

BEFORE THE ARBITRATOR

In the Matter of an Interest Arbitration Between

EAU CLAIRE FIRE FIGHTERS LOCAL 487, AFL-CIO

and

CITY OF EAU CLAIRE

Case 306

No. 72887

MIA-3125

Decision No. 34986-A

Appearances:

Mr. John B. Kiel, The Law Office of John B. Kiel, LLC, P.O. Box 147, Salem, WI 53168-0145, appearing on behalf of the Union.

Ms. Mindy K. Dale, Weld, Riley, Prenn & Ricci, SC, P.O. Box 1030, Eau Claire, WI 54702-1030, and **Mr. Stephen C. Nick**, City Attorney, City of Eau Claire, 203 S. Farwell St., Eau Claire, WI 54702-5148, appearing on behalf of the City.

ARBITRATION AWARD

The Union and Employer named above are parties to a collective bargaining agreement which expired on June 30, 2013. The parties filed an interest arbitration petition with the Wisconsin Employment Relations Commission, and a member of the Commission's staff conducted an investigation which reflected that the parties were deadlocked in their negotiations. The parties submitted their final offers to the Investigator by February 28, 2014. On May 5, 2014, the Commission issued an Order appointing the undersigned to serve as the Arbitrator. A hearing was held on September 24, 2014 in Eau Claire, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The parties completed filing briefs on December 1, 2014.

FINAL OFFERS OF THE PARTIES

City's Final Offer

Wages - 2% across the board on 7/1/2013

- 2% across the board on 7/1/2014

Insurance - City to pay 90% of premium effective January 1, 2014

- City to pay 87% of premium effective January 1, 2015

Association's Final Offer

Wages - 2% across the board on 7/1/2013

- 2% across the board on 7/1/2014

- 2% across the board on 1/1/2015

Insurance - City to pay 90% of premium on January 1, 2014

- City to pay 88% of premium on January 1, 2015

STATUTORY CRITERIA

The criteria to be given weight by the Arbitrator in rendering the award are set forth in Section 111.77(6), Wis.Stats., as follows:

(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 the consideration 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:

- 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 account in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public service or in private employment.

THE PARTIES' POSITIONS

The Association

The parties agree to most of the external comparables. The City would include Marshfield and the Union would include Green Bay and Racine. The Union now stipulates to the inclusion of Marshfield. There is no defined set of comparables as the parties have not previously been to interest arbitration. The parties use a broad statewide pool of comparables. They agree that smaller, northwestern communities of Chippewa Falls, LaCrosse, Menomonie, Rice Lake and Superior are appropriate comparables. They agree on the central communities of Stevens Point, Wausau, Wisconsin Rapids, Marshfield, Appleton, Fond du Lac, Manitowoc, Oshkosh, and Sheboygan, as well as the southern communities of Janesville and Beloit.

The Union asserts that comparisons of equalized value and population support including Green Bay and Racine in the comparable pool. Equalized value exemplifies the similarity in economic conditions between communities. Arbitrators have also recognized that demographics within plus or minus 50% of each other are comparable. Eau Claire's aggregate equalized value is only about 25% less than that of Green Bay and is about 25% more than that of Racine. Eau Claire's 2012 population is within 50% of both Green Bay and Racine. The Union also asserts that including Green Bay allows for better use of metropolitan statistical areas (MSAs) data. There are 12 MSAs, including Eau Claire, that account for most of the state's population, employment and personal income.

The Union expects the City to rely on a June 2001 interest arbitration award issued by Arbitrator Engmann in City of Eau Claire (Law Enforcement), Dec. No. 29948 where the Arbitrator refused to expand the pool previously established and refused to rely on a classification and compensation study because it did not include the bargaining unit members involved in that case. The present case is different, involving different parties with no established set of comparables. Moreover, the City itself recognized that Racine and Green Bay are important financial comparables when it commissioned the Wisconsin Taxpayers Alliance to prepare a report that compares it with nine other communities chosen by the City. The Taxpayer Alliance report compares the City with Green Bay and Racine and others in operating spending, property taxes, shared revenues, debt, income, and the percentage of residential property. Finally, Arbitrator Engmann's award is 13 years old and decided in the pre Act 10 era.

Things are different now. Racine and Green Bay would come into the pool under the standards advanced by Arbitrator Kossoff in City of Monona (Police), Dec. No. 30991-A (2004) and Arbitrator McAlpin in City of Wausau (Fire Department), Dec. No. 29062-A (1997).

On the merits, the Union notes that while it has proposed an additional 2% effective January 1, 2015, it is making an insurance concession. In January of 2012, the City paid 93.5% of the health insurance premium, and in January of 2013, it paid 92%. It now wants to go down to 90% in January of 2014 and 87% in January of 2015. The City fails both to show a compelling need for changing the status quo and a quid pro quo for the change. Where the firefighters receive base wages below the comparables, a quid pro quo is particularly important.

