
IN THE MATTER OF INTEREST)	
ARBITRATION BETWEEN)	
)	
CITY OF SHAWANO)	
)	DECISION AND AWARD
and)	
)	WERC CASE NO. 35
WISCONSIN PROFESSIONAL POLICE)	NO. 61989
ASSOCIATION/LAW ENFORCEMENT)	MIA-2509
EMPLOYEE RELATIONS DIVISION)	Dec. No. 30671-A

I. Appearances

For The Association

Thomas W. Bahr - Spokesperson, Wisconsin Professional
Police Association/Law Enforcement Employee
Relations Division (WPPA/LEER)

Gary Wisbrocker - WPPA/LEER
Brad Rabideau - Shawano Police Department
Jon Bornemann - Shawano Police Department
Joey Johnson - Shawano Police Department
Steve Buckwalter - Shawano Police Department
Scott Ruen - Shawano Police Department

For The City

Robert W. Burns - Attorney & Spokesperson
Bridget Amraen - Paralegal & Witness
Jim Stadler - Administrator & Witness
Lorna Marquardt - Mayor
Woody Davis
Fred Ponschok

II. Jurisdiction

This case was submitted to interest arbitration pursuant to Section 111.77(4)b of the Municipal Employment Relations Act (MERA).

The arbitration hearing was held in Shawano, Wisconsin, during which the City of Shawano (City), and the Wisconsin

Professional Police Association/Law Enforcement Employee Relations Division (Association) were provided a full opportunity to present written evidence and testimony. The hearing was tape-recorded by the arbitrator. Post-hearing briefs were received on December 15, 2003, and reply briefs were received on January 13, 2004.

III. Exhibits

City exhibits 1 through 29, and Association exhibits 1 through 26 were received as evidence.

IV. Issue

The issue in this case is whether either the City's or Association's final offer is more reasonable?

ASSOCIATION'S FINAL OFFER

In addition to the tentative agreements reached between the City and Association for a January 1, 2003 to December 31, 2004 successor collective bargaining agreement, the Association's final offer is:

ARTICLE 9 - MEDICAL INSURANCE

The Association modifies the current collective bargaining agreement as follows:

* * *

The Employer shall pay 90% of the total health insurance premium per month towards the single and family plan health coverages.

~~Employees shall elect to participate in one of the two health plan alternatives set forth below.~~

~~Alternative #1 — Deductible Coverage~~

~~Employees electing to participate in the ~~this~~ health insurance plan shall be subject to a ~~fifty dollar~~ (~~\$50.00~~) five hundred dollar (\$500.00) deductible provision and coverage as provided through the Employer's designated health insurance carrier. Under this Plan, should the actual premium cost less than the maximum amount which the Employer has agreed to pay as set forth above, the difference shall be paid directly to the City's deductible escrow fund.~~

~~Alternative #2 — Full Coverage~~

~~Employees electing to participate in this alternative health insurance plan shall not be subject to a deductible payment and shall receive such coverage as provided by the Employer's designated health insurance carrier. The participating employees, whether in the family or individual insurance plan, shall be required to pay the difference between the maximum amount of the Employer's contribution as expressed above and the amount by which the actual premium exceeds the Employer's obligated contribution.~~

The Employer may, from time to time, change the insurance carrier or self fund if it elects to do so, but the Employer and the Association retain control over the coverage and benefits, including the right to negotiate improved coverage.

APPENDIX A

A. The December 31, 2002 rates of pay set forth in Appendix "A" of the 2001-2002 Agreement for each classification be increased by the following rate:

Effective January 1, 2003: 3.0%

B. The December 31, 2003, rates of pay for each classification be increased by the following rate:

Effective January 1, 2004: 3.0%

CITY'S FINAL OFFER

In addition to the tentative agreements reached between the City and Association for a January 1, 2003 to December 31, 2004 successor collective bargaining agreement, the City's final offer is:

ARTICLE 7 - VACATION

Replace the current vacation schedule with the following:

