



AGENDA OF THE PERSONNEL COMMITTEE

**TUESDAY, JULY 9, 2019, 4:30 PM
CITY HALL, ROOM 207**

A. Roll Call.

- I. Members: Ald. Bill Galvin, Chair, Ald. Kathy Lefebvre, Vice Chair, Ald. Barbara Dorff, Ald. Veronica Corpus-Dax

B. Approval of the Agenda.

C. Approval of Minutes.

- I. Approval of the minutes from June 11, 2019.

D. Regular Business.

- I. Consideration with possible action on request to fill the following replacement positions and all subsequent vacancies resulting from internal transfers.
 - a. Mechanic Foreperson - Public Works
 - b. Electrician - Public Works
2. Consideration with possible action to amend City of Green Bay Personnel Policy Chapter I Equal Employment Opportunity.
3. Consideration with possible action on request by Ald. Galvin to examine and determine salary and benefits for the Oak Learning Center at the Wildlife Sanctuary to see if other funding sources can be used to get their pay and benefits closer to GBAPS salaries and benefits.

The Committee may convene in closed session pursuant to § 19.85(1)(e), Wis. Stats., for purposes of deliberating or negotiating the investing of public funds or conducting other specified public business for bargaining reasons. The Committee may thereafter reconvene in open session pursuant to § 19.85(2), Wis. Stats., to report the results of the closed session and consider the balance of the agenda.

4. Consideration with possible action on review of WRS eligibility of the physical fitness incentive grievance.

The Committee may convene in closed session pursuant to § 19.85(1)(a), Wis. Stats., for the purpose of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body. The Committee may, thereafter, reconvene in open session pursuant to § 19.85(2), Wis. Stats., to report any actions taken during closed session and to consider all other matters on the agenda.

E. Informational.

1. Report of routine personnel actions for regular employees.
2. Next meeting date: August 13, 2019.

F. Public Hearings.

G. Adjournment.

- 1) THIS MEETING IS RECORDED: THE VIDEO OF THIS MEETING AND MINUTES ARE AVAILABLE ONLINE AT www.greenbaywi.gov
- 2) ACCESSIBILITY: Any person wishing to attend who requires special accommodation because of a disability, should contact the City Safety Manager at 920-448-3125 at least 48 hours before the scheduled meeting time so that arrangements can be made.
- 3) QUORUM: Please take notice that a majority or quorum of the Common Council will attend this Personnel Committee meeting and will constitute a meeting of the Common Council for purposes of discussion and information gathering relative to this agenda.
- 4) REPRESENTATION: The party requesting the communication, or their representative, should be present at this meeting.



Report to the
Personnel Committee
of the City of Green Bay

MEETING DATE

July 9, 2019

PREPARED BY

AGENDA ITEM # D.I.

Consideration with possible action on request to fill the following replacement positions and all subsequent vacancies resulting from internal transfers.

- a. Mechanic Foreperson - Public Works
- b. Electrician - Public Works

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. Request to Fill Memo 07.09.19
2. Mechanic Foreperson - R. Lee 06.26.19
3. Electrician - R. Dachelet 07.17.19

MEMORANDUM



Human Resources Department

To: Personnel Committee
Joe Faulds, Human Resources Director

From: Adam Reidinger
Human Resources Generalist

Re: Request to Fill Vacant Positions

Date: July 9, 2019

The Human Resources Department is requesting authorization to fill the following replacement positions approved as part of the 2019 budget and all subsequent vacancies resulting from internal transfers. The justification reports are attached.

- Mechanic Foreperson – Replacement position due to the resignation of Robert Lee effective June 26, 2019. Salary range: \$25.86 - \$30.42 per hour.
- Electrician – Replacement position due to the resignation of Ryan Dachelet effective July 17, 2019. Salary range: \$25.86 - \$30.42 per hour.

**Position Fill Request
Justification Report
July 2, 2019**

Position Title: Mechanic Leadworker – DPW Operations Division/Motor Equipment Section

1. **If this position is a replacement position, please indicate the reasons for the vacancy. If this is not a replacement position, please indicate the reasons for requesting the position.**

 X **Replacement Position** **Not a Replacement Position**

This position is vacant as a result of the resignation of second shift Mechanic Leadworker Robert F. Lee, effective at the end of the work day on June 26, 2019.

2. **Is this position included in the current budget? If not, please list how this position will be funded (grant, internship, etc.). Please list the salary range of the position.**
Yes, this position is currently funded in the DPW-Operations Division operating budget. The current wage range for a Mechanic Leadworker is \$25.86/hour to \$30.43/hour (\$53,789 to \$63,294 annually)
3. **Please list the functions and any special information regarding this position.**
The Mechanic Leadworker performs a full range of duties including, but not limited to 1) maintenance and repair of DPW vehicles and equipment, 2) scheduling, prioritizing, and coordination repairs for all Mechanic work, 3) solving repair issues with Mechanics, 4) maintaining stability and unity of the Mechanic workgroup, and 5) managing the FASTER equipment management computer system
4. **Does the position generate revenue or reduce expenses? If so, provide an estimated amount.**
This position does not generate revenue for the City. But the use of in-house labor and equipment reduces the need to contract services provided by DPW employees.
5. **Please explain why current staff is unable to absorb duties of this position.**
Mechanic vacancies add workload to the Motor Equipment Section staff. During vacancies the Motor Equipment Section cannot maintain its preventative maintenance and repair program at a level necessary to keep the DPW fleet completely active. Repair and maintenance activity is then reactive instead of proactive. Working in a reactive manner contributes to extended equipment down time, and limits the productivity of core DPW functions. DPW cannot keep up with repair requests with a short staff, especially a Leadworker who coordinates the entire shift group. Replacement of the all DPW Mechanic vacancies is necessary.
6. **If duties of position are presently being done, how are they done?**
Duties associated with any vacant position are assigned to other employees. If there is a lack of personnel, then assignments are prioritized. Incomplete assignments are postponed or not completed.
7. **What service would be reduced or eliminated if this position is not filled?**
DPW cannot reduce or eliminate its core services. Motor Equipment Section operates as an internal City service agency to the DPW fleet. Its clients are DPW, Mason Manor,

Inspection Department, Mayor's Office, and Parking Division. If Mechanic positions were eliminated, DPW would first reduce or eliminate its services to other City departments.