The local economic conditions and outlook for the City are favorable according to the CAFRS report. New building reports are up, valuations in TIF boundaries have increased, and the City ranks high for economic and job growth. Employment recovered better in the recession than the majority of the MSAs, with only Green Bay faring better than Eau Claire, and the City leads the MSA in the employment forecast for 2014-2016. The City also led in personal income, again with a higher forecast for the future. The City's unemployment rate was better than the MSAs except for LaCrosse. When local economic conditions are improving, proposals like the Association's, which provides a quid pro quo for its insurance concessions and wage disparity, should be more attractive.

Where the Association has made a concession in insurance, it should be entitled to some quid pro quo for it. The City has not shown a compelling need for the concession and it failed to provide a quid pro quo. The City has the ability to pay and the Association's offer poses no economic hardship. The City's fund balance exceeds recommendations of the Government Finance Officers Association. Union Ex.#5 shows that the inclusion of Marshfield still leaves the base salary of Eau Claire Fire Fighters at 92% of their external peers for 2013, earning \$4,477 less than the external comparables, with an hourly rate disparity of \$2.28. The disparity grows in 2014 to \$4,818 and \$2.50 an hour. There is a longevity benefit after 20 year but the vast majority of bargaining unit members has less than 20 years of service and the average is 13. The education incentive pay plan only compensates new hires for 48 credits earned prior to their employment. Union Ex.#5a shows that Eau Claire Fire Fighters would remain behind their pool peers in total compensation, even if giving credit for longevity and assuming maximum education credit, which is an unlikely best case scenario.

The City has demanded 10% insurance contribution in 2014 up from 8% in 2013 and 6.5% in 2012. In 2015 it seeks a 13% contribution. The fire fighters have agreed to 12%. In an earlier bargain, the Union agreed to pay all of the employee share of the WRS. The Union seeks an additional 2% wage lift to put the fire fighters into a more competitive position with the externals. Four of the comparables - Appleton, Beloit, Chippewa Falls and Rice Lake - currently pay 100% of the insurance and 13 comparables pay more than 87% of the insurance premium. The City is the third lowest per capita fire and ambulance cost among the comparables.

Additionally, all but Superior enjoy a higher base wage than Eau Claire Fire Fighters.

Appleton's 2014 top step base salary is \$11,268 more than Eau Claire's, and Janesville's is \$7,213 greater. Only Superior's is less, and its 2012-2013 wage increase of 11.65% exceeds the City's of 10.65%. The Union expects the City to argue that other units made insurance and WRS concessions in a shorter span for a lower increase. Oshkosh made health insurance and WRS concessions with a 6.5% wage increase between 2012 and 2014. And its base wage is greater by \$10,553 than Eau Claire's. Similarly, Green Bay fire fighters pay 12% of the insurance premium and got a 6% wage increase when paying the general employee share of the WRS. Again, their base wage is \$8,416 higher than Eau Claire's. The City demands more of its fire fighters and offers them less than the external pattern.

The City

The City asserts that there is an established group of comparables as a result of three arbitration decisions involving the police unit. The City would use the same list except for adding Marshfield and taking out the Counties of Eau Claire and Chippewa. The counties do not have fire departments, and Marshfield is geographically proximate and in the same labor market as other comparables, and similar in size to other comparables. The City objects to the Union's proposed addition of Green Bay and Racine and asserts that both are too large to be appropriate comparables with a population of 104,250 and 78,830 respectively. Eau Claire's population is 66,060. Green Bay and Racine would be the two largest comparables on the entire list. They are not geographically proximate to Eau Claire and not potential labor markets. Arbitrators have specifically rejected Green Bay and Racine as appropriate comparables in prior arbitrations with the City. The City also rejects the Union's argument that there are no established comparables for the fire fighters because the prior awards involved only the police unit. However, Arbitrator Tyson noted in Richland County (Professionals), Dec. No. 28848-A (1997) that where no external comparables have been established for a unit, it is reasonable to rely on comparables established for other bargaining units of the same municipal employer.

In considering the economic conditions of the City, the City submits that its finances must be understood in context. Finance Director Jay Winzenz testified about the challenges facing the City's ability to support across-the-board financial growth. Among the biggest challenges faced by the City are statutory levy limits and reductions in shared revenue from the State. The City's offer commits approximately 37% of the available levy limit threshold to the fire fighters' pay and benefits, even though the fire department budget is only 18% of the City's general fund budget. Only the police department at 26% has a larger portion of the general fund budget. Consequently, compensation increases in these two departments have a greater impact on the City's budget than compensation increases in other department. While the portion of budget funds from shared revenue is shrinking, the City's ability to mitigate these losses through levy increases has largely been eliminated.

The City contends that the Union's offer does not account for reductions in shared revenue and levy limits. Historically, the City could overcome shared revenue decreases by increasing the tax levy, reducing services, showing the rate of growth in the budget or dipping into the fund balance. But now a municipality is only allowed to increase its levy over the

amount from the prior year by the percentage increase in equalized value from new construction. The cost of the Union's proposal, along with an equivalent "me-too" police union proposal, would almost double the City's 2015 permitted levy increase for operations. Any argument that the City should dip into its fund balances to pay for the increases is without merit. While the City is not making an "inability to pay" argument, it submits that the local economic conditions and its finances render the Union's final offer unreasonable. The fire department's recruitment and retention numbers show the fairness and reasonableness of its pay and benefit package. The City proposes wage increases and insurance contributions that are identical to the settlement negotiated by the transit unit and that provided to other internal employee groups.