* * *

Six days vacation	After one year of service
Twelve days vacation	Three years of service
Fourteen days vacation	Five years of service
Sixteen days vacation	Seven years of service
Eighteen days vacation	Eight years of service
Twenty-four days vacation	Twelve years of service
Thirty days vacation	Eighteen years of service

A. Each vacation week shall constitute six (6) working days.

ARTICLE 8 - SICK LEAVE

Change the current article to the following:

* * *

G. Employees shall be paid out per the following schedule for accumulated sick leave upon retirement or disability from employment:

<u>Years Of Service</u> <u>With The City</u>	<u>Percent Of Accumulated</u> <u>Sick Leave Paid Out</u>
15 years	60% paid out
20 years	65% paid out
25 years	70% paid out

ARTICLE 19 - SALARY SCHEDULE

* * *

E. (Add) Officers that are off duty but are scheduled to appear in court shall receive the payment for court appearances (2 hours straight time) for any scheduled court time that is canceled within 12 hours.

APPENDIX A

<u>Classification</u>	2% <u>01-01-2003</u>	3% <u>01-01-2004</u>
Investigator	47,741.06 21.40	42,993.29 22.03
Acting Supervisor	40,790.86 20.92	42,014.58 21.54
School Liaison Officer	40,790.86 20.92	42,014.58 21.54
*Top Patrol Officer	40,350.00 20.69	41,560.50 21.31

Pay rates for Patrol Officer, based on tenure, shall be applicable as follows:

*Starting	34,732.00 17.81	34,732.00 17.81
*Twelve Months	37,930.00 19.45	37,930.00 19.45
Twenty-Four Months	39,000.00 20.00	40,170.00 20.60
Thirty-Six Months	39,580.00 20.30	40,767.40 20.90
Forty-Eight Months	40,350.00 20.69	41,560.50 21.31

Note: Hourly rate figures based on 1950 annual hours.

* An additional wage step was added to the Patrol Officer wage rate schedule which increased those tenure employee's (four or more years) rates by

3.31% from 2002 to 2003. Rates for Starting and Twelve Month Patrol Officers remain unchanged from 2002.

ARTICLE 9 - MEDICAL INSURANCE

The City modifies the current collective bargaining agreement as follows:

* * *

Employees electing to participate in this health insurance plan shall be subject to a net five hundred dollar (\$500) ~~fifty (50%) percent of a one thousand (\$1,000) dollar a fifty dollar (\$50.00)~~ annual deductible provision and coverage as provided through the Employer's designated health insurance carrier.

In addition, the final offer deletes Alternative #2 language in its entirety.

V. Relevant MERA Provisions

* * *

111.77 Settlement of disputes in collective bargaining units composed of law enforcement personnel In . . . city . . . law enforcement agencies municipal employers and employes have the duty to bargain collectively in good faith including the duty to refrain from strikes or lockouts and to comply with the procedures set forth below:

* * *

111.77(4)(b) . . . The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

* * *

- (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 the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes 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 employes, 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.

VI. Background And Facts

The City of Shawano is a municipal corporation located in northeast Wisconsin. The Association represents the City's law enforcement personnel.

Teamsters, Local 75 (Teamsters) represents the City's street, park, and recreation department employees. Other City personnel are not organized.

Bargaining History

This is the first interest arbitration between the City and Association.

During negotiations for a successor to the 2001-2002 collective bargaining agreement, the City and Association reached tentative agreements on Recognition (Article 2) which excludes lieutenants; Vacation (Article 7) which gives an officer two (2) working days instead of five (5) working days to select vacation; Sick Leave (Article 8) which recognizes that all officers regardless of their date of hire shall receive sick leave; Clothing Allowance (Article 12) which requires the City to directly pay a clothing supplier on behalf of the officers; Salary Schedule (Article 19) which deletes sergeant from the definition of acting supervisor pay; and Life Insurance (Article 10) which increases the City-provided life insurance from \$15,000 to an amount equal to an officer's annual salary.

Final Offer Comparisons

Both the City's and Association's final offers include a two (2) year collective bargaining agreement beginning on January 1, 2003 and ending on December 31, 2004. In addition, the final offers regarding medical insurance (Article 9) are the

same because both offers delete the alternative 2 health plan, and each offer identifies a \$500 deductible amount.

