EDWARD B. KRINSKY, ARBITRATOR

In the matter of the Petition of	:	
	:	
Wisconsin Professional Police Association/ Law Enforcement Employee Relations Division	:	
	:	Case 146
	:	No. 66533 MIA-2750
For Final and Binding Arbitration Involving	:	Dec. No. 32073-C
Law Enforcement Personnel in the Employ of	:	
	:	
	:	
City of Wisconsin Rapids	:	

Appearances: Mr. Thomas W. Bahr Executive Director, for the Association

von Briesen & Roper, S.C. by Mr. James R. Korom, for the City

By its Order of May 25, 2007 the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as the arbitrator "to issue a final and binding award... pursuant to Sec. 111.77 (4)(b) of the Municipal Employment Relations Act."

A hearing was held at Wisconsin Rapids, Wisconsin on August 2, 2007. No transcript of the proceeding was made. The parties had the opportunity to present evidence, testimony and arguments, and they filed briefs. The record was completed with receipt by the arbitrator of the City's reply brief on September 22, 2007. The Association opted to not file a reply brief. There are two issue in dispute: retiree health insurance and wages.

The City's final offer is to increase wages as follows: 3.0% for 2007; 3.25% for 2008; 3.25% for 2009. In addition the City "will establish a post health employee retirement plan (PHEP), providing a $ 10.00 per month contribution for each employee under age 50 as of January 1, 2007; and a $20.00 per month contribution for each employee age 50 or over as of January 1, 2007, to offset possible future retiree health insurance premium increases."

In addition the City would modify the existing agreement as it pertains to retiree health and dental insurance to be as follows:

Article 18 - Insurance A2. The City agrees to allow retirees (and/or disability retirees) from the Police Department to participate in the Group Health Insurance Plan from

retirement until such time as Medicare coverage is available to the Police Department retirees. For those retirees who retire after January 1, 2007, with 25 years of service, the City will contribute the following amounts towards the retiree's insurance premiums under the City's retiree health plan. Said contribution will coincide with the level of coverage the retiree has. The City's contribution, however, shall in no event exceed 50% of the total cost of the retiree's health insurance premium. Such contribution will be made until the retiree reaches 65 years of age.

Health Plan	**Plan A**	**Plan B**
Family	$ 963.50	$ 829.00
Two-Person	669.50	580.00
Single	332.50	287.50

Dental Plan

Family	$ 42.50
Single	16.00

[The effect of the City's retiree health insurance proposal is to cap the City's contribution at current dollar amounts, rather than the 50% of premiums which exists in the present language]

The Association's final offer proposes no change in the existing retiree health and dental insurance provisions. The Association proposes that wages be increased by: 2.9% effective January 1, 2007; 2.75% effective January 1, 2008; and 2.75% effective January 1, 2009

The arbitrator is required by statute to "select the final offer of one of the parties...without modification." In making that decision the arbitrator is required to "give weight" to the enumerated statutory factors. In the present case there is no dispute with respect to three of the enumerated factors, and they will not be considered further: (a) the lawful authority of the employer; (b) stipulations of the parties; and (g) changes in circumstances during the pendency of the arbitration proceedings. The other factors are discussed below:

Factor (c) is, "the interests and welfare of the public and the financial ability of the unit of government to meet these costs." There is no contention by the City that it does not have the financial ability to meet the costs of the Association's final offer during the term of the Agreement, and in fact the total cost of the City's final offer is higher than that proposed by the Association. The City argues, however, that unless the future costs of employee retiree health benefits addressed by the City's offer are reduced, the City may

have a financial problem in the near future, and it is in the interests and welfare of the public to bring those costs under control now in order to moderate the anticipated adverse financial affects in the near future.

Specifically, the City's offer is an attempt to reduce its costs in anticipation of the requirement that it comply with GASB 45, which will require it to identify the amount of its unfunded retiree benefit obligations. The City acknowledges that it has not yet had an actuarial study of these obligations. The City notes, however, that because of its adverse financial condition in recent years, it has not set aside funds for future retiree benefit obligations. It anticipates that these obligations will be significant, even if they have not yet been determined precisely. The Association argues that this issue is not entitled to significant weight at this time, given that the City has not yet studied and accurately identified the extent of its unfunded liability.

The Association views the City's proposed capping of retiree benefits as having an adverse affect on the morale of the bargaining unit. In its view, the interests and welfare of the public are best served, "by recognizing the need to maintain the morale and health of its law enforcement officers and thereby retaining or recruiting the best and most qualified officers."

