

**BEFORE THE ARBITRATOR**

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In the Matter of the Petition of

Case 58 No. 66414

MIA-2741

IAFF LOCAL 311

**Dec. No. 32036-A**

For Final and Binding Arbitration  
Involving Fire Fighter Personnel in the  
Employ of

Heard: 11/27/07

Record Closed: 2/20/08

Award Issued: 4/23/08

CITY OF MONONA (FIRE DEPARTMENT)

Sherwood Malamud, Arbitrator

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**APPEARANCES:**

Hazelbaker & Associates, S.P., by Mark B. Hazelbaker, Attorney at Law,  
3555 University Avenue, Madison, Wisconsin 53705, appearing on  
behalf of the Union.

Melli, Walker, Pease & Ruhly, S.C., by Jack D. Walker, Attorney at Law,  
Ten East Doty, Suite 900, P.O. Box 1664, Madison WI 53701-1664  
appeared on behalf of the Municipal Employer.

**ARBITRATION AWARD**

Jurisdiction of Arbitrator

IAFF, Local 311, hereinafter the Union, and the City of Monona (Fire Department), hereinafter the City or the Employer, selected the undersigned from the panel of names submitted to them by the Wisconsin Employment Relations Commission. On April 16, 2007, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to determine this dispute involving this unit of Fire Fighter personnel pursuant to Sec. 111.70(4)(b) of the Municipal Employment Relations Act. Hearing in the matter was held on November 27, 2007, at the Monona City Hall in Monona, Wisconsin. The parties submitted original and reply briefs by February 20, 2008. This award is issued pursuant to Sec. 111.77(4)(b) Form 2 in that:

The Arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

**SUMMARY OF THE ISSUES IN DISPUTE**

The Union Offer

1. Effective January 1, 2006, change the City contribution for health insurance premiums from 90 to 95%.
2. Effective January 1, 2006, increase wage rates across the board by 2.5%. Effective January 1, 2007, increase wage rates across the board by 2.5%.
3. Add a new benefit. In addition to any other scheduled time off, each employee shall receive two (2) personal days off per year retroactive to January 1, 2006.

The City Offer

1. Change the language of Section 18.01 of the 2004-2005 contract to maintain the Employer contribution level at 90% and the Employee's contribution level at 10%. The effect of this proposal is to maintain the City's contribution towards health insurance premiums at 90% which it was in the expired 2004-2005 contract.<sup>1</sup>
2. Increase wage rates by 2% in each of the two years of the agreement to generate the following wage schedule.

|        | Effective<br>1/1/06 | Effective<br>1/1/07 |
|--------|---------------------|---------------------|
| Start  | 13.25               | 13.52               |
| 1 year | 13.65               | 13.92               |

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<sup>1</sup>The language of the successor 2006-2007 contract at Section 18.01 would read:

The City agrees to provide the WPS health and dental/vision plans implemented effective February 1, 2004, or plans with equivalent benefits for the life of this agreement. The City agrees to pay 90% of the premium of the offered plan selected by the employee for single or family health insurance. The balance of any monthly premium shall be paid by the employee by payroll deduction. The City agrees to continue to pay 100% of the applicable dental premium.

|         |       |       |
|---------|-------|-------|
| 2 years | 14.48 | 14.77 |
| 3 years | 14.93 | 15.23 |

3. The Employer proposes that no change be made to the time off provisions of the expired agreement.

**STATUTORY CRITERIA**

Section 111.77(6) provides:

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.77(6), Wis. Stats., as follows:

- “(6) In reaching a decision the arbitrator shall give weight to the following factors:
- (a) The lawful authority of the employer.
  - (b) Stipulations of the parties.
  - (c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
  - (d) Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
    - 1. In public employment in comparable communities.
    - 2. In private employment in comparable communities.
  - (e) The average consumer prices for goods and services, commonly known as the cost of living.
  - (f) The overall comparison presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the

continuity and stability of employment, and all other benefits received.

- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.”

### **BACKGROUND**

The City of Monona provides fire suppression and ambulance service through a department that employs six full-time Fire Fighter EMT (intermediate) and on-call volunteer personnel. The full-time employees, who comprise this bargaining unit, work 24-hour shifts, two to a shift. They work a schedule that cycles every 24 days. Each cycle of 24 days includes within it a period of 4 consecutive off days and a period of 6 consecutive off days. This schedule generates a 56-hour work week or 2,912 hours per year.

This is the fourth use of interest arbitration by the parties to settle a contract dispute. Arbitrators Vernon and Fogelberg determined interest disputes in the early 1990s,<sup>2</sup> when this unit of six Fire Fighters/EMTs was represented by Teamsters Local 695. In 1998, the unit members petitioned and were released from said representation. Local 311 has represented these employees in the negotiations for agreements reached after 1998. The expired 2004-2005 agreement is the product of an arbitral determination by Arbitrator Arvid Anderson, City of Monona (Fire Dept.), 30954-A (Anderson, 12/7/04).

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<sup>2</sup>City of Monona (Fire Dept.), 26562-A (Vernon, 4/8/91); City of Monona (Fire Dept.), 28197-A (Fogelberg, 9/25/05)

Both parties, each in their own way, seek to recoup what they expended/lost in the prior interest arbitration. The City, which prevailed with its two year offer before Arbitrator Anderson, offers 2% in each of the two years of this successor agreement for 2006-2007, a total of 1% less than the 5% over two years that it settled with four of the other five remaining bargaining units in the City of Monona. Through the City's 2% wage offer, it recoups the half percent per year it offered as a *quid pro quo* to obtain a 10% employee contribution towards health insurance from the 100% contribution the City previously paid to cover employee health insurance premiums. In addition to the 3.5% per year for 2004-2005, the City paid a one-time lump sum payment of \$641.73, the pro-rated share of the savings the City garnered from switching carriers from the State Plan to the plan administered by WPS that provides benefits similar to those offered in the Statewide Plan, but at a reduced cost.

