

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR  
ZEL S RICE II

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**In the matter of Arbitration between**

City of Stevens Point (Police Department)

and

Wisconsin Professional Police Association / Law Enforcement Employee  
Relations Division

[Case 132 No. 64080 MIA-2616  
Dec. No. 31301-A]

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Appearances: Thomas W Bahr, Executive Director, for the Union

Louis J Molepski, City Attorney, for the Employer

The Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, hereinafter referred to as the Union, filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, alleging that an impasse existed between it and the City of Stevens Point, hereinafter referred to as the Employer, in their collective bargaining. It requested the Commission to initiate arbitration pursuant to Section 111.77(4)(b) of the Municipal Employment Relations Act. An informal investigation was conducted by a member of the Commission staff who submitted the results to the Commission.

At all times, material herein, the Union has been, and is, the exclusive collective bargaining representative of the law enforcement personnel in the employ of said Employer.

On October 18, 2004, the instant petition was filed with the Wisconsin Employment

Relations Commission requesting the Commission to initiate final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Act with regard to an impasse existing between the parties with respect to wages, hours and conditions of employment of law enforcement personnel. On December 15, 2004, a member of the Commission staff conducted an informal investigation in the matter; and he determined that the parties were at impasse. The investigator advised the Commission that the parties were at impasse on the existing issues as outlined in their final offers. On March 28, 2005, the investigator transferred the final offers to the Commission and the investigator closed the investigation on that basis.

The Commission concluded that an impasse within the meaning of Section 111.77(3) of the Municipal Employment Relations Act existed between the Union and the Employer with respect to negotiations leading toward a new collective bargaining agreement covering wages, hours and conditions of employment for law enforcement personnel employed by the Employer. It ordered compulsory final and binding interest arbitration pursuant to Section 111.77 of the Wisconsin Statutes for the purpose of issuing a final and binding award to resolve the impasse existing between the parties. It directed that the parties select an arbitrator and notify the Commission in writing of the name of the neutral arbitrator.

Upon being advised by the parties that they had selected Zel S Rice II as arbitrator of the dispute, the Commission issued an order appointing him as the arbitrator and directed him to issue a final and binding award to resolve the impasse by selecting either the total final offer of the Union or the total final offer of the Employer.

The Union's final offer, attached hereto and marked as Exhibit 1, proposed that all provisions of the 2003-2004 collective bargaining agreement between the parties not modified by way of any previous tentative agreements and/or by its final offer should be included in the

successor agreement between the parties for the term of said agreement. It proposed that the term of agreement should be for the period from January 1, 2005 through December 31, 2006 and all dates related to terms should be modified to reflect that term. The Union proposed that the previously agreed to tentative agreements attached to it's final offer would become part of the new collective bargaining agreement.

The Union proposed to modify the first paragraph of Article 14 - Health Insurance as follows: "The City agrees to make a contribution of 94% to the medical and hospitalization program for employees selecting family coverage or single coverage." It proposed to modify the third paragraph of Article 14 - Health Insurance as follows: "Effective January 1, 2005, the City will implement a preferred provider organization "PPO". Under the PPO, "in network" charges are payable at one hundred percent (100%) after the appropriate deductible: "Out-of-network" charges are payable at ninety percent (90%) after the appropriate deductible. The Employer would "hold harmless" officers by providing "in network" coverage for providers outside of the PPO plan. Officers seeking services outside of the PPO would continue to be responsible for charges that are deemed "over usual and customary" by Humana/Employers Health. Deductibles would be \$200 per year for employees under the single plan and \$400 per year for employees under the family plan. The Union proposed that all 2004 rates of pay set forth in the appendix A of the 2003-2004 collective bargaining agreement for each classification be increased by the following rates: Effective January 1, 2005 - 1%, effective July 1, 2005 - 3%. The Union proposed that the December 2006 rates would pay each classification by the following increases: Effective January 1, 2006 - 1%, effective July 1, 2006 - 3%.

The Employer's final offer, attached hereto and marked Exhibit 2, proposed that a revised wage schedule get forth in its final offer become effective January 1, 2005; 2.5% across the board effective January 1, 2006, an additional .5% across the board January 1, 2006 to offset health plan changes.

## Article 10 - Sick leave

All sick leave would be subject to the justification and an administration by the Chief of Police and abuse of sick leave should subject the employee to discipline. The Employer reserved the right to have an employee on sick leave be examined by a health care provider of it's own choosing at no cost to the employee. The Employer would also modify maternity leave once the primary health care provider determined that the employee could no longer perform all the duties associated with the current job description of a Stevens Point Police Officer. The Employer would also strike the entire subsection I of Article 10 because it has been modified by the Modified Duty Amendment.

The Employer agrees to make a contribution in 2005 of 92% toward the medical and hospitalization premium for employees seeking the family and single plan. On January 1, 2006, the employer's contribution would be 90% of the premium . The employees who choose not to be enrolled in the health insurance program offered by the Employer, for whatever reason, would be paid \$200 per year in lieu of insurance coverage. The Employer agreed to pay for the extraction and the initial replacement of teeth (does not include implants), not covered by the plan. The Employer seeks to reopen the contract in 2006 for discussion of health insurance plan changes. The Employer would amend the post employment health plan to provide that the officers would contribute \$40 per month on the first payroll date following the passage of the agreement. The Employer proposes to have the agreement become effective January 1, 2005 and remain in full force and effect until December 31, 2006.