8. What are the alternative methods and costs of accomplishing the work?

The alternative to not filling Mechanic vacancies is expenditure of overtime to keep up with workload demand. Using overtime could reduce cost to the City by not having to cover fringe benefits of eliminated Mechanic positions. However, routine overtime assignment leads to employee burnout, potential injuries, and increased absenteeism. Another alternative would be privatization.

9. Are there union issues?

No

10. Other supporting comments.

None

**Position Fill Request
Justification Report
June 28, 2019**

Position Title: Electrician – DPW Traffic Division

1. **If this position is a replacement position, please indicate the reasons for the vacancy. If this is not a replacement position, please indicate the reasons for requesting the position.**

 X **Replacement Position** **Not a Replacement Position**

This position is vacant as the result of the resignation of Ryan Dachelet, effective at the end of the business day on Wednesday, July 17, 2019.

2. **Is this position included in the current budget? If not, please list how this position will be funded (grant, internship, etc.). Please list the salary range of the position.**

Yes, this position is currently funded in the DPW operating budget. The current wage range for a DPW-Electrician is \$25.86/hour to \$30.42/hour (\$53,789 to \$63,274 annually) plus opportunities to earn performance increases beyond the top of the wage range

3. **Please list the functions and any special information regarding this position.**

The position is one of 6 Electricians (1 Electrician Foreperson, and 5 Electricians) who perform routine and emergency maintenance and construction on all of the City's electrical equipment including traffic lights, city-owned street lights, sewer lift/pump stations, parking structures and other City buildings. They serve as the electricians for all of the City departments with significant assistance provided to Park, Police, and Fire Departments. DPW also provides traffic signal maintenance services to the City of DePere, and emergency electrical service to Brown County.

4. **Does the position generate revenue or reduce expenses? If so, provide an estimated amount.**

This position generates revenue for the City, by providing traffic signal maintenance services to the City of DePere, and emergency electrical service to Brown County

5. **Please explain why current staff is unable to absorb duties of this position.**

Electrical Section staffing was reduced from 7 to 6 Electricians in January of 2008 due to budget restraints. The section is currently under-staffed, and workload is high. Further reductions will not allow Electrical Section to keep up with work responsibilities.

6. **If duties of position are presently being done, how are they done?**

When absences occur, Electrical Section prioritizes projects, and declines discretionary work from other City departments. In effect, less work is done when there is a vacancy.

7. **What service would be reduced or eliminated if this position is not filled?**

Electrical assistance to other City departments would be eliminated or greatly reduced, requiring other departments to seek electrical help from private contractors. Electrical Section's first priority is to maintain 1) traffic signals, 2) street lights, 3) sewer lift stations, and 4) DPW facilities.

8. What are the alternative methods and costs of accomplishing the work?

Privatization and higher associated costs to the City

9. Are there union issues?

No

10. Other supporting comments.

DPW-Traffic Division Electrical Section is a valuable asset to DPW and all City departments. City Electricians maintain a unique institutional knowledge of the City's systems. This innate knowledge allows them to address issues more effectively and efficiently than any outside vendor.

The City continues to increase the number of street lights under City jurisdiction, reducing the cost paid to Wisconsin Public Service for maintenance and repair. Business Improvement Districts also continue to increase the number of amenities that require electrical maintenance and repair, which are currently performed by Electrical Section.

As the amount of City-owned services increase, additional Electrical Section staff is required. DPW continues to work toward increased staffing for Electrical Section.



Report to the
Personnel Committee
of the City of Green Bay

MEETING DATE

July 9, 2019

PREPARED BY

AGENDA ITEM # D.2.

Consideration with possible action to amend City of Green Bay Personnel Policy Chapter I Equal Employment Opportunity.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. Personnel Memo - Chapter I - Equal Employment Opportunity Amendment
2. Amended Chapter I - Equal Employment Opportunity

MEMORANDUM



Human Resources Department

To: Personnel Committee

From: Joseph W. Faulds, Human Resources Director

Re: Equal Employment Opportunity Revision

Date: July 9, 2019

Equal Employment Opportunity Revision

The City is an equal employment opportunity employer that opposes discrimination in the hiring process and in the workplace. As such, the City is proposing modifications to its current policy to stay aligned with current interpretations of state and federal laws. Further, the proposed language is consistent with the non-discrimination clauses contained in City agreements with outside entities. The intent is to be as clear and specific as possible for our applicants and current employees.



CITY OF GREEN BAY PERSONNEL POLICY

Policy Title Objectives and Scope of Policies	Policy Reference Chapter 1, Section 1
Policy Source Human Resources Department	Legal Review Date
Personnel Committee Approval	City Council Approval

1.1.1 PURPOSE. The general purpose of these Personnel Policies is to establish a system of personnel administration that meets the social, economic and program needs of the City of Green Bay. The system herein established shall be consistent with the following principles.

- Recruiting, selecting and advancing employees on the basis of their relative ability, knowledge and skills including open competition of qualified applicants for initial appointments.
- Establishing pay rates consistent with the principle of providing equal pay for significantly equal work duties.
- Recognizing good job performance, rewarding exceptional performance, correcting inadequate performance and separating employees whose performance is not acceptable.
- Assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, creed, age, sex, sexual preferences, sexual orientation, gender expression, gender identity, gender non-conformity, transgender status, handicap, national origin, genetic information, ancestry, marital status, arrest or conviction record, or any other basis protected by state or federal law and with proper regard to their rights. Reasonable accommodations will be provided for disabled individuals who are otherwise qualified.