For its part, the Union, the losing party in the last arbitration, presented a three-year offer to Arbitrator Anderson. It attempts to reduce the employee contribution toward health insurance premiums from 10 to 5% and achieve the same average wage increase over the two years, 2006 and 2007, 5%, as the other City units, including the Police, achieved in voluntary negotiations with the City.

It is in this context that the parties justify their offers and denigrate the other party's position. When the philosophic rhetoric concerning the interest arbitration statute and fairness are squeezed from the just under 100 pages of original and reply briefs submitted, the following remains.

### **POSITIONS OF THE PARTIES**

#### **The Union Argument**

The Union argues that the comparability pool should not only include the Town of Madison and the City of Stoughton, but it should include the City of Madison, Middleton, Oregon and the employees of the Fitch-Rona EMS District. The Union emphasizes that the suburban communities of Middleton, Oregon and Fitch-Rona operate departments that use both full-time and on-call employees.

The Union emphasizes that its salary offer is 2.5%; the City is at 2%. In a six-employee unit the dollar difference between the two offers amounts to \$1,296.00 for 2006 and \$2,580.00 for 2007 with a lift impact of \$3,876.00 higher than the end rate from 2005.

The focus of the Union's argument is on the internal comparables. It looks to what the other bargaining units in Monona receive and the manner in which the City treated the non-represented employees subsequent to the issuance of the Anderson award in December 2004.

The Union maintains that although the City met its expenses for the cost of operating the City and paying salaries in 2006 and 2007 by dipping into reserves, the Union emphasizes that the general fund balance as of December 31, 2006 of the City of Monona amounted to \$941,094 which is equal to 23% of the general fund expenses of the City. Whatever borrowing the City did in 2006 was to support capital projects. It did not borrow to meet its operational costs. The Union concludes that the City has the ability to meet the modest wage demands of the Union. The City did not increase its levy to the maximum in 2006. It set it at \$88,560 less than the maximum it could impose. It further limited the amount it could levy in 2007.

The Union argues that the factor "The lawful authority of the employer" does not preclude the City from meeting the Union's demand. The City's argument concerning the 2% levy attempts to have the Arbitrator apply the statutory criteria found in the interest statute applicable to non-law enforcement and Fire Fighter personnel. The greatest weight, greater weight analysis was not incorporated into the law enforcement/fire fighter statutory scheme. The legislature passed these amendments well after the law enforcement and fire fighter statute had been in effect for many years. If the legislature had wanted to make the change and have that analysis applied to these cases, it would have done so. Given the modest demands of the Union, there is no question concerning the ability of the municipal employer to meet and pay the Union's offer.

With regard to the comparability criterion, the Union argues that its offer conforms to the settlements put in place by the Employer and other unions representing the other five collective bargaining units of the City of Monona and the non-represented employees of the City. The City agreed to wage demands that closely approximate the total 5% cost of the Union's offer for 2006-2007 and all of them, including the non-represented employees, contribute only 5% and the City 95% towards health insurance premiums. Here, the City insists that Fire personnel continue to pay 10% towards those premiums. The Union cites the decision of Arbitrator Torosian in his award 30434-A issued 4/03 in the City of Cudahy (Fire) in which he articulated the arbitral principle that the contribution level of fire fighter units towards health insurance should be the same as the level of contribution paid by other employees of the municipal employer.

The other bargaining units of the City pay only 5% towards health insurance premiums, although they did not provide a *quid pro quo* for maintaining that level of contribution. Their agreements were settled subsequent to the Anderson award. The law enforcement unit prevailed in its arbitration, and as a result achieved a 5% level of contribution for employees in 2006 and 2007 without the payment of a *quid pro quo*. The Union maintains that the City's demand for a *quid pro quo* is inappropriate in this case. No other bargaining unit provided that *quid pro quo* to achieve that 5% level of contribution. Furthermore, the Union maintains that the cost of picking up the additional 5% for health insurance should not be costed against the total package in costing the Union's final offer.

With regard to the demand for 2-personal days off, the Union concedes that this benefit is not available to any other City of Monona employee. However, the Union proposes this new benefit in order to equalize the hours worked by Fire Fighters of the City of Monona and other employees including law enforcement. The Union emphasizes that Fire Fighters work 2,912 hours per year. They work 24-hour rotating shifts and they work eight 24-hour shifts every 24-day cycle.

The Union further concedes that if this benefit were accorded to the Fire Fighters, they would achieve 232 hours off as compared to the police who have

192 work hours off. However, the law enforcement officers of the City have a work year that totals 1872 hours. Other City employees work 2,080.

The two personal off day demand would provide Fire Fighters 3% of their hours off. In the second year it would amount to 4.9%. This percentage of time off is comparable to the amount of time off enjoyed by office employees of the City.

The Union maintains that a *quid pro quo* should not be necessary. Its wage demand is lower than what it could justify. Therefore, that lower wage demand should represent a *quid pro quo* for the totality of its wage and benefit offer.

The Union concludes that its final offer for 2006-2007 is structured in a manner to regain what was wrongfully withdrawn from them in the last arbitration proceeding. The 2.5% in each year of 2006 and 2007 is only a half a percent more than the City's offer. Other City employee settlements range from 2.5% to 3.6%. The 5% total lift over the two years is appropriate. When that wage demand is compared to the external comparables, be those of the City or of those proposed by the Union, those comparable communities settled within a range of 3 to 4% increases for 2006 and from 2.5 to 3.5% in 2007.

