

SEP 24 2014

BEFORE THE ARBITRATOR

RELATIONS COMMISSION

BEAVER DAM POLICE ASSOCIATION,

LOCAL 206

and

THE CITY OF BEAVER DAM

Case No. 102

No. 71991

MIA - 3076

Decision No. 34654-A

APPEARANCES:

BENJAMIN M. BARTH, LABOR CONSULTANT, Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, WI 53022 on behalf of the Beaver Dam Police Association, Local 206

STEVEN C. ZACH, ATTORNEY, Boardman & Clark LLP, 1 S. Pinckney St., Suite 410, P.O. Box 927, Madison, WI 53701-0927 on behalf of the City of Beaver Dam

INTEREST ARBITRATION AWARD

Background

The City of Beaver Dam, (City), and the Beaver Dam Police Association, Local 206, (Union or Association), are parties to a collective bargaining agreement (CBA) which ended December 31, 2013. The parties

reached impasse in their bargaining for the 2011-2013 collective bargaining agreement and on February 18, 2013 filed a petition with the Wisconsin Employment Relations Commission to initiate compulsory final and binding arbitration pursuant to Wis. Stats. 111.77(3), Municipal Employment Relations Act (MERA). On September 17, 2013 a member of the Commission's staff, conducted an informal investigation which reflected that the parties were deadlocked in their negotiations. On October 10, 2013 the investigator notified the Commission of the parties' deadlock. On October 30, 2013 the Commission certified that the conditions precedent to the initiation of compulsory final and binding arbitration pursuant to Wis. Stats. 111.77 of the MERA with respect to negotiations were met and ordered compulsory final and binding arbitration pursuant to Wis. Stats. 111.77(4)(b). The parties selected the Undersigned as their Arbitrator and he was so appointed by the Commission on December 19, 2013. A hearing on the matter was held in Beaver Dam on June 18, 2014 and briefs from the parties were received by August 11, 2014. The parties advised the Undersigned on August 11, 2014 that they were not filing any reply briefs, at which point the record was closed.

The Parties also advised the Arbitrator that it was not necessary to consider the Detective's wages and benefits since they closely follow the Patrol Officer's wages and benefits.

Issues

The question is whether the Arbitrator should select the final offer of the Association or that of the City. The Union says the Arbitrator should rule on the following, both of which appear in the parties' respective Final Offers:

1. Tentative Agreements dated January 20, 2014;
2. Wages as follows:
 - a.) 1.75% in the first year (2011);
 - b.) 1.75% in the second year (2012);

- c.) 3.0% in the third year (2013) -- all of which to begin on January 1 of each year.

The City, on the other hand, asks the Arbitrator to rule on the following:

1. Wages:

- a.) Status quo for the first two (2) years (2011 and 2012)
- b.) 3% increase in the third (3) year
- c.) \$500.00 signing bonus also in the third (3) year (2013)

2. Modify Article XVI, Secs. 16.04 and 16.06 with respect to insurance during leave and the use of intermittent leave.

Section 16.04 – Medical Leave: Employees shall be granted a medical leave of absence without pay upon presentation of satisfactory demonstration that they are medically unable to perform available work with the City. Such leave shall be in no greater than thirty (30) day increments with extensions of thirty (30) days, unless otherwise specified by the City. Employees shall, at the request of the City, submit additional medical documentation to support the bases for the leave and any extensions thereof. The total length of such leave shall not exceed one (1) year. The employee may return from such leave upon submission of satisfactory proof that he/she is medically able to perform available work with the City. The City may request the employee to undergo an independent medical examination during the leave or at its conclusion, at the City's expense, to confirm the employee's medical status. An employee, at his/her election, may use earned and accumulated sick leave and accrued vacation to provide income maintenance during said leave. The medical leave provided by this Section is intended to meet and (sic) exceed the minimum

requirements of Wis. Stats. 103.10(4). The City shall continue contributions for health insurance premiums for such period as required by law, or if not required by law, if ~~the~~ if an employee is receiving compensation, i.e., sick leave pursuant to Article XIV, including Section 14.02, or accrued vacation, while on medical leave, In no event shall said period of premium continuation be less than two (2) weeks. In the event that said leave is unpaid and City payment of insurance coverage is not required by law, the employee may continue coverage in effect during any month(s) of unpaid medical leave by submitting to the City Finance Director the required premium payment by the 1st day of each month. Failure to submit the required premium amount in a timely fashion shall result in the employee's removal from the City health insurance program without recourse from the employee.

Section 16.06 – Family Leave: Employees who have been employed by the City for more than fifty-two (52) consecutive weeks and have performed active work for the City for at least one thousand (1,000) hours during the preceding fifty-two (52) week period shall be granted a leave of absence for family leave as set forth in Section 103.10(3) of the Wisconsin Statutes. Said family shall be as follows:

- a. Six (6) weeks' unpaid leave in a twelve (12) month period for the birth or adoption of an employee's child, provided the leave begins within sixteen (16) weeks following the child's birth or adoption. This leave must be taken as a block; intermittent use is not permitted.
- b. Two (2) weeks' leave in a twelve (12) month period for the employee to care for a spouse, parent or child of the employee with a serious health condition defined as a disability, physical or mental; injury; impairment; or condition involving impatient (sic) in a hospital, nursing

home or hospice and/or outpatient care that requires continuing treatment or supervision by a health care provider. At the employee's election, the City shall deduct time spent in said leave from the employee's accumulated sick leave. In the event that the employee has insufficient accumulated sick leave and/or elects not to use his/her sick leave for purposes of income protection under this subsection, said leave shall be without pay.

3. The City shall continue contributions for health insurance premiums for such period as required by law, or if not required by law, if the employee is receiving compensation, i.e., sick leave pursuant to Article XIV, including Section 14.02, or accrued vacation, while on medical leave. In no event shall said period of premium continuation be less than two (2) weeks. In the event that said leave is unpaid and City payment of insurance coverage is not required by law, the employee may continue coverage in effect during any month(s) of unpaid medical leave by submitting to the City Finance Director the required premium payment by the 1st day of each month. Failure to submit the required premium amount in a timely fashion shall result in the employee's removal from the City health insurance program without recourse from the employee.

~~The City shall continue contribution for health insurance premiums for the duration of said leave in a manner which is consistent with the existing collective bargaining agreement and/or personnel policy which establishes the City's obligation for health insurance premium contributions on behalf of the employee.~~

Relevant Statutory Authority

The applicable statute directing the Arbitrator in this matter is Wis. Stats. 111.77(6) This statute provides as follows:

(6) (am) In reaching a decision the arbitrator shall give greater weight to the economic conditions in the jurisdiction of the municipal employer than the

arbitrator gives to the factors under par. (bm). The arbitrator shall give an accounting of this factor in the arbitrator's decision.

(bm) In reaching a decision, in addition to the factors under par. (am), the arbitrator shall give weight to the following factors:

1. The lawful authority of the employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
4. 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.
5. The average consumer prices for goods and services, commonly known as the cost of living.
6. 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.
7. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
8. 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.