While the City believes that the internal wage settlement pattern is the determining factor here, it argues that it maintains and improves its position with respect to the average compensation among the external comparables. The City takes issue with the Union exhibits #'s 5 & 6 and claims they contain so many calculation errors that the Union's entire premise is false. Eau Claire's compensation levels are actually right at the average of the comparables and improve under the City's offer. The City submitted supplemental exhibits # 35 & 36 which are revised versions of Union Ex. # 5 & 6 with the Union errors corrected. Three miscalculations of the greatest impact are hazmat/special teams pay, educational incentive pay left out for three comparables, and comparing Eau Claire's 2012 compensation with 2013 levels of others and the same thing for the next year.

The Union includes hazmat or other specialty team pay under the "Other" pay column on Union Ex.#5-6 for 8 external comparables but excludes it from Eau Claire, even though 29 out of 75 bargaining unit members receive hazmat team pay. The hazmat agreement calls for \$1,500 annually for 29 members of the team. The Union includes educational incentive pay only for Wisconsin Rapids, although Eau Claire, Beloit, Fond du Lac, Manitowoc and Racine also provide it. At \$2,120 per year, Eau Claire's educational incentive is by far the most lucrative, and a majority of members receive it. It cost the City \$98,000 in 2013.

The collective bargaining agreement runs from July 1 to June 30, and wage increases are implemented on July 1 rather than January 1. The Union compares wage levels in effect in Eau Claire on January 1, before the July 1 increases are implemented, to others' end of the year wage levels. This is misleading. Three of the comparables - Appleton, Sheboygan and Wausau - provided additional mid-year wage increases in 2013, and four of them - LaCrosse, Rice Lake, Sheboygan, and Wausau - did so in 2014. For those municipalities, the Union compares the end of year wage rates for 2013 and 2014 to Eau Claire's January 1, 2013 and January 1, 2014 wage rates. No wonder the Union's costing methodology shows Eau Claire as lagging behind the comparables. For 2013, Eau Claire's total cost per hour is 98.08% of the comparables average, not 91% as shown by the Union. For 2014, it is 99.35%, not 90% as shown by the Union. This increases it by 1% and improves the City's position in the averages among the externals. When taking out Green Bay and Racine, the City's position improves to 100.88% of the averages for 2013 and 102.92% for 2014. An outside consulting group also found that while the City pays 2.9% below market, it provides a higher level of compensation in longevity, educational

incentive pay and paramedic pay, as well as total compensation that exceeds the comparables by an average of 9.5%. Also, the City's 2014 wage increase is more in line with the comparables than is the Union's offer of a 3% net wage increase. Most of the comparables are unsettled for 2015, but the Union's offer of an extra 2% boost on 1/1/15 is not supported by them. The City rejects the Union's argument that it is entitled to catch-up because it is not falling behind the comparables when longevity, hazmat and education incentives are factored in.

The Union also asserts that it should have a quid pro quo for the insurance changes. This is not an issue in 2014 because both offers go from 8% to 10% contributions. In 2015, the Union's offer is 1% less in contributions than the City's offer. The City notes that other municipalities have increased insurance contributions without a corresponding quid pro quo. While many comparables are not settled for 2015, it believes its offer of 13% is not off the mark. Both Appleton and Sheboygan require 15% for certain plans, and Superior requires 12.6%. Where there were increases in employee contributions, there is no pattern of extra wage boosts in exchange for same. When contributions to WRS are factored in, many of the comparables' wage increases were negative, and for 2015 only Janesville was higher than the 2% the City offers here.

The City states that its final offer is identical to the voluntary settlement reached with its other settled unit and with its other internal employee groups. The City has bargaining obligations with only four units - fire fighters, police, transit and laborers (Local 284). The laborers unit has no bargaining rights except total base wages, and the others have full bargaining rights with the exception that police and fire cannot bargaining over health insurance plan design and selection. Going back to 2007, the City has provided identical wage increases and insurance contributions across all its employee groups, union and non-union alike. Because the police unit's final offer includes a 13% contribution, the fire fighters would be the only group to contribute 12% if their offer is accepted. There is no justification for one lone group to depart from an established internal pattern on health insurance contributions. The best indicator of where the parties would have settled had they reached a voluntary agreement is where the transit unit settled and where the other groups are in terms of wage increases and insurance contributions.

Finally, the City states that the fire fighters' overall compensation is reasonable and far exceeds compensation received by private sector employees in the area. The average total salary for the unit was \$62,348 for 2013, with the highest paid total salary \$85,732 and the lowest paid \$46,022. Compare those figures to Eau Claire's maximum annual private sector paramedic salary of \$48,423, which is only \$2,400 more than the lowest paid fire fighter's total salary. Among Eau Claire area employers, employees contribute an average of 21% on a single insurance plan and 27% on a family plan. Fire fighters are not leaving the job, as since 2009 only six fire fighters have left to work for other fire departments and most wanted to be closer to their home towns. The City has no trouble recruiting employees. As to the cost of living factor to be considered, the City states that for 2013, the appropriate annual CPI increase is 2.1%, and both parties' final offers will exceed it when taking increases in the cost of benefits. For 2014, the CPI increase is 1.4%, and while both parties' offers exceed it, the City's final offer

is more closely aligned than the Union's offer.