The Union attempts to obtain parity with all other City employees by reducing the employee contribution towards health insurance from the 10% paid by Fire Fighter personnel to the 5% contribution that all other City employees pay towards health insurance premiums. In addition, the Union attempts through its proposal for two personal days to achieve an equivalency in the amount of time off Fire Fighter personnel have as contrasted to other City employees. The Union notes that its proposal for wage increases of 2.5% in each year of the agreement at issue here, would provide a wage increase that is less than the increase in the cost of living, and is equivalent to what other City employees received for 2006-2007 from the City.

The Union emphasizes that the City pays 95% of the cost of health insurance premium for non-bargaining unit employees. Subsequent to the



issuance of Arbitrator Anderson's award in December 2004, the City in January 2005 reduced the percentage that non-represented employees paid towards health insurance premiums from 10% to 5%, and the City reimbursed the non-represented employees the 5% they had paid towards health insurance premiums in 2004. All other City employees contributed nothing towards health insurance premiums in 2004-2005. They began to contribute 5% in 2006, as a result of the voluntary agreements they reached in which the City paid and the employee unions did not offer or receive a *quid pro quo*.

The 2% offer of the City is lower than the amount of the increases provided by comparable communities. The Union concludes that the fire suppression service provided by the Monona employees is no different than the fire suppression service provided by other Fire Fighter departments including the City of Madison. The City of Monona has both commercial and residential property that is subject to protection by its Fire Department. The Union does not demand that these employees be paid at wage rates similar to the rates received by the City of Madison Fire Fighter personnel. Rather, they maintain that the ranking and the relative benefit level of Fire Fighter personnel between the City of Monona Fire Fighters and other Fire Fighters should be approximately the same. Only Fitch-Rona employees pay 5% towards health insurance. The other comparables continue to fully pay health insurance premiums for their employees. The Union maintains that its final offer is the more reasonable and in line with what comparable communities and what, more importantly, the City has settled with its other employees. Accordingly, the Union argues that the Arbitrator should select its final offer for inclusion in the 2006-2007 contract.

### The City Argument

The City emphasizes that its offer is in line with the 2% levy limits legislatively imposed on the City. Over a four-year trend (2004, 2005, 2006 and 2007) the wages of Fire Fighters advanced by 11%. That 11% exceeds the amount paid to other City employees.

With regard to health insurance, the City emphasizes that the *status quo* requires the Fire Fighters to contribute 10% towards health insurance premiums. The Union proposes to change that *status quo*. Yet, it offers no *quid pro quo* for that change.

On the comparability issue, the City emphasizes that this unit is made up of EMT IVs. The comparables with which the Union identifies are staffed by paramedics. The Monona fire fighters are not paramedics. They are not comparables to whom the Monona Fire Fighters should be compared.

The City emphasizes that since the first arbitration with this unit back in 1991, five of the six employees on staff then, remain employed by the City in 2006. The sixth was hired in 1993. The only turnover occurred in 2006 with the retirement of one employee.

The City emphasizes that other City bargaining units agreed to a 5% employee contribution towards health insurance premiums for 2005-2006. No *quid pro quo* was offered to establish this level of contribution. This unit received a *quid pro quo* for the 10% employee contribution. That 10% contribution was part and parcel of the City's offer adopted by Arbitrator Anderson for inclusion in the 2004-2005 contract. The *quid pro quo*, which the City offered to the Fire Department employees, was a salary increase of 3.5% in each of two years. That offer exceeded the 3% offered to other units by a half percent in each year. In addition, the City paid a lump sum of \$641.73 that represented the proportional savings achieved by the City with the change in carrier to WPS as the administrator of a policy that provided benefits similar to the State plan. Although the Union attempts to change the *status quo*, it offers no *quid pro quo* to achieve its goal.

The City acknowledges that non-represented employees paid 10% toward health insurance in 2004. Shortly after the Anderson award issued, the City returned five of the 10% contributions non-represented employees made toward their health insurance, even though the non-represented employees received a 3%

salary increase. The police union prevailed in arbitration in December 2004. No one other than the non-represented employees paid 10% towards health insurance premiums in 2004. Consequently, the City decided to “. . .stop punishing the non-represented staff and return 5% of the premium to them.” (Employer’s Brief)

The City points out that the direct comparables to this unit, the Village of Maple Bluff and the Town of Madison employees contribute 10% towards health insurance premiums. The City maintains that the 95%/5% payment ratio, employer to employee contribution levels, has not been established as a pattern either in the City itself or by the comparables.

The City argues that it is limited in the amount it can tax for revenue purposes to the amount of new construction in the city. For years 2006-2007, the amount of new construction in Monona was far less than the other suburban communities surrounding Madison. Middleton experienced an increase in construction of 7% in 2005 and 4% in 2006. Madison experienced a 3% increase in 2005 and a 4% increase in 2006. The Village of Oregon experienced a 9% increase in 2005 and a 7% increase in 2006. Fitchburg experienced a 5% increase in 2005 and 4% in 2006. Verona saw increased construction of 17% in 2005 and 14% in 2006. Monona has no vacant land in which to expand and for new communities to be developed. Its increase in construction is in the 1-2% area.

The City reviews the settlements achieved in the other bargaining units. These settlements, in some case two consecutive 2-year settlements, were reached and signed before the 2% levy limit went into effect. In Public Works, their agreement was signed in December 2005. They received a 47¢ per hour across-the-board increase in each of the years from 2006 through 2009. The 47¢ is equivalent to 2.37% of the top step in 2008.