1.1.2 EQUAL EMPLOYMENT OPPORTUNITY. Equal employment opportunity will be assured in the City system and affirmative action provided in its administration. Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline or any other aspect of personnel administration because of political affiliation, race, color, creed, age, sex, sexual orientation, gender expression, gender identity, gender non-conformity, transgender status, handicap, national origin, genetic information, ancestry, marital status, arrest or conviction record, or religious opinions or

~~affiliations or because of race, national origin, or~~ non-merit factors, or any other basis protected by state or federal law will be prohibited. Discrimination on the basis of age, sex (including ~~sexual preferences~~sexual orientation and gender identity), or physical disability will be prohibited except where specific age, sex or physical requirements constitute a bona fide occupational qualification and/or represents a business necessity.

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Report to the
Personnel Committee
of the City of Green Bay

MEETING DATE

July 9, 2019

PREPARED BY

AGENDA ITEM # D.3.

Consideration with possible action on request by Ald. Galvin to examine and determine salary and benefits for the Oak Learning Center at the Wildlife Sanctuary to see if other funding sources can be used to get their pay and benefits closer to GBAPS salaries and benefits.

The Committee may convene in closed session pursuant to § 19.85(1)(e), Wis. Stats., for purposes of deliberating or negotiating the investing of public funds or conducting other specified public business for bargaining reasons. The Committee may thereafter reconvene in open session pursuant to § 19.85(2), Wis. Stats., to report the results of the closed session and consider the balance of the agenda.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

None



Report to the
Personnel Committee
of the City of Green Bay

MEETING DATE

July 9, 2019

PREPARED BY

AGENDA ITEM # D.4.

Consideration with possible action on review of WRS eligibility of the physical fitness incentive grievance.

The Committee may convene in closed session pursuant to § 19.85(1)(a), Wis. Stats., for the purpose of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body. The Committee may, thereafter, reconvene in open session pursuant to § 19.85(2), Wis. Stats., to report any actions taken during closed session and to consider all other matters on the agenda.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. GBPPA Grievance - Physical Fitness Incentive
2. Personnel Committee - City Response to Physical Fitness Incentive Grievance - 6-26-19
3. Department of ETF Wisconsin Retirement System Administration Manual - Partial Document
4. Personnel Committee - Appendix B and Ltr to Det. Scanlan - Physical Fitness Incentive Payment



Green Bay Professional Police Association

Representing the brave men and women serving and protecting "Titletown, USA"

04-17-19

Personnel Committee
City of Green Bay
100 N. Jefferson Street
Green Bay, WI 54301

GBPPA Grievance #19-002

Dear Members of the Committee,

Attached with this letter is a Green Bay Professional Police Association (GBPPA) Contract Violation Information Form being turned over to your office for step III of the grievance process. I included the following documents for your review; a copy of the original Contract Violation Information Form given to Chief Smith at Step I of the grievance; Director Joe Faulds letter in regards to the WRS eligibility of the physical fitness incentive payment; Chief Smith's response to our association's grievance on 03-28-19 along with a copy of Appendix B of the 2016-2019 GBPPA contract. Appendix B of the GBPPA contract with the city of Green Bay specifically addresses the Physical Fitness Incentive Program.

Respectfully,

A handwritten signature in black ink, appearing to read 'Phil Scanlan', followed by a long horizontal line.

Detective Phil Scanlan

GBPPA President
Green Bay Police Department
307 S. Adams Street
Green Bay, WI 54301-4582
920-448-3200 ext 0241
philsc@greenbaywi.gov

Green Bay Professional Police Association Contract Violation Information Form

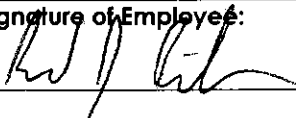
Date of Occurrence: 02-23-19	Grievance step – check one 1 ☐ 2 ☐ 3 ☒
Officer's Name/Rank: (If association as a whole write GBPPA) GBPPA	Division/Assignment: All sworn members of GBPPA
This grievance alleges a violation of article <u>Appendix B of 2017-2019 Contract</u> section _____ of the labor agreement and/or department policy pertaining to: _____	

Description of Grievance – state all facts including time, place of incident, persons involved, etc.

See attached documents

Relief Sought:

See attached

Signature of Employee: 	Signature of Association Representative: 	Date Filed: 04-17-19
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Employer Representative Response:

Employers representative signature	Title	Date Grievance received:	Date Answered

Matter resolved: Yes ☐ No ☐ If yes, How?

RECEIVED

MAR 20 2019

GREEN BAY POLICE DEPARTMENT
OFFICE OF THE CHIEF OF POLICE

Grievance #19 - 002

Green Bay Professional Police Association Contract Violation Information Form

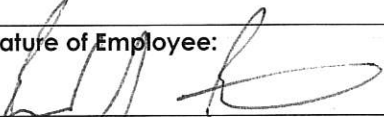
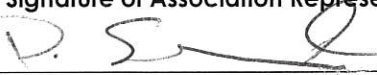
Date of Occurrence: 02/13/2019	Grievance step – check one 1 ☒ 2 ☐ 3 ☐		
Officer's Name/Rank: (If association as a whole write GBPPA) GBPPA	Division/Assignment: All Sworn members of GBPPA		
This grievance alleges a violation of article <u>Appendix B of 2016-2019 Contract</u> section ____ of the labor agreement and/or department policy pertaining to: _____			

Description of Grievance – state all facts including time, place of incident, persons involved, etc.

