

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Interest Arbitration Between
HORICON POLICE DEPARTMENT EMPLOYEES, LOCAL 1323-D, AFSCME, WISCONSIN
COUNCIL 40, AFL-CIO

And

CITY OF HORICON

Case 39
No. 68593
MIA-2863

Decision No. 33008-A

Appearances:

David Dorn, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 336 Doty Street, Fond du Lac, WI 54935 on behalf of Horicon Police Department Employees, Local 1323-D, AFSCME, AFL-CIO.

Lindner & Marsack, S.C., by Alan M. Levy, 411 East Wisconsin Avenue, Suite 1800, Milwaukee, WI 53202-4498, and David Pasewald, City Clerk, 404 East Lake Street, Horicon, WI 53032 on behalf of the City of Horicon.

ARBITRATION AWARD

Horicon Police Department Employees, Local 1323-D, Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter the "Union", is the exclusive collective bargaining representative of all full-time and part-time law enforcement personnel employed by the City of Horicon Police Department, excluding the Chief, captain, administrative assistants and all other

employees. The Union petitioned the Wisconsin Employment Relations Commission to initiate final and binding interest arbitration with the City of Horicon, hereinafter the "City", with respect to an impasse between the Union and the City pursuant to Sec. 111.77(3), Stats. The parties selected the undersigned, Douglas V. Knudson, to issue a final and binding award and he was appointed by order of the Commission dated August 6, 2010. A hearing was held before the undersigned on October 18, 2010 in Horicon, Wisconsin at which time the parties were given the opportunity to present testimony, documentary evidence and argument in support of their respective positions. The hearing was not transcribed. The parties filed post-hearing briefs by December 7, 2010.

Based upon consideration of the statutory criteria set forth in Sec. 111.77(6), Stats., the evidence and the arguments of the parties, the undersigned makes and issues the following

AWARD

STIPULATIONS:

At hearing, the parties stipulated to the inclusion of the following clauses in both final offers:

8.03-Stewards.

Revise the last sentence to read: "A copy of all disciplinary actions will be given to the Union."

11.05-Posting.

"The schedule template for the ensuing year shall be posted no later than November 1st of each year. Selections by employees shall be complete no later than November 30. The work schedule for the ensuing year shall be posted no later than seven (7) days after shift picks are completed. Each officer may request a copy of the completed schedule."

22.02 (C)-Uniform Allowance-Annual.

"All funds not expended from the employee's annual appropriation shall be carried over into the ensuing year."

22.06-Employee Repayment.

“Any employee who fails to successfully complete his/her probation or who voluntarily leaves the City during the first year of his/her employment shall return all uniforms and equipment for which the City paid some portion of the cost, but shall retain those items which are not readily used by others because of size or excessive wear and tear. In addition, the departing employee shall repay the City for those items not returned on the basis of the following schedule:

Departure within twelve (12) months of hire: 100% of the cost incurred by the City.

This requirement shall not apply to any items which are returned and can be used by other members of the Department.”

24.07-Travel Expense Rules.

Add the following language to the language in the 2006-08 contract: “If receipts are not provided by the employee, then the reimbursement from the City is taxable income for the employee.”

Appendix B-Approved Uniform Allowance Items

Does not include firearms.

REMAINING TWO ISSUES:

1. WAGES:

Union offer:

1/1/2009: 3% across the board increase
1/1/2010: 3% across the board increase

City offer:

1/1/2009: 2% across the board increase
1/1/2010: 2% across the board increase

2. VACATION AND HOLIDAY SCHEDULING:

Union offer:

13.03-Vacation and Holiday Scheduling.

Selection of Vacation time and Holiday time (as provided by Article XV) shall be by seniority and must be selected by March 1st of each year. During Vacation/Holiday picks, officers shall select 50% of the total vacation and holiday time to which they are entitled. If an employee is entitled to an odd number of vacation and holiday days, the sum shall be rounded down one day. The remaining 50% of entitled vacation and holiday days may be retained by the officer in a reserved manner to be used throughout the year as needed under the following request procedure. Floating Holidays can be used as a reserve day and are not subject to the 50% criteria. All vacation and holiday scheduling is subject to the approval of the Chief or his designee.

