STATE OF WISCONSIN
BEFORE ARBITRATOR JAMES W. ENGMANN

In the Matter of the Dispute Between

CITY OF TWO RIVERS (POLICE DEPARTMENT)

and

TWO RIVERS POLICE LOCAL 13,
WISCONSIN PROFESSIONAL POLICE ASSOCIATION

For Final and Binding Arbitration Involving
Law Enforcement Personnel in the Employ of

THE CITY OF TWO RIVERS

Case 110
No. 68339
MIA-2848

Decision No. 32745-B

Appearances:

Mr. Mark L. Olson, Davis & Kuelthau, S.C., Attorneys at Law, 111 E. Kilbourn Avenue, Suite 1400, Milwaukee, WI 53202, appearing on behalf of the City of Two Rivers.

Mr. Richard Terry, RWT Strategies, LLC, 6111 Rivercrest Drive, McFarland, WI 53538, appearing on behalf of Two Rivers Police Local 13, Wisconsin Professional Police Association.

ARBITRATION AWARD

The City of Two Rivers (City or Employer) is a municipal employer which maintains its offices at Two Rivers City Hall, Two Rivers, WI. Two Rivers Police Local 13, Wisconsin Professional Police Association, (Association or Union) is a labor organization which maintains its offices _ Ed Vander Bloomen, 2211 Dewey Street, Manitowoc, WI 54220. 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 the Employer.

On October 17, 2008, the Employer filed a petition with the Wisconsin Employment

Relations Commission (Commission) requesting the Commission to initiate final and binding arbitration pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act with regard to an impasse existing between the parties with respect to wages, hours and conditions of employment of law enforcement personnel. An informal investigation was conducted by a member of the Commission's staff on December 3, 2008, which reflected that the parties were at impasse. On or before May 15, 2009, the parties submitted their final offers and stipulation on matters agreed upon, after which the Investigator notified the parties that the investigation was closed. The Investigator also advised the Commission that the parties remained at impasse. On May 21, 2009, the Commission certified that the conditions precedent to the initiation of arbitration as required by statute had been met and ordered the parties to select an arbitrator from a panel of arbitrators submitted by the Commission.

By a process of elimination, the parties were left with the undersigned to serve as the impartial arbitrator in this matter. On June 11, 2009, the Commission appointed the undersigned as arbitrator to issue a final and binding award, pursuant to sec. 111.70(4)(b) of MERA, to resolve said impasse by selecting either the total final offer of the Employer or the total final offer of the Union. Hearing was held on October 22, 2009, in Two Rivers, WI. Prior to the start of the hearing, the parties participated in mediation which resulted in the settlement of several issues. The settlement was reduced to writing and issued as a Consent Decree, Decision No. 32745-A, a copy of which is attached to this Decision. At hearing, the parties were afforded the opportunity to present evidence and make arguments as they wished. The hearing was transcribed. The parties filed briefs and reply briefs, the last of which was received on January 25, 2009, after which the record was closed. Full consideration has been given to all of the testimony, exhibits and arguments of the parties in issuing this Award.

FINAL OFFERS

Employer

Wages	2009: 3% salary increase

Union

Wages	2009: 3% salary increase 2010: 3% salary increase

STATUTORY CRITERIA

Section 111.77 (6), Wis. Stats., states as follows:

(6) In reaching a decision the arbitrator shall give weight to the following

factors:

g. The lawful authority of the employer.

b. Stipulations of the parties.

a. 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 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:

   a. In public employment in comparable communities.

   b. In private employment in comparable communities.

e. The average consumer prices for goods and services, commonly known as the cost of living.

f. The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

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

POSITION OF THE PARTIES

Employer on Brief

The Employer argues that its General Fund Balance has declined by 50% over the past ten years; that the vast majority of the City's expenditures are comprised of wages and fringe

benefits associated with personnel costs; that the City has attempted to decrease its operating costs in an attempt to align its budget for 2010; that one-year agreements have been recognized as a viable method of maintaining consistency among labor units; that the general economy demands prudence in spending from all public sector employers; that the internal pattern in the City supports the City's final offer which is that of a contract which would expire on December 31, 2009; that an arbitration award should not upset this City-wide parity; that maintaining parity between police and fire units, in particular, has been determined to be in the bests interest of the public; that an arbitration awards which grants wages or benefits to one bargaining unit that was not obtained by another bargaining unit would likely undermine future bargaining efforts; that internal settlements carry greater weight than external settlements; that the City's selection of the external comparable pool is the more reasonable and should be adopted by the arbitrator; that the parties' 2009 wage offer demonstrates that the City of Two River's Police Officers are receiving wage rates in excess of the comparables; that the benefits received by Two Rivers Police officers demonstrates that the City offers competitive or superior benefits; that consideration of the Consumer Price Index does not support the Association's final offer; that the City's final offer is clearly established to be the most reasonable offer when considered both in its entirety and when considered item by item; that both the issues of City financial survival and parity with the remaining City employees are the key issues in this proceeding; that both provide a sufficient basis to award the City's final offer; that both internal and external comparables also support the City's final offer; and that the general state of the City's financial condition is compellingly supportive of the City's one-year proposal.

