

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

OAK CREEK PROFESSIONAL FIRE FIGHTERS ASSOCIATION, LOCAL 1848,	:	
	:	
Complainant,	:	
	:	Case II
vs.	:	No. 15123 MP-102
	:	Decision No. 10677-A
CITY OF OAK CREEK,	:	
	:	
Respondent.	:	
	:	

Appearances:

Schwartz, Schwartz, Roberts & Cairo, Attorneys at Law, by Mr. Jay Schwartz, appearing on behalf of the Complainant.
 Spacek, Miller & Rinzel, Attorneys at Law, by Mr. Frederick A. Miller, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Oak Creek Professional Fire Fighters Association, Local 1848, having on December 6, 1971, filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that the City of Oak Creek had committed prohibited practices within the meaning of the Wisconsin Municipal Employment Relations Act; and the Commission having appointed Marvin L. Schurke, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and pursuant to notice issued by the Examiner on December 9, 1971, hearing on said complaint having been held in Milwaukee, Wisconsin, on January 5, 1972, before the Examiner; and the Examiner having considered the evidence, arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Oak Creek Professional Fire Fighters Association, Local 1848, hereinafter referred to as the Complainant, is a labor organization representing employes for the purposes of collective bargaining, and has its principal offices at 240 E. Puetz Road, Oak Creek, Wisconsin 53154.
2. That the City of Oak Creek, hereinafter referred to as the Respondent, is a Municipal Employer having its principal offices at the Oak Creek City Hall, 8640 S. Howell Avenue, Oak Creek, Wisconsin 53154.
3. That at all times pertinent hereto, the Respondent has recognized the Complainant as the exclusive collective bargaining representative in a bargaining unit consisting of employes of the Oak Creek Fire Department.

4. That the Complainant and the Respondent were parties to a collective bargaining agreement entered into on June 30, 1970 and effective for the period from January 1, 1970 through December 31, 1971; that such agreement does not contain procedures for the final and binding resolution of claims and grievances arising from the agreement; and that such agreement contains the following provisions material herein:

"Article V
Rates of Pay

"The wages paid to the employees covered by this Agreement for the year 1970 shall be in accordance with the salary ordinance adopted by the Common Council on December 16, 1969, and as amended.

The wages to be paid the employees covered by this Agreement for the year 1971 shall be as follows:

"The Association agrees to accept any uniform general pay increase granted to the protective services of the City (i.e. police and fire department personnel) as may be provided in the 1971 salary ordinance. In addition thereto, however, the City agrees to close the existing disparity gap between the police and fire personnel wages and/or salaries by granting additional pay increases to the employees covered by this Agreement and to be reflected in such 1971 Salary ordinance so that such disparity gap for corresponding wages and/or salaries between said personnel shall close such wage and/or salary differential by 50%."

5. That the Respondent maintained a salary schedule for its Police Department and Fire Department personnel for the year 1970, as part of Ordinance No. 392, as follows:

"POLICE DEPARTMENT

Chief (1).....	\$13,500.00 per year
Captain (1).....	11,987.00 per year
Lieutenant (1).....	11,300.00 per year
Detectives (4).....	10,653.00
Sergeants (6).....	10,653.00
Patrolmen (15).....	9,936.00 per year
	after 3 years
Patrolmen (1).....	9,736.00 per year
	after 2 years
Patrolmen (1).....	9,536.00 per year
	after 1 year
Patrolmen (4).....	9,336.00 per year
	starting
	starting
Crossing Guards (3).....	2.10 to 2.45 per hour

NOTE: Overtime pay will be compensated at the rate of time and one-half or may be taken as compensatory time off at the same time rate if overtime is authorized by the chief of police or the captain of police. This only affects the patrolmen, sergeants and detectives.

In addition, each member of the police department on the police department payroll, exclusive of the chief, captain, lieutenant and detectives shall be entitled to receive \$125 per year as and for uniform allowance, such uniform allowance to be granted when needed in the discretion of the chief of police. The chief of police, captain, lieutenant and detectives shall be entitled to receive \$150 per year as and for uniform allowance. In addition, each member who has completed five years of service is also eligible for a longevity payment of \$5 per month, and for ten years of service \$10 per month.