City offer:

13.03-Vacation and Holiday Scheduling:

Selection of Vacation time and Holiday time (as provided by Article XV) shall be by seniority and must be selected by March 1st of each year. During Vacation/Holiday picks, officers shall select 75% of the total vacation and holiday time to which they are entitled. If an employee is entitled to an odd number of vacation and holiday days, the sum shall be rounded down one day. The remaining 25% of entitled vacation and holiday days may be retained by the officer in a reserved manner to be used throughout the year as needed under the following request procedure. Floating Holidays can be used as a reserve day and are not subject to the 75% criteria. All vacation and holiday scheduling is subject to the approval of the Chief or his designee.

Final Annual Schedule:

Notwithstanding any other provision of this Article XIII, all use of vacation days, holidays and floating holidays must be scheduled no later than October 1 of the calendar year in which they are to be used.

POSITIONS OF THE PARTIES:

UNION:

Comparable Pool:

The Union proposes a comparable pool consisting of Beaver Dam, Berlin, Columbus, Hartford, Jefferson, Kewaskum, Lake Mills, Mayville, North Fond du Lac, Ripon, Slinger, Watertown and Waupun. With the exception of Ripon, these municipalities represent those adopted by Arbitrator Shiavoni in an interest arbitration in 2001 involving the City and the Horicon Public Works Employees' Union. The Union includes Ripon as a comparable as it falls comfortably within the geographic and demographic range of the comparable pool established in the Shiavoni arbitration. The municipalities of Chilton and Kiel, suggested by the City, would expand the geographic range used in the previously determined comparable pool. Arbitrator Schiavoni rejected the city of Plymouth as an external comparable for being "closer to Sheboygan and too geographically remote from Horicon". Both Chilton and Kiel lie north of Plymouth and are in an entirely different labor market. Those municipalities should not be in the pool of external comparables.

Wages:

The clear pattern of settlement among the external comparables indicates that the Union's wage offer is more reasonable than the City's wage offer. For 2009, eight of the thirteen comparable units received wage increases equal to the 3% across the board wage increase proposed by the Union. Four other comparables received wage increases greater than the Union's offer in the instant proceeding. Of the comparable municipalities, only Ripon settled for less than 3% and that settlement of 2.75% more closely resembles the Union's offer than the City's offer.

Similarly, the Union's offer of a 3% across the board increase in 2010 again more closely resembles the pattern of settlement among the comparable units. The average total lift based on actual patrolman wages for 2009 and 2010 among the comparable pool was 6.3%. The Union's wage offer would provide a 6.08% total lift over that same period, while the City's wage offer would provide a total lift of just 4.04% over that same period. The dollar amount of the wage increase proposed by the Union is more strongly supported by the external comparables. Three of the comparable units, i.e., Mayville, Lake Mills and Beaver Dam, reached settlements after January 1, 2009. The dollar amounts of those wage settlements were \$0.76, \$0.63 and \$0.71

respectively. The Union's final offer equates to a \$0.71 increase in 2010, so it is well supported by those recent settlements.

The City exhibits reflect the wage rate earned after a third year of employment by patrolmen in comparable communities. While three years represents the maximum wage rate in Horicon, this is not true in many of the comparable municipalities. In its brief the Union includes citations from other interest arbitration awards wherein comparisons of maximum wage rates were deemed to be of prime importance. The average maximum patrolman wage rate among the comparables in 2008 was \$25.08, compared to \$23.12 in Horicon. The City's offer would increase the gap between the maximum hourly wage rate in Horicon and the average maximum hourly wage rate of the comparable pool from \$1.96 in 2008 to \$2.62 in 2010.

A wage increase below the external settlement pattern is not supported by the current wage schedule. The Union's wage offer maintains the current rank of the patrolman which already is greater than only one of the fourteen municipalities being compared. The City's offer would make the patrolman the lowest paid of any comparable community. Arbitrators often have relied on the relative wage rankings of the comparables in selecting final offers so as to prevent bargaining units from losing ground.

Under Wis. Stat. 111.77, internal comparables are not a leading factor and should be given minimal weight, if any. Arbitrators have placed an emphasis on the unique nature of police work compared to non-law enforcement employees. The history of settlements in the public works unit and the police unit has not been of a lock step conformity, as evidenced by the fact that the police unit pays a portion of their monthly health insurance premiums while the public works unit does not. Based on that disparity the public works settlement should not be given much comparable significance and, further, a single settlement fails to constitute a controlling internal pattern.