Union on Brief

The Union argues that the statutory criteria compels the selection of the Association's Final Offer; that the Association's Final Offer most closely resembles what the parties would have agreed to if there had been a voluntary settlement; that a two-year Agreement is the status quo; that a two-year contract is generally preferred over a one-year contract; that this is especially true since the one-year offer expired on December 31, 2009; that the second year of the contract parallels the settlements among the comparables for 2010; that the Employer has not established nor proven a need for the modification of the status quo is seeks; that the Employer seeks to change the status quo by moving from a two-year contract to a one-year Agreement without even the appearance of a quid pro quo; that the Cost-of-Living (COL) criterion is best represented by the Association's Final Offer when the settlement pattern for 2010 is added to the formula for measuring the COL; that the City's Final Offer increases the wage disparity between Two Rivers Police Officers and the Comparable Employers; that the Offer of the Association slows the widening rift between Two Rivers Police Officers and the Comparable Employers; that the Two Rivers Police Officers' overall compensation, when compared to the Comparables, is not superior; that this Employer is not claiming the inability to pay; that, in fact, the Employer has the real resources to meet the Associations Final Offer which costs $14,000 without undue hardship to the taxpayers; that there is no evidence that this City has suffered more than the Comparables as a result of the recent economic downturn; that there is clear evidence that

the economy as a whole is improving; that the pattern of settlements among the comparables advocated by the Association and those championed by the Employer strongly supports the adoption of the Association's Final Offer for 2010; and that, for the foregoing reasons, the Association respectfully requests that its Final Offer be selected by the Arbitrator for incorporation into a 2009-2010 Collective Bargaining Agreement.

Employer on Reply Brief

The Employer argues that the financial situation in the City of Two Rivers is not only germane but is pivotal in this dispute; that the City reiterates its reliance on internal patters; that Wisconsin arbitrators have assigned greater weight to internal settlements in rendering protective services' interest arbitration awards; that the City's proposed set of external comparables is the most relevant; that the Association's claim that the employer is required to offer a quid pro quo for a change to the status quo is misplaced; that Wisconsin statutes note that arbitrators may consider changes during the pendency of the arbitration proceedings; that the Association inappropriately and unconvincingly discounts the importance of the City's GASB obligations; that the City cannot ignore its financial obligations; and that the Cost of Living factor is supportive of the City's final offer.

Union on Reply Brief

The Union argues that this case can best be described as an attempt by the City to use the economic conditions experienced during most of 2009 across the United States, including most cities and counties in Wisconsin, as justification for permanently reducing the wage rate ranking of its police offers among comparable communities; that the City seeks to use arbitration to "line up" its bargaining units, both those consisting of sworn law enforcement officers covered by Sec. 111.77, Wis. Stats., and those non-sworn civilian units covered by Sec. 111.70 , Wis. Stats., for the stated purpose of ease of Administration; that the Employer submitted a final offer predicated on a position that external comparables are much less relevant than internal comparables; that the City previously asserted that there was a pattern among the internal bargaining units for 2010 that consists of no settlements; that subsequent to the hearing a pattern of internal settlements did emerge; and that if considered at all under Sec. 111.77, Wis. Stats., internal settlements should be afforded little weight, particularly when there is a clear pattern of settlements among the external comparables.

Discussion

Introduction

The big issue of the day in every collective bargaining agreement – health insurance and all that goes with it: plan coverage, contribution rate, co-pays and deductibles – has been resolved by these parties at mediation prior to hearing, as has the salary for 2009.

Therefore, this should be an easy case but, obviously, if it was easy, it would not be in arbitration.

Essentially, the parties resolved all issues for the 2009 contact year, including many health insurance issues and a wage increase of 3%, during mediation at the hearing. The City's offer ends there; it makes no proposal for 2010, instead offering a one year contract for 2009 only. The Union's proposal includes a second year for the agreement, that being 2010, and its only proposed change from the 2009 year is a second year wage increase of 3% on January 1, 2010.