Dispatchers signed an agreement spanning four years (2005-2006 and 2007-2008). They signed this agreement before the City was subject to the levy limit. They received an increase of 2.6% in 2005; 3.6% in 2006; and 3.6% in

2007. The dispatchers received an increase of 3.6% in 2008. In total, dispatcher salaries increased by 12.3% over this four-year span. The reason for the larger settlements in the dispatcher unit, the City maintains, is due to the need for catch-up.

Office maintenance employees similarly signed agreements covering four years (2004-2005, 2006-2007). These four increases total 11.8%. In June 2005, this unit agreed to have employees contribute 5% toward health insurance premiums.

The Monona Library Board, a unit that the City acknowledges is lower paid and, in order to address that issue, the City agreed to increases of 3% in 2005; 2.5% in 2006; 2.38% in 2007.

In additional remarks about its offer, the City notes that the increase in health insurance premiums places the cost of its offer over the 2% levy limit. The Union offer exceeds the 2% without even considering the health insurance increase in premium. The Union asks the Employer to pick up an additional 5% of the cost of premium without the Union's offering a *quid pro quo* for that demand. The City acknowledges that the take home pay of Fire Fighters, should the City offer be implemented at 2%, would decrease due to the increase in health insurance premiums over 2006 and 2007.

With regard to the external comparables, the City notes that the Village of Oregon increased its wage rates by 21% in 2004. Then in 2005 and 2006 the rates increased by 4% each year. Despite these large increases, the five-year employee in Oregon receives \$39,362. In Monona, the three-year employee is paid \$43,476.

The City argues that the total number of hours worked in Monona as contrasted to the Village of Oregon or Fitch-Rona emergency personnel does not tell the entire story. Monona EMTs accrue 12 hours per month rather than 8 of paid time off. The City pays overtime for Monona Fire Fighters to work 24-hour

shifts. In fact, the Union demand for additional time off increases the cost of their total package for these six employees by 4.1%. Nonetheless, every employee in the department carried over vacation into 2007. Overtime costs amounted to \$43,572.00 in 2007 or \$7,262.00 per person.

The City details the impact of each of the statutory factors in evaluating the Union's and the City's offers. The City notes again that it cannot exceed the 2% levy limit. Accordingly, it has dipped into reserves to fund its offer.

The City claims that the parties established a stipulation that neither Madison nor departments that employ paramedics should serve as comparables to this unit. The Union, in its reply brief, denies this assertion.

There has been no turnover in this department. One individual retired at the beginning of 2006. Therefore, the interest and welfare of the public criterion supports its offer.

The City acknowledges that the library and dispatcher units received higher percent increases than offered by the City or demanded by the Union. However, the City notes that these units comprise lower paid positions; far lower than the rates paid by the City to this Fire Fighter unit.

The City presents private sector comparability data, because the statute specifically makes reference to such data. The legislature had to know that the private sector did not include private fire fighter companies. Private sector comparability under this statute requires the Arbitrator to note trends, particularly in the payment of benefits. Private sector employers pay between 80 and 90% of premiums. This supports the City's offer to continue employee contribution towards health insurance premiums at 10%.

The cost of living, as measured by the Bureau of Labor Statistics All Urban Consumers, increased 3.4% in 2005 and 3.2% in 2006. The cost of health

insurance premiums constitutes an important factor the Bureau of Labor Statistics includes in its calculation of these percentage increases.

The City calculates the percentage increases of the wage and health insurance benefit under its offer and under the Union's offer. It argues that only this calculation provides the basis for and the analytical framework for a cost of living analysis. The City paid in 2005, the base year, \$45,297.62 plus the \$3,893.00 for those opting out of health insurance. This generates a base figure of \$49,190.62 of salary and health insurance paid in 2005 by the City. In 2006, under the City's offer of a 2% increase, the wage would increase to \$46,219.82 plus the increased premium for those opting out of health insurance. This amounts to \$4,399.68 for a total of \$50,619.50 or an increase of 2.9%.<sup>3</sup> Similarly, in 2007, the 2% wage increase generates a salary of \$47,142.02 at the top three-year step. The Employer's share of the increase in premium for those opting out of health insurance amounts to \$4,940.78 or a total increase of \$52,082.80 or 2.8%. Two employees, or a third of this unit opt out of health insurance. The City pays the lowest premium for single coverage for those who opt out.

For those employees who take the most expensive family health insurance, the data reflects the following. The City calculates that in the base year of 2005 a salary of \$45,297.62 plus the 90% contribution towards health insurance premium costs the City a total of \$10,549.44 for a total wage and health insurance compensation package totaling \$55,847.06. In 2006, under its 2% offer, wages increase to \$46,219.82 plus the 90% Employer contribution towards health insurance at \$11,290.56 generates a total package of wage and health insurance that amounts to \$58,140.38; an increase of 4.1% in 2006 over 2005. Similarly, in 2007 the City's expenditure increases by 4.1% wage and health insurance from \$47,142.02 plus \$13,387.03 for a total wage and health insurance payment by the City totaling \$60,259.05.

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<sup>3</sup>The amount of health insurance premium represents the employer contribution towards the premium at 90%. The amount of the increase represents the amount of the health insurance premium increased and the amount that increase generates additional expenditure by the City for employees who opt out or take family health insurance.

The City calculates the increase in the health insurance wage proposal presented by the Union for those employees who opt out of taking health insurance and receive the stipend equal to the premium for the lowest cost health insurance premium for single coverage. Again, in the base year 2005, that amounts to \$45,297.62 for salary plus \$3,893 for health insurance or \$49,190.62. For 2006, its proposed 2.5% increase on wages lifts the rate to \$46,435 plus \$4,644.02 for the amount paid to employees who opt out of health insurance for a total of \$51,079.02 or an increase of 3.8%. Similarly, in 2007, the 2.5% wage proposal generates a salary of \$47,572 plus the increased single premium of \$5,215.27 which equals \$52,787, again a 3.8% increase in City expenditure for wage and health insurance for employees who opt out of taking health insurance.