Neither final offer raises a concern relative to the ability of the City to meet the costs of implementing an award. The difference in the wage proposals amounts to approximately \$7,812.41 over the duration of the two-year contract. At roughly \$3,900.00 per year, this

difference equates to only a fraction of a percentile of the City's overall expenditures or revenues. The average annual difference in cost as a function of the City's public safety expenditures is a fraction of a percent, i.e., 0.31%.

Vacation Selection:

The offers of both the City and the Union represent a departure from the status quo contract language regarding the selection of vacations. The Union's offer is an attempt to balance the flexibility traditionally afforded the officers in Horicon when selecting vacations with the City's desire for more control over the process. Vacation selection used to be initiated at a Union meeting where the officers would select vacation in two-week blocks by seniority until the officers either exhausted their vacation allowances or they decided to stop scheduling. It was entirely up to the individual officer as to how much vacation to schedule at the initial meeting. Such a system allowed officers to pick vacation in an orderly manner while affording some flexibility later in the year to account for necessary time off which could not have been anticipated months in advance. The Union's offer requires officers to schedule 50% of their available vacation by March 1, while the City's offer requires the officers to schedule 75% of their vacation by March 1. Under both final offers an officer can select additional vacation days with 14 days notice as compared to the current policy of a 7 day notice. Neither offer prohibits an officer from amending and rescheduling vacation later in the year nor modifies the City's right to approve when vacation may be taken. Mayville is the only one of the thirteen comparable communities to require any or a percentage of vacation to be scheduled by a specific day. Given that vacations can be rescheduled later, it is not clear what benefit the City realizes by requiring an officer to schedule 75% of vacation so early in the year.

The Union concludes that its final offer is more reasonable and should be adopted by the arbitrator.

CITY:

The City's Economic Circumstances:

Horicon had deficit budgets in 2008, 2009 and 2010. Over the period of 2009-2010, the City had to absorb cost increases equal to .8% of wages for WRS retirement benefit contributions and 18.4% of wages for health insurance premiums. Police unit employees saw their proportion of health insurance premiums go down each of those years and they pay no part of the WRS cost. Although the City adopted the maximum tax levy allowed by law during the period of 2008-2010, it still had to lay off employees or to decline to fill vacancies in all of its administrative departments. The City's net assets, as a whole and in each sub-category, went down each year. Due to insufficient revenues, the City was forced to use its reserves to pay for day-to-day operations even at a reduced level of those operations. The balance in the City's general fund decreased 8% (\$186,640) in 2009. The Union suggests the cost of the wage proposals are only a small part of the City's overall budget. However, this fails to acknowledge that these costs are automatically expanded by required payments which are percentages of wages (such as WRS contributions) and by extra wage compensation (such as payments of unused sick leave upon retirement, death or disability). Moreover, all wage rates have a compounding factor for any future wage increases which are multiples of whatever wage rate is determined here.

Section 111.77(6)(c) requires attention to the community's economic reality and does not require a municipality to be in bankruptcy before it can argue an inability to pay for a union's demand.. The City shares the limitations and losses of all Wisconsin communities with job losses, housing foreclosures and long-term unemployment. Citizens out of work means income tax receipts have fallen, property taxes have gone unpaid and traditional income resources have diminished with continued reductions in State funding, e.g., shared revenues provided under the county and municipal aid program were reduced another 3% in 2010. The City includes this quote in support of its position. "(G)iven the current economic conditions facing governments at all levels, it is in the best interests of the public for government to reduce its expenditures, especially when it is possible for it to do so without reducing the level of services it provides." *Ozaukee County*, Dec. No. 32592-A (Shaw, 11/09). The City does not seek any greater sacrifice from this unit than has been accepted through voluntary agreement by its other represented employees and by its non-represented staff.

Comparable Pool:

This is the parties' first interest arbitration for a police unit contract. An arbitration for the public works unit a decade ago spoke of various comparables based on geography and a lack of controversy to establish their relevance with no attention to other important factors. The City cites the following analysis:

“In adopting external comparables, arbitrators have considered such factors as size of municipality, geographic proximity, economic conditions, similar tax levy, and union affiliation.” *City of Mosinee*, Dec. No. 30547-A (Baron, 10/03).

By that test, the only fair comparison is to communities with populations in the range of 4,000 and with both adjusted gross income per tax return and general property tax revenues within 10 or 15 percent of the amounts for Horicon. That means the communities suggested by the parties should be limited to Berlin, Chilton, Columbus, Horicon, Kewaskum, Kiel, Lake Mills, Mayville, N. Fond du Lac and Slinger. All of those communities have populations between 3,000 and 6,000. In that group Horicon has the second smallest population, third lowest adjusted gross income, third highest property taxes and third highest per capita police cost in 2008.