The parties disagree on the term of the contract, but they also disagree as to the external comparable pool, the weight to be given the external comparables in this situation, and the weight to be given to internal settlements, especially since there was a change in the settlement situation of the internal comparables post hearing.

Status quo

The Union argues that a two-year Agreement is the *status quo*, that the Employer has not established nor proven a need for the modification of the *status quo* it seeks, and that it has not offered a *quid pro quo* for the change in the *status quo*.

The standard for changing the *status quo* has been enunciated in many similar ways. Arbitrator Petrie wrote as follows:

> When either party to a labor agreement proposes elimination or significant modification of a previously negotiated right or benefit, arbitral approval of such a proposal is normally conditioned upon three determinative factors: first, that a significant and unanticipated problem exists; second, that the proposed change reasonably addresses the underlying problem; and, third, that the proposed change is normally but not always, accompanied by an appropriate *quid pro quo*. *Rice Lake School District (Support Staff)*, Dec. No. 32580-A (Petrie, 7/14/09) at pages 23-24.[1]

[1]For two recent cases consistent with this formulation, see also *Outagamie County (Highway Dept)*, Dec. No. 32530-A (McAlpin, 2/11/09) at page 14 and *Milwaukee Board of School Directors*, Dec. 32429-A (Grenig, 6/13/09) at page 24.

I have framed this burden to include a review of the comparables as follows:

> The burden on the party seeking to change the *status quo* is to show that there is an actual, significant and pressing need for the change; that the proposed change addresses the need in as limited a manner as possible; that comparables are consistent with and supportive of the change; and that a proper *quid pro quo* is offered to compensate, at least in part, the party resisting the change. *Cassville*

School District (Support Staff), Dec. No 32649-A (Engmann, 10/06/09) at pages 18-19. See also *Racine Wastewater Commission*, Dec. No. 31231-A (Engmann, 12/20/05).

The differences in formulation make no difference in the outcome of this case.

Arbitrators have found that the requirement for an adequate *quid pro quo* "falls well within the scope of Wis. Stats. 111.77(6)(h)." *City of Wauwatosa (Fire Dept)*, Dec. No. 32645-A (Hempe, 8/15/09) at page 30.[2]

As Arbitrator Hempe has written,

> There is no set answer as to what constitutes a sufficient *quid pro quo.* It is directly related, inversely, to the need for change. Thus, the *quid pro quo* need not be of equivalent value or generate an equivalent cost savings in the change sought. Generally, the greater the need, the lesser the *quid pro quo* required. *City of Wauwatosa (Fire Dept)* at page 31.

There is a growing acceptance that there are times will a lesser or no *quid pro quo* is required. Arbitrator Petrie wrote as follows:

> An exception to this requirement may exist where *the costs or the substance of a long standing policy or benefit have substantially changed over an extended period of time*, where *they no longer reflect the conditions present when they were negotiated*, and where the proposed change is directed toward *correction of a mutual problem which was neither anticipated nor previously bargained about by the parties*. *Rice Lake School District (Support*

[2]In terms of Sec. 111.70, it has been found that the "*quid pro quo* criterion falls well within the intended scope of Section 111.70(4)(cm)(7r)(j) of the Wisconsin Statutes." *Rice Lake School District (Support Staff)*, Dec. No. 32580-A (Petrie, 7/14/09) at page 23.

Staff) at page 25 (italics in original).[3]

[3]Again, I have framed it a bit differently:

> There are times when a lesser *quid pro quo* or even no *quid pro quo* is needed for a change to be made. Such cases include the situation where a contract clause or benefit has caused or will cause a significant problem, unseen at the time of agreement, to one or both parties, or the clause or benefit is so significantly out of line with the comparables as to be an aberration, or the clause or benefit is of such a nature that there is a mutual interest and benefit to changing it because it no longer serves the parties well, but only one party has offered a reasonable resolution. *Cassville School District (Support Staff)*, Dec. No 32649-A (Engmann, 10/06/09) at page 21.

And, again, the differences will make no change in the outcome of this case.

But even if a two-year contract is the *status quo* in an everyday use of the phrase, the term of the contract is not part of the *status quo* doctrine in terms of labor relations. As noted by the City on brief, the term "*status quo*" applies to the content of the existing collective bargaining agreement, not to the duration of the contract. See *Employer Brief* at page 12. And so it is here. I could find no arbitral support for the notion that the contract term is covered by the *status quo* doctrine. And since the term of the contract is not covered by the status quo doctrine, there is no need for the Employer to provide a *quid pro quo* to change the term.