Although the City has the ability to pay the Association's final offer, it is undisputed that the City has been coping with an adverse economic situation, has laid off 41 employees from other bargaining units, and has reduced City services such as road repair and maintenance. It also is striving to limit the impact on its taxpayers at a time when the City has experienced substantial job losses in the private sector.

It is the arbitrator's view that the City is correct that under present and anticipated circumstances, the public interest is better served by moderation of its future financial obligations, and that this outweighs any negative effects on the morale of the bargaining unit. In this regard, it should be noted that what the City is proposing is a capping of present contributions to retiree health insurance, not elimination of the benefit.

Factor (d) is a "comparison of the wages, hours and conditions of employment of the employees" in the bargaining unit with those "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."

One of the comparisons which is traditionally made in interest arbitration, and especially when considering employee benefits, is a comparison of the bargaining unit involved in the arbitration with the others of the City's bargaining units, the so-called "internal comparisons." The City bargains with four bargaining units in addition to the police. One of those units does not have the retiree benefits which are at issue here. The other three units have the same retiree health insurance benefit of contribution by the City of 50% of their health insurance premiums, although two of the units have a minimum age

of 57 to receive the benefit, where there is no age stipulation for the police and fire units. At the present time the City is in arbitration with each of these bargaining units, and in each arbitration the City is proposing to cap the benefits, as it is proposing to do in the current proceeding. It should be noted also that the City's non-represented employees also enjoy the retirement benefits in question. The City has tied its decision on whether to cap benefits for the non-represented employees to the outcome of this arbitration.

Although the retiree health insurance benefits have not been uniform across all internal bargaining units, a pattern has existed until the present time such that employees in all but one bargaining unit have bargained an annual employer contribution of 50% of the premiums. In the present round of bargaining with these other units, the City has not succeeded in getting the voluntary agreement of any of them to cap these benefits, and there have as yet been no other arbitration awards issued. Thus, at the present time, the internal comparables favor the Association's final offer. It must be emphasized in this context that the Association is not proposing a new benefit. It is seeking to continue in effect a benefit which has resulted from past voluntarily bargained agreements with the City. Perhaps the arbitrator would favor the City's position if it were clear that the City had succeeded in its attempt to cap the benefits enjoyed by some of the other bargaining units, but that is not the case here. Under the circumstances, this modification of an existing benefit of long-standing should be brought about through voluntary collective bargaining, and not imposed through arbitration.
With respect to the "external" comparables, both parties use as comparisons the cities of Marshfield, Stevens Point and Wausau, and the counties of Portage and Wood. The City correctly points out that none of the employers in these jurisdictions make any contributions to employee retirement health benefits.

The retiree health insurance benefit at issue in the present case has been in the parties' Agreements since 1979. Were the Association now attempting to add this benefit, where no other external comparable had such a benefit, that would be a significant argument in the City's favor. It is less compelling in a situation such as this where the parties voluntarily agreed to an employer paid retiree health benefit years ago, notwithstanding that the external comparables had no such benefits.

The City argues, however, that what it has to pay under the current retiree health insurance benefit far exceeds amounts paid by the comparable employers which their employees could use to pay for retiree health insurance. Thus it notes that in Stevens Point, Wausau and Wood County the employers do not pay any of the employee's retiree health costs, but do provide a benefit "based on an accumulated sick leave conversion." It notes that the City of Marshfield and Portage County do not offer a sick leave conversion benefit, but rather make contributions to a PHEP plan. In its exhibits, the City calculates that under its final offer capping the benefits at their present levels, what is generated is "a benefit more than twice the value of Portage County...more than five times that offered in the City of Wausau, and more than three times [what is] offered by the City of Stevens Point or Wood County.

The City acknowledges that it has not yet had the actuarial study which will be necessary to calculate its unfunded liabilities. It cites an arbitration decision by Arbitrator Oestreicher in *City of Waupun [Decision No. 31772-A (04/02/2007)* which dealt with this issue in a police bargaining unit of 13 employees. The actuarial study done there attributed $ 170,000 for the police in 2006 and a future cost of $ 4,174,000 for police, as the funds needed to cover the anticipated costs of retiree health insurance between retirement and eligibility for Medicare. The City notes that the bargaining unit in the current arbitration has 33 employees, more than twice the size of the Waupun bargaining unit. It argues, "We may make all sorts of different assumptions about actuarial trends in the City of Wisconsin Rapids, but there can be no serious doubt that this City's present GASB liability will run well into millions of dollars. Any suggestion that this information will have no impact on future City finances, nor that it will have any impact on risk factors when borrowing money for future municipal projects, is simply ludicrous. The City of Wisconsin Rapids has a huge unfunded liability, and the City contends this constitutes a compelling need to make some sort of change in this area...."