The Union suggested a total of 13 outside comparables, a group containing communities far larger than Horicon, whose populations and economic resources so far exceed those of Horicon that they can't be considered comparable. Three of the disputed comparables are 30 or more miles from Horicon and are not appropriate for that reason.

One other aspect of the external comparables is that most of the data presented was derived from contracts negotiated before those communities suffered the impact of the current national financial disaster. In September 2008 the unemployment rate in Wisconsin was 5%. The rate was 6.4% in December 2008, 7.1% in January 2009, 7.9% in the remainder of 2009, 8.7% in January 2010, over 8% for the next six months and 7.9% in the following three months. Of the 4 comparables negotiated since the economic crisis became evident around January 1, 2009, only Beaver Dam at \$0.74 included an increase as high as the Union seeks. The other 3 hourly rate increases were Kiel at \$0.25 (effective 7/1/10), Lake Mills at \$0.53 and Mayville at \$0.66. The average increase of the 4 contracts is \$0.545 per hour. Horicon is offering an increase of \$0.47,

86% of that average. That offer is far more appropriate than the Union's offer of \$0.71. In the context of the new economic reality, Horicon, already burdened by the highest per capita police cost and second lowest property tax revenue among these five communities, has made a very reasonable offer.

The City contends that the internal comparables support its final offer. The 2009-2010 agreement negotiated by the Union for the City's public works unit provided wage increases of 1% every six months for a two year lift of 4.06%. The City's offer to the police unit is 4.04%, while the Union's offer is 6.08%. The City's non-represented employees received the same wage increase as the public works employees. While it is true that the police unit agreed in a prior contract to pay a portion of the health insurance premiums, that figure is third lowest among its 2010 comparable and the employee's relative share decreases every year because it is a fixed dollar amount. The City cites awards according significant weight to the employer's ability to negotiate a voluntary agreement which includes the same terms for one unit that is proposed in arbitration for another unit.

Wages:

The City made its wage comparisons based on the wage rate for patrol officers payable after three years of service by each comparable, since that is the time period it takes to reach the maximum rate on the wage schedule for the City's police unit. The following is a listing of the lengths of time it takes a patrol officer to reach the top rate among the Union's comparables; Jefferson is 30 months, Beaver Dam, Columbus and Watertown are 4 years, Kewaskum and Slinger are 5 years, N. Fond du Lac is 7 years, Ripon is 15 years and Berlin is 18 years.

In making the wage comparisons the City believes it is appropriate to include the pre-tax monthly Section 125 health benefit in the Horicon police officer wage rate. The City values that benefit at \$0.73 per hour. When a common standard of the respective wage rates after three years of service and a wage rate for Horicon which includes the \$0.73 is used to compare the City's offer to the 13 comparables proposed by the Union, the City's offer exceeded 3 of the comparables, i.e., Berlin, Columbus and Ripon, in each year.

Vacation Selection:

In addition to the wage rate issue, the parties are in dispute about the minimum requirements for scheduling off days. The bargaining unit has six employees and each receives 9 paid holidays and 2 floating holidays for a total of 66 paid days off. Five officers currently are entitled to 10 vacation days per year and one officer to 20 vacation days for a total of 70. Of 365 days in a year with a 24/7 department schedule, 136 days are paid days off for an employee (not including sick leave, funeral leave, personal leave, compensatory time off, or time off for training requirements, on the job illness or injury, or, family and medical leave).

The City has not proposed any change to the method of vacation selection or the number of days selected, but rather, it only asks that the selection process occur one month earlier than at present and the selection include 75% of the days, excluding the 2 floating holidays, with the remainder of the days to be selected no later than October 1. This process will allow better planning to cover scheduled time off, including any need for the use of non-unit employees to cover for absent unit employees. Further, there would be less competition among employees for paid days off on traditional holidays, during hunting season and similar clusters of dates with high demand for time off. Since floating holidays are not included in the scheduling process, employees have a reserve to allow for unexpected absences. The Union's offer is identical to the City's (apparently acknowledging the value of planning the schedule) but limits commitments to 50% of the days by March 1 and has no final selection date like the City's October 1 date. The Union's issue seems to be, in large part, that this is a change from "tradition". Their other concern is that people seeking to change a pre-selected day off may create work for the scheduler, who must rearrange the shifts of other officers to absorb the changes. No explanation was given why this would be different from the current practice of working out changes with seven to eight days notice. The City's proposal does not prevent any post-selection changes acceptable to supervisors nor does it affect voluntary trades among unit members.