The City's final offer proposes changes to Vacation (Article 7) and Sick Leave (Article 8) which are not contained in the parties' tentative agreements. The City's final offer also makes changes to the wage structure in Appendix A of the 2001-2002 collective bargaining agreement. Other than the tentative agreements contained in Articles 7 and 8, the Association's final offer does not propose other changes to these contract provisions.

Final Offer Costs

The City's final offer for 2003 and 2004 represents increases of 3.5% (\$16,127), and 3.4% (\$16,195), respectively.

The Association's final wage offer for 2003 and 2004 represents increases of 3.1% (\$14,347) and 3.1% (\$14,797), respectively.

The City's two (2) year costs are higher than the Association's costs due to the City's proposed changes to the structure of Appendix A which affects more senior police officers.

Comparability Group

In their post-hearing briefs, the City and Association acknowledge that Antigo, Clintonville, New London, Oconto, Oconto Falls, Peshtigo, Shawano County, Waupaca, Ripon, Waupun,

Rhineland, and Tomahawk are comparable to the City. The Association's comparability data also includes Marinette and Merrill, and the City's data includes Seymour.

The following compares the population, number of police officers, and distance from the City of Shawano for each municipality contained in the City's and Association's comparability data:

<u>CITY</u>	<u>POPULATION</u>	<u>NUMBER OF POLICE OFFICERS</u>	<u>MILES FROM SHAWANO</u>
Antigo	8,560/8,639	16/17	44
Clintonville	4,736/4,609	12	15
Marinette	11,749	24	63
Merrill	10,146	22	76
New London	7,085/7,070	17	32
Oconto	4,708/4,811	8/9	41/42
Oconto Falls	2,843/2,733	6	28
Peshtigo	3,357/3,500	6	56
Rhineland	7,735	20	90
Ripon	7,620	14	84
Seymour	3,222	5	31
Shawano County	40,664/40,944	36/38	--
Tomahawk	3,770	7	99
Waupaca	5,676/5,393	13/14	50
Waupon	10,743	17	95

Shawano

8,298/8,091

19/20

--

With the exception of Shawano County (County) as to population and the number of law enforcement personnel, the municipalities submitted by the City and Association as being comparable to the City of Shawano are similar as to population, number of police officers, distance from Shawano, and approximate geographical location with each other in northeast Wisconsin. The City and Association acknowledge for differing reasons that Antigo, Clintonville, New London, Oconto, Oconto Falls, Peshtigo, Shawano County, Waupaca, Ripon, Waupun, Rhinelander, and Tomahawk are comparable to the City of Shawano. However, the parties disagree as to whether Marinette, Merrill, and Seymour should also be considered as part of the comparability group. I recognize the City's objection to Marinette given its geographical proximity to Menominee, Michigan. I also recognize the City's argument that the City of Shawano was not included in a comparability group in an arbitration proceeding between the City of Merrill and its firefighters. I further recognize the Association's objection to Seymour because it employs five (5) police officers. However, both the City and Association suggest that Shawano County is comparable to the City of Shawano even though the

County employs approximately twice as many law enforcement personnel, and it has approximately five (5) times the population of the City of Shawano. Clearly, but for the parties' agreement, the number of police officers employed by the County as well as the County's population would otherwise exclude the County from a group comparable to the City. Nonetheless, I conclude that the 15 municipalities submitted by the City and Association constitute a comparability group because, simply, these cities share similar populations, staff levels, and distances from the City, as well as geographical locations with each other in northeast Wisconsin. This conclusion does not mean that these 15 municipalities constitute an employment market from which the City necessarily recruits law enforcement personnel. Nor does it mean that City police officers would consider working for one (1) of the employers in the comparability group. Rather, this comparability group serves as a benchmark to compare wages, hours, and conditions of employment for purposes of this interest arbitration proceeding.