In 2018 sworn members of the Green Bay Police Department participated in the Physical Fitness Incentive Program in accordance with appendix B of the the 2016-2019 contract between the city of Green Bay and the Green Bay Professional Police Association (GBPPA). The Association was contacted by Human Resources Director Faulds who informed the Association the city had determined the payment made for completing the fitness incentive wouldn't be WRS eligible, contrary to paragraph 4 of the Physical Fitness Incentive Appendix B (see attached). Discussions occurred between Director Faulds and the Association's legal representation regarding the City's decision to pay the fitness incentive without WRS contributions. The matter went unresolved. In 2018 the city paid the fitness incentive payment to members of the GBPPA that completed the program without WRS contributions. Continued discussions with Director Faulds occurred attempting to resolve the matter as the Association maintained its desire to have the payment WRS eligible. On 02-13-19 Director Faulds provided the Association with a written explanation regarding the City's determination as to the eligibility of the physical fitness incentive payment (See attached). The GBPPA does not agree.

Relief Sought:

1. Make appropriate WRS contributions for the 2018 Physical Fitness Incentive Program payments.
 2. Continue making the program WRS eligible in the future.
- or
3. Successfully negotiate a change of the contract language, specifically paragraph 4, regarding said payment

Signature of Employee: 	Signature of Association Representative: 	Date Filed: 03-20-2019
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Employer Representative Response:

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Employers representative signature	Title	Date Grievance received:	Date Answered

INTRADEPARTMENTAL CORRESPONDENCE

Date: March 28, 2019

To: Detective Phil Scanlan, President Green Bay Professional Police Association

From: Chief of Police

**SUBJECT: RESPONSE TO GRIEVANCE, No. 19-002-PHYSICAL FITNESS
INCENTIVE PAY**

I have reviewed the Grievance No. 19-002. I am denying the grievance at this level with the below listed rationale.

The City has engaged in discussions with the Wisconsin Department of Employee Trust Funds to determine if we can make the physical fitness incentive funds Wisconsin Retirement System eligible. They informed the City that physical fitness incentive pay is not WRS eligible. They indicate that it is classified as a one time volunteer payment that is not wages.

The grievance is denied.



ANDREW J. SMITH
Chief of Police



The City of Green Bay is a leader in employee health and wellness with its Health 1265 program and a goal to engage all employees in their own health and well-being

February 13, 2019

Detective Phil Scanlan
Green Bay Police Department
307 S. Adams Street
Green Bay, WI 54301

RE: Physical Fitness Incentive WRS Eligibility

Dear Detective Scanlan,

The City and the Union have been in discussions about the physical fitness incentive payment and whether it is WRS eligible (see attached Appendix B from the GBPPA Agreement). Below is my interpretation of the contract and offer to resolve this matter.

I. Whether the Physical Fitness Incentive Payment is WRS Eligible.

As stated in previous discussions, the City has been in contact with the Wisconsin Department of Employee Trust Funds (ETF) and they have indicated that the Physical Fitness Incentive Payment is not WRS eligible. My understanding is that the Union has been in contact with ETF as well and ETF has also told the Union that the Physical Fitness Incentive is not WRS Eligible.

The City and the Union had discussions on whether to file for a declaratory ruling to determine whether the Physical Fitness Incentive Payment was WRS eligible. The City stated that it would not be opposed to whether the fitness incentive is deemed WRS eligible, but the concern is that the City is an extension of ETF and is unable to join the Union in filing this declaratory ruling. I believe this is still an option for the Union, but the City is unable to jointly file as the City would be adversarial to the Union's position based on the City being an extension of the ETF.

II. Whether the Physical Fitness Incentive Payment counts towards a police officer's yearly salary.

As stated above, the Physical Fitness Incentive Payment is not WRS eligible, so therefore it is not reported to the WRS as earnings and not included in a police officer's top three years for retirement purposes.

III. Whether the City will make additional contributions on behalf of the police officers who received the Physical Fitness Incentive Payment.

I'm writing this response assuming: (1) the City does not believe that the Physical Fitness Incentive

is WRS reportable and (2) the Union agrees that it is not WRS reportable. My assumption is that the Union is offering an alternative way for the City to put funds into the police officer's retirement.

What the Union has stated through Attorney Cermele is that the City and the Union have bargained that the fitness incentive payments would be pensionable. Therefore, the City should make the proper percentage contributions for the fitness incentive payments under this provision.

My interpretation of the contract and the provision is that the City and the Union believed that the fitness incentive would be treated like wages for the police officer, and, thus, WRS reportable. Both the police officer and the City would make its respective contribution to WRS based on the fitness incentive payment being included in a police officer's biweekly paycheck. In essence, the fitness incentive payment would be added to a police officer's paycheck and the WRS contributions would be processed as it would with in any other paycheck.

I do not believe that the contract goes further in stating that both the City and the Union understand that the fitness incentive payment is not WRS eligible, and therefore, the City will agree to make additional contributions in the amount that coincides with the percentage contribution from the employer. I believe both sides were mistaken to believe that the fitness incentive would be considered wages and that it would be WRS eligible. Thus, the City does not believe the contract obligates the City to make additional contributions.

With that being said, I do appreciate how cooperative the Union and Attorney Cermele have been during this process. I believe that we all have been working together to find a solution that is in the best interests of the City and the Union members. In continuing to work together to find a resolution to this matter, the City offers two proposals:

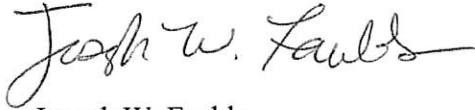
- (1) The fitness incentives for 2018 have already been paid out. The City will make a one-time additional contribution for each police officer in the amount that coincides with the 2018 employer's contribution. The additional contribution may not be able to be retroactive for 2018, so the additional contribution may be paid in 2019. Please keep in mind that if there is a police officer who received the fitness incentive payment, but no longer works as a GB police officer, that police officer would not be eligible to receive the additional contribution. Going forward, The City and the Union agree that the fitness incentive is not WRS eligible and the City will no longer make additional contributions. The eligible police officer will only receive the incentive payment on his or her paycheck.
- (2) The City and the Union agree that the fitness incentive payment is not WRS eligible. Starting in 2019, police officers who are eligible for a fitness incentive (\$500, \$250, or \$100) will receive the fitness incentive as an additional contribution to his/her retirement. This means that the officer will not receive the amount as a stipend on his or her paycheck, but it will go directly into his or her retirement.