The Parties' Positions

The parties' basic positions are not set forth in detail but are summarized here. Further arguments made by the parties appear in the Discussion Section to follow.

The Union

The Union argues the statutory factors under its "Introduction" section. The issues of "Internal Settlements"; Failure to provide an adequate quid pro quo; and the fact that the membership wants to maintain its standing among the comparables are argued under the "Argument" section. Both are labeled "IV". The Undersigned believes these topics should be placed under Wis. Stats. 111.77(6)(bm) 4, 6 and 8 respectively and will treat them as though they were argued under those sections.

There is only one dispute to be resolved by the Arbitrator; wages. The Union maintains that one of the controlling factors in this interest arbitration is whether the City has offered an adequate quid pro quo in return for the significant modifications it seeks in Article VII – Retirement and Article XV – Insurance. It says that the Employer not only fails to offer a meaningful and adequate *quid pro quo* but it also insults the membership with a wage offer substantially below the external comparables.

Wis. Stats. 111.77(6)(am): In reaching a decision the arbitrator shall give greater weight to the economic conditions in the jurisdiction of the municipality of the municipal employer than the arbitrator gives to the factors under par. (bm). The arbitrator shall give an accounting of this factor in the arbitrator's decision. The parties agree that the economic conditions of the City of Beaver

Dam are good and have not argued otherwise. Thus this factor is not an issue between the parties.

Wis. Stats. 111.77(6)(bm)1: The lawful authority of the employer to enter into the contract. The Parties both agree that the City has the statutory authority to enter into this agreement. Hence, the first statutory factor is not in dispute and is not argued by the Parties.

Wis. Stats. 111.77(6)(bm)2: Stipulations of the parties. The parties have agreed on a number of TAs as follows:

- A. That the Employees of the Union will pay 3% of the employee contribution to the Wisconsin Retirement System effective June 1, 2013.
- B. The Employee's contribution to the health insurance premium will increase from the current 10% to 11% effective upon the signing of the contract.
- C. The TA relating to housekeeping matters in the City's proposal under Article IV, Sec. 4.04 (Detective work hours); Article IV, Sec. 4.05 (Shift switches); Article V, Sec. 5.06 (Job classification); Article VI, Sec. 6.11 (Compensatory time); Article VI, Sec. (Weapons qualifications); Modifications of Gender Pronouns Throughout the Agreement; Agreement to Work Together on the Formation of a Drug and Alcohol Policy.
- D. At the hearing on this matter the parties agreed that the City's proposal relating to Article VI, Sec. 16.04 and Sec. 16.06 should be considered TAs.

Hence, there is no dispute over factor number 2 .

Wis. Stats. 111.77(6)(bm)3. As for the third statutory factor, the interest and welfare of the public and the public's ability to afford the cost of the Union's final offer, the Union called an uncontested witness, Jim Van Erem, Jr., Union President, who testified that the City has the ability to pay the Association's final offer. His testimony was not contested nor has the City argued an inability to pay. Also, John Somers, Director of Administration for the City, was called and confirmed that the City had the ability to pay the costs of the Association's

offer. Therefore, this particular factor, the public's ability to afford the cost of the Association's offer, is not in issue. As for the second part of this condition, a consideration of the interests and welfare of the public, the Union believes that the public interest is well served if the citizens and taxpayers of the City of Beaver Dam are provided with public servants who are well paid and of high spirits and morale. Officers interact with their fellow officers in neighboring jurisdictions and are well aware of the financial trends in other jurisdictions. They depend on each other for mutual aid and backup and they attend the same type of training and see one another processing arrests at the District Attorney's office. During these meetings conversations among them take place relative to wages, hours and conditions of employment. The Association believes that its final offer will have a more positive effect on the Beaver Dam police officers and that this will, in turn, have a positive effect on the interests and well-being of the citizens they serve.

Wis. Stats. 111.77(6)(bm)(4)a Factor Number 4 requires the Arbitrator to compare wages, hours and conditions of employment of employees within the same community. It states the following:

Comparison of 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.

The drafters of this requirement clearly recognized the need to distinguish the special needs of law enforcement employees when compared with employees holding other positions within the same community. Arbitrator Fleishli observed in PORTAGE CITY, Case 16, No. 51947, INT/ARB-7488 (sic):

“Logically, there is a sound basis for comparing law enforcement personnel with other law enforcement personnel. Not only is the nature of their work significantly different than that which is performed by blue collar and white collar employees in the same

community, a separate statutory procedure exists, and has existed for many years, for the establishment of their wages, hours, and working conditions.” (Emphasis added)

Throughout the negotiations over wages the Association has consistently argued that its final offer was supported by settlements received by other law enforcement employees within comparable communities. The Association believes this argument to be consistent with statutory criteria and asks the Arbitrator to concur.

Factor Number 5 provides that the Arbitrator give weight to the average consumer prices for goods and services, commonly known as the cost of living (CPI). Both parties' final offers are well below the average cost of living during negotiations and at the time of the Arbitration hearing. At the time the final offers were certified, the CPI was 1.0% and the Association's final offer was 1.75% effective January 1, 2011; 1.75% effective January 1, 2012; and 3% effective January 1, 2013. The City's final offer has a wage freeze for 2011 and 2012; and a 3% increase effective January 1, 2013. On the day of the hearing the Association produced the most recent CPI (May, 2014) revealing that the latest CPI was 2.1%. The Association also produced a CPI for January, 2012 which was 2.9% and a CPI for January, 2011 which was 1.6%. Clearly, the Association's final offer is closer to the CPI than the City's and is more reasonable whereas the City's offer is without comparability and well below the CPI.

Factor Number 6 is the comparison of 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. For the most part, the Association's benefits are about average compared to the external comparables. It accounts for all the benefits received by the Association members as required by statute

while the City does not compare other benefits in its exhibits. The Association believes this is a non-issue.

Factor Number 7 provides that any changes in any of the foregoing circumstances during the pendency of the arbitration proceedings be given weight. The Association maintains that this is a non-issue.

The City's reliance on Internal Settlements should not be given any weight by the Arbitrator.

Good collective bargaining agreements must be fought for and once a benefit or condition of employment is obtained, it must be defended. Once the Fire Association settled for its woeful offer, the City refused to bargain further and told the Police Union to take the Fire Union's deal or go to arbitration. The City never acknowledged that the Association was losing ground financially when compared to other comparable police units in the area. Although the City went through the motions it knew it would not exceed the settlement reached by the Fire Association. It is the City's inflexibility to negotiate in good faith which brings us to this point.