Requirement to Use Internal Comparables

The Union asserts that while the arbitrator is not barred from the use of internal comparables under factor (h) of Section 111.77, neither is he required to do so as he would under Section 111.70(4)(cm)7, Stats.

The Union is correct that this arbitrator is neither barred from or required to use internal comparables for protective service employee units by Section 111.77, Stats. on its face. Arbitrator Shaw faced a similar argument and stated that Sec. 111.77(6)(h) includes other factors which are normally or traditionally taken into consideration in arbitration and that, certainly, how an employer treats its other represented employees compared to how it proposes to treat the protective service employees has traditionally been taken into account in interest arbitration. See *Ozaukee Co (Sheriffs)*, Dec. No. 32592-A (Shaw, 11/02/09) at page 15.

I agree.

Internal Comparables: Non-represented Employees

One reason the City argues for a one-year contract is so all of its contracts will be on the same schedule, providing greater ease in administration. It asserts that the four internal comparables, including the Firefighters, received 3% in 2009 with a contract expiration date of 12/31/09. That is the offer the City has made to the Union, an offer consistent with the four other bargaining units, including the Firefighters.

The Union argues that having all of the City's bargaining unit on the same contract term would allow the Employer to "settle" with the non-represented employees and use that internal settlement to leverage the unionized employees to accept the same.

Arbitrator Hempe has written, "Non-represented employees are not usually regarded as a persuasive internal comparable because their wages, hours and conditions of employment are usually not bargained, but imposed." *City of Wauwatosa (Fire Dept)*, Dec. No. 32645-A (Hempe, 8/15/09) at page 27, footnote 37. Arbitrator Greco has written that since unrepresented employees lack a meaningful mechanism to resolve any deadlocks reached

with the employer, they do not constitute an appropriate internal comparable. *City of Menomonie (DPW)*, Dec. No. 32631-A (Greco, 8/24/09) at page 5, footnote 1.

But I need cite no cases to say that no arbitrator working in this state would impose a settlement on represented bargaining units based solely on a "settlement" reached with non-represented employees.

Arbitral Preference for Longer Contract Terms

Second, the Union asserts there is an arbitral preference for longer collective bargaining agreements. I agree. Longer contract terms allows the parties time to live with and under a contract before they have to go back to the table.

But as noted in the City's brief, there is arbitral precedent for choosing a one-year contract as opposed to a longer one among protective service employees. Arbitrator Torosian has written:

> [T]he County's one-year offer would establish a common expiration date for all five unionized employee groups in Langlade County. This would promote internal consistency especially in the are of benefits and would minimize the whiplash effect in bargaining. *Langlade County (Sheriffs)*, Dec. No. 29916-A (Torosian, 1/19/01).

Arbitrator Greco has decided for a one-year vs. a two-year contract as follows:

> "[T]he City's one-year wage proposal of 3% should be adopted over the Union's two-year offer. This result is consistent with the 3% across-the-board wage increases granted to all other unionized City employees in 2002 and it does not prevent the Union from seeking catch-up pay for 2003. *City of Superior (Firefighters)*, Dec. No. 30489-A (Greco, 4/26/03).

So while there is a preference for longer contract terms, there is precedent for awarding a one-year contract under the right circumstances.

Selection of External Comparable Pool

The Union asserts that the primary external comparable for this bargaining unit is the City of Manitowoc with the secondary comparables comprised of the Cities of Fond du Lac and Sheboygan and Manitowoc County. The City proposes municipalities of Algoma, De Pere, Kaukauna, Kewaunee, Manitowoc and Sturgeon Bay, as well as Manitowoc County.

The determination of comparability should be so easy but, alas, it is not. Arbitrator Strycker has written:

> The selection of appropriate comparables is a challenging task. While there are objective criteria that can be relied upon, a certain amount of subjectivity is always involved. Arbitrator Yaffe identified factors to consider in establishing comparability which include: similarity in services provided, similarity in level of responsibility, geographic proximity and similarity in the size of the employer. *School District of Mishicot*, Dec. No. 19849-A, (2/83) There are many other criteria relied upon to make judgments regarding the similarity of employers. The weight provided to these various criteria can vary depending upon specific circumstances, thus, confirming the unscientific nature of the process. *Calumet County (Police)*, Dec. No. 32700-A (Strycker, 9/25/09) at pages 30-31.