Wages

The 2001-2002 collective bargaining agreement contains a starting wage rate, and 6, 12, 18, and 36 month increments. The City's final wage offer contains a starting wage rate, and 12, 24, 36, and 48 month increments. The City's final wage offer also "freezes" both the starting and 12-month wage rates. Under

the City's offer it would take an officer four (4) years to reach the top pay rate compared to the current three (3) years to reach the top pay rate. The comparability data shows that the average number of years to reach the top pay rate is four (4).

The City's final offer contains a 2% across-the-board (ATB) wage increase on January 1, 2003, and a 3% ATB wage increase on January 1, 2004. The Association's final offer contains a 3% ATB wage increase on January 1, 2003, and a 3% ATB wage increase on January 1, 2004. The comparability data shows for 2003 and 2004 that the average ATB wage increases are 3.3% and 3.1%, respectively.

Subsequent to the interest arbitration hearing, the City and Teamsters agreed to a 2004-2006 collective bargaining agreement which includes a 3% ATB wage increase for 2004.

The comparability data indicates that as of September 2003 the average urban consumer price index was 2.3%, and the non-metropolitan index was 1.3%.

No comparability data was presented regarding the City's final offer to pay officers two (2) straight-time hours for a cancelled, scheduled court appearance.

Vacation And Work Schedules

The 2001-2002 collective bargaining agreement between the City and Association defines a vacation week as "seven (7)

working days." The 2001-2002 agreement also defines the "normal work week to be six (6) days on, three (3) days off." The City's final offer changes the current definition of a vacation week to six (6) working days. The comparability data shows that the number of vacation days are linked to the number of working days. The City's final vacation offer reduces by 1.7 days per year the bargaining unit's average number of vacation days.

Sometime during the mid 1980s the police officers' work week schedule changed from seven (7) days on duty and two (2) days off duty, to the current six (6) days on duty and three (3) days off duty. However, the seven (7) working day definition of a vacation week contained in Article 7 remained unchanged.

Sick Leave

The 2001-2002 collective bargaining agreement contains a 50% pay-out of accumulated sick leave upon retirement or disability retirement regardless of an officer's years of service. The City's final sick leave offer pays officers 60%, 65%, and 70% of accumulated sick leave upon retirement or disability retirement from employment based on 15, 20, and 25 years of service, respectively.

The comparability data contains differing contractual provisions regarding converting accumulated sick leave to other employment benefits, for example, to purchase health insurance

and to be used as a pay-out for either retirement or disability retirement.

Health Insurance

No comparability data was presented regarding the City's and Association's final medical insurance offers identifying a \$500 deductible amount.

Longevity (Career Incentive)

The comparability data contains differing contractual provisions regarding the relationship between an officer's seniority and longevity pay. Generally, the data indicates that the City's career incentive pay is higher, on average, than the longevity comparability data.

Holidays

The comparability data shows that other law enforcement personnel have, on average, ten holidays per year, compared to the City's 12 days.

Life Insurance

The comparability data shows differing contractual provisions regarding employer paid life insurance including the amount of insurance coverage.

Retirement

The comparability data shows differing contractual provisions regarding employer contributions towards the Wisconsin Retirement Fund (Fund) with, like the City, employers

paying either all or most of an officer's contribution to the Fund.

Uniform Allowance

The comparability data shows that the average annual uniform allowance is \$465, compared to the City's \$400 annual allowance.

Shift Differential

Antigo, Clintonville, Marinette, Merrill, New London, Oconto, Oconto Falls, Peshtigo, and Rhinelander pay officers shift differential. Shawano County, Tomahawk, Waupaca, and the City of Shawano do not pay law enforcement personnel a shift differential.

Revenue Sources

The State of Wisconsin's (State) shared revenue with the City represents approximately 30% of the City's operating budget. The State's shared revenue and other related revenue for the City is estimated to decrease .5% for 2003, and decrease 7.3% for 2004.

VII. Position Of The Association

The Association contends that its final offer is more reasonable than the City's final offer.