Please let me know if you would like to discuss the options further or need any clarification.

The City and the Union both agreed that the time for filing a grievance would start after the City was able to look into this issue in more detail and give the Union a definitive answer. As such,

the timing for filing a grievance in regards to the physical fitness incentive will begin with the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Joseph W. Faulds".

Joseph W. Faulds
Human Resources Director

Cc: Police Chief Andrew Smith (via email only)
Commander Kevin Warych (via email only)
Officer Brad Biller (via email only)

APPENDIX B

PHYSICAL FITNESS INCENTIVE PROGRAM

1. Effective for the 2018 calendar year and each year thereafter, police officers will be eligible for an annual physical fitness incentive of up to \$500 annually by successful completion of a City designed physical fitness course (PFC) in effect as of the ratification of this Agreement. The initial design of the course will be the entry level officer fitness course test. Scheduling of the PFC, makeup and/or PFC retest will be determined by the Chief of Police or designee.
2. A police officer who successfully completes the PFC with a passing time will receive an incentive payment of \$500.
3. If an officer does not pass the PFC on their first attempt they have the following options:
 - a. An officer completing the course but not passing may receive \$100 for completion of the course, or;
 - b. that officer may request a re-test, in writing, within 30 calendar days to the Chief of Police or designee. The officer will be allowed to retake the PFC at the next available makeup date. If an officer passes the PFC on their second attempt they will receive an incentive payment of \$250 in that calendar year.
4. All payments are subject to appropriate tax deductions and will be WRS eligible.
5. An officer who is incapacitated during the PFC test may test at an alternate time established by the City. In the event an officer has a medical restriction preventing participation in a particular portion of the PFC, the City will establish an alternate testing procedure.
6. A PFC design committee consisting of 2-representatives selected by the GBPPA, 2-managerial police officers and 1 representative from Human Resources will assist the Chief of Police or designee in developing the physical fitness course. Outside experts such as trainers, physical therapists, or other appropriate personnel may be brought in by the PFC design committee to provide advice and guidance in designing the course.



*The City of Green Bay is a leader in employee health and wellness with its **Health | 1265** program and a goal to engage all employees in their own health and well-being*

June 26, 2019

Personnel Committee
City of Green Bay
100 N. Jefferson Street
Green Bay, WI 54301

RE: Step 3 Grievance #2019-002 - Physical Fitness Incentive WRS Eligibility

Dear Personnel Committee,

This correspondence is in response to the Step 3 Grievance #2019-002 submitted by Detective Phil Scanlan. In addition, please see the enclosed documents for the Personnel Committee's consideration:

1. Appendix B: Physical Fitness Incentive Program
2. Relevant pages of Department of Employee Trust Funds Wisconsin Retirement System Administration Manual.
3. Human Resources Director Joe Faulds's letter to Detective Phil Scanlan – 02/13/19

The City requests that the Personnel Committee deny the Union's grievance asking for the City to pay WRS contributions for officers who earned the Physical Fitness Incentive because state law deems that the Physical Fitness Incentive is not WRS eligible and paying the officers WRS contributions is a violation of state law.

I. The Physical Fitness Incentive Payment is not WRS Eligible under State Law.

The City and the Union bargained for a Physical Fitness Incentive Program which allows officers to be eligible for an annual physical fitness incentive of up to \$500 annually by completing a City designed physical fitness course. (See Attached Appendix B). In addition, the contract language states "All payments are subject to appropriate tax deductions and will be WRS eligible." (See Attached Appendix B). The phrase "will be WRS eligible" was intended to mean that the City and the officer would pay its respective WRS contribution percentage based on the \$500 earned for completing the physical fitness course.

Through discussions with the Wisconsin Employee Trust Fund, the City became aware that the physical fitness incentive payment of \$500 is not WRS eligible. The Wisconsin ETF has stated that pursuant to state law and specifically, Wis. Stat. 40.02(22), the physical fitness incentive is not considered earnings for Wisconsin retirement purposes. Furthermore, the WRS Administration Manual that is used as a guide to interpret the statutes, states that a cash payment for a wellness incentive is not WRS eligible. (See WRS Manual Chapter 500.) Since Wisconsin ETF treats the

physical fitness incentive as a wellness incentive for the officers, the incentive cannot be treated as WRS eligible.

Moreover, the City is an extension of the Wisconsin Employee Trust Fund and is bound by the laws and rules that govern the Employee Trust Fund. This means that the City cannot enter into an agreement with any employee group that violates the Employee Trust Fund state laws or enforce an agreement that is in violation of state law:

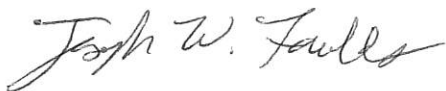
The provisions of Chapter 40 of the Wisconsin Statutes relating to WRS earnings will always take precedence over any conflicting public entity resolution, order, ordinance, bargaining unit agreement, etc., for purposes of administering the WRS. An employer may not redefine payments as WRS earnings if the earnings do not meet the criteria in Chapter 40. (See Attached ETF WRS Administrative Manual Page 1)

Since the ETF and state law has determined that the physical fitness incentive is not WRS eligible, the City is prohibited from following the Agreement and paying the WRS contributions to the officers.