The situation which the City describes has not changed in relation to the external comparables with respect to the fact that for some years the City has paid to its employees considerably more money than the other jurisdictions have paid their employees for possible use towards the purchase of retiree health insurance. What has changed, is that the cost of health insurance has continued to rise dramatically, and the City's economic problems have increased. What has changed also is that the GASB 45 requirement has been introduced which has made the City aware that it needs to begin to moderate its unfunded financial liability. Presumably, the other jurisdictions also have to address their GASB 45 liabilities. The arbitrator has no way of knowing how the City's liabilities compare to those of the other jurisdictions.

Looking at wage settlements for 2007, the four external units which have settled have a median percentage increase of 2.7%, in contrast to the Association's proposed 2.9% and the City's proposed 3.0%. For 2008, just two of the external units have settled, and the median increase is 2.5%, in contrast to the Association's proposed 2.75% and the City's proposed 3.25%. For 2009, only one of the comparables has settled. The wage increase is 2.0%, in contrast to the Association's proposed 2.75% and the City's proposed 3.25%.

Thus for each of these years, the wage increases proposed by both parties are reasonable ones in comparison with the settlements reached so far in external comparable units, with the Association's final offer on wages being closer to the median increases than the wage increases being proposed by the City. The City argues that in terms of wage rates, as opposed to percentage increases, the bargaining unit receives in excess of $ 2 per hour more than officers in the comparable jurisdictions. This is indeed the case, but it has been so for many years. The City acknowledges that, but

argues that because of its relatively poor financial position and the economic problems which it has had to face, its final offer should be viewed as more favorable than the Associations in relationship to the comparables and it should be allowed to reduce its long term financial liability. Towards this end,the City argues, its higher than average percentage wage increases are offered as a *quid pro quo* for its proposal to cap the retiree health benefits. The matter of the *quid pro quo* is discussed below in the context of consideration of statutory factor (h).

The City has also presented data showing that other benefits enjoyed by the bargaining unit exceed those enjoyed by the external comparison units, including annual hours worked, amount of sick leave, and pay for holidays worked. The City has not proposed changes in these areas in its final offer, and there is no evidence that the relative standing of the bargaining unit to the comparables has changed, and under either party's final offer the bargaining unit will retain its leadership position in relationship to the external comparables. As discussed elsewhere, the City may or may not have a compelling need at this time to change its employee retirement health contribution arrangement, but the analysis of the external comparables does not compel a conclusion that one party's final offer should be favored more than the other's.

The statute directs the arbitrator to give weight to private sector comparisons. The City presented data for two of the largest employers in Wisconsin Rapids. One of them makes no contributions to retiree health insurance. The other does, although after July, 2006 the benefit will not be offered to new hires. These data do not persuade the arbitrator that one party's final offer is more reasonable than the other's.

Factor (e) is the "cost of living." Bureau of Labor Statistics data for calendar year 2006 show an increase of 1.63% in the All Urban Consumers Midwest Urban index. That index for cities of less than 50,000 population shows an increase of 1.83%. In relationship to these indices, both party's final offers are reasonable and exceed these percentage increases. The Association's final offer, which has a lower total cost over the three years of the proposed agreement, is closer to the increase in the cost of living change.

Factor (f) is the "overall compensation" being received by the bargaining unit. It is clear from the data presented by both parties that the overall compensation received by the bargaining unit is as good or better than that received by any of the external comparable bargaining units. The City notes that Wisconsin Rapids is the smallest of the comparable jurisdictions and has the least ability to pay, yet "...adding all of these various benefits together reveals a city [Wisconsin Rapids] with the least ability to pay providing the greatest total aggregate benefit package to its employees." There is no showing that the relationships between the City and its external comparables have changed with respect to overall compensation, however, nor has their been any demonstrated change in the relationship between the police unit and the other internal units which might be viewed as significant with respect to overall compensation. Thus,

a look at the three year period of the proposed agreement does not reveal any changes in overall compensation given to this bargaining unit or to the comparables which would lead the arbitrator to say that this factor favors one party's final offer more than the other's final offer.