For those employees who subscribe to the most expensive health insurance family plan, the base year 2005 again amounts to \$45,297.62 in salary plus \$10,549.44 which totals \$55,847.06. In 2006, the Union's 2.5% wage proposal increases wages to \$46,435. Together with the health insurance premium of \$12,583.09 (95% to be paid by the Employer under the Union offer), the total expenditure increases by 5.6% to \$59,018.09. In 2007, the 2.5% generates a salary of \$47,572.38. The health insurance premium increases to \$14,130.76 for a total of \$61,703.14, an increase of 4.54%.

The City concludes from this data that its offer that costs 2.9% and 2.89% in 2006 and 2007, respectively, more closely tracks the increase in the cost of living. The Union's proposal is higher both for employees who opt out of paying health insurance and particularly for those who take family health insurance.

The City emphasizes that the factor overall compensation supports its offer. It notes that the Employer pays the full cost of dental insurance. Similarly, the total benefit package allows employees to accumulate 840 hours per year of sick leave that is paid out on retirement. Only one person has retired from the department since 1993.

Under the criterion Such other factors, the City maintains that the trend among public, and particularly private, employers ask their employees to contribute at least 10% towards the cost of health insurance premiums. The Union proposal to reduce the employee contribution at the expense of the Employer has no *quid pro quo* to justify that demand. Furthermore, the Union's proposal for an additional two personal days has a 4% impact on the total cost of the settlement due to the overtime costs generated when employees take off. The City argues that its offer is the more reasonable. It should be included in the successor agreement.

## **DISCUSSION**

This portion of the Award is organized by statutory factor. The Arbitrator applies the statutory factor to the totality of each party's proposal. Each part of each offer is interconnected with the other constituent parts of their respective offers. While it is possible to separate and discuss the wages from health insurance, it is the totality of the parties' proposals that is determinative, here. The Arbitrator begins his analysis with the comparability criterion.

### Comparability in the Public and Private Sectors

Ordinarily, comparability is accorded substantial weight in a case that focuses on wages and health insurance. This case is the exception. Here is why.

First a little history, back in 1991, Arbitrator Vernon in the first arbitration proceeding between these parties identified the City of Stoughton and the Town of Madison as appropriate comparables to the City of Monona. The Union argues that this unit of six professional Fire Fighters who work in a department that relies on volunteer on-call personnel should be compared to the City of Madison. The Union argues that both respond to emergencies and suppress fires.

This Arbitrator does not find that the City of Madison is in any way comparable to the City of Monona on any measure of comparability other than geographic proximity. Madison is much larger by population and area. The City



of Madison maintains a department with multiple fire stations staffed by full-time employees. Madison has a substantially greater tax base to support its fire suppression and emergency service. Accordingly, the Arbitrator finds that the City of Madison is not an appropriate comparable for the City of Monona.<sup>4</sup>

The nature of the job performed and the certifications obtained differentiate Monona from several of the communities that Local 311 maintains are comparable. The Union asserts that the City of Middleton and the Fitch-Rona EMS District serve as comparables. However, the employees in these communities are paramedics and perform duties consistent with that skill level.

Furthermore, there is little comparability data in this record. The City, for its part, asserts there are three comparables: the City of Stoughton, Town of Madison and Village of Maple Bluff. However, the wage data presented for the City's comparables does not permit a wage rate comparison. The parties provided data concerning percentage wage increases and the extent to which employees contribute towards health insurance.

During the hearing the record developed to establish that the pumper position in the City of Stoughton was eliminated. It was that position that served as a comparability tie to the City of Monona. The evidence to establish the comparability of these public sector employees to employees engaged in fire fighting in comparable communities is insufficient for the Arbitrator to engage in a thorough comparability analysis. Accordingly, the Arbitrator accords this factor much less weight in the decision to select one of the party's offers for inclusion in the 2006-2007 Agreement.

The City placed in evidence contracts between represented employees of: a Madison TV station owned by Television Wisconsin, Inc. that is represented by the Communication Workers of America; a Grant County employer manufacturer of loud speaker components whose employees are represented by the Sheet Metal

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<sup>4</sup>There are many reasons that support this conclusion. For purposes of brevity, the Arbitrator limits himself to the above remarks.

Workers; the agreement between Research Products, a Madison-based company, and Lodge 1406 of the IAM and Wood County Telephone Company and the OPEIU Local 95. The Union argues that no weight should be accorded this private sector evidence. No private sector fire fighter employees appear in the data submitted by the Employer, because fire suppression is not a private sector area of employment.

The City counters. It argues that private sector comparability is set out as part of the comparability factor in Section 111.77, the statute that governs the interest arbitration proceedings for law enforcement and fire fighter personnel. The legislature must have realized there are few, if any, private sector law enforcement/fire suppression companies in the state. Nonetheless, the statute calls for the Arbitrator to consider private sector comparability. This Arbitrator views the inclusion of private sector comparability in the statutory scheme to establish a basis for comparing the wages, hours and working conditions of the law enforcement or fire fighter personnel at issue in a particular case against the trend of wages, benefits and working conditions found in the private sector.

Four collectively bargained private sector contracts with employers dispersed in the southern third of the State, that are not proximate to each other or close in the sense of sharing a labor market with the City of Monona, does not form the basis for a trend. Not unlike the public sector comparability data submitted by the parties in this case, the evidentiary record does not afford the Arbitrator the basis for making the necessary comparisons. Consequently, the Arbitrator does not make that comparison. The statutory factor, Changes in the Foregoing, provides no basis for selecting between the parties' offers.

