether the first two elements have been established by clear and convincing evidence.²⁸

In this case, the City's fiscal contention in connection with Sec. 12.3 retiree health insurance benefits is not a matter to be taken lightly. But, it also appears the City has been paying the benefit for the past 10-years and the City has advanced no current financial cost figures or actuarial evidence to demonstrate a need for change, i.e., a need for elimination of City's obligation to pay the benefit. I simply have no basis for determining whether or not there is a need to eliminate the benefit.

Moreover, as previously noted, the City offers no *quid pro quo* or inducement to the Union to agree.

The Union's counter-proposal on this issue is limited to proposing elimination of the last two paragraphs of Sec. 12.3. Having been a part of the parties' contracts for the past 10- years, its elimination would also constitute a change of the *status quo*. Yet, as a practical matter, little would change. Under the Union's proposal, the City will continue to reap the benefits of the lower 1996-7 wage rate schedule for employees hired after January 1, 1996, it won in negotiations, including the schedule's expansion to a 5-year progression to the top rate, since that is the only wage rate schedule contractually listed.

The parties have offered no comparability analysis of the Sec. 12.3 benefit, for which there is no apparent need.

Presumably, at the time the parties agreed to the Sec. 12.3 retiree benefits in exchange for the lower wage rate package, the *quid* was apparently valued as close to the *quo*. If that situation has now changed, it is incumbent on the parties to negotiate a solution. In that event, they may wish to attempt another collaborative process that led to their success with respect to the health insurance situation.

Finally, the Union's desire to eliminate the last two paragraphs of Sec. 12.3 does not appear overreaching. As previously noted, as a practical matter, elimination of those two paragraphs will not endanger continuation of each party receiving the benefit of the bargain it reached in the 1996-97 CBA negotiations.

On the basis of the foregoing discussion of this issue, I find the Union's proposal with respect to Sec. 12.3 the more reasonable.

²⁸ *D. C. Everest Area School District*, Dec. No. 24579-A (Malamud, 12/88); *City of Verona (Police Dept.)*, Dec. No. 28066-A (Malamud 12/94). Supporting citations omitted.

AWARD

In reaching this award I have considered and given weight to each of the factors enumerated in Wis. Stats. 111.77 (6). Factors (a), (g) and (h) were not addressed by either party, and do not appear to be relevant to the disposition of this matter.

Wis. Stats. 111.77(4)(b) requires the arbitrator to “select the final offer of one of the parties and shall issue an award incorporating that offer without modification.”

Based on consideration of the afore-listed factors, the evidence, testimony and arguments of the parties, I conclude and direct:

That the Final Offer of the Union in its entirety, along with the stipulations the parties have reached (set forth on p. 3, above) shall be incorporated into the collective bargaining agreement between the parties herein for the 2005 – 2007 term

Dated at Madison, Wisconsin this 31st day of May 2007.

By: _____
A. Henry Hempe, Arbitrator

Effective January 1, 2005 3% across the board
Effective January 1, 2006 1% across the board
Effective January 1, 2007 1% across the board

4. **ARTICLE 12 - HOSPITALIZATION AND DISABILITY
INSURANCE**

Delete Section 12.3 and renumber other sections accordingly.

Appendix "A"

~~Settlement Offer~~
Final Offer
Beaver Dam Fire Fighters
IAFF Local 3432

To

City of Beaver Dam

January 23, 2006

Wages

Effective 1/1/05 2% ATB increase
Effective 7/1/05 1% ATB increase

Effective 1/1/06 2% ATB increase
Effective 7/1/06 1% ATB increase

Effective 1/1/07 2% ATB increase
Effective 7/1/07 1% ATB increase

Article 12 – Hospitalization and Disability Insurance

Amend Section 12.3 by deleting the last two paragraphs.

TAs

All tentative agreements shall be incorporated into the 2005 through 2007 agreement.

Local 3432 reserves the right to amend or delete proposals as limited by the Memorandum of Understanding between the parties.

Appendix "B"

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Agreement") is by and between the City of Beaver Dam and The Full-Time Members of the Beaver Dam Fire Fighters Local No. 3432 International Association of Fire Fighters, AFL-CIO-CLC ("Union").

RECITALS

WHEREAS, the parties are currently in negotiation for a successor collective bargaining agreement; and

WHEREAS, the parties recognize the savings to all by the City offering the Union's bargaining unit members the option of selecting health insurance coverage under the High-Deductible Health Insurance and Health Savings Account identified during the health insurance coalition meetings between the parties; and

WHEREAS, the parties have now reached an understanding that they wish to reduce to writing.

NOW, THEREFORE, for and in consideration of the terms and conditions contained herein, the parties agree as follows:

1. Section 12.1 of the 2002-2004 collective bargaining agreement between the parties ("Section") is modified as follows:

12.1 - Health Insurance. As soon as practicable, 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 who choose the Choice Plus POS or the HMO, the City shall contribute the City's Monthly Health Insurance Contribution towards the employee's monthly premium cost for single or family coverage, as appropriate, or pay the total premium, whichever is less. The employee will be responsible for the difference, if any, between the City's Monthly Health Insurance Contribution and the monthly premium charged by the insurer.

2. Section 12.6 is added as follows:

12.6. 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.

3. Section 12.7 is added as follows:

12.7. 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.

4. The fourth sentence of Section 6.12 is modified to insert the phrase "of the highest cost health insurance plan" before the phrase "by sixty (60) months."

5. The fifth sentence of Section 6.12 is modified to insert the phrase "and to fund a Health Savings Account, as allowed by law, on behalf of the employee, if the employee has selected the high deductible health insurance plan" after the phrase "offset health insurance premiums."

6. This Agreement is effective February 1, 2006, if possible (if not, March 1, 2006) and shall remain in effect through December 31, 2007, the reaching of a successor agreement by the parties, or conclusion of the mediation/arbitration process, whichever is earlier.

7. The parties stipulate to the following:

- a. The provisions of paragraphs 1, 2, 3, 4, and 5 shall be contained in the successor collective bargaining agreement.
- b. The successor collective bargaining agreement shall be for a three year term covering years 2005, 2006, and 2007.
- c. The only issues to be submitted to interest arbitration are issues relating to wages and the elimination/modification/continuation of Section 12.3. However, no party is required to submit the Section 12.3 issues to interest arbitration.

CITY OF BEAVER DAM

Date
Gay H. Hammer 01/25/06
Date

Date

UNION

Date
Matthew Christians 1/22/06
Date
Russell J. [Signature] 1-23-06
Date