The Employer's salary increase proposal provided that all employees would be paid based on the revised wage schedule, effective January 1, 2005 and 2.5 % across the board effective January 1, 2006 and an additional .5% across the board January 1, 2006. The names of the officers and their increases are spelled out in the final offer and is part of the attached Exhibit

2. The final offer also includes a letter of agreement between the Union and the Employer which was completed on August 9, 2004 and is spelled out in a letter of agreement that is part of the Employer's final offer. In the letter of agreement, the parties agreed to the contract language which was considered a tentative agreement and would be included in the successor agreement to the 2003-2004 collective bargaining agreement. The agreement (regardless of when a successor contract becomes effective) would become effective on the first of the month following ratification by both parties and the agreement would settle all claims of kelly time owed Officer Trochiniski, Wanta, Radsek and Sgt Carlson. They would have their kelly time account brought to zero but not reduced below zero. This would settle all claims of time owed by the Employer to individual officers.

### **UNION'S POSITION**

The Union points out the criteria to be utilized by the arbitrator in rendering the award that are set forth in Section 111.77 Wisconsin Statutes. In reaching a decision, the arbitrator shall give weight to the lawful authority of the Employer, stipulations of the parties, interest and welfare of the public, and the financial ability of the unit of government to meet these costs, comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in comparable counties and in private employment in comparable communities. The arbitrator is also required to consider the average consumer prices for goods and services and 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. The arbitrator is required to consider any of the forgoing circumstances during the pendency of the arbitrations proceedings and such factors not confined to the forgoing that are normally or traditionally taken into consideration in the determination of wages, hours

and condition of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties in the public service or private employment.

The issues that remain unresolved are wages, sick leave, Article 10 (E), Article 10 (I), Article 37 Post Employment Health Plans, Article 14 Premium contributions and Article 14 Health Insurance.

Section 111.77(6)(a) of the Wisconsin Statute provides that in reaching a decision, the arbitrator must give weight to the lawful authority of the Employer. The Union argues that no testimony or evidence was presented by the Employer that indicates that it does not have the authority to lawfully meet the Union's final offer and neither the Employer's exhibits or testimony provided any indication that any legal deficiency exists. There are several items included in the final offer that are identified as tentative agreements between the parties. These items reflect the parties mutual agreement to modify certain provisions of the successor agreement. Neither party assessed any cost associated with such changes and the Union contends these changes should not determine this case.

The Union takes the position that when considering which final offer is more reasonable, the arbitrator must give weight to the interest and welfare of the public. It asserts that its final offer serves the best interest of the citizens protected by the police department by recognizing the need to maintain the morale and health of its law enforcement officers and thereby retaining the best and most qualified officers. The conditions consist of tangible benefits such as fair salary, fringe benefits and steady work. Intangible benefits including morale and unit pride are of equal importance. The importance of these intangibles are important when one realizes that law enforcement officers of one department work side by side on a daily

basis with officers of other departments. It asserts that law enforcement officers employed by the Employer compared to other law enforcement employees employed by similar sized police departments are the most relevant comparison made in these proceedings. The Union argues that the police departments must provide law enforcement services for their citizens 24 hours per day, 365 days per year. It contends that law enforcement officers are responsible for dealing with individuals involved in issues that are not found in any other type of municipal employment. Their duties are not found in any other type of municipal interest arbitration. The Union argues that regardless of circumstances or workload, an officer must perform his/her duties with a professional demeanor and the knowledge that any action taken will be held to the utmost scrutiny by the general public and the Employer. It contends the maintenance of a high level of morale is important to an officer's well being and the Union's offer must be deemed more reasonable. The Union takes the position that the Employer has the financial ability to meet the cost of the Union's final offer. It takes the position that there is no dispute between the parties as to the appropriate comparable pool which includes Marathon County, Portage County, City of Marshfield, City of Wausau, City of Wisconsin Rapids and Wood County. The Union argues that the Employer has suffered a substantial erosion of standing in comparison with comparable police departments. It contends that in 1988 and 1999, a top patrol officer of the Employer was on the average paid thirty cents per hour less than other comparable police officers in the area. It asserts that by 2003, this disparity had increased to seventy-six cents per hour less than other comparable officers and in the following year was a dollar seven below the wage paid. The Union argues that its final offer sets about to reverse this trend in a reasonably and orderly fashion that moves the Employer's police officers from the disparity they have suffered in years past. It contends that it continues the process of bringing them back to the level of comparison they had previously enjoyed. The Union argues that the Employer's offer radically changes the manner by which police officer are compensated. It contends that no other external comparable has a wage scale that is personalized to an individual officer. The wage increase

proposed by the Employer ranges from a high for only two officers of the bargaining unit of 5.1% to a low .1% for the four least senior officers and averages a 3.1% for the patrol classification. It contends that only one of the six comparables settled through 2006 and that is the City of Wausau, which increased its police officers wages by 3%.

No internal comparisons were submitted by the Employer or the Union.