DISCUSSION:

Wis. Stat. 111.77(6) directs the arbitrator to consider and give weight to the following eight factors under that provision in reaching a decision as to the final offer to be selected and incorporated into the parties' agreement:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - 1. In public employment in comparable communities.
 - 2. In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall 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.

In this case the parties focused on factors (c), (d) and (f). The stipulations reached by the parties under (b) were set forth above.

Subsection (6)(c)

The City contends that its financial circumstances can't sustain the wage increase sought by the Union. The City points out that: it has the third highest police cost per capita among Wisconsin municipalities its size; it had deficit budgets in 2008, 2009 and 2010; and, it taxed to its levy limits each year. The City also refers to the continuing economic crisis negatively affecting tax receipts and State funding.

The Union asserts that the difference between the wage offers is less than 0.13% of the City's public safety expenditures in 2009 and does not justify a wage settlement below the established pattern of settlements among comparable police departments, since those departments share the same economic conditions as the City.

The undersigned acknowledges the City is dealing with difficult economic conditions, but is not persuaded from the exhibits that those conditions differ from the ones impacting comparable communities. The exhibits did not show the City's relative standing among the communities it considered comparables had worsened with respect to its police cost per capita or its property tax levies. While this factor slightly favors the City's wage offer, it does not stand alone, but must be weighed with the other factors.

Subsections 6 (d) & (f)

The City's patrol officers reach the maximum wage rate after three years of service. Because all the Union's comparables, with the exception of Jefferson at 30 months, have wage schedules wherein the top wage rate is reached after periods ranging from four to eighteen years, in order to do an "apples to apples" comparison, the City believes it is appropriate to compare its top wage rate, reached after three years, to the three year wage rates at the comparables, rather than to the maximum rates of the comparables. The Union opposes such a comparison and contends that a comparison of maximum rates is more reasonable. In support of its position the Union cites two prior interest arbitration awards both of which relied on comparisons of the maximum salary rates. In *Washington County*, Decision No. 21515-A, (Vernon, 11/84) the arbitrator stated:

“Simply put, the structural considerations to salary schedules are deserving of consideration. However, most weight should be given to maximum rates in the final

analysis. This is so for a variety of reasons: (1) arbitrators generally give most weight to maximum rates in proceedings involving employees similar to those here (social workers, among others); (2) most employees will normally be at or near the maximum rates; and, (3) there is often variance in the structure of the rest of the salary schedules making other comparisons more difficult.”

The Union also cited *Rock County*, Decision No. 25698-A, (Kerkman, 5/89).

The City’s argument does not persuade the undersigned that a comparison of wage rates based on the three-year rates is more logical than a comparison of the maximum rates. It is virtually impossible to determine what tradeoffs may have been made during prior negotiations in the fashioning of the wage schedules found in the various comparables. Consequently, the comparison of the wage offers will be based on the impact those offers have on the relative ranking of the maximum wage rate for the City’s police officers compared to the maximum rates paid by the external comparables to their police officers.

Such a finding does not answer the City’s contention that its contribution to a Section 125 plan for each police officer should be added to the wage rate when making comparisons to the external comparables. At hearing the City calculated said contribution to be the equivalent of \$0.73 per hour in wages. In its reply brief the City calculated the hourly wage equivalent to be \$1.03 in wages because that amount is equal to \$0.73 after deductions for FICA, Wisconsin income tax and federal income tax. The Union disagrees with adding said amount to the wage rate paid by the City when comparing that maximum wage rate to the maximum wage rates paid by the external comparables on the basis the City made no effort to account for similar arrangements in other municipalities. The undersigned believes the City makes a reasonable case for adding the Section 125 contribution to the maximum wage rate before making comparisons to the external comparables. The payment falls within the overall compensation consideration outlined in (6)(f). Moreover, such a payment is a uniform amount, unlike longevity payments which can vary by length of service. Further, the payment could have been agreed to in lieu of a higher wage rate or an extended wage schedule. However, the appropriate amount to be used for comparisons with the external comparables is \$0.73, since the larger amount of \$1.03 apparently

only applies when the Section 125 contribution is taken as a cash payment and the record does not establish how often the employees have taken the contributions as cash in the past.