The main thrust of the Union's argument for its proposed comparable pool is that these comparables have been found comparable in arbitration decisions involving other comparables. The Union notes that in the *City of Manitowoc*, Dec. No. 28799-A, Arbitrator Roberts found that Manitowoc County and the City of Two Rivers were the primary comparables and that the Cities of Fond du Lac and Sheboygan were secondary comparables. The Union also notes that in an arbitration involving the fire fighter unit in the *City of Manitowoc*, Dec. No. 28785-A, Arbitrator Michelstetter used the Cities of Sheboygan and Two Rivers as comparables.

The problem with this analysis is that it uses the criteria which determined the comparables for one municipality and then applies that comparable pool to all of the other comparables. Thus, under the Union's analysis, the Cities of Fond du Lac, Sheboygan and Two Rivers, determined to be comparable to the City of Manitowoc by Arbitrator Roberts, are also comparable to each other.

As noted, determining the comparable pool for any particular entity involves several factors, only two of which need to be looked at here to make the point. In terms of the City of Manitowoc, the City of Two Rivers is a comparable based upon its geographic relationship in that they are contiguous municipalities. The Cities of Fond du Lac and Sheboygan, on the other hand, are comparable to the City of Manitowoc based upon the population of the communities.

In terms of the comparable pool for the City of Two Rivers, the City of Manitowoc is included, again, because of its geographic proximity; indeed, both the Union and the City include it in their proposed comparable pools. But since the City of Two Rivers does not share with the Cities of Fond du Lac and Sheboygan either proximity (with neither city in the same county as Two Rivers) or comparable population (with each city having a population of 40,000+, compared to Two Rivers' population of 12,575), I do not find either of them comparable with the City of Two Rivers, even though the Cities of Fond du Lac, Sheboygan and Two Rivers were found comparable with the City of Manitowoc. The determination of comparables must be based on the relationship of potential comparables with the employer involved in the arbitration, and not based on the fact that the employer involved and other

comparables are comparable to any other particular entity. Therefore, I exclude the Cities of Fond du Lac and Sheboygan from the comparable pool to be used in this matter.

A secondary problem I have with the Union's proposed list of comparables in that it lists only one primary comparable, that being the geographically close but much more populated City of Manitowoc. One primary comparable does not offer much to compare. The City's proposed comparable pool remedies that in that it offers six municipalities and Manitowoc County, which the Union also includes in its secondary comparable pool. The six municipalities, not including Manitowoc County, are within a 50 mile radius of the City of Two Rivers. The population of these six comparables range from 2,896 for Kewaunee to 34,620 for the City of Manitowoc with an average of population of 14,675 which compares favorably to the Two Rivers' population of 12,575.

So while the comparables proposed by the City are favored over those proposed by the Union, I do not wish to lock in a future arbitrator to this list because there seems to be other possibilities that could be included, municipalities within a reasonable distance of Two Rivers that have a population within an acceptable range of Two Rivers's population. Though inclusion of those possible comparables were not argued in this case, I let the field open for one party or the other to argue their inclusion in the future. But for this case, today, the City's proposed pool is accepted.

Weight to be Given External Comparables

But though the Union's proposal for the comparability pool is rejected, the comparables as accepted work in the Union's favor. In terms of these external comparables, the Union's offer of 3% is the same as the 2010 agreements in DePere, Kewaunee, and Manitowoc County and very close to that of the City of Maintowoc which had a 3% lift but 2.5% cost. Algoma and Kaukauna are not settled, and Sturgeon Bay's increase is tied to the Consumer Price Index.

Arbitrator Hempe has written that protective service personnel may be considered independently from other internal bargaining unit comparisons; indeed, internal comparables generally are not directly comparable to protective service units in many cases with the possible exception of the other internal protective service units.

> This is not to say internal units consisting of general service, as opposed to protective service, employees should be discontinued as comparables with the deputies' unit. The question is rather *how much weight* should be assigned to internal comparables, where, as here, there exist dissimilarities of the respective positions' responsibilities, training, physical requirements and hazards. *Sheboygan County (Sheriff's Dept)*, Dec. No. 32740-A (Hempe, 8/25/09) at page 26.

So protective service employees, whether fire fighters or police officers, are bound less to

the internal settlement pattern that general service employees, especially in terms of wages where the comparison is generally made with external protective service employee units. Indeed, comparison of a protective service unit with external comparables is appropriate and given considerable weight because it is a comparison with other protective service units. See *Village of Ellsworth (Police)*, Dec. No 32360-A (Torosian, 1/23/09) at page 22.