Both the Employer and Union have submitted into evidence information regarding the cost of living. The Union maintains that settlements among the comparables are consistent with its final offer. Quite generally, the proper measure of the amount of protection against inflation can be afforded for employees should be determined by what other comparable employers and unions have settled for and who have experienced the same inflationary ravages as those experienced by the employees in this proceeding. The voluntary settlements create a reasonable barometer as to the weight that the cost of living should be given in determining the outcome of the arbitration. The Union takes the position that employees as parties to interest arbitration are entitled to no greater or less protection against cost of living increases than are the employees who entered into voluntary settlements. The Union argues that its final offer when measured against external settlements and when done in conjunction with the need to correct the disparity of these officers wages to that of the comparable officers should be deemed to have reasonably met this criteria. The Union argues that it has provided information on overall compensation for the comparable departments as well as that of the Employer's police department. It contends that with the exception of health insurance premium contributions, the benefit levels of the Employer's officers compare to their law enforcement counterparts with various degrees of accomplishment. It contends that no benefit elevates any member of the Union to a position giving cause to find its final offer unreasonable.



The Union points out that the Employer's final offer contains several components that were not even mentioned at the hearing in the instant case. It contends that in order for a party to successfully justify changes they seek, the change must satisfy the following three conditions.

1. Does the present contract language give rise to conditions that require change?
2. Does the proposed language remedy the condition?
3. Does the proposed language impose an unreasonable burden upon the other party?

The Union takes the position that Item 1 of the Employer's final offer substantially changes the manner by which officers are directly compensated. It asserts that the expired collective bargaining agreement has in it a four step wage progression whereby officers progress from a starting rate through a six month rate and receive the top patrol rate after one year of service. The Union argues that all the Employer's comparables have a series of increasing rates of pay based upon steps in the respective wage schedules. It points out that the number of wage steps vary from four, as in the case of Marshfield, to a ten step progression in Wausau. The Union takes the position that it is clear that these steps are premised upon the time an employee has spent in that classification. It asserts that what the Employer's offer does is to require that the parties come together and bargain over wages each and every time the Employer finds it necessary to hire an officer. The Union take the position that the proposal results in effectively removing any step progression for wages and tailors any future increases to specific, named employees. It asserts that if the Employer's offer regarding the provision were to be implemented it would force the parties to negotiate over a wage rate for each and every member of the Union now and into the future as well as each and every time the Employer hires a new officer. The Union argues that such a result is not supported by any external comparable and invites ongoing and continued negotiations with regard to new employees wages over the course of the agreement. It contends that the Employer has provided no testimony nor rationale to support such change other than its insistence that a

prior arbitration proceeding has suggested this change. The exhibits submitted by the Employer with regard to its proposal fail to survive the three prong test and is inherently unreasonable and should be rejected.

The Union argues that Item 2 of the Employer's final offer seeks to modify sick leave for the police officers in three areas. It deletes the provision that allows the Employer to have an officer examined by a doctor if that officer is on sick leave for three or more days. It contends the Employer provided no insight as to the need for such a change nor if any problem exists that the Employer hopes to cure. The Union's position is that there is no basis for the Employers desire to change the description of the individual that would evaluate the officers request to utilize sick leave. The Union takes the position that the Employer has offered no evidence or testimony that a need for such a change exists.

The second component of the Employer's final offer regarding sick leave is a modified maternity leave/modified duty. The Union argues that there has not been one bit of evidence or testimony offered by the Employer to support or demonstrate a need for change in this area.

The last component of the Employer's proposed change of provisions with regards to sick leave proposes to strike an entire provision of the contract. The Union points out that the Employer notes in it's final offer that this item has been addressed by modified duty amendment. The Union takes the position that it is at a loss to determine what the Employer refers to by "modified duty amendment". It points out that the Employer has not only failed to provided the arbitrator any information as to the problems that necessitate this language be changed but it also fails to provide any information to identify what the "modified duty amendment" is. The Union argues that the provision fails to meet the usual criteria required

to support the need to modify or change status language found in the parties collective bargaining agreement.

Item 3 of the Employer's final offer involves several changes to the health insurance plan. The Union argues that it changes the premium payment relationship of the Employer and employee. The Employer proposes to increase the employee's contribution from 6% in 2004 to 8% in 2005 and commencing in 2006 increases the employee contribution to 10%. It points out that the Employer proposes that the contribution toward the premium be made by all employees against the status quo of just those employees who enrolled in a family health plan. The Union argues that it has, by its final offer, proposed to change this area of contract so that all employees would contribute 6% of the premium to the cost of the health insurance. The Union also proposes to increase the deductible amounts for the PPO plan from \$100 to \$200 for the single plan and \$200 to \$400 for the family plan. It contends that this change is recognition that relative to external comparables the plan deductibles are low by comparison and the Union recognizes the need in this area to bring the employees participation into alignment with the comparable. The Union argues that relative to employee/Employer cost sharing of health insurance premiums, such an arrangement requiring all employees to participate is consistent with the external comparables. The Union argues that the basic premise of increasing the employees contribution to the level suggested by the Employer is not supported by any measure of quid pro quo and should therefore be deemed unreasonable. It points out that the Employer's proposal to increase the payment to employees who choose not to enroll in the Employer's health plan, of \$200 per year from the current \$25 quarterly payment to those employed as of 1998. The Union takes the position that the Employer has failed to provide any evidence of the need for justification for such change and does not provide adequate information that would allow review of the impact of those changes upon the bargaining unit. The Employer proposes to include language that requires that the parties

reopen the contract in 2006 for discussion of health insurance plan changes. The Union asserts that this proposal apparently requires the entire contract to be reopened. It asserts that the reopener that the Employer is seeking is in itself unreasonable and too broad. The Union argues that if it is the Employer's desire to be able to speak to all aspects of the contract for the year 2006, it should have more appropriately proposed one year agreement.