Additionally, there is a savings clause in the contract which means the remainder of Appendix B: Physical Fitness Incentive Program remains intact. The recourse for the City and the Union is to enter into collective bargaining for the purpose of arriving at a mutually satisfactory replacement for the WRS contribution.

Overall, the Personnel Committee shall deny the grievance because enforcing the Agreement to make the City to pay the WRS contribution would be forcing the City to violate state law which prohibits the Physical Fitness Incentive to be treated as WRS eligible.

Sincerely,



Joseph W. Faulds
Human Resources Director

Cc: Detective Phil Scanlan (via email only)
Police Chief Andrew Smith (via email only)
Commander Kevin Warych (via email only)

CHAPTER 5 – EARNINGS AND REPORTABLE HOURS

- 500 Definition of Reportable Earnings**
- 501 Earnings Reportable for WRS Purposes**
- 502 Vacation Pay and Sick Pay (Accumulated Leave)**
- 503 Compensatory Pay (Accumulated Leave)**
- 504 Accumulated Leave Payments at Termination and WRS Disability**
- 505 Retirement Credit for Worker's Compensation**
- 506 Pay During a Leave of Absence or Sabbatical**
- 507 Earnings Not WRS Reportable**
- 508 Reportable and Non-Reportable Earnings Guide**
- 509 Definition of WRS Creditable Service**
- 510 Annual Earnings Period is Basis for Reporting Hours**
- 511 Computing and Reporting Hours**
- 512 Reporting for Eight-Hour Workday**
- 513 Computing and Reporting Hours for Other Than an Eight-Hour Workday**
- 514 Earnings and Hours for On-Call, Standby, Extracurricular and Other Non-Standard Hours**
- 515 Reportable Hours for Part-Time Local Elected Officials**
- 516 Reportable Hours for County Agents**
- 517 Earnings That Exceed Internal Revenue Code Limit**

500 Definition of Reportable Earnings

Wis. Stat. §40.02 (22) (a), defines earnings for Wisconsin Retirement System purposes as:

“The gross amount paid to an employee by a participating employer as salary or wages, including amounts provided through deferred compensation or tax shelter agreements, for personal services rendered to or for an employer, or which would have been available for payment to the employee except for the employee's election that part or all of the amount be used for other purposes and also includes the money value, as determined by the employer, of any board, lodging, fuel, laundry and other allowances provided for the employee in lieu of money. For purposes of this paragraph, the gross amount shall be determined prior to deductions for taxes, insurance premiums, retirement contributions or deposits, charitable contributions or similar amounts and shall be considered received as of the date when the earnings would normally be payable by the employer. For reporting and computation purposes, fractions of a dollar shall be disregarded in determining annual earnings.”

Note: The provisions of Chapter 40 of the Wisconsin Statutes relating to WRS earnings will always take precedence over any conflicting public entity resolution, order, ordinance, bargaining unit agreement, etc., for purposes of administering the WRS. An employer may not redefine payments as WRS earnings if the earnings do not meet the criteria in Chapter 40.

The definition of WRS earnings differs from the definition of wages for IRS purposes. Some major differences include:

- Employee elective contributions to deferred compensation and tax-sheltered plans are included in WRS earnings, but for IRS purposes, most are not subject to income tax at the time of contribution.

- I. Payments for damages, attorney fees, interest or penalties.
- J. Amounts paid to students younger than age 20 who began employment on or after April 23, 1992, and who are regularly enrolled or expected to be enrolled as full-time students (grades 1-12) in a public, private or parochial elementary or high school.
- K. Payments on a fee-for-service basis to an independent contractor (refer to subchapter 314).
- L. Payments made in the last five years of employment that are the result of a change in the method of computing the base compensation, unless the change is permanent and applicable to all employees or is the result of significant changes in the employee's duties.
- M. Earnings attributable to the non WRS participating employers of a joint instrumentality.

508 Reportable and Non-Reportable Earnings Guide

Reportable AND Non-Reportable Earnings Guide				
Compensation Type	Payment Type	Example	WRS Reportable	Comments
Advance	Cash payment	Advance for ordinary and necessary expenses incurred in the business of the employer (e.g., meals, lodging, etc.)	No	The advance must be identified separately by the employer when the payment is made. Refer to subchapter 507-F.
Allowances (See clothing, expense, lodging and vehicle)				Refer to subchapter 501.
Attorney Fees	Cash payment	Employee is awarded a payment representing attorney fees resulting from a grievance, compromise settlement, court order, etc.	No	Cash settlements for attorney fees are considered damages and are not reportable for WRS purposes. Refer to subchapter 507-I.
Back Pay Awards	Cash payment	Payment resulting from a compromise settlement, court order, etc., which represents back wages.	1. Yes	1. Back pay awards are reportable for WRS purposes, if the settlement agreement meets the requirements in Wis. Admin. Code ETF 20.12.
			2. No	2. If all requirements in Wis. Admin. Code ETF 20.12 are not met in the settlement agreement, a back-pay award is not reportable for WRS purposes. Refer to Chapter 13 – Compromise Settlements.
Cafeteria Plan (IRC Section 125) Reductions	Reductions from IRS gross wages	Medical expense, dependent care expense and insurance premiums expense reductions.	Yes	WRS earnings include amounts deducted from gross wages for Section 125 plans. Refer to subchapters 500 & 501-M.
Cash	Cash payments of salary, wages, bonuses, etc.	Payment for personal services rendered to an employer.	Yes	Amounts paid to an employee for personal services rendered are reportable for WRS purposes. Refer to subchapter 501-A.
Cell Phone	Cash/Stipend	Payment for use of employee's personal cellphones for work-related	No	Amounts paid as advances or reimbursements for ordinary and necessary expenses incurred while