#### Lawful Authority of the Employer and Interests & Welfare of the Public

The Union demands a 2.5% increase in each of the two years of the 2006-2007 Agreement. The City offers 2% in each of those two years. The statutory levy limit of 2% limits the City's taxing authority. It is prohibited from increasing its levy by an amount that exceeds 2%.

The Union argues that the City could have increased its levy in 2006 by an additional \$88,560 and increased the revenues available to it for expenditures on salaries and benefits for Fire Fighter personnel, but it neglected to do so. In this regard, the Union notes that the difference in the cost of meeting the wage portion of its offer as contrasted to the City's offer is set out in City Exhibits Nos. 8 and 9. The increase in gross pay in 2006 over 2005 is \$513.00 over the entire unit. In 2007 the gross pay increases by \$3,509.13. The cost disparity for this unit in 2006 is the result of a retirement in 2006. The Union bases this argument on actual costs year to year, rather than by employing the cast forward method of calculating the costs of its offer.

The City argues that the statutory factor, the Lawful Authority of the Employer, mandates that the City keep its tax increases to or below 2%.<sup>5</sup> Although the City is mindful that the law enforcement/fire fighter statutory interest arbitration process does not provide for a greatest weight/greater weight analysis, the City emphasizes the levy limits to the point that the reader comes away from reviewing its original and reply briefs with the impression that the City wants the analysis under this criterion to determine the appropriateness of the Union's wage demand under a greatest weight/greater weight analysis.

Further, the City emphasizes that unlike the fast growing suburban communities, such as, Sun Prairie, Verona and Middleton, Monona does not have within the confines of its municipal boundaries open land that would sustain development, construction and annual growth rates in equalized value that would provide increased tax revenue. For example, Monona saw its equalized value increase by 7% in 2006 over 2005. In the City of Middleton, it increased 16% in the same year. The Village of Oregon sustained increases in equalized value in 2006 over 2005 of 15%. In Fitchburg the increase in equalized value in 2005 and 2006 were 11 and 9%, respectively. In Verona, the increase was 25 and 19% respectively, as contrasted to Monona that saw its equalized value increase 8% in 2005, 9% in 2006 and 7% in 2007. The other comparables referenced by the

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<sup>5</sup>The Arbitrator will address the total package costs of the parties' offers under the Cost of Living criterion.

parties, the Town of Madison saw an increase in its equalized value of 4% in 2005, but 10% in 2006. Stoughton's equalized value increased in 2005 by 10% and 8% in 2006. Even the Village of Maple Bluff saw an increase in equalized value of 8 and 13%. The Village of Maple Bluff is similar to the City of Monona as it has little or no open property available for development and new construction.

The City of Monona may increase its levy above the 2% limit if there is sufficient new construction to support it. Under the levy limit legislation, it is through new construction that a community may increase its levy. Maple Bluff, an almost exclusively residential community, saw a 1% increase in new construction. There is no manufacturing in Maple Bluff and little commercial property. The City of Verona, on the other hand, saw changes in new construction in the following categories; in manufacturing 20%, commercial 55% and residential at 8%. Monona saw commercial new construction up by 5% and residential construction up by only 1% in 2007.

The Town of Madison residential new construction increased by 1% and commercial by 4%. New construction in the City of Stoughton increased in the areas of manufacturing, commercial and residential by 1 or 2% in each of these three categories over the years 2005 and 2006, the years for which complete data was available from the appropriate state website referenced by the City.

The City argues it has limited land for new construction and development. The 2005 statute passed by the legislature to reign in spending takes a particularly tough bite in Monona . The Employer asserts this fact supports its position, and this argument should be accorded substantial weight.

However, the unreserved fund balances of the City of Monona increased from 2005 to 2006 from \$662,113, or 17% of its general fund expenditures, to \$941,094, 23% of its general fund expenditures. The City used its reserves to balance its budget in 2007. It used a substantial amount of its reserves to do so, \$112,300. Since debt service is excluded from the 2% limit, the levy increase fell well below the 2% limit. Finally, the amount at issue here, whether in wages only

or the entire offers of the parties does not threaten in any way the financial stability of the City or bring its expenditures to a point at which selection of the Union offer would bring the City close to violating the statutory levy limit. Having concluded that these statutory criteria support the Union's rather than the City position, the Arbitrator is well aware that a municipality cannot long spend down its reserves without endangering its financial stability. However at this time, there is no evidence that the City's financial position is anything but secure and there is no statutory impediment to the Arbitrator's proceeding and considering the selection of the Union's final offer for inclusion in the successor agreement.

The Interest and Welfare of the Public criterion, the Union argues supports its position. A stable workforce well satisfied with wages and benefits working in an environment in which employees must act in emergency situations support, the Union maintains, its position. The Arbitrator concludes that these criteria, the Lawful Authority and the Interests and Welfare of the Public do support the selection of the Union offer over the City's.

#### Stipulations of the Parties

For its part, the City maintains that an accord was reached on the communities comparable to Monona. The Union denies such agreement. The Arbitrator concludes that this factor does not serve to distinguish between the parties' offers.

#### Overall Compensation

This factor requires the Arbitrator to review the full range of benefits received by this unit. The Employer pays 100% of the cost of dental insurance. Furthermore, if the Arbitrator were to grant the Union's demand for two personal days off, this unit would gain a new benefit that no other Monona employee has. It would not only reduce the number of hours worked by Monona Fire Fighters, but it would reduce it to a level below that of law enforcement personnel. There

is no evidence in this record to suggest that the range of benefits afforded to Monona's Fire Fighters require the addition of an additional benefit.

The City challenges the need for additional time off. Everyone in this unit carries over vacation time. Neither party addressed the factual issue as to why all Monona's Fire Fighters carry over vacation from year to year.