The fact is that different bargaining units enjoy different levels of power and have different sets of concerns. Each bargaining unit must be allowed to determine what is, and what is not, worth fighting for. Past arbitrators have recognized this:

*"The other units in the City are **independent** of each other and of the Sheriffs unit and to say all must conform to a given wage rate is **inconsistent with the independent negotiations process inherent in each separate unit, and defeats the purpose of good labor relations**" CITY OF GOODHUE, MINNESOTA ., Case No. 81-PN-955-A, (8/81)(Emphasis added.)(sic)*

More recently Arbitrator Paul Gordon, in the CITY OF NEW BERLIN, Dec. No. 34204-A (12/13) (sic) stated:

*“The police and fire are separate bargaining units. They are autonomous from each other. Some interests may be similar, but each group is independent of each other. **Effective, productive collective bargaining between one group and the City would be undermined if one bargaining unit’s settlement were to be determinative of what the other bargaining unit must or will get.** That could have negative morale repercussions and fail to take into account other priorities in the other unit.” (Emphasis added)*

The City has failed to provide a Quid Pro Quo.

Interest arbitrators are reluctant to award changes in the status quo without a demonstration of a compelling need and a *quid pro quo* to help offset the effects of the change. Arbitrator Torosian commented, in WASHINGTON COUNTY SOCIAL WORKERS, Dec. 29363-A (12/11/98) (sic):

*“The Arbitrator in the instant case, like so many before him, is firmly convinced that in cases where one party is seeking to make significant changes in existing language or benefits (status quo), the interests of the parties and the public is best served by imposing on the moving party the burden of establishing (1) a **compelling need** for the change, (2) that its proposal **reasonably** addresses the need for a change, and (3) that a **sufficient quid pro quo** has been offered. In each case, the sufficiency and weight to be given to each element must be balanced.*

The rationale for tests and criteria, as set forth above, is simple. Stability in labor relations is essential for a good working relationship between the parties. The Municipal Employment Relations Act seeks to promote stability as a matter of good public policy by promoting collective bargaining and peaceful resolution of impasses through interest arbitration. Therefore, any major changes proposed in existing language negotiated by the parties must be for compelling

*need or demonstrated need **or else left for voluntary negotiations** by the parties and not imposed by an Arbitrator. (Emphasis added) (sic)*

When an Employer failed to offer an adequate *quid pro quo* in exchange for a change in insurance benefits, Arbitrator Flaten rejected the Employer's offer:

"A demand for a contract concession of that significance is traditionally accompanied by a quid pro quo benefit to compensate for the 'take-back' and ameliorate its impact. No such quid pro quo was forthcoming." PRENTICE SCHOOL DISTRICT, Dec. No. 25814-A (7/3/89). (sic)

The City of Beaver Dam is asking the Arbitrator to impose upon the Association significant changes in existing benefits without any type of *quid pro quo*. The Association is showing a willingness to contribute by agreeing to the City's proposal to make a retroactive contribution of 3% to the WRS contribution. The external comparables have begun making payments to the WRS but many, if not all, received a *quid pro quo* in exchange. (Association Exhibit No. 801.) It is worth noting that the Employer's share towards the WRS for Beaver Dam has decreased from 18.4% in 2011 to 17.1% in 2013. (Association Exhibit No. 1301 and 1304.)

The parties have agreed to the City's proposal to increase the amount employees pay to the health insurance premium from 10% to 11%. Members of the Police Department have always been the leader when it comes to payment towards the premium. Association Exhibit No. 900 shows that the average employee contribution towards the insurance premium was 5.7% in 2013. The Association is already on the extreme high end of employee contributions. The Association offered a 1.75% wage increase in 2011 and in 2012 as a *quid pro quo* and to maintain its standing amongst the external comparables. The City bears the burden of proof to show that a meaningful and adequate *quid pro quo* exists and the City has failed to meet its burden.

The members of the Police Association want to maintain their wage standing amongst the external comparables. The Association drafted its final offer with the external comparables in mind. (Association Exhibit 700.) With the Association's offer its membership would fall from \$0.40 above the hourly rate average in 2010; \$0.31 above the hourly rate in 2011; \$0.32 above the average rate in 2012; and \$0.46 above the hourly rate average in 2013.

Under the City's proposal it would fall from \$0.40 above the average hourly rate in 2010 to \$0.17 below the 2011 average hourly rate; \$0.64 below the average hourly rate in 2012 and \$0.53 below the average hourly rate in 2013. For a patrol officer at the top pay in Beaver Dam, that is a \$0.93 per hour swing.

The City

Internal Comparables

The City believes that the principle factor for consideration in this arbitration is the comparison of settlements internally and externally and the relative weight they should be given. It sets forth the applicable law guiding the Arbitrator as **Wis. Stats. 111.77(6)**.

Prior to Act 10 arbitrators consistently used internal comparables in assessing the parties' final offers partly because they were grounded in equity and fairness. But in the post-Act 10 era arbitrators no longer place great weight on the internal comps. Not that they ignore them altogether. Arbitrator Strycker expressed his opinion as follows:

. . .

. . . The role and importance of internal comparables has been impacted through the enactment of Acts 10 and 32. Prior to these changes, interest arbitration was available broadly to resolve contract disputes. With this type of level playing field, employers did not have the opportunity to unilaterally implement contract changes. Disputes were subject to review and resolution by an impartial arbitrator. With the advent of Acts 10 and 32, only protective

services employees can negotiate complete contracts and proceed to interest arbitration.

. . .

VILLAGE OF GREENDALE, (Fire Department) Dec. No. 70834 (Strycker, 3/13), pp. 33, 34. (Emphasis added)

The evaluation of internal comparables recognizes that different treatment of employees of the same municipality would negatively impact employee morale and would be inequitable. CITY OF GREEN BAY, Dec. No. 33467-A (Malamud, 11/13), pp. 29, 30. Arbitrators particularly recognize the necessity to give internal comparables significant weight, especially when one unit has settled voluntarily and another has proceeded to arbitration. Arbitrator Strycker selected the Village's offer to the firefighters unit which was identical to the CBA reached with the Police unit placing significant weight on this internal equity. He noted that, as here, the Village's wage proposal would keep the fire unit in the same ranking among the comparables and thus did not favor either party. There is a strong roll that internal comparables play with respect to firefighters (IAFF) and police units since they are both involved in public safety. Arbitrator Hempe, in selecting the City's offer in CITY OF MEQUON, Dec. No. 71513 (Hempe, 11/12) recognized that a sufficient *quid pro quo* existed where it resulted in a compensation loss to the officers less than the non-represented employees but a greater loss than the union's offer would have imposed. The City's offer in this arbitration seeks to strike the same balance with the Firefighters Unit (IAFF), the Association membership and the general municipal employees. Somers testified at hearing that the City was attempting to create equity regarding premium contributions between the Association and the IAFF and that this (equity) had been a bargaining history between the two groups. He testified that this was the City's goal when it fashioned its Final Offer to the Association.

The City's primary goal was to treat the City employees equally with respect to the impact of increased premium contribution and that this was reasonable. It also wanted to keep the two units equal in bargaining. Both units consulted with

each other during bargaining and, although they bargained separately, they discussed the proposals with each other.