Voluntary Employee Benefits Association (VEBA)	Employee Contributions	Employee is required to make the contribution to fund post-employment medical expenses from their earnings and the contributions are made from pre-tax income.	Yes	VEBA is authorized under Section 501(c)(9) of the Internal Revenue Code. It allows for the tax-free pre-funding of post-employment medical expenses. Funds can only be used for post-employment medical expenses. Premium payments both incoming funds and earnings and post-employment expenditures are exempt for State, Federal and FICA taxation. Typically, a third-party administrator is responsible for account activity.
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Compensation Type	Payment Type	Example	WRS Reportable	Comments
Voluntary Employee Benefits Association (VEBA)	Employer Contributions	Employer contributes money to fund post-employment medical expenses for the employee.	No	VEBA is authorized under Section 501(c)(9) of the Internal Revenue Code. It allows for the tax-free pre-funding of post-employment medical expenses. Funds can only be used for post-employment medical expenses. Premium payments both incoming funds and earnings and post-employment expenditures are exempt for state, federal and FICA taxation. Typically, a third-party administrator is responsible for account activity.
Wellness Incentive	Cash Payment	An employee receives a payment from the employer for engaging in healthy behaviors.	No	Wellness incentive is a payment to encourage the employee to do something for their own benefit, not payment for personal services rendered to or for an employer.



*The City of Green Bay is a leader in employee health and wellness with its **Health | 1265** program and a goal to engage all employees in their own health and well-being*

February 13, 2019

Detective Phil Scanlan
Green Bay Police Department
307 S. Adams Street
Green Bay, WI 54301

RE: Physical Fitness Incentive WRS Eligibility

Dear Detective Scanlan,

The City and the Union have been in discussions about the physical fitness incentive payment and whether it is WRS eligible (see attached Appendix B from the GBPPA Agreement). Below is my interpretation of the contract and offer to resolve this matter.

I. Whether the Physical Fitness Incentive Payment is WRS Eligible.

As stated in previous discussions, the City has been in contact with the Wisconsin Department of Employee Trust Funds (ETF) and they have indicated that the Physical Fitness Incentive Payment is not WRS eligible. My understanding is that the Union has been in contact with ETF as well and ETF has also told the Union that the Physical Fitness Incentive is not WRS Eligible.

The City and the Union had discussions on whether to file for a declaratory ruling to determine whether the Physical Fitness Incentive Payment was WRS eligible. The City stated that it would not be opposed to whether the fitness incentive is deemed WRS eligible, but the concern is that the City is an extension of ETF and is unable to join the Union in filing this declaratory ruling. I believe this is still an option for the Union, but the City is unable to jointly file as the City would be adversarial to the Union's position based on the City being an extension of the ETF.

II. Whether the Physical Fitness Incentive Payment counts towards a police officer's yearly salary.

As stated above, the Physical Fitness Incentive Payment is not WRS eligible, so therefore it is not reported to the WRS as earnings and not included in a police officer's top three years for retirement purposes.

III. Whether the City will make additional contributions on behalf of the police officers who received the Physical Fitness Incentive Payment.

I'm writing this response assuming: (1) the City does not believe that the Physical Fitness Incentive

is WRS reportable and (2) the Union agrees that it is not WRS reportable. My assumption is that the Union is offering an alternative way for the City to put funds into the police officer's retirement.

What the Union has stated through Attorney Cermele is that the City and the Union have bargained that the fitness incentive payments would be pensionable. Therefore, the City should make the proper percentage contributions for the fitness incentive payments under this provision.

My interpretation of the contract and the provision is that the City and the Union believed that the fitness incentive would be treated like wages for the police officer, and, thus, WRS reportable. Both the police officer and the City would make its respective contribution to WRS based on the fitness incentive payment being included in a police officer's biweekly paycheck. In essence, the fitness incentive payment would be added to a police officer's paycheck and the WRS contributions would be processed as it would with in any other paycheck.

I do not believe that the contract goes further in stating that both the City and the Union understand that the fitness incentive payment is not WRS eligible, and therefore, the City will agree to make additional contributions in the amount that coincides with the percentage contribution from the employer. I believe both sides were mistaken to believe that the fitness incentive would be considered wages and that it would be WRS eligible. Thus, the City does not believe the contract obligates the City to make additional contributions.

With that being said, I do appreciate how cooperative the Union and Attorney Cermele have been during this process. I believe that we all have been working together to find a solution that is in the best interests of the City and the Union members. In continuing to work together to find a resolution to this matter, the City offers two proposals:

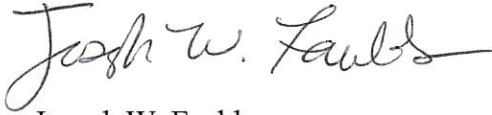
- (1) The fitness incentives for 2018 have already been paid out. The City will make a one-time additional contribution for each police officer in the amount that coincides with the 2018 employer's contribution. The additional contribution may not be able to be retroactive for 2018, so the additional contribution may be paid in 2019. Please keep in mind that if there is a police officer who received the fitness incentive payment, but no longer works as a GB police officer, that police officer would not be eligible to receive the additional contribution. Going forward, The City and the Union agree that the fitness incentive is not WRS eligible and the City will no longer make additional contributions. The eligible police officer will only receive the incentive payment on his or her paycheck.
- (2) The City and the Union agree that the fitness incentive payment is not WRS eligible. Starting in 2019, police officers who are eligible for a fitness incentive (\$500, \$250, or \$100) will receive the fitness incentive as an additional contribution to his/her retirement. This means that the officer will not receive the amount as a stipend on his or her paycheck, but it will go directly into his or her retirement.

Please let me know if you would like to discuss the options further or need any clarification.

The City and the Union both agreed that the time for filing a grievance would start after the City was able to look into this issue in more detail and give the Union a definitive answer. As such,

the timing for filing a grievance in regards to the physical fitness incentive will begin with the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Joseph W. Faulds".