Item 4 of the Employer's final offer increases the employees contribution to a post employment health plan. The Union argues that the Employer makes such a proposal without any rationale leading it to wonder why such proposal is made in the first place. It contends that employees under the application of the Employer's wage offer that results in an increase of .1% and an increase of their contribution from 6% to 10% toward health premium contributions would need to reallocate their disposable income in a different manner. It takes the position that the arbitrator in the instant manner is left to wonder why such a proposal was put forth by the Employer as once again it choose not to address the need for this change. It asserts that the status quo proposal of the Union must be deemed the more reasonable offer. The Union argues that it has applied the specific statutory criteria set forth in Section 111.77(6) of the Wisconsin Statutes to the final offers presented to the arbitrator. It contends that it's analysis has shown that it's final offer ought to be considered more reasonable than the proposed offer of the Employer and should be adopted by the arbitrator.

### **EMPLOYER'S POSITION**

The Employer questions the Union's argument that morale is tied directly to salary or even that morale is a critical issue among its membership and that the Union proposal best serves the public's welfare. It contends that no testimony was given nor any exhibit presented that would bear directly on the ability of the Employer to meet the cost of either proposal. The Employer takes the positions that Section 111.77(6)(g) requires the arbitrator to give

consideration to changes in any of the forgoing circumstances during the pendency of the arbitration proceedings. It asserts that such changes beyond the Employer's ability to control have occurred by the recent passage of the state budget bill, which restricts the Employer's ability to raise revenue as well as notification to the Employer of an increase in contributions to the Wisconsin Retirement System and actual and projected cost increases in gasoline and utilities. The Employer argues that it is not making comparisons between its employees and private sector employees in comparable communities. Both the Employer and the Union agree that the appropriate municipal and county employees with whom comparison is appropriate are City of Wisconsin Rapids, City of Marshfield, City of Wausau, Portage County, Wood County and Marathon County. The Employer asserts that its final offer is clearly supported by the external comparables and the Union's is not. It points out that the Union identifies only a single agreement among the comparable agencies for 2005 and 2006.

The Union uses the City of Wausau and its police employees agreement to a 3% wage increase for 2006. It fails to note that the 2005 wage increase for Wausau is 2% and the 2006 wage increase is split with a 2% increase in January 1, 2006 and 1% on July 1, 2006 resulting in a 3% lift but a 2.5% wage increase for the year. It contends that the Union fails to note the agreement between Portage County and its deputies association which calls for a 3% general pay increase on January 1, 2005. It points out that no additional support among the comparables is cited by the Union for its position. The Employer argues that during the pendency of this process the arbitration between Marathon County and its deputies has been resolved in favor of the county. It provides for a general pay increase of 2.5% for 2005. The Employer argues that these three agreements are the only ones known to have been reached for 2005 and each of the three provides support for the Employer's proposal and argues against that of the Union. It contends that its proposal is more in line with the pay structure

of the three employers that have reached an agreement. The Employer argues that the Union takes the position that a top patrol officer of the Employer was paid on average \$.30 per hour less than other comparable officers in the area. The Union asserts that by 2003, this disparity had increased to \$1.07 per hour. The Employer takes the position that the Union failed to note that it's top police officers reach that level after one year of employment, while in comparable agencies that step is not reached until as long as 15 years. The Employer also contends that the Union fails to note that eight of it's thirty-eight members (21%) of the group are classified as sergeants, a rank which is either absent or a non-represented position in three of the six comparable agencies. The Employer argues that a review of the labor agreement of all comparable municipal employees reveals that overall compensation levels enjoyed by it's police officers are quite comparable, with the exception of health insurance benefits which are at a level superior to all comparable agencies. The Employer takes the position that the state budget bill constrained the Employers taxing levels by the state's expenditure restraint program. It asserts that upon passage of the state's budget, the Employer and other municipalities are now greatly constrained in their ability to raise revenue through taxation. The Employer takes the position that the state budget bill would permit it to increase it's tax revenue by no more that \$201,566. It asserts that preliminary cost estimates show that it's spending needs for 2006 will exceed 2005 by \$1,337,349, an amount that can not possibly be covered by operational efficiency. It points out that it's health plan was increased by 15% in both 2004 & 2005. There is no reason to assume that the trend will not continue for 2006. The Employer argues that the average annual increase in the cost of insurance over the last five years was 11.2%. This increased cost for the police department approaches \$67,000 for 2006 less the Union's proposed deductible increase that could not possibly generate more than \$7,800 per year. It argued that if the increase of 15% is the same as in each of the last two years, the cost to the Employer would approach \$90,000, less the Union's proposed deductible increase. The Employer takes the position that

all the additional tax revenue the Employer is able to generate will be consumed by health care costs alone if all its employees receive the same health care plan proposed by the Union. It points out that it has also received notification from the Wisconsin Retirement System of increases in both the employee and Employer contributions to the fund for 2006 will increase by .1%. It takes the position that since the Employer pays both contributions in their entirety as part of the benefit package, the additional cost to the Employer will be .2% and should be considered by the arbitrator. The Employer asserts that the arbitrator must consider the incredible increases in both current costs and projected future costs of fuel and utilities. The Employer argues that the potential loss of personnel is great due to state imposed budget restrictions and it is not in the public interest to reduce the size of the department because this would have a negative impact on the quantity and quality of police service which it provides to the citizens. The Employer argues that loss of personnel will have a significantly negative impact on the morale of the officers both individually and collectively.