So the external comparables for 2010 strongly support the Union's offer in this matter.

Weight to be Given the Internal Comparables

Arbitrators generally give great weight to internal comparables. Arbitrator Yaeger has written:

> As I have stated previously in other interest arbitrations, internal comparability or, in other words, what terms and conditions of employment the Employer has negotiated with other represented bargaining units is a very significant factor, and in certain circumstances can be a controlling factor in deciding which final offer is selected. *Western Wisconsin Technical College*, Dec. No. 32531-A (Yaeger, 3/04/09) at page 8.

Other arbitrators agree. Arbitrator Greco has written:

> Internal settlements ordinarily must be given considerable, if not great weight, which is why a party seeking to break an internal wage pattern must establish the clear need to do so. *City of Menomonie (DPW)*, Dec. No. 32631-A (Greco, 8/24/09) at page 19.

Arbitrator Grenig has stated it this way:

> Internal comparables of voluntary settlements carry heavy weight in interest arbitration. If the employer is to maintain labor peace within the many bargaining units with which it negotiates, changes in wages and benefits must have a consistent pattern. *City of Altoona (Public Works)*, Dec. No. 32673-A (Grenig, 9/05/09) at pages 16-17.

In terms of protected service employees, Arbitrator Shaw has written:

> An internal settlement pattern should control unless it can be demonstrated that adherence to that pattern would cause unreasonable and unacceptable wage relationships relative to the external comparables. *Ozaukee Co (Sheriffs)*, Dec. No. 32592-A (Shaw, 11/02/09) at page 15.

Arbitrators have noted the effect on employee morale when one unit of employees are

treated differently from the employer's other units. Arbitrator Flaten has written:

> It is important that municipalities. . .should attempt to have consistency and equity in the treatment of its employees. Hard feelings are avoided when all employees are treated alike. Deviations from a historically established pattern can be disruptive and have a negative effect on employee morale. *Wauwatosa Professional Firefighters Association, Local 1923, and the City of Wauwatosa*, Dec. No. 27869-A (Flaten, 9/94), cited in *City of Wauwatosa (Fire Dept)*, Dec. No. 32645-A (Hempe, 8/15/09) at page 27-28.

Arbitrator Shaw noted not only the impact on employee morale but on an employer's credibility in such a case:

> Further, arbitrators have recognized a municipal employer's valid interest in equity and the fair treatment of all of its employees, and considered the negative impact on those interests and morale when one group of employees gets more than the rest. Arbitrators have also noted the negative impact of one group receiving more that what the other employees had voluntarily agreed to on the employer's credibility and on future negotiations. It being generally accepted that those employees would be reluctant to reach a voluntary agreement with the employer in the future for fear that if it did, the employer would then offer more to its other employees. *Ozaukee Co (Sheriffs)*, Dec. No. 32592-A (Shaw, 11/02/09) at page 15.

Here is where this case gets a little confusing since the choice before this arbitrator is not between the 3% increase in 2010 proposed by the Union and a percentage increase in 2010 proposal by the Employer, but the choice is between the 3% increase proposed by the Union and the Employer's position that the parties should go back to the bargaining table to work out 2010.

It is further confused in that, post hearing, all of the Employer's other represented employees voluntarily settled a 2010 contract with includes no 2010 salary increase. Taking note of this, these internal settlements certainly favor the Employer's final offer.

Internal Comparability and Police-Fire Parity

As noted by Arbitrator Hempe, firefighters and police officers continue to be justifiably linked as protective service groups, statutorily and in the mind of the public.

> The respective (though usually different) duties of each include physically exhausting, debilitating and at times personally dangerous activities, to which employees in non-protective or general service groups are not normally exposed. This is recognized, in part, by earlier retirement opportunities afforded them than to general service employee groups. Another

> consequence of this linkage is that a police officer bargaining unit and a firefighting bargaining unit employed by the same municipality usually constitute a close and accurate internal comparable for the other. *City of Wauwatosa (Fire Dept)*, Dec. No. 32645-A (Hempe, 8/15/09) at page 25.

Again, this is a bit complicated here because the City does not actually have an 2010 offer for this unit and at the time of hearing it did not have a settlement with the fire fighter unit for 2010; since then, the fire fighter unit has settled with no salary increase for 2010. But that proposal is not before me in regard to the police unit: I have a 3% increase in 2010 proposed by the Union vs. a one year contract ending in 2009 by the City. But there is no doubt that the 2010 fire fighter settlement strongly favors the City's position in this matter.