In Reply, the Association:

The Union will concede calculation errors but notes that even with recalculation as urged by the City, the City's offer leaves the fire fighters behind the externals. The Union uses the City's corrections with a single exception - the Union does not include longevity pay for a 10 year fire fighter paramedic. The collective bargaining agreement provides no such benefit to a 10 year bargaining unit member, it only applies to employees hired prior to July 15, 1989. The Eau Claire fire fighters are behind their external peers at both the base and total compensation level with and without Green Bay and Racine included.

Union Supplemental Ex.#1 includes Green Bay and Racine and shows that the base wage of a 10 year fire fighter is at 92% of the external average at the beginning of 2013 or \$4,703 less than the external mean. With a 2% raise on July 1, 2013, the wage is at 94% of the external average, or \$3,663 less than the external mean. This is with the City's corrections. Even with the education pay as urged by the City, the hourly wage of a 10 year fire fighter paramedic is 92% of the externals at the beginning of 2013 and 94% when the first wage increase takes place on July 1, 2013. Union Supplemental Ex. #2 takes out Green Bay and Racine, and finds the disparity in base wages of a 10 year fire fighter and the external mean is 93% or \$4,035 less and 95% in terms of hourly rate for a fire fighter paramedic. Adding a 3% increase for July 1, 2013, the wage is at 95% or \$2,995 less than the external average, and 97% of the external average in terms of hourly rate, without Green Bay and Racine and with the external corrections advanced by the City. Union Supplemental Ex.#3 looks to 2014, with Green Bay and Racine, with 2013 rates in 2013 for Beloit and Marshfield which were not settled for 2014, and using City's number excluding Eau Claire longevity which is not payable to a 10 year bargaining unit member. Again, the disparity is 91% at the start of 2014, and 93% with the 2% increase in July of 2014. Taking out Green Bay and Racine, Union Supplemental Ex.#4 reveals a base wage disparity of 93% at the start of 2014 and 96% for a fire fighter paramedic's hourly rate. Then mid-year 2014, the numbers are 94% and 98% for a fire fighter paramedic.

Even the inclusion of haz-mat pay still leaves a fire fighter paramedic who is a member of the haz-mat team at 95% of the externals hourly rate at the beginning of 2013, and 96% mid-year with the 2% increase. Taking Green Bay and Racine out, the number is 97%. With the July 1, 2013 wage increase, the number is 99%. In 2014, the number is 95% at the beginning of 2014, and 97% mid-year. Again, taking out Green Bay and Racine, the number is 98% and with the mid-year increase, the fire fighter paramedic is finally within 4 cents of the hour rate median of the externals. However, only 29 of the 75 bargaining unit members receive haz-mat pay. The Union further asserts that the City is among the largest of the comparable communities, and with Green Bay and Racine included, it is the fifth largest of nineteen communities, and the third largest without those two. Its aggregate equalized value is the second greatest among the comparables with Green Bay and Racine included, and if excluded, it has the greatest equalized value among the comparables. However, City residents spend less on fire and paramedic ambulance service than the externals, and only Sheboygan, Marshfield

and Appleton spend less per capita than Eau Claire. The Union notes that in Union Supplemental Ex. #12, fire fighters rank 14 out of 19 comparables, or 12 out of 17 without Green Bay and Racine. The Union further objects to the City's reliance on an internal settlement pattern. The police unit is not settled, and there is no reliable internal settlement pattern to be considered.

Regarding the comparable pool, the Union states that neither Green Bay nor Racine are Milwaukee area municipalities, contrary to the City's claim. The City itself selected Green Bay and Racine for inclusion in its 2010 Wisconsin Taxpayer Alliance customized report. While the City contends that those two cities are too large to be comparables, there are a number of cities too small to constitute comparables. The difference in population between Green Bay and Eau Claire is 38,080. If that population difference should exclude consideration of a municipality as comparable, then Stevens Point, Marshfield, Wisconsin Rapids, Menomonie, Chippewa Falls and Rice Lake would be excluded. The difference between Eau Claire and Racine is 12,660, and that difference would exclude everyone else except Appleton, Oshkosh and Janesville. It is appropriate to include both smaller and larger comparables. As to geographic proximity, the parties agreed to a state-wide pool ranging from Superior to Janesville. Racine is not part of the Milwaukee metro area as urged by the City - Employer Ex. #27 shows that Racine is in its own Metropolitan Statistical Area. Also, the City has not relied on the comparables established by Arbitrator Engmann when it proposed including Marshfield.

The Union states that the City's reliance on private sector comparisons is misplaced. None of the private sector employees listed in Employer Ex. #'s 24-26 have employment responsibilities comparable to that of fire fighters who perform essential emergency tasks for community safety. They face higher risks to their own safety when suppressing fires, extricating motor vehicle crash victims, cleaning up hazardous waste spills, and engaging in fire prevention. Their training, practice, physical fitness, courage and hours differ significantly and they are compensated for these things. Also, the Union contends that the CPI does not favor the City, as the appropriate weight to be given the cost of living is determined by the external settlements which are above the 2.1% CPI increase.