With respect to wages, it is evident that the Employer did not submit its wage proposal as clearly as might be desirable. It points out that the current labor agreement currently pays newly employed recruit officers either 85% or 90% of the pay rate of a regular officer, depending on whether or not the officer has already completed the basic recruit academy. The salaries increase to 95% of the regular officer pay after six month of employment and then to a 100% of a regular officer's pay after one year, currently the top pay step for a police officer. The Employer's proposal for a police office pay raise in 2005 calls for a 1% base

increase across the board. Officers with three years total time and service would receive an additional 2% for a total wage increase of 3%. The officer with eight years tenure would receive an additional 3% for a total wage increase of 4%. Officers with thirteen years tenure would receive an additional 3.5% for a total wage increase of 4.5% and officers with twenty years tenure would receive an additional 4% for a total wage increase of 5%. The Employer argues that its submission demonstrates that the junior officers would receive a 1% pay increase plus moving through the steps from recruit officer to regular officer rate after one year tenure. It takes the position that the overall wage benefit for the Union's members would give 90% of them increases of between 3% and 5% in 2005. It argues that it is common for junior officers on probationary status to begin employment at a percentage of the rate of a regular officer. Newly hired officers with recruit school training would receive a starting wage higher than all other comparable agencies. The Employer's wage proposal includes a 3% wage increase for all pay rates in 2006 and a 3.63% total wage cost to the Employer in 2005 and a total wage cost over the two year period when compounded of 6.74%. The Employer argues that the Union's characterization of its proposal fails to note that the employees identified are being represented in separate rates to which the wages would apply. It contends that the Unions proposal which includes splits in each of the two years lifting wages for all covered employees by 8.21% by July 1, 2006 is well in excess of the current comparables. The Employer argues that no testimony was given nor any exhibit presented that would bear directly on its ability to meet the cost of either proposal. The Employer argues that its ability has been limited by the recent passage of the state budget bill that restricts its ability to raise revenue as well as the notification to it of an increase in contributions to the Wisconsin Retirement System and actual and projected cost increases in gasoline and utilities. It contends that its offer is clearly supported by the comparables and the Union's is not. The Employer argues that only one similar agreement among the comparable agencies for 2005 and or 2006 is identified by the Union. The Employer states



that the Union does not note that the 2005 wage increase for Wausau is 2% and the 2006 wage increase was split with a 2% increase on January 1<sup>st</sup>, 2006 and a 1% increase on July 1<sup>st</sup>, 2006. It is a 3% lift but a 2 ½ % cost for the year. It contends that the Union did not note the agreement between Portage County and its Deputies which calls for a 3% general pay increase on January 1<sup>st</sup> 2005. It points out that no additional support among the comparable is cited by the Union for its position. The Employer points out that during the pendency of this Arbitration, an Arbitration between Marathon County and its Deputies, has been resolved in favor of the county and provides for a general pay increase of 2 1/2% for 2005. It asserts that the three agreements are the only ones known to have been reached for 2005 and each of those provides support for the Employer and argues against the Union. The Employer argues that its proposal is more in line with the pay structures of those in the agency. It contends that in 1998 and 1999 the top patrol officer of the Employer was paid on average 30 cents per hour less than other comparable officers in the area and by 2003 this disparity had increased to \$1.07 per hour. It points out that its Top Police Officer reaches that level after one year of employment while in comparable agencies that step is not reached until as long as 15 years. The Employer argues that no such agreement between the Employer and Union was an imposed agreement. It contends that a review of the labor agreements of all the comparable agencies reveals that overall compensation levels enjoyed by its officers are quite comparable with the clear exception of Health Insurance benefits which are at a level superior to all comparable agencies. The Employer takes the position that its capital and operation budget for 2005 is \$21,754,007.00 and under the new state budget bill the Employer may increase its tax revenue by no more than \$201,566.00. It asserts that its spending needs for 2006 will exceed 2005 by \$1,337,349.00, a difference of \$1,135,783.00 that can not possibly be covered by only operational efficiencies. The Employer argues that the cost of the health plan has increased by 15% in 2004 and 15% in 2005 and there is no reason to assume the trend will not continue for 2006. The Employer takes the position that the cost increase over

the last 5 years averaged 11.2% each year. It asserts that if the cost of the health plan increases 11.2% for 2006 the increased cost to the Employer for members of the Union alone approaches \$67,000.00 for 2006 less the Union's proposed deductible increase which could not possibly generate more than \$7800.00 per year. It argues that if the increase is 15%, the same as in the each of the last two years, the cost to the Employer would approach \$90,000.00 less the Union's proposed deductible increase. The Employer argues that if this figure is provided across the board to the Employer's other employees all the addition tax revenue it would be able to generate would be consumed by health care costs alone. It contends that the Employer has received notification from the Wisconsin Retirement System of increases in both the Employee and Employer paid contributions to the fund for 2006. Each will be increased by .1%. The Employer takes the position that it pays both contributions. The additional cost to the Employer will be .2%. The Employer state that the incredible increases in both the current cost and the projected future cost of fuel and utilities should be considered. It argues that the potential loss in personnel is great due to the state imposed budget restrictions and it is not in the public interest to reduce the size of the department because it will reduce the quality and quantity of police service and loss of personnel will have a significantly negative impact on the morale of the officers. The Employer argues that the current labor agreement pays newly employed recruit officers either 85% or 90% of the pay rate of a regular officer, depending on whether the officer has already completed the basic recruit academy. It contends that salary increases to 95% of regular officer pay after 6 month of employment and then to 100% of regular officer pay after 1 year and that is the top pay step for a police officer. The Employers proposal for the police officers pay grade calls for a 1% base increase across the board. Officers with 3 years total time in service would receive an additional 2% for a total wage increase of 3%. Those with 8 years tenure will receive an addition 3% for a total wage increase of 4%. Officers with 15 years tenure will receive an additional 3.5% for a total wage increase of 4.5% and officers