In support of its position, the Association argues: (1) The City can legally implement the Association's final offer; (2) The interests and welfare of the public will best be served

by the Association's final offer because the Association's "final offer best serves the citizens of the City of Shawano by recognizing the need to maintain the morale and health of its police officers and thereby retaining the best and most qualified officers. While these conditions consist of tangibles such as fair salary, fringe benefits and steady work, the intangible benefits including morale and unit pride are of equal importance;"¹ (3) The City has the ability to pay the Association's final offer because "the City's wage offer is .4% and .3% higher for each year respectively of the dispute [sic] two year Agreement;"² (4) "With regard to wages, the Association's offer is consistent with settlements of all of the comparables submitted by the parties,"³ and "(w)ith regard to the period of time to reach the top rate of pay, the (comparable) evidence . . . clearly shows there is no consistency regarding the period of time to reach the top rate of pay;"⁴ (5) With respect to vacation, regardless of the police officers' work cycle "the amount of vacation afforded an employee is nothing more or less than another form of compensation and that for over fifteen years both parties have recognized this . . . (and that) over a course of a thirty year career, an officer in the City of

¹ Association brief, p. 10.

² Id., p. 11.

³ Id., p. 15.

⁴ Id., p. 16.

Shawano receives but 204 more hours than the average of the comparables,"⁵ (and) "the City apparently suggests that because the police officers bargained this benefit over fifteen years ago and a like benefit is not found in the Teamsters Agreement that is has somehow diminished in value. Certainly it has not;"⁶ (6) Internal comparability shows that police officers and the City's street, park and recreation department employees represented by Teamsters, Local 75, do not have the same work cycle; they reach the top rate of pay in two (2) years; and these employees negotiated a 3% wage increase in 2003 and a 3% wage increase for 2004; (7) With regard to cost of living, "settlements within the comparable area are consistent with that of the Association's final offer;"⁷ (8) With respect to overall compensation "the benefit levels of the City police officers compare to their law enforcement counterparts with various degrees of accomplishment, however, no benefit elevates any member of the Association to a position giving cause to find its final offer as unreasonable;"⁸ and (9) "(T)he City lacks any ability to argue that they have offered up an appropriate *quid pro quo* for the change in vacation benefits. They effectively removed benefits that are directly received by each bargaining

⁵ Association brief, p. 16.

⁶ Association reply brief, p. 2.

⁷ Id.

⁸ Association brief, p. 18.

unit member each and every year . . . The City would have the Association believe that an appropriate *quid pro quo* to do so is an additional 3/10% added to wage [sic] and increasing the sick leave pay-out upon retirement."⁹

VIII. Position Of The City

The City contends that its final offer is more reasonable than the Association's final offer.

In support of its position, the City argues: (1) "The City's exhibits . . . support the fact that work schedules and time off due to vacation are analogous among both the internal and external comparisons. Thus the need for a *quid pro quo* is not as crucial in deciding the outcome of this dispute. Nevertheless, the City has offered a *quid pro quo* in exchange for its proposal to restructure the wage schedule and vacation benefit;"¹⁰ (2) The City's comparability data shows a link between the police officers' work schedules and the number of paid days for vacation leave. "It is visible to see what the City is attempting to do. The longer an officer stays on the department, the more lucrative the benefit. This makes sense given the fact that employees should be rewarded for years of service which is consistent with the underlying theory of most vacation schedules;"¹¹ The City's final vacation offer places

⁹ Association brief, p. 21.

¹⁰ City brief, p. 7.

¹¹ Id., p. 13.

the City's police officers' vacation and holidays "more in the line with what is received by the average of other departments."¹² "(T)here is no argument that the (vacation) provision has remained in the contract for many years. . . . However, there is no reason why the City cannot attempt to correct the imbalance;"¹³ (3) The City's final wage offer attempts to move police officer wage rates towards the average within the comparable group because, currently, "city officers are well compensated upon a review of wages paid to other department officers;"¹⁴ (4) "The City's career incentive bonus is very lucrative when compared to other departments and must be given consideration in the outcome of this dispute;"¹⁵ (5) "Since the City's offer on wages alone is well above the CPI, it guarantees officers will not suffer a reduction in spending power and will actually gain in very real terms;"¹⁶ (6) The City does not claim an inability to pay, however, the City does not anticipate additional state shared revenue and other sources of money to offset negotiated wages and benefits; (7) Significant increases in the cost of health insurance and private sector company layoffs and closings in the area, as well as the City's goal "to provide services without laying the burden on taxpayers

¹² City brief, p. 14.