FIRE DEPARTMENT

Fire Chief (1).....	\$12,528.00 per year
Assistant Fire Chief (1).....	10,757.00 per year
Lieutenants (5).....	9,944.00 per year
Firefighters (19).....	9,263.00 per year
	after 3 years
Firefighters (2).....	9,143.00 per year
	after 2 years
Firefighters (0).....	9,023.00 per year
	after 1 year
Firefighters (3).....	8,903.00 per year
	starting
Volunteer Firemen.....	4.00 per year
Inspection.....	3.25 per hour

NOTE: Each member of the fire department on the fire department payroll, exclusive of the fire chief shall be entitled to receive \$125.00 per year as and for uniform allowance, such uniform allowance to be granted when needed in the discretion of the fire chief. The fire chief shall be entitled to receive \$150.00 as and for uniform allowance. In addition, each member who has completed five years of service is also eligible for a longevity payment of \$5 per month, and for ten years of service \$10 per month."

6. That the Respondent recognizes a collective bargaining representative in a bargaining unit consisting of employes of the Oak Creek Police Department; that the collective bargaining representative of the Police Department personnel is a separate entity from the Complainant herein; that, subsequent to June 30, 1970, the Respondent and the collective bargaining representative of its Police Department personnel engaged in negotiations concerning the establishment of wages, hours and conditions of employment of Police Department personnel for the year 1971; that during the course of such negotiations the parties thereto had discussions concerning hazards affecting the employment of Police Department personnel; and that the results of the negotiations between the Respondent and the collective bargaining representative of its Police Department personnel are embodied a salary schedule for the Respondent's Police Department personnel for 1971, as a part of Ordinance No. 419 dated December 15, 1970, as follows:

"POLICE DEPARTMENT

Chief (1).....	\$14,445.00 per year
----------------	----------------------

Captain (1).....	12,826.09 per year
Lieutenant (1).....	12,091.00 per year
Detectives (4).....	11,398.71 per year
Sergeants (6).....	11,398.71 per year
Patrolmen (16).....	10,631.52 per year
	after 3 years
Patrolmen (1).....	10,431.52 per year
	after 2 years
Patrolmen (4).....	10,231.52 per year
	after 1 year
Patrolmen (0).....	10,031.52 per year
	starting
Crossing Guards (4).....	2.25 to 2.60
	per hour

NOTE: Overtime pay will be compensated at the rate of time and one-half or may be taken as compensatory time off at the same rate if overtime is authorized by the chief of police or the captain of police. This only affects the patrolmen, Sergeants and detectives.

In addition, each member of the police department on the police department payroll, exclusive of the chief, captain, lieutenant and detectives, shall be entitled to receive \$125.00 per year as and for uniform allowance, such uniform allowance to be granted when needed in the discretion of the chief of police. The chief of police, captain, lieutenant and detectives shall be entitled to receive \$150.00 per year as and for uniform allowance. In addition, each member who has completed five years of service is also eligible for a longevity payment of \$5.00 per month, and for ten years of service \$10.00 per month.

Hazardous Duty Pay

In addition to the salaries provided above for all police department personnel each member of the police department will receive hazardous duty pay of \$25.00 per month, the same to be payable in one lump sum to each member on or about December 5, 1971."

7. That the Respondent maintained a salary schedule for its Fire Department personnel for the year 1971, as part of the same Ordinance No. 419, as follows:

"FIRE DEPARTMENT

Fire Chief (1).....	\$13,924.98 per year
Assistant Fire Chief (1).....	12,168.00 per year
Lieutenants (5).....	11,046.15 per year
Firefighters (21).....	10,298.22 per year
	after 3 years
Firefighters (0).....	10,178.22 per year
	after 2 years
Firefighters (4).....	10,058.22 per year
	after 1 year
Firefighters (9).....	9,938.22 per year
	starting

Volunteer Firemen.....	4.00 per hour
Inspection.....	3.25 per hour

NOTE: Each member of the fire department on the fire department payroll, exclusive of the fire chief shall be entitled to receive \$125.00 per year as and for uniform allowance, such uniform allowance to be granted when needed in the discretion of the fire chief. The fire chief shall be entitled to receive \$150.00 as and for uniform allowance. In addition, each member who has completed five years of service is also eligible for a longevity payment of \$5.00 per month, and for ten years of service \$10.00 per month."