Factor (h) is "such other factors...which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through ...bargaining... arbitration or otherwise between the parties, in the public service or in private employment."

The Association notes that the City is here attempting to substantially reduce a voluntarily agreed upon benefit of long standing, and it is offering very little in return as a *quid pro quo*, since what it is offering in wage increases is in the settlement range of the comparable jurisdictions. The Association calculates that even after considering the increase of $ 20 per month by the City in its contribution to a PHEP plan, a top patrol officer would receive $269.95 more in wages in 2009 under the City's plan, but if that officer retired in 2009 the cost of retiree health insurance to the officer would be in excess of $ 3000 more than would be true under the Association's proposal.

The City argues that it is offering "a substantial quid pro quo in the form of both extra wages and an employer-funded individual investment plan..." Moreover, it argues, it is not proposing to take away anything that any current employee has earned to date. Rather, it is proposing to put a cap on the City's contributions at their current level in order to reduce the future liability of taxpayers. It argues, "An employee who retires at age 55 will still receive 10 years of health insurance premiums paid by the City to the tune of $ 74,700 per employee. While this is, admittedly, less than that same employee would receive under the status quo analysis, it is still a significant sum. In short, the City is *moderating* its benefit level in this area, not taking it away completely."

The City argues, in part, that its proposal results from "unanticipated changes related to health care, both for active employees and retirees," and therefore no significant *quid pro quo* is needed, or none at all. The arbitrator is not persuaded by arguments that this is an "unanticipated" problem. The requirement that the City fund its liabilities according to a formula per GASB 45 may have been unanticipated, but the problem of how to fund its liabilities is something which could have, and should have, been anticipated. The City is correct that when they implemented the benefit in 1979 they could not have anticipated the dramatic increase in health care costs, but they have been aware of that problem, too, for many years prior to this bargain.

The City has offered estimated costs of future retiree health costs under various assumptions. As already mentioned, the City has not as yet had an actuarial analysis done. Although such an analysis would still be a speculative exercise because of its many assumptions, it would be based on accepted actuarial calculations and experience which would produce more reliable estimates than what the City now has.

The City recognizes the difficulties of predicting what the likely costs would be in the absence of such analysis. The City devotes several pages of its brief to this problem. The arbitrator will only quote a portion of it, to dramatize the problem:

"...the City readily recognizes many inherent flaws in [its] analysis, and further acknowledges there may be many other equally valid ways to measure the difference between the status quo contract language and the City's approach. One of the greatest problems is that the further we attempt to project costs and cost savings into the future, the more speculative and unreliable those numbers become. Thus, the 30 year old employee hired today, who works for the City for 25 years, and retires at age 55, under the City's analysis, would have to absorb $ 183,565.96 more in health insurance costs than under the City's plan. However, that number includes so many assumptions that it is inherently unreliable...Moreover importantly, it assumes that employees continue to work for us through retirement eligibility. It further assumes the State of Wisconsin will not implement, at any time in the next 25 years, an alternative health insurance model (such as a single-payer system) that substantially reduces costs for both employers and employees, or otherwise mandates a payment system contrary to that found in the Collective Bargaining Agreement. It similarly assumes the federal government will not do the same. Given this level of speculation, the quid pro quo analysis should not be driven in any significant way by the numbers for the 30 year employee. Similarly [for] the employee who is 40 years old today...while there is a little more certainty to this analysis, we are still talking about events more than 15 years in the future."

The City argues that the focus of the analysis should be on the seven employees who will reach age 53 prior to 2009, thus making them eligible for a retirement benefit under the Wisconsin Retirement System. The City goes on to argue: "[Under the City's analysis] those employees, over the years of their retirement, may be faced with an additional cost of approximately $ 40,000 in future insurance expenses. While that number seems large if you had to write a check all at once on the date of retirement, it is more manageable when you realize that expense will be spread out over the entire length of retiree's retirement prior to age 65. Further, that number is based on, again, a variety of assumptions about what the health insurance market will look like over the next 15 years, assumptions which may turn out to be widely inaccurate, both positively and negatively. The point is, we simply do not know what the precise cost of this change will be on these employees."