There is no persuasive argument made by the Union to support the demand for additional time off. The Arbitrator concludes that the criterion Overall Compensation supports the City's arguments. However, this criterion normally is not accorded substantial weight in an arbitrator's analysis. The criterion does suggest comparisons of the parties' offers to each other or to other groups of employees. That is true in this case, as well.

#### Such Other Factors

It is under this factor that this Arbitrator weighs internal comparability. What other employees of this Employer, both represented and non-represented, received as wage increases and benefits, health insurance and time off has a significant impact on the outcome of this case. Most of the record evidence submitted by the parties addresses internal comparability and the impact this factor has on the three issues under consideration wages, insurance, and the creation of a new benefit of two personal days off.

In this analysis, the City asserts that the Arbitrator should consider the wage increases these Fire Fighter personnel received in 2004-2005 as a result of the Anderson award, in addition to considering the respective offers of the Employer and Union for 2006 and 2007.

Union Exhibits H and J detail the trend in wages and health insurance. The Fire Fighters received 3.5% increases in each year, 2004 and 2005 under the City offer that prevailed in the prior interest arbitration. Monona police prevailed in their interest arbitration with the City (City of Monona, 30991-A (Kossoff

12/16/04). They received increases of 3% each in 2004 and 2005, and the police were able to resist contributing towards the cost of health insurance premium. So in those two years, City paid the total cost of police officer health insurance premiums. The Monona Fire Fighters did not prevail in their arbitration. In addition to 3.5% higher wage offer from the City in each of the two years, 2004 and 2005, Fire personnel had to contribute 10% towards health insurance premiums. The City proposes to continue to have Fire Fighters pay 10% towards health insurance premiums and the City pay 90% of those premiums. The chart below sets out the trends for wages and health insurance for the other City units and Fire.

| <b>Wage Trends</b>          | <b>2004</b> | <b>2005</b> | <b>2006</b>                     | <b>2007</b>                     |
|-----------------------------|-------------|-------------|---------------------------------|---------------------------------|
| Monona Fire                 | 3.5%        | 3.5%        | <u>City 2%</u><br>Union<br>2.5% | <u>City 2%</u><br>Union<br>2.5% |
| Monona Police               | 3%          | 3%          | 3%                              | 2%                              |
| Monona Public Works         | 2.6%        | 2.6%        | 2.5%                            | 2.4%                            |
| Monona Dispatchers          | 2.6%        | 3.6%        | 3.6%                            | 2.5%                            |
| Monona Office & Maintenance | 3%          | 3%          | 3.3%                            | 2.5%                            |
| Monona Non-Represented      | 3%          | 3%          | 3%                              | 2%                              |

| <b>Insurance Trends</b>     | <b>2004</b>                 | <b>2005</b> | <b>2006</b>         | <b>2007</b>         |
|-----------------------------|-----------------------------|-------------|---------------------|---------------------|
| Monona Fire                 | 90                          | 90          | City 90<br>Union 95 | City 90<br>Union 95 |
| Monona Police               | 100                         | 100         | 95                  | 95                  |
| Monona Public Works         | 100                         | 100         | 95                  | 95                  |
| Monona Dispatchers          | 100                         | 100         | 95                  | 95                  |
| Monona Office & Maintenance | 100                         | 100         | 95                  | 95                  |
| Monona Non-Represented      | 90<br>reimbursed-<br>5%=95% | 95          | 95                  | 95                  |

After the City prevailed in the interest arbitration in December 2004, in January 2005, the City reimbursed the non-represented employees ½ of their contribution towards health insurance premium that they paid in 2004. As the City describes in its brief, it wanted to stop punishing the non-represented employees by requiring them to pay 10% on health insurance premiums for 2004 and 2005. (Employer Reply Brief; See, Union Exhibit K)

The City attempts to maintain the *status quo*. Monona Fire Fighters should continue to pay 10% towards health insurance premiums or at least offer a *quid pro quo* to reduce that contribution from 10 to 5%. The City emphasizes that it paid a *quid pro quo* to support the selection of its successful offer; the payment of an additional half percent in each year, 2004 and 2005, and a lump sum of \$641. The Union argues that the amount paid for health insurance premiums should be equal across all units of the Employer. It cites the decision of Arbitrator Torosian to that effect. The Union argues not only that the premium contribution should be reduced by 5%, but that the increased cost to the Employer should not be costed against the Union in calculating the total package costs of the Union's offer.

This Arbitrator is reluctant to grant or alter major benefits through the application of arbitral principles without considering real world factors, when making the decision as to which offer should prevail. In this case, the City paid a *quid pro quo* to obtain employee contributions towards health insurance, when none of Monona's employees contributed toward health insurance prior to the 2004-2005 contract. The Union argues that the *quid pro quo* was inadequate. Apparently, Arbitrator Anderson felt otherwise when he ruled for the City and the inclusion of its offer in the 2004-2005 contract.

In the real world, when one tries to induce change, the party proposing change offers something for it. In this case, the Union offer refers to arbitral principles concerning the uniformity of benefits among employee groups. This indeed is a strong principle and one that frequently is argued when the shoe is on the other foot. When a union resists an employer demand for consistency of



benefits among all bargaining units, an arbitrator would give substantial weight to that argument. Here, the Union argues there should be consistency of benefits. The Arbitrator gives that argument substantial weight. The *quid pro quo* analysis lessens the weight accorded to the consistency of benefit argument.

On the other hand, this unit of employees contributed 10% towards health insurance in 2004 and 2005, when no other represented Monona employee group contributed toward health insurance premiums. The Union demands that the Employer reimburse Fire Fighters for the difference between 5 and 10% contribution towards health insurance back to January 1, 2006. Its proposal would bring it in line and consistent with the other units. It does not offer a *quid pro quo*. It asserts that no *quid pro quo* is necessary.