The testimony at the hearing “reflects the sentiments expressed in the cases cited above about the importance of an Arbitrator giving strong weight to internal settlements, particularly between police and fire units, which should only be disregarded if substantial factors override that interest.”

There have been several other police and fire units decided post Act 10. Most of these are not relevant to this case or support the City’s position regarding the use of internal comparables.

- *City of Green Bay (Id)*

Arbitrator Malamud selected the City’s offer finding that internal comparability provided support for the City’s offer because that the (sic) offer was identical to that offer to the City’s firefighters. Arbitrator Malamud preferred the City’s offer because the union’s proposal placed a cap on the City’s WRS employee premium contribution.

- *Sauk County (Sheriff’s Dept.), Case No. 71275 (Flaten, 12/12)*

The County’s offer was chosen in part because “other Sauk County employees have already agreed to pay the rate proposed by the Employer.” P. 6.

- *City of New Berlin (Police), Dec. No. 34204-A (Gordon, 12/13).*

While recognizing the importance of internal comparables, Arbitrator Gordon decided in favor of the union on the basis that the City’s offer did not phase in WRS employee premium contributions and did not provide an adequate *quid pro quo* for the change in those employee contributions. The City’s offer provided wages (sic) increases in 2012 and 2013 of 1%, while requiring unit members to pay the full 5.9% share of WRS premium contributions at the end of 2013. The union’s offer provided for the following economic terms:

	Wages	WRS
2012	0%	0%
2013	1.5%	1.5%
2014	1.5%	3%

The union's offer in *New Berlin* is very similar to the City of Beaver Dam's Final Offer to the Association. The City of New Berlin's offer over-reached resulting in the police offers losing approximately 5% in earnings. This case should not be viewed as determinative of the issue of whether internal comparables outweigh external comparables, but is more appropriately viewed under Arbitrator Jaeger's (sic) formula in which internal comparables control unless there is substantial justification for abandoning that pattern. In *New Berlin*, the drastic cost to the police employees provided that justification, which is not present with respect to the current Final Offers.

- *LaCrosse County (Sheriff's Deputies)*, Dec. No. 71523, (Mawhinney, 12/12)

Arbitrator Mawhinney ruled in favor of the union. She recognized that prior to Act 10, arbitrators "recognized internal consistency in benefits as being desirable" (P.16) and that, prior to Act 10, would have been "very significant and probably the most relevant factor with regard to benefits" (p. 15). However, post-Act 10, comparing general employees with no bargaining rights to protective service employees with interest arbitration rights has less weight given the legislature's desire "to protect public safety employees." (*Id*)

This is not to say that in certain cases, internals do not count or are not to be given weight. It only means that internal comparables do not carry as much as they have in the past before Act 10 and 32 when looking at such things as the WRS and insurance where the law made changes for **general employees and exempted public employees. (Emphases added) p. 16.**

The distinction highlighted by Arbitrator Mawhinney between unrepresented general municipal and represented public safety employees is not what is presented in this arbitration, in which the relevant internal comparable is between represented public safety bargaining unit that had interest arbitration rights.

Given the lack of a true internal comparable, Arbitrator Mahwinney required there to be some sort of *quid pro quo* to support the City's final offer. Neither LaCrosse County, nor the City of New Berlin, offered a *quid pro quo* for the proposed benefit changes. The County proposed wage increases of 2% over two years while at the same time proposing a 5.9% WRS employee premium contribution resulting in a loss of compensation over the term of the contract. In contrast, the union's final offer was as follows:

	Wages	WRS
2012	1%	0%
2013	1%	0%

The County's final offer over-reached in Arbitrator Mahwinney's view because it required a one-step jump to full WRS premium sharing for the officers resulting in a significant compensation loss.

- *Dodge County (Sheriff's Deputies), Dec. No. 71541 (Vernon, 1/13)*

In this arbitration, Arbitrator Vernon chose the union's offer; however, there was no internal comparable involving a protective service bargaining unit present. Thus, the impact of an internal comparable relative to other factors was not an issue in this case. In addition, Arbitrator Vernon found it significant that the County's offer to the Sheriff's Deputies was even less than what the County provided to its non-protective service employees.

- *City of Oshkosh (Law Enforcement) (Gallagher, 6/13)*

In this case, Arbitrator Gallagher engaged in a similar discussion as Arbitrator Mawhinney in *Mequon* with respect to the role of internal comparables. She noted that “internal comparables have been used by arbitrators over decades to assure internal equity, stability, and morale, which have at times been threatened by a party’s proposal of a two-tiered system.” With respect to the City’s settlement with the firefighters, Arbitrator Gallagher noted that the firefighters received a benefit not on the table for the police unit and, therefore, this was “inconsistent with the City’s asserted pattern” with respect to internal comparables. Therefore, *Oshkosh* presents a different factual setting than this arbitration in which the internal comparables are identical.

In addition, Arbitrator Gallagher focused on whether an appropriate *quid pro quo* was present for the increased WRS contribution. The parties’ offers in *Oshkosh* were:

City Proposal

	Wages	WRS
2012	2%	0%
11/2012	.5%	3%
2013	2.5%	5.9%
2014	2.5%	-

Union Proposal

	Wages	WRS
2012	2%	0%
12/2012	.5%	3%
2013	2.5%	4.5%
2014	2.5%	5.9%

Arbitrator Gallagher favored the union offer because it phased in the WRS contributions over one more year with additional wage compensation while the City's offer sought the full contribution without such added wage set-off. This is different, again, than the current arbitration in which the City and Association have not sought full contribution by the employees of their share of WRS premiums, but have agreed to a 3% increase in WRS contributions in 2013 offset by a 3% wage increase.

In sum, these cases continue to recognize the value of internal comparables after Act 10. This arbitration presents a strong case for following the pre-Act policy, as articulated by Arbitrator Jaeger (sic), of giving greatest weight to internal comparables, particularly between bargaining units, unless some substantial reason exists not to. No substantial reason is present here.

The City contends the greatest weight should be given to the fact that the City's Final Offer is identical to that bargained with the IAFF unit. Furthermore, there is no substantial reason to disregard this internal comparable. Unlike the post-Act 10 cases set forth above which have favored the union offer, the City's Final Offer to the Association does not over-reach, but provides a *quid pro quo* for the increased WRS contribution, plus a \$500 signing bonus. This factor strongly favors selection of the City's Final Offer.

External Comparables

The parties agree on the external comparables which have been established during numerous prior arbitration decisions as follows:

Dodge County

Fort Atkinson

Horicon

Mayville

Monona

Oconomowoc

Portage

Sun Prairie

Watertown

Waupun

Whitewater

The City does not contest the use of these communities as comparables, but does contend that their application should take into account the difference among them in size, equalized value and geographic location when assessing the parties' offers, in particular, the impact of the offers on Beaver Dam's ranking in conjunction with its relative status among the comparables. While Mayville is a comparable, neither party included contract information for this community and, consequently, it is not relevant to this case.