Impact of Health Insurance

Even though all issues of health insurance have been agreed upon, it still will have impact on this decision. The City asserts that all other City employees received their 3% salary increase in 2009 in exchange for the 2009 changes in the health insurance plan structure, changes this unit did not agree to until hearing in October 2009, and yet this unit received the same 3% increase in 2009 without giving the City the *quid pro quo* the other units did.

Arbitrator McAlpin faced a similar situation:

> The failure to promptly be able (to) implement this new (health insurance) program does have costs associated with it and, while the bargaining unit certainly has the right to invoke interest arbitration, it is not without additional costs to the Employer. *Outagamie County (Highway Dept)*, Dec. No. 32530-A (McAlpin, 2/11/09) at page 16.

Arbitrator Torosian stated that the bargaining unit should not be rewarded for not settling the health insurance issue at the time of the internal comparables by awarding the bargaining unit the same wage increase as the internal comparables, but he also stated that neither should the bargaining unit be punished for exercising its statutory right to interest arbitration. So while he found that the internal comparables favored the Union, savings in insurance had funded part of the wage increase for the internal comparables, which savings was not realized or available to pay the LO the same wage increase. See *Village of Ellsworth (Police)*, Dec. No 32360-A (Torosian, 1/23/09) at page 19.

Conclusion

The Union and the Employer also made other arguments, all of which have been reviewed and all of which have been determined to be wanting and, therefore, to have no impact on the final outcome of this matter.

The external comparables favor the Union. The internal comparables, especially including the settlements made for 2010 post hearing, favor the City. The most important internal comparable, the Fire Fighters, strongly favors the City. If I find for the Union, the City will have all of its bargaining units settled with no salary increase in 2010 and one unit with an arbitral imposed settlement increase of 3% in 2010. If I find for the City, all of the bargaining units will be on the same contractual schedule to which there are many benefits. And if I find for the City, the Union has nothing imposed upon it by such an award; instead, it is given the opportunity to go back to the bargaining table with the City to try to find an agreement for 2010 and, if unsuccessful, the Union still has the opportunity to return to arbitration to have the 2010 contract resolved.

So based upon a reading and review of the record, a reading and review of the briefs-in-chief and reply briefs, application of the arbitral criteria, and for the reasoning stated above, this arbitrator issues the following

AWARD

That the final offer of the City is the more reasonable of the two offers and shall be incorporated as the parties' 2009 collective bargaining agreement.

Dated at Madison, Wisconsin, this 26th day of March, 2010.

By _____
James W. Engmann, Arbitrator

STATE OF WISCONSIN
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WISCONSIN PROFESSIONAL POLICE ASSOCIATION

For Final and Binding Arbitration Involving
Law Enforcement Personnel in the Employ of

THE CITY OF TWO RIVERS

Case 110
No. 68339
MIA-2848
Decision No. 32745-A

Appearances:

Mr. Mark L. Olson, Davis & Kuelthau, S.C., Attorneys at Law, 111 E. Kilbourn Avenue, Suite 1400, Milwaukee, WI 53202, appearing on behalf of the City of Two Rivers.

Mr. Richard Terry, RWT Strategies, LLC, 6111 Rivercrest Drive, McFarland, WI 53538, appearing on behalf of Two Rivers Police Local 13, Wisconsin

Professional Police Association.

CONSENT DECREE

At the Arbitration hearing held in the above-reference matter on Thursday, October 22, 2009 in the Two Rivers City Hall, the parties agreed as follows:

1. The City of Two Rivers shall implement as soon as practicable, the across the board wage increase of three percent (3%) retroactive to January 1, 2009 as found in the Final Offers of both parties and shall become part of the successor to the expired January 1, 2007 through December 31, 2008 Collective Bargaining Agreement regardless of whether the successor is for 2009 or for 2009 and 2010.

2. The City of Two Rivers shall implement as soon as practicable, the insurance portion of the Final Offer (item # 2) below and it shall become part of the successor to the expired January 1, 2007 through December 31, 2008 Collective Bargaining Agreement regardless of whether the successor is for 2009 or 2009 and 2010.