In Reply, the City:

The City continues its objection to the Union's proposal to include Green Bay and Racine in the comparable pool, due to geographic distance, population, labor markets and lack of similarity of urban environments. The City asserts that Green Bay and Racine are significantly larger than any of the other agreed-upon comparables. The use of those cities in a Wisconsin Taxpayers Alliance report does not mandate the use of them in an interest arbitration setting.

The City objects to the Union's use of the CAFR report without some clarifications, namely to point out the two projects cited are tax exempt. While resident construction increased, it had been very poor in recent years and is slowly recovering. The increases in TIF boundaries are used to fund TID project costs such as infrastructure, and the 50% allowed to be factored into the levy was already in the levy increase. The levy limit for 2014 is \$374,985

and \$349,800 for 2015. The City's final offers to the police and fire units will consume almost all of these available levy dollars. The Union's offer will exceed the available levy amounts.

While the Union noted that it had agreed in an earlier bargain to pay the full employee share of the WRS, it failed to mention that this was in conjunction with a 6.65% wage increase, experiencing a net zero wage increase that year compared with net wage decreases among the comparables. The City also objects to the Union's argument that the additional 1% insurance contribution justifies the Union's proposed extra 2% wage increase. The 2% wages increase result in salary increases of \$1,196 the first year and \$1,222 the second year. The City estimates, based on comparables' insurance rates, that the fire fighters would still net a wage increase of around \$1,000 even after adjusting their premium contribution in the first year.

The City contends that there is no pattern among the externals of extra wage boosts as a quid pro quo for increased insurance contributions. The City's analysis of the comparables shows no justification for anything more than the 2% wage increases in conjunction with its proposed increased insurance premium. The City's offer in no way extracts an unreasonable concession for the insurance especially when private sector comparisons are considered. The City's premium contributions from 92% in 2013 to 90% in 2014 and 87% in 2015 are to be contrasted with the private sector's average of 73% in 2013. The Union's offer contains a quid pro quo so excessive as to be wholly unsupported by the external and internal comparables and the private sector.

The City also believes that the Union has made errors on the compensation of comparables, such as Marshfield and overstates it at \$25.40 versus the City's more accurate calculation of \$23.84. The Union also makes errors for Green Bay and Wisconsin Rapids. When the corrections are made, Eau Claire's cost per hour is only 49 cents below the comparables' average in 2013 and 17 cents below in 2014. When Green Bay and Racine are excluded, Eau Claire's cost per hour emerges as 24 cents above the average in 2013 and 72 cents above in 2014. Moreover, the Union incorrectly states that the maximum education incentive pay of \$2,078 is unlikely to ever be paid out because it requires 20 years of service and maximum longevity, there is nothing in the contract that establishes a 20-year requirement. Employer Ex. #2 shows 63 out of 75 unit members received some form of education/tuition pay for 2013. The total payout of \$98,733 equates to an average of \$1,316 per bargaining unit member.

Regarding internal comparables, the City's non-protective transit unit voluntarily negotiated the same wage and insurance contribution that the City proposes here, and the transit unit retains full bargaining rights. The police unit has also agreed to the same health insurance contributions, although headed to arbitration. If the Union's offer were selected, the firefighters would be the only employee group to contribute 12% of the premium while all others will contribute 13%.

DISCUSSION

Comparables:

The discussion is wide open for the matter of determining external comparables. The parties have never been to arbitration, and it's been quite a while since the police unit went to arbitration. In the police unit arbitration, two counties - Eau Claire and Chippewa - were included but those need to be excluded here because they do not have fire departments. Unions in this State are in a state of change, with internal comparables rapidly disappearing. Both parties want to add external comparables to a sizable list that they have agreed upon. That list of 15 that they agreed upon during bargaining was the following:

Appleton
Beloit
Chippewa Falls
Fond du Lac
Janesville
LaCrosse
Manitowoc
Menomonie
Oshkosh
Rice Lake
Sheboygan
Stevens Point
Superior
Wausau
Wisconsin Rapids

Then the City wanted to add Marshfield to the list and the Union wanted to add Green Bay and Racine. After the hearing in this matter, the Union agreed in its post-hearing brief to include Marshfield in the comparable pool, but the City continued to object to the inclusion of Green Bay and Racine.