Also, the City is not evaluating Dodge County in the comparables because of the stark differences between the size and economic condition of a county to a city or village.

Both parties submitted evidence regarding the comparable populations, equalized value, and tax levies. The City suggests that these data establish a rank or hierarchy among the comparables. For example:

- Sun Prairie and Watertown are significantly larger in population than the rest of the comparables.
- Sun Prairie, Watertown and Oconomowoc have significantly larger equalized assessed values than the rest of the comparables.
- Monona, Oconomowoc, Watertown and Sun Prairie have significantly higher equalized assessed values per capita than the other communities.

- Sun Prairie, Oconomowoc and Watertown have significantly higher tax levies than the rest of the communities.

This data suggests that, giving consideration to population and equalized assessed values, Sun Prairie and Oconomowoc are distinctly different than the other communities. Monona has a vastly different equalized assessed value per capita than the other communities and is located on the edge of Madison which suggests increased labor market pressures than the rest of the communities.

Horicon is significantly smaller in population, equalized assessed value and tax levy. Whitewater, Portage and Waupun are on the lower end in equalized assessed value, both in real terms and per capita, and in its tax levy. The remaining communities in the comparable list are more similar with respect to these economic indicators.

Taking the above factors into account creates the following hierarchy:

Name	Population (k)	EAV	Levy
Sun Prairie	29	\$2.4b	\$61m
Oconomowoc	15.71	\$1.8b	\$36m
Watertown	23.8	\$1.3b	\$33m
Monona	7.5	\$1.1b	\$26m
Beaver Dam	16	\$1.0b	\$26m
Fort Atkinson	12	\$824m	\$22m
Whitewater	14.3	\$625m	\$14m
Portage	10	\$547m	\$14m

Waupun	11.3	\$389m	\$10m
Horicon	3.6	\$204m	\$6m

This rough ranking of the (external) comparables is relevant when considering the parties' Final Offers and their impact on the Association relevant to the police officers' rank, with respect to wages, in their comparable pool. (Due to the small number of Detectives in the unit, the City did not evaluate them but the data provided by the Association supports the City's position.) The City's Final Offer would keep the patrol officer hourly rate of pay at the same rank from 2011 through 2013. Under the Association's Final Offer it would increase only by one slot surpassing Whitewater. Under both offers, the City would still be behind, respecting wages, Sun Prairie, Oconomowoc, Whitewater and Monona would be ahead of Watertown, Fort Atkinson, Portage and Horicon. The City believes that the use of average hourly rate is not appropriate as a measure of the Final Offers relative to the comparables.

Municipality	Wage Increase	WRS	Net Compensation
Oconomowoc	3.9%	0	3.9%
Sun Prairie	9.7%	5.9%	3.8%
Monona	10%	2%	8%
Fort Atkinson	6	2%	4%
Whitewater	3%	2%	1%
Watertown	3%	3%	0%
Horicon	5.9%	5.9%	0%
Waupun	1%	0%	1.0

Beaver Dam	3%	3%	0%
			Plus \$500

The pattern is consistent with the size, equalized assessed value and levy rankings of the comparable communities. The larger communities were more inclined to provide a larger net compensation over this period. Beaver Dam is similarly situated with respect to *quid pro quo* with the communities which are within its comparable rank among the comparable communities.

The data provided by the City and the Association show that there is no material change in ranking under either Final Offer. The data also shows that the *quid pro quo* offered by the City is in line with other comparable communities. This factor favors the City's offer.

Wis. Stats. 111.77(6)(bm)5

With regard to the CPI, the Association's offer is closer to the CPI but this reflects a state-wide retrenchment in compensation occasioned by Act 10.

Wis. Stats. 111.77(6)(bm)6

The City's offer maintains the overall high level of benefits under the CBA. The City's CBA with the Association compared to the external comparables provides the highest longevity payments; is near the top of the rank with respect to paid holidays; allows employees to fund premium payments with accumulated sick leave upon retirement in addition to City payment of 25% of the premium; and, provides above average vacation and sick leave benefits, in particular the ability to accumulate sick leave with no limit.

There have been no changes in circumstances during the pendency of this arbitration and thus **Wis. Stats. 111.77(6)(bm)7** criteria is not applicable.

To the extent that the Arbitrator considers the use of internal comparables this factor is relevant and the arguments made by the City with respect to internal comparables are relevant under Section 111.77(6)(bm)8, Stats. The City contends that the internal settlements reached with its other groups for the years 2011-

2013 weigh greatly in favor of its offer. It is the same as the agreement reached with the IAFF unit, and selection of the Association's offer would create discord between those units. Also, the City's offer is the best proposal respecting equity with the non-represented employees.

The Arbitrator should choose the City's Final Offer.

DISCUSSION

The parties' certified final offers define only one main issue in dispute: wages. It is the statutory responsibility of the interest arbitrator to choose one of them based upon his or her evaluation of the statutory criteria under Wis. Stats. 111.77(6) (above). The Arbitrator may only choose one of the Final Offers and he must do so without modification. He may not blend the two in order to make things "more fair." The following narrative complies with Wis. Stats.

111.77(6)(am). The undersigned is also mindful of the requirement that he not go outside the evidence and record. The record in this case is replete with discussion relating to the weight to be given to "internal" and "external" comparisons among the general employees, the IAFF and the Association membership. In the post-Act 10 era, however, this discussion is subordinate to **Wis. Stats.**

111.77(6)(am):

(am) "In reaching a decision the arbitrator shall give greater weight to the economic conditions in the jurisdiction of the municipal employer than the arbitrator gives to the factors under par. (bm). The arbitrator shall give an accounting of this factor in the arbitrator's decision."

111.76(6)(am) : The parties have agreed that the economic conditions in the City are healthy and the City has indicated in its brief that it is not making an inability to pay argument. It does mention in its brief, almost in passing, that if the Association's offer were to be accepted the excess would have to be paid from the City's fund balance and would cost the taxpayers an additional \$23,276.28. The City also argues that it is placed 5th highest in terms of tax levy ; 3rd highest in terms of tax; and the 11th lowest in terms of new construction. There were three communities whose numbers were very close to Beaver Dam's numbers in terms

of tax rates. Beaver Dam's tax rate was 8.64 in 2012-2013. Horicon, Mayville and Sun Prairie's rate over the same time period was, respectively, 8.63, 8.63 and 8.42. The worst economic news that can be concluded about Beaver Dam is that it must levy taxes to meet its obligations. The Undersigned believes that Beaver Dam is in good economic condition compared to its comparable external communities and is able to pay for the additional monies in the City's fund balance. Because the City raised the issue of financial hardship in the event of the selection of the Union's offer it has the burden of showing that it cannot pay. Aside from the argument that the City is in less than stellar financial condition, it has not produced any such proof. Therefore, the argument relating to the City's inability to pay on the *specific* grounds that any payment resulting from the new contract be paid from the general fund is not persuasive. The Association does not express an opinion on this factor.