In looking at the percent of the wage increases granted by the Union's thirteen external comparables, only Ripon settled for an increase of less than 3% for 2009 and even the Ripon increase was for 2.75%. That pattern of settlements clearly supports the Union's proposal for a 3% increase in 2009.

Eleven of the same thirteen comparables had negotiated increases for 2010. Eight of the eleven had scheduled increases of 3% or more. One had a scheduled increase of 2.75% and one had a scheduled increase of 2.5%. One had no increase for 2010. Two of the comparables had not completed negotiations for 2010. Even factoring in the comparable with no wage increase in 2010, the Union's offer of 3% is more in line with the settlement pattern of the Union's comparables.

The undersigned now looks at the comparables suggested by the City, starting with the following seven municipalities also included in the Union's comparables; Berlin, Columbus, Kewaskum, Lake Mills, Mayville, North Fond du Lac and Slinger. In that group were the following scheduled wage increases: Columbus, Mayville and North Fond du Lac had 3% on January 1 in both 2009 and 2010; Berlin had 3% on January 1 and \$0.20 on July 1 in both 2009 and 2010. Lake Mills had 3% on January 1 in 2009 and 2.5% on January 1 in 2010; Slinger had 2% on January 1 and 2% on July 1 in both 2009 and 2010; and, Kewaskum had 2% on January 1 and 2% on July 1 in 2009 and was in negotiations for 2010 at the time of the hearing herein. All of the seven municipalities gave increases of 3% or more in 2009. Of the six municipalities with settlements for 2010, only Lake Mills had a scheduled wage increase of less than 3%. The Lake Mills scheduled increase of 2.5% falls exactly halfway between the final offers of the parties herein. Such a pattern of settlements again supports the Union's offer in this matter.

The undersigned excluded Chilton and Kiel from the appropriate external comparables because both are more than 50 miles distant from Horicon. The City's proposed inclusion of Chilton and Kiel among the comparables appeared to be inconsistent with its contention that Berlin, Jefferson

and Ripon should be excluded from the Union's comparables because they were all 30 or more miles distant from Horicon. It is also noted that Lake Mills at 29 miles distance from Horicon is only 1 mile below the City's suggested cutoff of 30 miles, but is included in the City's list of comparables.

Even though the undersigned did not find Chilton and Kiel to be appropriate external comparables, he did look at Chilton and Kiel since the City had included those municipalities in its comparables. City exhibit 5 listed the wage increases in Chilton for a patrolman to be 3% in 2008, 3% in 2009 and 3.22% in 2010 for a total lift of 6.22% in 2009 and 2010. The same exhibit listed the wage increases in Kiel for a patrolman to be 3.25% in 2008, 3.52% in 2009 and 1.01% in 2010 for a total lift of 4.53% in 2009 and 2010. Thus, even adding Chilton and Kiel to the list of external comparables, as proposed by the City, would offer little support to the City's offer of a 4.04% lift compared to the Union's offer of a 6.08% lift for 2009 and 2010.

Next, the undersigned looked at how the respective offers of the parties affected the ranking of the City's maximum wage rate compared to the maximum wage rate of the external comparables. First, the City's offer is compared to the group of seven comparables consisting of Berlin, Columbus, Kewaskum, Lake Mills, Mayville, North Fond du Lac and Slinger. With the inclusion of the \$0.73 in the Horicon wage rate, Horicon ranked sixth lowest of the eight in 2008. Under the City's offer the Horicon wage rate remained at sixth lowest of the eight in 2009, but dropped to seventh lowest of the eight in 2010, even if Kewaskum gave no wage increase in 2010. The Union's offer, again including the \$0.73 in the wage rate, ranks Horicon sixth lowest of the eight comparables in both 2009 and 2010, even if Kewaskum gave no wage increase in 2010. Thus, the Union's offer would maintain the relative rank of the patrol officers from 2008 through 2010, while the City's offer would result in a lower ranking in 2010 than was held in 2008 and 2009.

The same pattern results from comparing how the patrolman rate would rank when included with the external comparables suggested by the Union. Including the \$0.73 in the Horicon maximum wage rate would cause that rate to be the twelfth lowest of the fourteen municipalities in both 2008 and 2009 under the offers of both the City and the Union. However, in 2010 the City's

offer would rank as the thirteenth lowest of the fourteen, even if Kewaskum and Watertown gave no wage increases in 2010, while the Union's offer would continue the Horicon wage rate to be ranked the twelfth lowest of the fourteen.