Although the City has an objection to including Green Bay and Racine on the grounds of the lack of geographical proximity, this objection has no merit. The parties have agreed to comparables that range from Beloit to Superior. Green Bay is geographically closer to Eau Claire than Manitowoc, Sheboygan, Janesville and Beloit. And Green Bay is in line with the Fox Valley cities of Appleton and Oshkosh and Fond du Lac. On geographic grounds, Green Bay is certainly in line with the other agreed-upon comparables. Racine would be the furthest comparable from Eau Claire, but it is much closer to Eau Claire in terms of population. Here is the whole group in terms of population:

Green Bay	104,250
Racine	78,830
Appleton	72,810
Oshkosh	66,325
Eau Claire	66,170
Janesville	63,480
LaCrosse	51,590
Sheboygan	49,110
Fond du Lac	43,100
Wausau	39,160
Beloit	36,850
Manitowoc	33,750
Superior	27,146
Stevens Point	27,129
Marshfield	19,107
Wisconsin Rapids	18,343
Menomonie	16,101
Chippewa Falls	13,704
Rice Lake	8,405

In terms of population, Green Bay looks a little heavy with 38,000 more people than Eau Claire. However, Rice Lake is way too small to be a comparable, with 57,765 fewer people than Eau Claire. These two balance each other out in terms of population. The agreed-upon comparables are heavily weighted in favor of much smaller cities such as Superior, Stevens Point, Wisconsin Rapids, Menomonie, Chippewa Falls and Rice Lake. The new addition of Marshfield aggravates that situation. There are now 7 cities that are less than half the size of Eau Claire. Accordingly, in terms of population, Green Bay and Racine are acceptable comparables, especially since there few cities larger and many cities much smaller than Eau Claire. Without Green Bay and Racine, there are only two cities that are larger than Eau Claire and fourteen that are smaller, with the bottom five being considerably smaller.

The factor of the labor market in terms of proximity is not determinative here because the parties themselves have disregarded it by their own list of comparables, ranging from Superior in the north to Beloit in the south, and Manitowoc and Sheboygan in the east. The City acknowledges that it has no recruitment or retention problems, and the parties have agreed in the past to look at a state-wide pool of comparables. Both parties have already analyzed their cases with and without Green Bay and Racine and neither of them found that the addition of them changed their positions. None of the cities on the list are considered to be a suburban area. Most of the cities have rural areas surrounding them. Equalized value favors the Union's position, as Eau Claire stands in between Green Bay and Racine. This arbitrator has

reviewed Arbitrator Engmann's case cited by both parties, and notes that it was issued nearly 14 years ago and applied to the police unit. The union in that case may have gotten a little overly ambitious as it added Kenosha and West Allis as well as Green Bay and Racine. And as noted earlier, the police comparables included a couple of counties which can't be used here.

While Green Bay is larger in population than Eau Claire, it is closer geographically than Racine, while Racine is closer in population but farther geographically. Eau Claire's equalized value is below that of Green Bay but above that of Racine. There is no good reason to exclude either one of these proposed comparables. Another reason to add the two comparables as urged by the Union is that there is more similarity of work between fire departments of these sizes rather than fire departments in smaller communities. Along with a larger population and industrial base comes larger buildings, factories, apartment complexes and the variety of more complex and dangerous work. There are more calls, emergencies, and activity. Since the agreed upon list is so heavy with smaller comparables - the bottom seven, including Marshfield, are not even half the size of Eau Claire - it makes sense to add two larger comparables.

Contrary to popular opinion, the comparable pool is not set in stone. It is only a guideline that is useful for this case, at this time. The parties can always agree to their own list of comparables. For this case, Marshfield, Green Bay and Racine will be considered when reviewing comparable wages and benefits.

Greater Weight under Sec. 111.77(6), (am), Wis.Stats:

Regarding the greater weight factor – the economic conditions of the jurisdiction – the City's main concern are statutory levy limits and reductions in shared revenue from the State. These are common concerns throughout the state and not unique to the City. The City's Finance Director, Jay Winzenz, stated that cities across the state are in the same boat. Public safety - both police and fire departments - take up 44% of the City's budget of approximately \$60 million. Personnel is the biggest part of those departmental expenses. The City's offer commits about 37% of the available levy limit to fire fighters' pay and benefits. And between increases in police and fire department personnel, the compensation has a greater impact on the City's budget than any other department. This, too, is typical of cities that have both police and fire departments. After all, police and fire protection is one of the critical functions of cities. It is one of the main reasons cities exist, to provide services such as mutual aid and police and fire protection and as well as amenities such as sewer and water.

The Union's offer would cost \$149,416 over the City's offer, according to the City's figures. But to put this in perspective, that amount is in a department that has a budget of over \$10.5 million, out of a total budget of \$60 million. No one argues that there is an inability to pay in this case.

The Arbitrator agrees with the City that salaries should not come out of reserve funds since salaries are ongoing expenses. However, the City is in solid financial shape. Union Supplemental Ex. #10 shows that in 2012, the City's per capita cost of fire and ambulance

expenditure is near the bottom of the comparables. Employer Ex. #27 shows that the City is expected to reach its pre-recession employment peak in 2014. Housing permits were down in 2013 but are expected to increase as the housing market recovers. (There is a discrepancy between that exhibit and Union Ex. #14, the CAFR's report, which shows building permits increasing in 2013 over 2012.) Personal income was up in the metropolitan statistical area. There is nothing in the MSA report that raises any alarm.

Thus, the Arbitrator has given greater weight to the economic conditions in the jurisdiction and has found that the other factors under Sec. 111.77(6)(bm) will determine which party will prevail.