This factor favors the Association's offer.

1. The City also makes an argument under **Wis. Stats. 111.77(6)(bm)4** which will be addressed below. The issue presented in **Wis. Stats. 111.77(6)(bm)(1)**, the lawful authority of the City to accept and abide by the terms of the Association's final offer, is not disputed by either party. Since there is no dispute between these parties, this factor is not an issue.

Neither party is favored under this factor.

2. Relative to **Wis. Stats. 111.77(6)(bm)2**, respecting tentative agreements, the parties did reach a number of TAs, none of which are in dispute. They are primarily "housekeeping" matters with the balance being economic in nature. The City argues that the TAs relate to the wage issue in terms of bringing the Association into line with the IAFF and the unrepresented general employees. The Undersigned will consider that issue in the wage discussion below. The economic TAs are:

- a) A boost to the employees from 0% to 3% of the employee contribution to the WRS effective June 1, 2013;

b) The employees' contribution to health insurance premiums will increase from 10% to 11% effective upon the signing of this contract;

c) The City's proposals relating to Section 16.04 and Section 16.06 (see above) shall be incorporated into the new contract.

Thus, there is no issue to consider under this factor and neither side is favored.

3.Wis. Stats. 111.77(6)(bm)3 requires the Arbitrator consider the interests and welfare of the public and the financial ability of the unit of government to meet these costs. The Undersigned has discussed the City's financial condition above. As for the interests and welfare of the City and its residents, this one is a close call. The Undersigned believes that a well-paid police force, satisfied with their remuneration package and with good benefits results in police officers who have higher morale and a better mental attitude. The officers rely on other communities for back-up and support in the field which promotes the welfare of the community in general. The Undersigned also believes that better wages with good benefits will attract a higher quality recruit and result in lower attrition which, of course, benefits the City. The Arbitrator has also considered the potential for internal strife in the event the Association's offer were to be implemented. In the event the City's offer is implemented, the police may believe that the increase in the morale of the rest of the municipal employees was done on the backs of the Association membership. Reducing their morale is not a good thing and the Undersigned believes that the City's offer reduces their morale. The police are the municipality's "first line of defense" and risk their safety and lives daily to prevent illegal behavior and lawlessness and to maintain peace in the jurisdiction. On the other hand, the City is caught "between a rock and a hard place". It has the responsibility of spending taxpayer dollars in a responsible way and, at the same time, maintaining the morale of its employees, including its police officers.

On balance the Undersigned believes that this factor weighs slightly in favor of the Association's offer.

4.Wis. Stats. 111.77 (6)(bm)4 requires that the Arbitrator consider a comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and condition 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.

Internal settlements.

The IAFF, (a protective service unit), has entered into a voluntary agreement on the same terms the City has offered to the Association. The Association is one of two represented protective service units in Beaver Dam. With the exception of the Association, the IAFF, the AFSCME group and the non-rep groups all have contracts which provide for wages, WRS premium contribution, and health premium contribution as follows:

Group	Year	Wage	WRS	Health
Non-rep	2011	0%	5.9%	90/10
	2012	0%	5.9	89/11
	2013	2%	5.9%	89/11
AFSCME	2011	Prior K	0%	Per. K
	2012	Prior K	0%	Per. K
	2013	2%	5.9%	89/11
Fire (IAFF)	2011	0%	0%	89/11

	2012	0%	0%	89/11
	2013	3% +\$500	3%	89/11
Police	2011	0%	0%	89/11
(City Offer)	2012	0%	0%	89/11
	2013	3%+ \$500	3%	89/11

The above chart shows that the non-reps and the AFSCME group have a 2% wage increase in 2013 and a 5.9% increase in WRS Premium Contributions while the IAFF has a 3% plus \$500 wage increase in 2013 and a 3% WRS contribution. There are no changes in the Health Premiums for the firefighters during the term of the contract. (2011-2013) The IAFF (and the Police Unit's offer) are being treated differently than the non-reps and the AFSCME group. The Arbitrator is aware of the pitfalls of the potential erosion of morale and service delivery if equity and fairness are ignored. The Association Membership does have certain things in its contract which are unique to it, but if all the units and employees were to be treated the same way, the employers could simply publish the terms of the employee's wages, hours and conditions of employment for the following year and implement them without any input from the employees.

The role of internal settlements has been effected by Acts 10 and 32 because, with the exception of the police and firefighters, employee groups no longer have the ability to negotiate complete contracts and go to arbitration before a neutral arbitrator. Perhaps this is the end game for all public employees in this State, but it's not here yet. The Arbitrator is not sure what the results of that scenario might be but he doesn't think it will be well received by the employees. If the Association's offer is implemented the outcome could negatively impact voluntary agreements and damage labor peace. Such a result would not be in the best interests of the City as a whole. The Undersigned believes that labor peace is still a desired goal under MERA notwithstanding the

passage of Acts 10 and 32. The Arbitrator believes that the selection of the Association's offer would, more likely than not, create more internal strife and upset labor peace to an unhealthy extent.

The undersigned agrees with a long line of cases and with Arbitrator Yaeger:

Also, as most arbitrators have concluded, including this one, an employer's ability to negotiate to a successful voluntary agreement with other unions the terms that it proposes in arbitration is a factor to be accorded significant weight, if not controlling weight, absent some unusual circumstance surrounding such an agreement(s) that diminishes its persuasive value. See arbitrator Vernon in WINNEBAGO COUNTY, Dec. No. 26494-A (6/91); arbitrator Malamud in GREENDALE SCHOOL DISTRICT, Dec. No. 25499-A (1/89); arbitrator Neilsen in DANE COUNTY (SHERIFF'S DEPARTMENT), Dec. No. 25576-B (8/79); arbitrator Kessler in COLUMBIA COUNTY (HEALTH CARE), Dec. No. 28960-A (8/97); and arbitrator Torosian in CITY OF WAUSAU (SUPPORT/ TECHNICAL), Dec. No. 29533-A, (11/99).

OMRO SCHOOL DISTRICT (SECRETARIAL DIVISION), Dec.No. 63105 (Yaeger, 6/05)

Arbitrator Yaeger's observation in OMRO predates Acts 10 and 32. Those Acts notwithstanding, the significance of an internal comparable of another service group cannot be ignored and must be weighted heavily enough so that it does not become meaningless as a guide to the arbitrator. The Undersigned believes that the strongest comparison to a service group is another service group. In the present case, the City of Beaver Dam, as in most cities, has only two service groups: the police officers and the firefighters. The remaining groups have little in common with the service groups. This is why internals in general are not comparable to service units like the police unit, with the exception of the firefighters unit. They have much in common. They both put their lives on the line every day while performing their jobs and they both put their health in jeopardy

each time they put on a uniform. Hence, a comparison of those two units makes sense and Acts 10 and 32 did not change that fact; they only changed the weight to be given to it.