with 20 years tenure will receive an additional 4% for a total wage increase of 5%. The Employer argues that the submission demonstrates that the four most junior officers would receive a 1% pay increase in 2005 plus moving through the steps from recruit officers to regular officers. It contends the minor short impact on these four junior officers is not so great as to outweigh the overall wage benefits for Union members, approximately 90% of whom would receive wage increases between 3% and 5% in 2005. The Employer takes the position that its newly hired officers with recruit school training receive a starting wage higher than all other comparable agencies. It asserts that its wage proposal which also includes a 3% wage increase for all paid rates in 2006 has 3.63% total wage cost to the City in 2005 and total wage cost over the two year period, when compounded of 6.74%. The Employer argues that both of these figures are generous in comparison to current settlements of the comparable police forces. The Employer argues that the Union proposal includes splits in each of the two years lifting wages for all covered employees by 8.21% by July 1<sup>st</sup>, 2006 which is well in excess of the current settlements among the comparables. It contends that its proposal is a progressive departure from the flat percentage increase and addresses what the Union considers to be inequities with the comparables. It contends that each and every comparable agency has a step plan in its wage structure and this point is recognized by the Union as is evidenced by their references to their top officers pay compared to comparable agencies. The Employer takes the position that it pays the highest wage for all regular officers of any of the three agencies that have reached an agreement until after 11 years when the Wausau wage goes up to \$46,872.00 a year and Portage County goes up to \$48,276.00 in 12 years. For 13 years the Employer pays an officer \$46,136.00 a year and after 20 years the salary is \$46,342.00. It asserts that the pay grade shown in the 9 year and 15 year salaries for Marathon County are actual 10 and 15 years while the Employers police officer receive regular officer status after 1 year and Marathon Counties officers take 18 months and 2 years for Wausau Police officers. The Employer pays an officer in the

Sergeant grade \$50,826.00 a year from the start and after 4 years the wage increases to \$51,843.00 a year. Portage County starts a Sergeant at \$49,441.00 and after one year the wage goes to \$51,001.00 and after 3 years \$52,582.00.

It takes the position that it is reasonable to request an examination by health care providers at the Employers expense. It asserts taking reasonable steps to discourage use at this time is reasonable. The Employer argues that four agencies among the six comparables allow for a medical examination of an Employee at the option of the Employer with no requirement of any minimum time used to justify the examination. The remaining two comparables allow the Employer to require a medical certification for proof after more days.

The Employer also proposes to change reference to examination by a “Doctor to Health care provider” The Employer intends that the level of medical certification necessary for the specific instance should be determined by a medical professional at a treatment facility and not by a labor agreement. The Employer proposes to provide a benefit to pregnant female officers, allowing them the option to work a modified duty schedule rather than require them to use sick or accumulated earned time for time away from duty due to pregnancy as is a requirement of the current contract language. It contends the Union proposes status quo but can’t logically make such an argument in opposition to this proposal since on July 12<sup>th</sup>, 2004 it signed a letter of agreement to modify the labor agreement to allow the creation of a modified duty policy for officers who are temporarily disabled and for pregnant female officer. The Employer takes the position that by arguing for the status quo the Union is either endorsing its proposal or seeking to withdraw from the agreement to allow the availability of modified duties for pregnant female officers. The Employer argues that the limited term, modified duty policy, which has been used since the signing of the agreement on July 12<sup>th</sup>, 2004 and the contract language proposed by the Employer would completely fulfill the intent

of the parties in the letter. The Employer proposes to delete the provision against the modified duty assignment.

The Employer proposes to consent to the Union's request to increase the employee's contribution to the post employment health plan. It contends that the signed request dated January 11<sup>th</sup>, 2005 requests that the Employer increase the Employee contribution to the PET plan from the current 25 dollars a month to 40 dollars a month.

The Employer proposes to increase the recent percentage of premium by employees to minimally mitigate the exploding cost of the health plan. It also offers to provide an annual payment of 200 dollars to any Employee who chooses not to be in the plan and to delete the 25 dollars quarterly payment to any person on the single coverage plan. This deletion is included in the Union's proposal as well. The Employer takes the position that its proposal would guarantee immediate relief from rapidly escalating health plan costs while the Union's proposal of an increase in the plan deductible from 100 dollars and 200 dollars a year for the single and family plan respectively to 200 dollars and 400 dollars could only provide minimal relief since not all employees reach their deductible during any given year. The Employer argues that the Health Insurance benefit enjoyed by its Police Officers is well above that of the comparables. This is acknowledged by the Union in its brief. The Employer takes the position that any other health related benefits enjoyed by members of comparable agencies such as dental or vision insurance by separate policy are also available to the employees of the Employer and are not a benefit provided by any of the general health plans of the comparables.