Wages & Insurance:

The parties have shown wages and total compensation using some different figures. The Arbitrator has relied mostly on their supplemental exhibits which have some corrections made. The Union accepted most of the City's corrections but objects to the City's position of putting longevity pay into the total compensation because no one in the 10 year position gets longevity as it only applies to employees hired before July 15, 1989. However, there are other items in the total compensation consideration that also do not go to everyone in the bargaining unit. The haz-mat pay goes to less than half the unit. Not everyone gets the education incentive. Thus, the City's inclusion of longevity pay is acceptable and is within the statutory language regarding overall compensation, which includes "all other benefits received." Also, the City shows figures with Racine and Green Bay included but omits Marshfield, the comparable it proposed and which was accepted by the Union. At any rate, here is some of what can be gleaned by the numbers.

On 1/1/13, the City finds the **total** compensation for a 10 year employee to be \$24.40. Then on 7/1/13, it is \$24.88. The average of the comparables - including Green Bay and Racine but not Marshfield - is \$25.37. The wage of \$24.88 is thus 98.08% of the comparable pool.

The Union finds on 7/1/13 the wage to be \$23.76, excluding longevity. Including Marshfield, Green Bay and Racine, that compares with \$25.20 in the comparables, or 95% of the comparables average. Running the figures without Green Bay and Racine but with Marshfield yields an average in the comparables of \$24.51, and Eau Claire's wage of \$23.76 would then be 97% of the comparables.

On 1/7/14, the City finds the wage to be \$25.36, and the comparables, including Green Bay and Racine but not Marshfield or Beloit, at \$25.52. The Union used Beloit and Marshfield numbers for 2013 because they were not settled for 2014, and found the comparables to be \$25.58, and its wage rate to be \$24.23.

When the City excludes Green Bay and Racine as well as Marshfield, it finds the 2013 wage on 7/1/13 of \$24.88 to be just 24 cents above the comparable average of \$24.64, and for 2014, it shows the comparable average to remain the same with its July 1 raise being its wage

rate to \$25.36 and thus over the average. The City also excludes Beloit, which is not settled for 2014. The City does not have an increase on 1/1/15 as the Union does. The City shows that its rates are at 100% of the average by excluding Racine and Green Bay and Marshfield in 2013 and then excluding Racine, Green Bay, Marshfield and Beloit in 2014. When the rates come in for Marshfield and Beloit, the average will go up as Beloit's rates are considerably above the City's and Marshfield's only slightly above. In other words, the only way that the City can be at the average of the comparables is without one of the comparables it has previously agreed to - Beloit. Even if Beloit were to give no raise in 2014, it's rates would still raise the average and the City falls below the average.

The City also has an objection that the Union compares itself to the external comparables at the beginning of a year and not in the middle of the year when its first wage increase occurs. One could say that the Union is always behind 6 months or ahead 6 months, depending on the point of view. (The parties can easily solve this by bargaining a two-and-a-half year contract sometime.) The parties have made comparisons at both points in the year and these have been considered. The best number to look at is mid point in the contract, July 1, 2014. This point would encompass the City's 2% raise and the beginning and end of the year for the comparables, as well as any mid year increases by them. This number, on City Supp. Ex. #36, is \$24.57 without the educational incentive and \$25.36 with it. This number as a percentage of the average is 96.50% without the educational incentive and 99.35% with it. This number excludes Beloit and Marshfield who were not settled for 2014 and includes Green Bay and Racine. Since Beloit's 2013 wage total was \$28.48 and Marshfield's was \$24.44, those settlements will increase the average wage and then Eau Claire is further behind from the 96.5% and 99.35%. These are total compensation numbers, despite the fact that not everyone in the bargaining unit gets longevity, haz-mat pay, or educational incentive. Only 7 bargaining unit members get longevity and only 29 out of 75 members get haz-mat pay. Eau Claire is one of the largest of the comparables, and there are several smaller cities bringing that average down, so the City would be hard pressed to argue that it should not be at least at the average, and there is no reason to fall below it. Thus, the Union's final offer is preferred on wages.

The City characterizes the insurance concession as only 1% on the premium, but in reality, it is a 4 or 5%, depending on which offer prevails. The parties are going from 92% to 90% in the first year and then either to 88 or 87% in the second year. Therefore, the Union is asking for an additional 2% in wages in exchange for 4% in insurance concessions.

The 2014 external comparables' average on premium payment is a employee/employer split of 9.83%/90.17%. There are some cities that are lower than the 87% proposed by the City. Appleton has one plan at 85% but another where it pays 100%. Green Bay has 3 plans where it pays 85% on one, 86.25% on another and 87.50% on the third. Sheboygan has 1 plan at 85% and another at 88%. Wisconsin Rapids has 4 plans - paying 80%, 85%, 90% and 95%. Most of the family premiums are between \$1,000 and \$2,000, with a couple over \$2,000 a month. While neither party lists the premium rates, the average for the family plan among the comparables in 2014 is \$1,752/month.