According to the City's Director of Administration, John Somers, the City fashioned its offer to the Association to create equity and to conform to what had become the normal historical bargaining posture of treating the police and firefighters the same. His testimony was not rebutted by the Association and so the Arbitrator accepts it as true. This testimony is buttressed by the testimony of Association President James Van Erem, also not rebutted, who confirmed that the bargaining history between these two parties had been equal in terms of benefit packages and that the parties discussed the terms together to ensure the City didn't offer the Association different terms than the other. Thus, the parties' bargaining history supports the idea that these two units should be compared with each other.

External Comparables

As the Arbitrator has mentioned, the most reasonable group with which to compare a police unit is another police unit in a comparable community.

Regarding the external comparables, the parties agree on the use of the comparables found in numerous cases and ones which have been used for many years. They are as follows:

Dodge County

Fort Atkinson

Horicon

Mayville

Monona

Oconomowoc

Portage

Sun Prairie

Watertown

Waupun

Whitewater

The City suggests that Dodge County should not be included in the above list because of its lopsided population with the other comparables. The Undersigned is not persuaded that a change in comparables is appropriate simply by virtue of its population and believes that Dodge County is still a comparable community in terms of wages. As Arbitrator Gil Vernon said in CITY OF WAUSAU, (DPW), Dec. No. 31532-A, (Vernon, 10/06):

A comparable group once established is valued, even if some relative comparable criteria have changed overtime, for its predictability. It may be an imperfect yardstick, but it is one that produces some consistency in bargaining in that it gives both parties the same tools of guidance as to what a reasonable wage level change and what reasonable wage levels are in reasonably and similarly situated municipalities in light of all the relevant statutory criteria. If arbitrators were quick to disregard or modify comparable groups, there would be little stability and focus at the table.

This record does not contain sufficient evidence to support the conclusion that these comparables should be modified. The party seeking a change in the existing comparables, especially when they have been used for many years as in the case of Beaver Dam, has the burden of providing compelling evidence supporting the fact that the change is appropriate. The Undersigned is not persuaded that the City has met that burden.

The Association is concerned that if the City's offer were to be implemented, it would lose its position in the hierarchy of its' external comparables. It argues that under its proposal the Top Patrol Officers would fall from \$.40 to \$0.31 above the average hourly rate in 2011; \$0.32 above the hourly rate in 2012; and to \$0.46 above the hourly rate in 2013 while, under the City's proposal, the Top Patrol Officers would fall to \$0.17 above the average hourly rate in 2011; \$0.64 below the hourly rate in 2012 and \$0.53 below the average hourly rate in 2013. The Association says that this fact moves its' membership down in the comparable rankings and that it is moving backwards financially.

**BEAVER DAM POLICE ASSOCIATION
PATROL OFFICER/TOP PAY
ASSOCIATION OFFER**

Municipality	2010	2011	2012	2013	2014	2015	2016
Ononomowoc	(3.0)	(3.0)	(.05)	(.05)	(3.25)	(2.0)	(2.0)
	30.13	31.01	31.17	31.33	32.6	32.00	33.56
Sun Prairie	(3.0)	(3.0)	(0.0)	(1.5/5.2)	(1.0/1.0)		
	28.59	29.45	29.45	31.44	32.07		
Monona	(4.0)	(3.0)	(3.0)	(2/2)	(2/2)	(2/2)	
	27.50	28.30	29.15	30.32	31.55	32.82	
Dodge Co.	(2.5/2.5)	(0)	(0.5)	(2.25)	N/S		
	27.26	27.26	27.87	28.50	6/11/14		
Beaver Dam	(2/2)	(1.75)	(1.75)	(3.0)			
	27.17	27.65	28.13	28.97			
Whitewater	(2/1)	(2.5)	(1.0)	(2.0)	(0)		
	26.87	27.54	27.82	28.38	28.38		

Waupun	(2/2)	(0)	(0)	(1.0)	(2.0)	(1/1)	
	26.35	26.35	26.35	26.62	27.17	27.72	
Mayville	(3.0)	N/S					
	26.18	6/11/14					
Fort Atkinson	(2.0)	(2/1)	(2/1)	(0)	(2.0)	(3.0)	
	25.54	26.31	27.10	27.10	27.64	38.47	
Portage	(3.0)	(1/1)	(3.0)	(3.0)	(2.0)	(2.0)	
	24.83	25.33	26.09	26.87	27.41	27.96	
Horicon	(3.0)	(0)	(3.0)	(2.96)	(2.0)	(2.0)	(2.0)
	24.52	24.52	25.26	26.01	26.53	27.06	27.60
Average	(3.15)	(1.83)	(1.55)	(2.49)			
Plus/Minus	+0.40	+0.31	+0.32	+0.46			

The above chart shows that the Beaver Dam Association Offer compared to its comparables at the top (Oconomowoc) and at the bottom (Horicon) were as follows:

2011 (Association offer)

Oconomowoc's hourly wage was \$31.01 and Beaver Dam's was \$27.65; a difference of \$3.36;

Horicon's hourly wage was \$24.52 against Beaver Dam's \$27.65; a difference of \$3.13;

In **2012** the Association's offer would have placed:

Oconomowoc's hourly wage at \$31.17 and Beaver Dam's at \$28.23; a difference of \$2.94;

Horicon's hourly wage was \$25.26 and Beaver Dam's was \$28.13; a difference of \$2.87;

In **2013** the Association's offer would have placed:

Oconomowoc's hourly wage at \$31.33 and Beaver Dam's at \$28.97; a difference of \$2.36;

Horicon's top hourly wage at \$26.01 and Beaver Dam's at \$28.97; a difference of \$2.96;

2011 (City offer)

Oconomowoc's hourly wage was \$31.01 and Beaver Dam's was \$27.17; a difference of \$3.84;

Horicon's hourly wage was \$24.52 and Beaver Dam's was \$27.17; a difference of \$2.65;

In **2012:**

Oconomowoc's top hourly wage was \$31.17 and Beaver Dam's was \$27.17; a difference of \$ 4.00;

Horicon's hourly wage was \$25.26 and Beaver Dam's was \$27.17; a difference of \$1.91;

In **2013:**

Oconomowoc's hourly wage was \$31.33 while Beaver Dam's was \$27.98; a difference of \$3.35;

Horicon's hourly wage was \$26.01 with Beaver Dam's at \$27.98; a difference of \$1.97.

What the above shows, according to the Association's figures, is that in the first year of the contract under the Association's offer, the membership would have fallen behind Oconomowoc by \$3.36 and moved ahead \$3.13 vis a vis Horicon. (All of the comparables remaining have numbers of different values but all fall somewhere between these two.) In year two of the contract the Association would fall behind Oconomowoc by \$2.94 and ahead by \$2.87 vis a vis Horicon; and in year three (2013) the Association would have lost ground compared to the town of Oconomowoc in the amount of \$2.36 and gained ground to the extent of \$2.96 vis a vis Horicon.