The Employer argues that its health plan cost increase from 1996 through 2005 show a greater than 240% increase in the cost of the benefit over that time. It points out that the plan

cost has increased by 15% in each of the last two years. It contends that no quid pro quo is necessary given the dramatic differences in percentages of plan costs by employees in comparable agencies. It asserts that this obvious and dramatic difference along with the explosive increase in plan cost negate any requirement of a quid pro quo. Arbitrators have found that the increasing health care costs paid by the Employers reduce or even eliminate the usual burden to provide a special justification with a quid pro quo. The Employer argues that reopening the contract for 2006 with a purpose of discussing health plan issues is reasonable and necessary because the full cost of the plan for 2006 is not yet known. Arbitrators have found it is important to conduct negotiations on the issues of health plan cost when the parties have full knowledge of factors involving this issue.

The Employer's proposal to insert language indicating it will pay for the extraction and initial replacement of teeth (does not include transplants) not covered plan is a codification of the current situation. In 1997, in a side letter, the Employer agreed to self assure or reinsure extraction and replacement of natural teeth not covered by the plan ( does not include implants).

### DISCUSSION

The Union contends that the Employer attempts in its brief to characterize its final offer as not being as clear as it should have been. The arbitrator agrees that the Employer could have done a much better job in spelling out just what it meant with its final offer. It admits that in its brief. However in its brief it does try to make the intention of the final offer more clear and the Arbitrator is satisfied that he knows what the Employer intended. In any event whatever the final offer says the Employer is stuck with it and the Arbitrator will interpret it as he understands it. In its brief the Employer makes references to its final offer that are somewhat different than the way the Arbitrator would interpret the meaning of the final offer but he is satisfied that his interpretation of what the Employer meant was correct. If it has

made mistakes over certain items in its brief when it discusses its final offer the Employer can't change things by changing them in its brief. It is stuck with its final offer.

The Union also argues that the Employer does not mention any need for a change in the Health Care Provider versus doctor as to whom should evaluate an employee who is on sick leave for more than three days. The Arbitrator will not decide this case based on issue of whether an employee is evaluated by either a "Health Care Provider" as opposed to a doctor. The Union contends that the record provides no facts that would indicate any type of abuse of sick leave has been developed. The Arbitrator is satisfied that only two real issues exist in this arbitration and they will control. All of the differences are all so minor that the Arbitrator is satisfied that the decision will have validity based on his disposition of the issues of wages and health care.

The review of the Union's exhibits indicates that the salaries of the Employer's police officers are pretty much in line with the pattern that has been established in the comparable group. There are some differences but they are not significant. In 2005 the Employer proposes a 1% base increase across the board. Officers with three years total time in services would receive an additional 2% for a total wage increase of 3%. Those officers with eight years tenure would receive an additional 3% for a total wage increase of 4%. Officers with 13 year tenure would receive an additional 3.5% for a total wage increase of 4.5% and officers with 20 years tenure would receive an additional 4% for a total wage increase of 5%. The four most junior officers would receive a 1% pay increase plus movement through the step from recruit officer to regular officer after 1 year. The Employer proposes a 2.5% increase across the board effective January 1<sup>st</sup>, 2006 and additional .5% across the board January 1<sup>st</sup>, 2006 to offset health plan changes and a total wage cost over the two year period of 6.74%. The Union proposes a 1% increase effective January 1<sup>st</sup>, 2005 and a 3% increase effective July 1<sup>st</sup>, 2005. The Union would increase the wages for each of the officers 1% on

January 1<sup>st</sup>, 2005 and 3% July 1<sup>st</sup> 2006.

The Union complains the Employer's final offer of wages is rather nebulous and difficult to understand. The Employer agreed in its brief that its final offer for 2005 was not very clear. The only thing that is clear is what the salaries of each individual officer would be for 2005. No provision has been spelled out in the final offer to boost any employee in the first year as he or she gains more experience. The Arbitrator guesses that it was the intention of the Employer to move employees to a higher rate as they gain more experience but that is not spelled out in the first year of the Employer's final offer. The Employer tries to compensate for this in its brief by indicating that it was establishing a wage schedule based on experience.

There is nothing in the final offer that indicates that there would be any increases in the year 2005 for officer who gained increased experience during that year. The Arbitrator can not reinterpret the final offer based on the brief of the Employer and his guess as to what the Employer intended. The Employer is stuck with its final offer that spells out the wage for each officer for 2005. Even the second year of the Employer's final offer does not spell out any changes in the salaries for individual officers as they gain more experience. It only spells out that there would be a 2.5% increase across the board effective January 1<sup>st</sup>, 2006. The Arbitrator is left to guess what the Employer intended and rely on the explanation in the Employers brief to understand what intended. The Employers proposal for wages is exactly what it is set forth in its final offer which states that a revised wage schedule (see enclosed ) effective January 1<sup>st</sup>, 2005 and 2.5% across the board effective January 1<sup>st</sup>, 2006. An additional .5% across the board effective January 1<sup>st</sup>, 2006 to offset Health Plan changes.

The Union's final offer proposes that each classification be increased by 1% effective January 1s, 2005 and 3% effective July 1<sup>st</sup>, 2005. It proposes that effective January 1<sup>st</sup>, 2006 the wages increase for each classification by 1% and 3% effective July 1<sup>st</sup>, 2006. Its proposal would provide a 4% lift in the wages of the employees for each year but the cost of the increase would only be 2 ½% because of the lift proposal. The Arbitrator finds the lift rather



high but it will provide some catch up for the Employer's police officers while retaining a low actual cost for each year. The Union's proposal is clear and it takes no guessing or examination of the briefs to understand what was intended. The Arbitrator find the Union's proposal clear and easily to understand and not out of line with the amount of cost to the Employer. The Union's proposal is somewhat higher than those increases agreed upon by the comparables that reached agreements and the one that obtained its increases by arbitration for the year of 2006..