¹³ Id., p. 7.

¹⁴ Id., p. 16.

¹⁵ Id., p. 20.

¹⁶ Id., p. 21.

to meet expenses"¹⁷ make the City's final offer more reasonable; (8) Although the comparables by themselves necessitate changes, the parties' tentative agreements together with the offer to improve vacation and sick leave is the *quid pro quo* to change the status quo vacation and salary structure; (9) "There is absolutely no documentation or testimony in the record to substantiate the claim that the City's offer will have a negative impact on officers;"¹⁸ and (10) With respect to overall compensation, "(t)here is no question Shawano officers are well paid for the duties and responsibilities they carry out."¹⁹

IX. Discussion And Conclusions

The issue in this case is whether either the City's or Association's final offer is more reasonable.

The Association's position primarily centers on the argument that the City's final offer to change the sick leave pay-out upon retirement or disability, and the changes to the wage structure contained in the 2001-2002 collective bargaining agreement are not reasonable trade-offs to modify the longstanding vacation provision which defines a work week as seven (7) working days during an officer's six (6) day work cycle.

¹⁷ City brief, p. 23.

¹⁸ City reply brief, p. 2.

¹⁹ Id., p. 9.

The City's position, on the other hand, primarily centers on the argument that the tentative agreements reached with the Association during negotiations for a successor to the 2001-2002 collective bargaining agreement, and the comparability data which shows that the City's police officers are above average in compensation and other benefits are the appropriate *quid pro quo* to change both the definition of a vacation week and the existing wage structure to be like the vacation provisions and wage structures contained in comparable contracts between cities and law enforcement personnel.

The parties' final offers will be considered given the following statutory criteria contained in Sections 111.77(6)a through h of the MERA:

SECTION 6(a) - THE LAWFUL AUTHORITY OF THE EMPLOYER.

The City and Association agree that the City has the legal authority to implement either the City's or the Association's final offers.

SECTION 6(b) - STIPULATIONS OF THE PARTIES.

Other than the parties' tentative agreements, there are no other relevant stipulations.

SECTION 6(c) - THE INTERESTS AND WELFARE OF THE PUBLIC AND THE FINANCIAL ABILITY OF THE UNIT OF GOVERNMENT TO MEET THESE COSTS.

The City acknowledges that it has the financial ability "to meet" the costs of either final offer. In addition, the

"interests and welfare of the public" will not be affected by awarding either the City's or Association's final offer. Public "interests and welfare" include such considerations as maintaining current law enforcement services and tax rates. Although the City's share of State revenues and other funds may be reduced in 2003 and 2004, the City does not contend that implementing either the City's or Association's final offers will affect the current level of the City's law enforcement and existing taxes paid by the public.

SECTION 6(d) - COMPARISONS 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

No evidence was presented comparing the City's law enforcement personnel's wages, hours and conditions of employment with private sector employees performing similar services.

The evidence establishes that, in northeast Wisconsin between February 28, 2002, and March 13, 2003, 40 private sector companies have either closed or laid off personnel. These closings and layoffs have affected 4,422 people. Although this evidence clearly indicates a direct economic impact on the private sector employers and employees involved in the closings and layoffs, I do not consider this economic impact as relevant

to the wages, hours, and conditions of employment of law enforcement personnel employed by the City of Shawano. That is, there is no nexus or link between the reasons these private sector operations either closed or laid off personnel and the reasons to either modify or improve the working conditions of the City's law enforcement personnel. These private employers and employees share a similar geography with the City, however, they do not share similar working conditions.