On the other side of the coin is the City's offer. Under that offer the Association, in 2011, would have lost ground vis a vis Oconomowoc in the amount of \$3.84 and gained \$2.65 vis a vis Horicon. In 2012 it would have lost \$4.00 versus Oconomowoc and gained \$1.91 versus Horicon; and finally in 2013 it would have lost \$3.35 compared to Oconomowoc and gained \$1.97 vis a vis Horicon.

The above chart shows that the Association, during the term of the contract using the City's offer, steadily loses ground relative to the top comparable, and remains ahead of the lowest group (Horicon) in each year. So where does the Association rank in each of these two offers based strictly on wages? In 2011 it moves from fifth to sixth place under the City's offer. Under the Association's offer 2011 it stays at number five. In 2012 under the City's offer it moves to sixth and in 2012 under the Association's offer it stays at number five. The same is true in year 2013. In 2011 the difference between the two offers is \$0.11 under the Association's offer; \$.31 in year two and \$0.59 in the third year. Under the City's offer the differences in each successive year are as follows: \$0.37; \$0.65; and \$0.40. Although these figures don't seem to be of any great consequence, annually they amount to \$770, \$1352 and \$832. (Figures are rounded to next

higher amount.”) This is not “pocket change”. These are real dollars which could otherwise be used to pay for a myriad of household expenses.

The Arbitrator believes this factor *slightly* favors the Association’s offer.

5. **Wis. Stats. 111.77(6)(bm)5** requires that the Arbitrator consider the average consumer prices for goods and services, commonly known as the cost of living. (CPI) The Association’s Final Offer is beneath that of the published CPI and the City’s offer is further below that. At the time of the hearing the most recent CPI was 2.1% for all items. The Association’s offer contained a wage proposal of an increase of 1.75% effective 1/1/2011; 1.75% on 1/1/2012; and 3% on 1/1/2013. The City’s proposal was obviously less than that. (Wage freeze in year one, wage freeze in year two and an increase of 3% in the final year of 2013.)

The Arbitrator believes this factor *slightly* favors the Association.

6.) **Wis Stats. 111.77 (6)(bm)6** requires the Arbitrator consider the overall benefits compared to other employees. See attached for detailed information regarding benefit information. The City currently:

- Provides the highest longevity payments.
- Is near the top of the rank with respect to paid holidays.
- Allows employees to fund premium payments with accumulated sick leave upon retirement in addition to City payment of 25% of the premium.
- Provides above average vacation and sick leave benefits, in particular the ability to accumulate sick leave with no limit.
- Pays a clothing allowance which is ranked 5th among the comparables.
- Allows paid vacation near the top of the scale relative to comparables.

- Provides sick leave benefits near the top with unlimited accumulation. (3 of the 12 comparables, including Beaver Dam, have sick leave programs with unlimited accumulation.)

These benefits compare favorably with Beaver Dam's comparables and the parties do not argue otherwise.

This factor weighs in favor of the City's offer.

7. **Wis. Stats. 111.77(6)(bm)7** requires that the undersigned consider any changes in circumstances during the pendency of this arbitration. The parties have advised the Arbitrator that there have been no changes during the pendency of this arbitration. Hence, this factor is not applicable to this action.

8. **Wis. Stats. 111.77(6)(bm)8** requires that the Arbitrator consider numerous other factors normally taken into consideration. The Association says it is well aware of the fact that arbitrators are loath to award settlements that are greater than those voluntarily agreed to by other bargaining units within the same municipality. (Internal comparables) The Undersigned covered this issue above in Number 4. The Association says it was not able to bargain with the City because it (the City) refused to bargain in good faith since they knew they were never going to offer more than the Firefighters had received. It went through the motions but did no more than that. To award the City's offer based on the Firefighter's offer flies in the face of the arbitration process and the arrogance of the City cannot be condoned. Each bargaining unit must be allowed to determine what is, and what is not, worth fighting for. The Undersigned agrees with the Association's position in this regard and has mentioned it above under No. 4.

As for the Association's argument that the City has failed to offer a valid or reasonable *quid pro quo*, the Union says that the City's offer would increase the employees' contribution to the WRS by 3% (it was 0% prior to this arbitration) and increase its health insurance contribution by 1%, for a total of a 4% increase. The Association says that it has agreed to the City's proposals and shown a willingness

to contribute to the WRS. It argues that “many, if not all have received a wage increase to off-set the WRS contribution” and in many cases a wage increase that exceeds the WRS contribution. It says the *status quo* is for the parties to contribute 10% of the monthly health insurance payment.

The City maintains that the *quid pro quo* offered by the City is in line with the comparables. The increase in wages to the Patrol Officers over the three year period under the City’s proposal is 3% plus \$500.00 (in the third year.) The increase in WRS contribution is 3% (in the third year.) The Undersigned takes note of the fact that after factoring in the Membership’s Patrol Officer’s wages versus the WRS increase, the membership is left with \$500.00 less the cost of the health insurance increase of 1%.

The City argues that the City of Beaver Dam is “...similarly situated with respect to *quid pro quos* with the communities which are within its comparable rank among the comparable communities.” The Arbitrator does not agree. The City has ranked Beaver Dam with communities which are below it in terms of virtually all criteria; Whitewater, Watertown, Horicon, and Waupun. In reality, Beaver Dam is ranked ahead of these communities and, if the chart provided by the City were to rank Beaver Dam in its proper order, it would be ranked among communities which netted much higher “net compensation.” (With the exception of Fort Atkinson.) The Undersigned is not persuaded that \$500.00 is an adequate *quid pro quo* in return for the net value the City receives under its offer.

In order to support a change in the *status quo* the proponent of the change must provide a strong and proven need for the change. It must also show a *quid pro quo* or a showing that comparable groups were able to make the change without a *quid pro quo*. Finally, the proponent of the change must show a compelling need for the change and that the change will address that need absent a hardship to the other party. The provision of a *quid pro quo* in order to ameliorate the other party’s hardship also will satisfy the requirement that the other party not be placed in a position of hardship. The City has not shown an

adequate need for this change to the Arbitrator's satisfaction. Without doing so, its position is fatal.

This factor is favored by the Association.

The Association's final argument relates to the allegation that its membership will be forced to slide backwards in terms of its ranking among its comparables. The Undersigned discussed this issue above under the "External Comparables" section of paragraph 4.

The question is whether each side received a fair and impartial assessment of their respective positions under the controlling statute, Wis. Stats. 111.77. The parties' briefs were well conceived and argued on behalf of their respective parties. This matter was very close. On balance however, in view of the evidence, testimony, arguments and the application of the controlling statutory requirements of Wis. Stats. 111.77(6) to this matter the Arbitrator enters the following

AWARD

The Association's final offer is somewhat more reasonable than the City's offer and is selected along with all tentative agreements without modification and incorporated into the parties' 2011, 2012 and 2013 collective bargaining agreement.

Dated this 21st day of September, 2014.

Steve Morrison, Arbitrator