The Union's final offer on wages is strongly supported when the final offers of the parties are compared to the settlements of the external comparables suggested by either the City or the Union, regardless of whether the comparison is based on the percentage of the wage increases or the relative ranking of the maximum wage rates.

The City also argues that most of the contracts for the external comparables were negotiated before those communities suffered the impact of today's financial disaster and only one of the four settlements among the comparable communities since this crisis became evident around January 1, 2009 included dollar increases as high as the Union seeks. The undersigned finds that argument to be inaccurate. The examples cited by the City were Mayville with an hourly rate increase of \$0.76 negotiated on 10/10/09, Lake Mills with an hourly rate increase of \$0.53 negotiated on 5/12/09, Beaver Dam with an hourly rate increase of \$0.74 negotiated on 6/15/09 and Kiel with an hourly rate increase of \$0.25 negotiated in 2010. The City's offer generates an hourly rate increase of \$0.47 for 2010, which of the four examples cited by the City only exceeds Kiel and would result in the City's maximum wage rate still being lower than the other four, including Kiel. In comparison, the Union's offer generates an hourly rate increase of \$0.71 in 2010, which amount would exceed the increases in Lake Mills and Kiel, but would be less than the increases in Beaver Dam and Mayville. The Union's offer would move the maximum wage rate ahead of Kiel, but would leave it below the rates in Beaver Dam, Lake Mills and Mayville. Consequently, the undersigned is not persuaded that support for the City's final offer is found in the examples of wage increases negotiated since January 1, 2009.

The City believes its internal comparables provide support for its final offer. The only other represented bargaining unit of City employees consists of the public works employees. The settlement for the public works unit provided for wage increases of 1% every six months in 2009 and 2010 for a total compounded lift of 4.06%, compared to the 4.04% lift offered to the police unit. The City also notes that its unrepresented employees received the same wage increases as

the public works unit received. The Union argues that the internal comparables are not supported by the bargaining history and it points to the lack of uniformity in prior settlements between the public works unit and the police unit, as evidenced by the fact the police unit employees pay a portion of their monthly health insurance premiums, while the public works unit employees do not pay a portion of their monthly health insurance premiums.

Given the unique duties and responsibilities of protective service employees, the comparison of wages, hours and conditions of employment of police units with other protective service employees is often given the most weight in evaluating final offers. However, subsection (6)(d) is sufficiently broad to also allow internal comparisons. The evidence in this case fails to establish that the police and public works units have a history of consistently uniform settlements for wages and benefits. At a minimum, as noted by the Union, there exists a difference in contributions toward monthly health insurance premiums. Based on such a difference, the undersigned does not find one settlement by the public works unit to be sufficient to establish an ongoing pattern of uniform internal settlements.

In summary, it is concluded that the record strongly supports the Union's final offer on wage increases.

Vacation and Holiday Scheduling:

Both final offers represent a change from the language of the 2006-08 contract.

The City believes its proposed language will allow for better planning to cover scheduled time off, as well as minimizing officers delaying their selections until late in the year and then having to compete for popular days off. The Union believes that the City's greater percentage requirement for the initial scheduling of time off will actually result in more changes later in the year.

Under both offers an officer can reschedule vacation and holiday time off later in the year. Both offers also make all vacation and holiday scheduling subject to the approval of the Chief or his

designee. The City's proposal to require a higher percentage, i.e., 75%, of vacation and holiday to be scheduled by March 1 was based on the premise that the Union's lower percentage of 50% would result in more changes in the staffing schedules as the calendar year progresses and would make planning more difficult for both management and the employees. In the absence of any factual support for such a premise, the undersigned does not find the City's presumptions to provide a compelling reason to adopt the 75% requirement. Thus, this issue is given little weight in the final determination of which final offer should be selected.

In summary, the undersigned concludes that the City's economic circumstances and conditions do not outweigh the extensive support provided by the settlements among the external comparables for the Union's final offer on wages.

Based on the foregoing, the evidence and the arguments of the parties, and, having considered the statutory criteria under Sec. 111.77 (6), Stats., the undersigned enters the following

AWARD

That the Union's final offer is selected and, along with any tentative agreements of the parties, shall be incorporated into the parties' 2009-2010 collective bargaining agreement.

Dated this 26th day of January 2011.

Douglas V. Knudson
Arbitrator