Within the 15 municipalities which are the City's comparability group, the evidence establishes that the City's vacation and wage structure are not comparable to other law enforcement personnel within the comparability group. That is, the comparability data establishes that, unlike the City of Shawano, the number of vacation days for law enforcement personnel are linked to the number of working days. The data also establishes that the average number of years for an officer to reach the top pay rate is four (4) years, compared to the current three (3) years required for the City's officers to reach the top pay rate. Therefore, considering comparability alone, the City's final offer to move the law enforcement personnel's collective bargaining agreement towards the vacation and wage structure averages within the comparability group, initially, suggests that the City's final offer is more reasonable. However, to move the current and longstanding

definition of a week of vacation and the current wage structure towards these benchmark averages must also take into consideration that such moves reduce by 1.7 days per year the bargaining unit's average number of vacation days, as well as requiring an officer to wait an additional year to reach the top pay rate.

SECTION 6(e) - THE AVERAGE CONSUMER PRICES FOR GOODS AND SERVICES, COMMONLY KNOWN AS THE COST OF LIVING.

As of September 2003, the urban consumer price index was 2.3%, and the non-metropolitan consumer price index was 1.3%. Clearly, both the City's and Association's final offers for 2003 and 2004 exceed, at least for 2003, those consumer price indexes.

SECTION 6(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.

Within the 15 municipalities which are the City's comparability group, the evidence establishes that with some differences City law enforcement personnel are comparable to the group with respect to overall compensation as it relates to longevity (career incentive), holidays, life insurance, retirement (pension), uniform allowance, and shift differential. Whereas the City's law enforcement personnel exceed the comparability group's averages with respect to career incentive

and holidays, they receive less than the average with regard to uniform allowance and they do not receive a shift differential. These similarities and distinctions in benefits, therefore, do not significantly affect the reasonableness of either the City's or Association's final offer.

SECTION 6(g) - CHANGES IN ANY OF THE FOREGOING CIRCUMSTANCES DURING THE PENDENCY OF THE ARBITRATION PROCEEDINGS.

Subsequent to the interest arbitration hearing, the City and Teamsters agreed to a 2004-2006 collective bargaining agreement which includes a 3% ATB for 2004, and an increase from \$200 to \$350 per year for the health insurance deductible paid by an employee.

SECTION 6(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.

In this case, the City and Association disagree as to whether each, during bargaining for a successor to the 2001-2002 agreement, made the appropriate or reasonable offers to voluntarily conclude a contract without resorting to interest arbitration. The parties' failure to reach a voluntary agreement clearly indicates that the offers and counter offers made during bargaining were not sufficient to convince the other side to reach an agreement.

Section 6(h) of the MERA requires an interest arbitrator to take into consideration other factors which are normally and traditionally used in determining employee wages, hours and terms and conditions of employment. A traditional factor in interest arbitration is that an arbitrator should award a final offer that approximates the agreement that labor and management should have made during the bargaining process. This traditional consideration, in my view, includes the impact of either an employer's or union's final offer on existing contract provisions. That is, an interest arbitrator should consider whether a final offer will require either an employer or union to make a significant concession which could not otherwise be obtained during bargaining. In this case, this means determining whether the City's final offer to modify the existing wage structure which includes the time it takes an officer to reach the top pay rate is a reasonable *quid pro quo* or tradeoff to change the current, longstanding vacation definition. As concluded above, with some differences, the City's law enforcement personnel's overall compensation is not significantly different than the 15 municipalities in the comparability group. I recognize the City's concern that a change may be necessary to the definition of vacation, however, given the law enforcement personnel's overall compensation compared to other police officers, requiring the City's police

officers to wait an additional year to reach the top pay rate as part of a concession in the definition of vacation is unreasonable.

Comparability data, as noted above, serves as a benchmark from which averages may be fixed for purposes of comparisons, as well as determining whether a bargaining proposal is vulnerable as compared to the comparability averages. In this case, the evidence establishes that the trade between the definition of vacation and the changes to the wage structure proposed by the City approximates the comparability averages. Nonetheless, the City's final offer is unreasonable because it requires employees, on average, to concede 1.7 vacation days and also concede for another year their ability to reach the top pay rate.

X. Award

The Association's final offer is awarded.

Dated at Des Moines, Iowa, this 13th day of March, 2004.

James A. McClimon
Arbitrator