Amend Section 1. Health Insurance, to incorporate the following health insurance plan, to become effective as of January 1, 2009 or as soon thereafter as practicable:

Effective January 1, 2009, the annual deductibles for health insurance coverage provided by the City's health insurance carrier, currently the Wisconsin Counties Association (WCA) Group Health Trust, are modified as follows:

Current WCA Plan Deductible	***New WCA Plan Deductible***	***Difference***
In-Network	*In-Network*	
$300 single	*$1000 single*	*$700 single*
$600 family	*$2000 family*	*$1400 family*
Out-of-Network	*Out-of-Network*	
$500 single	*$2000 single*	*$1,500 single*
$1000 family	*$3,200 family*	*$2,200 single*

The deductibles to be paid by employees are to remain unchanged; however, the difference between current WCA plan deductibles and the new WCA plan deductibles will be funded through health reimbursement accounts (HRA's) for each covered employee.

Increased deductible amounts shall be completely funded through an HRA funded exclusively by the Employer. Funds made available through the HRAs will only be available for paying eligible charges under the City's plan which have been incurred after the employee has met his /her annual deductible,

yet before he/she has met the WCA Plan deductible.

The HRAs will be administrated through a third party administrator (currently planned to be elflexgroup.com, Inc. or EFG). The third party HRA administrator will work in tandem with the current plan administrator, Midwest Security Administrators (MSA). Once an employee has met his/her annual deductible, but has not yet met his/her new WCA play deductible, MSA will transfer bills received from health care providers for services provided to the employee or employee's family members to the HRA administrator for payment. Such payments from the HRA will be make directly to the employee, who will be responsible for paying the bill(s) in question. Once the employee has reached his/her "new" WCA plan deductible as shown above, payments to health care providers will be made by MSA, in the same manner that claims are currently paid.

This change in the structuring of the City of Two Rivers health insurance benefit, which constitutes "self-funding" for a higher deductible under the coverage purchased from the WCA, will have no impact on the actual coverage provided to employees. In conjunction with this change, starting July 1, 2009, the following services will be paid as "In-Network" regardless of the provider:

1. *Ambulance Services*
2. *Independent Lab Services*
3. *Skilled Nursing Home Care*
4. *Home Health Care*
5. *PPO Hospital Radiologist, Anesthesiologists, Pathologist, and Emergency Room Doctor Charges*
6. *Oral Surgery as Currently Covered Under the Plan*

3. The City of Two Rivers shall implement the following "opt out" language as soon as practicable and it shall remain effect through December 31, 2010. However this language shall not be a part of the successor to the expired January 1, 2007 through December 31, 2008 Collective Bargaining Agreement. Neither party will assert that this language, whether including or excluding, the "escalator language" as the status quo in any subsequent negotiations.

In addition, any employee who voluntarily "opts out" of the City's health insurance coverage shall receive the following benefit:

Full - time active employees eligible for family or single insurance coverage and who "opt out" shall receive compensation of $138.46 per biweekly pay period ($3600) annually for family opt out and $53.38 per biweekly pay period ($1400) annually for single opt out.

In order to qualify, an employee must provide evidence of coverage under another health insurance plan, typically through his/her spouse. (Because of

this requirement that employees show proof of alternative coverage, this opt out option will typically not be available to single employees, unless they are somehow eligible for some other coverage, such as through a domestic partner).

Full-time employees eligible for family coverage who opt for single coverage (either convert or initial selection) will receive compensation of $84.63 per biweekly pay period ($2200) annually.

The above amounts will be adjusted annually to reflect increases in the single or family premiums in order to maintain the percentage of premium reflected by the above amounts compared to the rates in effect for 2009. For example, if the rates in 2010 increase by five percent (5%), the reimbursement would be increased by 5% (e.g. $84.63 x 1.05 = 88.86).

Should an employee who has chosen the opt out option and subsequently losses his/her alternative insurance through no fault of his/her own such as the result of a HIPPA "qualifying event," he/she shall be immediately be reentered and covered under the City' health insurance plan without proof of insurability or other restrictions. (Note: voluntarily dropping out of a spouse's health insurance program is not a HIPPA "qualifying event).

Employees who wish to re-enter the City's health insurance program for reasons other than the above shall be subject to the program's open enrollment policies in effect at that time.

4. The parties agree that the status and existence of the "escalator language" which is addressed in paragraph 3, above, will be determined by the parties through collective bargaining for a successor to the agreement which is currently being resolved through the arbitration proceeding in this case. The non- precedential nature of the "escalator language" that is contained in this Consent Decree is reaffirmed here.

5. The Final Offers of both parties shall remain under the jurisdiction of this Arbitrator for decision on all matters not resolved herein.

AWARD

All matters listed above are hereby

Ordered this 30th day of November 2009.

By _____
James W. Engmann, Arbitrator