Joseph W. Faulds
Human Resources Director

Cc: Police Chief Andrew Smith (via email only)
Commander Kevin Warych (via email only)
Officer Brad Biller (via email only)

APPENDIX B

PHYSICAL FITNESS INCENTIVE PROGRAM

1. Effective for the 2018 calendar year and each year thereafter, police officers will be eligible for an annual physical fitness incentive of up to \$500 annually by successful completion of a City designed physical fitness course (PFC) in effect as of the ratification of this Agreement. The initial design of the course will be the entry level officer fitness course test. Scheduling of the PFC, makeup and/or PFC retest will be determined by the Chief of Police or designee.
2. A police officer who successfully completes the PFC with a passing time will receive an incentive payment of \$500.
3. If an officer does not pass the PFC on their first attempt they have the following options:
 - a. An officer completing the course but not passing may receive \$100 for completion of the course, or;
 - b. that officer may request a re-test, in writing, within 30 calendar days to the Chief of Police or designee. The officer will be allowed to retake the PFC at the next available makeup date. If an officer passes the PFC on their second attempt they will receive an incentive payment of \$250 in that calendar year.
4. All payments are subject to appropriate tax deductions and will be WRS eligible.
5. An officer who is incapacitated during the PFC test may test at an alternate time established by the City. In the event an officer has a medical restriction preventing participation in a particular portion of the PFC, the City will establish an alternate testing procedure.
6. A PFC design committee consisting of 2-representatives selected by the GBPPA, 2-managerial police officers and 1 representative from Human Resources will assist the Chief of Police or designee in developing the physical fitness course. Outside experts such as trainers, physical therapists, or other appropriate personnel may be brought in by the PFC design committee to provide advice and guidance in designing the course.

**REPORT OF ROUTINE PERSONNEL ACTIONS
FOR REGULAR EMPLOYEES
July 9, 2019**

<u>Position</u>	<u>Department/Division</u>	<u>Name</u>	<u>Date</u>
<u>New Hire</u>			
Engineering Technician	Department of Public Works - Engineering	Kyle VanderLoop	6/11/2019
Seasonal Maintenance Employee	Department of Public Works - Parking	Marcus May	6/10/2019
Community Service Intern	Police	Brandon Deprey	6/21/2019
Community Service Intern	Police	Blake Main	6/21/2019
Community Service Intern	Police	Archie Dudley	6/14/2019
Police Officer	Police	Benjamin Snyder	7/8/2019
Seasonal Maintenance Employee	Department of Public Works - Operations	Robin Beatty	6/18/2019
Seasonal Engineering Aide	DPW	Gracien Onya	7/1/2019
<u>Transfer</u>			
4K Teacher	Parks, Recreation and Forestry - WLS	Brooke Conrad	6/14/2019
Seasonal Summer Camp Program Coordinator			
4K Teacher	Parks, Recreation and Forestry - WLS	Natalie Shikoski	6/14/2019
Seasonal Summer Camp Program Coordinator			
<u>Promotion</u>			
Patrol Officer Recruit	Police	Garrick Fisher	5/20/2019
Patrol Officer			
Patrol Officer Recruit	Police	MaKayla Wolfe	5/20/2019
Patrol Officer			
Patrol Officer Recruit	Police	Michael O'Donnell	5/20/2019
Patrol Officer			
HR Assistant - Risk	Human Resources	Sarah Fidler	6/17/2019
Human Resources Generalist II			
Operator I	Department of Public Works - Operations	Elliot Ness	6/24/2019
Sewer Maintenance Worker			
Truck Driver - Sanitation	Department of Public Works - Sanitation	Jared Seitz	6/24/2019
Sewer Maintenance Worker			
Truck Driver - Sanitation	Department of Public Works - Sanitation	Steve Gandy	6/24/2019
Sewer Maintenance Worker			
<u>Grade/Step Change</u>			
Park Ranger	Parks, Recreation & Forestry	Paul Leicht	6/1/2019
Senior Animal Keeper	Parks, Recreation & Forestry	Matthew Rupnik	6/1/2019
Executive Secretary	Parks, Recreation & Forestry	Melissa Edison	6/1/2019
Financial Supervisor	Parks, Recreation & Forestry	Nina Robinette	6/1/2019
Administrative Clerk II	Municipal Court	Terry Muth	6/1/2019
Administrative Clerk II	Municipal Court	Christine Petitjean	6/1/2019
Parks Maintenance Worker	Parks, Recreation & Forestry	Robert Delahaut	6/11/2019
Sewer Maintenance Worker	Department of Public Works - Sewers	Michael Faltynski	6/18/2019
Sewer Maintenance Worker	Department of Public Works - Sewers	Gerald Winnekens	7/2/2019
Mechanic	Department of Public Works - Operations	William Leisgang	6/17/2019
Financial Supervisor	Department of Public Works - Administration	Nancy Clifford	6/24/2019
Appraiser II	Assessor	Matthew Johnson	7/9/2019
City Sealer	Community & Economic Development	Jason Stubble	6/23/2019
Mechanic	Department of Public Works - Operations	Joshua Babler	7/2/2019
<u>End of Employment</u>			
Police Specialist II	Police	David VanErem	7/5/2019
Regular Crossing Guard	Police	Marlyce Sherman	6/4/2019
Casual Worker	Community and Economic Development	Patrick Couillard	3/29/2019
Captain	Police	Todd LePine	6/13/2019
Seasonal Maintenance	Community and Economic Development	Michael Michaels	6/14/2019
Mechanic Foreperson	Department of Public Works - Operations	Robert Lee	6/26/2019
Seasonal Maintenance	Community and Economic Development	Michael Michaels	6/14/2019
Transit Operator	Transit	Chris Laes	6/17/2019
Transit Operator	Transit	Lynette Wirgau	8/2/2019
Community Service Intern	Police	Zachary Malcore	7/10/2019