Taking \$1,752 as the average, the City states that employees would pay \$210/month for premiums under the Union's offer and \$228/month under the City's offer, or \$18/month and \$216/year more, compared to the \$1,222 wage increase in 2014. However, the City does not analyze this as what additional costs employees will pay for insurance during the life of this contract. Under the Union's offer, the employees go from paying \$140/month or \$1680/year for paying 8% of the premium to paying \$175/month or \$2100/year at 10% to \$210/month or \$2520/year when paying 12% of the premium. This is an extra cost of \$840/year. In 2014 of the contract, the employees would pay \$420 extra, and then another \$420/year the next year. The 2014 rate, taking the base of \$54,063.90 divided by 2744 hours yields an hourly rate of \$19.72. Then under the Union's offer, adding another 2% in 2015 for a quid pro quo, there's about 40 cents per hour, and at 2744 hours, a yearly total of \$1,097.60, or \$257 more than it needs to pay for the insurance. That would only leave only about a dime for catch-up pay and the rest would go to the insurance premium. These are not real numbers but assume that the premium is \$1752/month throughout the contract, which is unlikely. So the Union is a little high on the quid pro quo, the City has offered nothing for a quid pro quo and is a little on the low side on wages anyway. The City's offer leaves the bargaining unit in a worse position than it was. The City believes that it should not have offer a quid pro quo to due to the internal and externals comparables. The City discounts the fact that it has asked for two concessions - the first going from employer paid 92% to 90% and the second going from 90% to 87%. That's 5% over the life of the contract, not just 1%.

The City believes that the external comparables support its proposal and that the externals do not support an extra 2% as a quid pro quo. The City reviews 13 comparables, and 8 of them also changed the employee WRS contribution, which these parties did in their last contract when such a change resulted in no wage increase or a net zero when the WRS is considered. This makes it difficult if not impossible to determine what was given for what in those externals. The City also points out that the private sector employer premium contribution is 73%, but the public sector employer premium contribution is around 90%. The City is leading the pack a bit here and should be ready to pay something for it.

The external comparables, as shown by Union Ex. #10, show an average employer contribution of 90.17% with employees paying an average of 9.83%. The exhibit reviews 17 comparables, including Green Bay and Racine, but not Marshfield. Employer Ex. #15 shows Marshfield at 85%. Only 6 of the comparables, including Marshfield, support the City's level of proposed contribution. Green Bay has 3 plans that have varying contribution levels of 85, 86.25, and 87.50%. Manitowoc contributes 87.50%. Oshkosh has 2 plans and contributes 85 or 88%. Sheboygan has 2 plans at 85 and 88% contribution. Superior has a contribution level of 87.40%. Only 3 of the comparables have plans where the employer contributes 100%, and 2 of them - Appleton and Chippewa Falls - have other plans that are at 85 and 88% respectively. LaCrosse has one plan at 86.37% but 3 other plans from 91% to 95.36%. And Wisconsin Rapids has 4 plans ranging from 80 to 95%. It is difficult to tell how much those individual employers would be paying, given the lack of knowledge of the percentage of people in each plan. After all the data is reviewed, at either 87 or 88%, both parties have a lower employer contribution rate than the majority of the external comparables. This is a more compelling reason that the

Employer should provide a quid pro quo. If the Employer were one of the **last** of the comparables to provide a lesser contribution rate, it would be a different story. Then the need for a quid pro quo would be diminished. Here, however, the City is lowering its contribution rate by 5% which is not supported by the comparables and is trying to do it without a quid pro quo. While the Union's offer is a little high just for a quid pro quo, the City offers nothing. Therefore, the Union's position on wages and insurance combined is preferred.

It is true, as the City asserts, that arbitrators liked to see internal patterns of settlement followed, particularly in the realm of benefits. As a result of Act 10, many cities and counties who relied on those internal patterns now are left without them, either because unions did not seek recertification or because those who did are not allowed to bargain over benefits and are limited to the CPI in bargaining on wages. There are two non-protective bargaining units, but one - Laborers Local 284 - has limited bargaining rights and its wage rate was limited to the CPI, which was 1.64% for 2013. Thus it does not even match the City's offer on wages to the fire fighters. The other non-protective unit, the transit union, has full bargaining rights and settled for a 6.65% increase on 9/23/13 and a .35% increase on 1/14 in exchange for full employee WRS contributions of 6.65% on 9/23/13 and increasing to 7% on 1/1/14. The City states that this wage increase equates to a 0% net wage increase which is consistent with wage increase received by the other bargaining units for the years in which employees began contributing the full employee share of the WRS. The transit union has agreed to an employee contribution of 13% for 2015 and all other City employees will be contributing 13%. The police unit is not settled. **If the police unit had settled, it would be given considerable weight. And if the police unit and the transit unit settled on the same terms, it could be difficult for the fire fighters to overcome that.** But those are not the facts here. There is no pattern of voluntary settlements. Only the transit union has voluntarily settled for the insurance contribution proposed by the City, but there is no corresponding wage settlement to that being offered here. While the Union here would pay 1% less in insurance contributions than other internal units, that would be only for the last 6 months of this contract as it expires in less than 6 months.

The Arbitrator has considered all the statutory criteria and finds that the Union's final offer is preferred based on the fact that the bargaining unit's wages are a little below the average of the external comparables, and the City has not offered a quid pro quo for an insurance concession on the premium.

AWARD

The Association's final offer is selected and shall be incorporated into the parties 2013-2015 collective bargaining agreement.

Dated at Elkhorn, Wisconsin, this 12th day of January, 2015.

Karen J. Mawhinney, Arbitrators