In return for capping this benefit, the City argues, it is proposing a *quid pro quo* of a PHEP plan, and a significantly greater wage increase than is offered by the Association, and it emphasizes that these things will benefit all employees, not just those who remain with the Department until retirement. The City argues further that its offer should be supported because PHEP Plans are better public policy than simply cost sharing of premiums, since they encourage personal investment and involvement in the employee's health, and that by capping retiree health contributions, it will begin to reverse a situation where employees will not take advantage of opportunities to be mobile by taking jobs elsewhere because they do not want to give up lucrative retirement benefits which they will get only if they continue in City employment.

With respect to the argument about PHEP Plans, the City may be correct in its assertions about the advantages of PHEP plans as an enhancement to mobility, but that is an issue which should be left to bargaining, if possible, rather than arbitration. If the parties agree about the advantages of having a PHEP rather than having retiree health insurance contributions be tied to a percentage of premiums, they will agree to it in bargaining.

In response to the City's arguments about its either not needing to offer a *quid pro quo* or, at the very least, having to offer one which is not substantial, the arbitrator disagrees with the City under the circumstances of the present case. Given that the existing retiree health benefit came about through voluntary collective bargaining, and given that the same benefit is enjoyed by almost all of the City's other represented employees, (presumably as a result of their voluntary collective bargaining with the City), there is a need for a *quid pro quo* if the change is to made through arbitration. The *quid pro quo* offered by the City, higher wage increases and a PHEP Plan contribution, while not insignificant does not begin to approach the monetary amounts which retired employees will have to assume under the City's final offer as a result of the capping of retiree health insurance contributions.

As previously mentioned, the existing retiree health insurance benefit resulted from a collective bargaining trade-off in 1979. According to Association witness Smolarek, the Association gave up longevity in 1979 in order to get the retiree health insurance benefit. The City characterizes his testimony as "vague at best," and notes that Smolarek was not able to recall anything else about the discussions, trade-offs or outcomes of the bargaining that year. It argues further, "...no documents or records were produced identifying whether a specific quid pro quo was agreed upon between the parties on this matter [and]...more importantly...the Union got much of the longevity benefit back later when the 15-year step was added back in. It is also the case that when wages and longevity benefits are combined, the Wisconsin Rapids police have the highest pay among the comparables." The City argues also, "Surely neither party could have imagined in 1979, the time the benefit was granted, that the cost of health care would rise so dramatically or that the government would step in and regulate the accounting of post-retirement medical benefits."

The City is correct that the Association's testimony about the 1979 bargain is vague and not supported by documentation, although the arbitrator has no reason to question that the benefit was implemented in 1979, and that thereafter and until the 15 year wage increase step was added later, there was no longevity benefit although one had existed previously. The important point is that the retiree health insurance benefit resulted from bargaining, whether or not there were specific discussions of it having been offered as a *quid pro quo* for giving up longevity pay.

This bargaining history notwithstanding, the arbitrator might be willing to decide in the City's favor if there were a compelling reason to cap the retiree health insurance benefit

at this time. The arbitrator understands the City's concerns about the future, given the financial obligations which it will likely face once GASB 45 is in place. However, at the present time there has been no actuarial analysis, and the dollar figures which the City will have to pay towards unfunded liabilities during the life of the proposed agreement, if any, have not yet been identified. GASB 45 does not require the City to have such an analysis until 2008, the second year of the Agreement. Whether and how the City will be able to meet its resulting financial obligations during the life of the Agreement, remains to be seen. Clearly, this is a matter which will not go away. The City will need to address it with the Association and the other unions with which the City bargains if the City's dire predictions about its financial difficulties in the future prove to be accurate. They either will reach agreement in the next round of bargaining on steps to begin to address the issue, or they will again end up in arbitration, but by that time many of today's unanswered questions about the City's financial obligations and when they will have to be paid will have been answered.

The arbitrator is well aware that a ruling in the Association's favor will do nothing to address the City's anticipated financial problems, but a ruling in the City's favor will result in a significant reduction of an existing benefit for employees who will retire during the life of the Agreement and where, at the present time, it is not clear that such a step is needed during the life of the proposed Agreement. Whether and how the City will be able to meet its financial obligations in future years is something which will likely affect the parties' next bargain(s) and they will undoubtedly address those issues then.

As mentioned at the outset it is the arbitrator's obligation under the statute to select one final offer in its entirety. Based on the above facts and discussion, the arbitrator hereby makes the following AWARD:

The Association's final offer is selected.

Dated at Madison, Wisconsin this 10th day of October, 2007

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Edward B. Krinsky
Arbitrator