The Employer proposes that the sick leave provision of the contract be changed to provide that it reserves the right to have an Employee on sick leave examined by a Health Care Provider of its own choosing at no cost to the Employee. It also proposes that Maternity leave/modified duty is available to pregnant female officers once their primary health care provider determines that they can no longer perform all of the duties associated with the current job description of a police officer. The final offer of the Union provides that there would be no change in the contract language with respect to examination by a health care provider rather than a requirement that it be by a doctor and it does not make any proposal with regard to maternity leave/modified duty to pregnant female officer once their primary health care provider determines that they can no longer perform all the duties associated with the job description of a police officer. The Union signed a letter of agreement on July 12th, 2004 agreeing to modify the old labor agreement to allow the creation of a modified policy from officers who are temporarily disabled and for pregnant female officers. By arguing for the status quo the Union endorses the proposal of the Employer with respect to examination by a health care provider of its own choosing.

The Employer proposes to amend Section E of the collective bargain agreement to provide a benefit to pregnant officers by allowing them the option to work a modified duty schedule rather than require them to use sick or accumulated earned time for time away from duty due

to pregnancy as required by the current contract language. On July 12<sup>th</sup>, 2004 the Union signed a letter of agreement to modify the labor agreement to allow creation of a modified duty policy to officers who are temporarily disabled and for pregnant female officers. By arguing for a status quo the Union is endorsing the Employers proposal which is a restatement of the letter of agreement dated July 12<sup>th</sup>, 2004.

With respect to the Health Insurance the Employer proposes to make a contribution of 92% effective January 1<sup>st</sup>, 2005 toward the Medical and Hospitalization programs for employees seeking the family and single plan coverage, and 90% effective January 1<sup>st</sup>, 2006. Employees who chose not to be enrolled in the Health Insurance program offered by the Employer would be paid \$200.00 a year in lieu of insurance coverage. The Arbitrator finds the Employer's proposal with the respect to health insurance to be more reasonable than that of the Union. The Union would continue the current language requiring a Employer to make a contribution of 94% for employees seeking family plan coverage and 100% for employees seeking single coverage. The Employer proposes to make a contribution to the Medical and Hospitalization program of 92% of the premium for employees seeking the family and single plan coverage and 90% for single plan coverage effective January 1<sup>st</sup>, 2006. It would pay employees who chose not to enrolled in the health insurance program offered by the Employer \$200.00 a year in lieu of insurance coverage. The Employer's proposal addresses the fact that health insurance premiums have increased 15% in each of the last two years but the Employer has still been required to make the same contributions. Health insurance has been a problem for all Employers because of the increases in the premiums and they are seeking to have the employees assume a larger share of the premium. This is a reasonable approach and the Employer's proposal is not out of line with respect to the contributions of the employees toward the health insurance premiums. There should be some tie between the cost of health insurance and the cost of wages because those two items are the most significant cost items in the contract. The Arbitrator finds the Employer's proposal with respect to contributions to

the health insurance program to be more reasonable than the Union's insistence that the premium contribution by the Employer remain the same.

The weakest part of the Employer's proposal is its requirement that its contract be reopened for purposes of renegotiating the health insurance or discussion of health insurance plan changes. The Union has made a proposal for two years and it includes proposals for both wages and health insurance. Those are the two biggest cost items in the whole contract. The Employer wants to tie up the wage increases for 2006 but it wants to leave the insurance cost open in case there is another increase of some large amount. The Arbitrator believes that the insurance and wage costs should be bargained at one time so the Employer and the Union would both know what the cost would be and what each would be required to pay. There is a close relationship between how much the Union would receive in the form of wages and how much it would be required to pay for insurance. The issue of the 2006 insurance costs should be settled at the same time that the 2006 wages are agreed upon. While the Arbitrator suspects that the health insurance costs are going to go up this next year he does not know how much and neither does the Employer or the Union. The Union is making a wage proposal based on what it thinks it should pay for insurance. The Employer makes a wage proposal but wants to leave open the question of insurance for negotiation for next year. The positions of each of the parties have merit.

The Employers position is that the state budget would permit it to increase its tax revenue my no more then \$201, 566.00. That amount would obviously not pay for the increases sought by the Union and the increases that will be sought by other employees in 2006.

The Arbitrator is satisfied that based on the actual proposals of both the Employer and the Union the proposal of the Employer is more reasonable. Considering the explanations given by the Employer in its brief as to the meaning of its final offer he finds that the Employer's

proposal is more realistic than that of the Union.

It therefore follows from the above facts and discussions thereon that the undersigned renders the following

**AWARD**

After full consideration of the criteria set forth in the statutes and after careful and extensive evaluation of the testimony the exhibits and briefs of the parties, the Arbitrator find that the Employer's final offer adheres more closely to the statutory criteria than that of the Union and directs that the Employer's proposal contained in Exhibit 2 be incorporated into the collective bargaining agreement as a resolution of this dispute.

Dated at Sparta Wisconsin this 1<sup>st</sup> day of November, 2005

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Zel S. Rice II, Arbitrator