The City argues that the Arbitrator should not consider the 5% contribution by employees as a trend. The City intends the Arbitrator to conclude that in the future the City will attempt to increase the amount that employees pay towards health insurance. Similarly, it points to whatever comparables the parties have provided to indicate that some employees pay 5%, others 10% towards health insurance premiums.

The City argues a pattern has not been established. That argument would have some merit, but for the City's decision to reimburse non-represented employees the 5% health insurance premiums they paid in 2004. It demonstrates that the City has established that the amount that it will expect employees to pay towards health insurance premiums is 5%.

The Such Other Factor criterion brings to bear both the internal comparability and *quid pro quo* analyses. The Employer refund of the premiums for non-represented employees for 2004 tips the balance in favor of the Union's position, were these the only two issues or matters considered under this criterion.

The Union proposes a new benefit, in this case. In its final offer in the arbitration decided by Arbitrator Anderson, the Union sought additional vacation time off that Arbitrator Anderson concluded was not justified. Arbitrator Anderson observed:

Also, as for vacations, there is no pervasive evidence that an increase in time off is needed. In fact, the record shows that employees accumulate time off under the existing plan. As mentioned, the increase in vacations would greatly increase the cost to the employer because of the overtime required to fill vacancies.

The Union, in its demand for two personal days, has not demonstrated a need for this benefit. All employees carry over vacation. There is no evidence to indicate why this situation exists. The Employer has established that the cost of providing a replacement for the employees who take the personal days off which it must do in part, through the use of overtime, would add 4.1% to the costs of the total expenditure for wages and benefits for this unit. No other employee group has two personal days. Not only has the Union failed to establish a basis for its demand, it offers no *quid pro quo* or inducement for inclusion of this benefit in the successor agreement. The addition of this benefit to the Union's offer results in this segment of the Such Other Factor criterion supporting the selection of the City final offer for inclusion in the successor agreement.

#### Cost of Living

\_\_\_\_\_The annual increase in the cost of living for 2006-2007 is 3.2% and 2.8% respectively. The Arbitrator compares the total package costs of each party's offer when applying the Bureau of Labor Statistics annual increase to the cost of living data. The City costed health insurance and wages, the two principal elements of a wage package. Under the City offer, it generates an increase in costs of 2.9% in 2006 and 2007 when costing the opt out insurance cost. When the most expensive health insurance premium is included with wages under the City's offer, costs increase to 4.1%. Under the Union offer, under the opt-out provision, wages and health insurance, the lowest premium for single coverage generates a total

cost that amounts to 3.8% in 2006 and 2007. When the premium for the family coverage is added to the Union's wage proposal of 2.5% in each year, the cost increases by 5.6% in 2006 and 4.5% in 2007. Clearly, the City's offer most closely approximates the cost of living.

### SELECTION OF THE FINAL OFFER

The Such other factor criterion and Cost of living are the two criteria that carry significant weight in this case. The Union offer, if limited to wages and insurance, is preferred under the Such other factor criterion, and the City's under the Cost-of-living criterion. The Union's offer would have been selected had its offer been limited to its proposal for a 2.5% wage increase, one similar to and in line with increases received by other bargaining units over the two year period 2006 and 2007 and which, even considering a four year trend, would have placed it at no more than 1% above the salary increases received by other bargaining units.

With regard to health insurance, the Union failed to offer a *quid pro quo* or return the *quid pro quo* in part or in total that the City paid in order to obtain a 10% contribution towards health insurance premium. However, the pattern of benefits established by the Employer for health insurance is so strong, particularly in light of the Employer's decision to return the "5%" contribution non-represented employees paid in 2004, that this pattern of contribution, 5%, should hold for Fire Fighters, as well. The Employer received part of its *quid pro quo* back in the additional contribution made by these employees in 2004 and 2005, when no other bargaining unit contributed anything towards health insurance premiums. Based on this analysis, the Arbitrator would have selected the Union's final offer had it limited its proposal to wages and health insurance.

The interest arbitration process requires the prevailing party to exercise discipline in formulating its final offer. Cases are won and lost in the course of formulating a final offer. The temptation to include zingers or proposals that cannot be justified frequently undermines what would ordinarily be a reasonable

final offer; the one that should be adopted. Here, the Union persists for the second arbitration case in a row to propose an increase in time off. There just is no apparent reason or basis for this demand. It significantly increases the cost of running the department. In this case, the Union offer on wages and health insurance is preferred. The addition of the time off benefit defeats its proposal.

The Union's offer places the Arbitrator in a position of including a new benefit in an agreement. The selection of the City's offer results in the Union receiving 1% less than other bargaining units and continuing to pay 5% more for health insurance premiums. Both of these problems created by the City's offer may be resolved in the next bargain. The inclusion of a new benefit would be difficult to correct or delete in the next bargain.

The statutory criteria, the Lawful Authority of the Employer, the Interests and Welfare of the Public support the selection of the Union offer. However, when the totality of the parties offers are considered under the Such other factor-- Internal Comparability and Cost-of-Living criteria, the City offer is preferred. The demand for additional time off in the form of two personal days is not justified; it increases the costs of implementing the Union's offer. Accordingly, the Arbitrator selects the City's final offer for inclusion in the successor agreement.

### **AWARD**

\_\_\_\_\_Based on the above analysis, the Arbitrator makes the following award. The final offer of the City of Monona for calendar years 2006 and 2007 shall be included in the successor agreement.

Dated at Madison, Wisconsin, this 23rd day of April, 2008.

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Sherwood Malamud  
Arbitrator