8. That Ordinance No. 419 provided for an increase in base salary only in the amount of \$695.52 per annum for Police Department Patrolmen at all levels of experience; that Ordinance No. 419 provided for an increase in base salary in the amount of \$1,035.22 per annum for Fire Department Firefighters at all levels of experience; that Ordinance No. 419 provided base wage rates such that the disparity existing in 1970 between the base salary of a Patrolman after 3 years and the base salary of a Firefighter after 3 years, amounting to \$673.00, was reduced for 1971 by approximately 50% to \$333.30; and that Ordinance No. 419 provided base wage rates such that the disparity existing in 1970 between the base salaries of Patrolmen and the base salaries of Firefighters at all other levels of experience were reduced for 1971 by greater than 50%.

9. That the portion of Ordinance No. 419 establishing hazardous duty pay for Police Department personnel appeared for the first time in a salary ordinance of the Respondent; that no hazardous duty pay or similar benefit was provided for employes of the Oak Creek Fire Department or any other department of the Respondent; that the inclusion of hazardous duty pay for Police Department personnel in Ordinance No. 419 was the outcome of negotiations between the Respondent and the collective bargaining representative of its Police Department personnel; that on December 5, 1971 the Respondent paid \$300.00 [or such lesser amount as may have accrued at a rate of \$25.00 per month] to each employe of the Oak Creek Police Department, pursuant to the hazardous duty pay provision of its Ordinance No. 419; that such hazardous duty pay was a general pay increase granted to all Police Department personnel of the Respondent; and that such hazardous duty pay accrued at a uniform rate to all Police Department personnel of the Respondent, without regard to any differences between the duties and responsibilities of said Police Department personnel.

10. That the hazardous duty pay provided by Ordinance No. 419, and paid by the Respondent to its Police Department personnel on December 5, 1971, is not a benefit separate and apart from the wage and/or salary schedules established by Ordinance No. 419 for Police Department and Fire Department personnel of the Respondent, and is a uniform general pay increase granted to the protective services of the City, within the meaning of Article V of the collective bargaining agreement between the Complainant and the Respondent.

11. That Ordinance No. 419 provided for a total uniform general pay increase, including hazardous duty pay, in the amount of \$995.52 per annum for Police Department Patrolmen at all levels of

experience; that Ordinance No. 419 provided that the disparity existing in 1970 between the wages and/or salaries of Patrolmen at each level of experience and the wages and/or salaries of Firefighters at the corresponding levels of experience be reduced by \$39.70; that the reduction in disparity between the wages and/or salaries of Patrolmen and Firefighters at the starting level falls \$176.80 short of closing the wage and/or salary differential existing in 1970 by 50%; that the reduction in disparity between the wages and/or salaries of Patrolmen and Firefighters at the one year experience level falls \$216.80 short of closing the wage and/or salary differential existing in 1970 by 50%; that the reduction in disparity between the wages and/or salaries of Patrolmen and Firefighters at the two year experience level falls \$256.80 short of closing the wage and/or salary differential existing in 1970 by 50%; that the reduction in disparity between the wages and/or salaries of Patrolmen and Firefighters at the three year experience level falls \$296.80 short of closing the wage and/or salary differential existing in 1970 by 50%.

Based upon the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. That the City of Oak Creek, by including provision for hazardous duty pay for Police Department personnel only in its Ordinance No. 419 on December 15, 1970, and by making payments on December 5, 1971 pursuant to the hazardous duty pay provisions of its Ordinance No. 419, has not refused to bargain collectively with Oak Creek Professional Firefighters Association, Local 1848, and has not committed prohibited practices within the meaning of Section 111.70(3)(a)4, Wisconsin Statutes.

2. That the City of Oak Creek, by its payment on December 5, 1971 of hazardous duty pay to its Police Department personnel pursuant to its Ordinance No. 419 has maintained the difference between police and fire personnel wages and/or salaries at corresponding levels at an amount greater than 50% of the difference existing in 1970 pursuant to Ordinance No. 392, in violation of the collective bargaining agreement existing between the Respondent and Oak Creek Professional Firefighters Association, Local 1848; and that by such violation of a collective bargaining agreement the City of Oak Creek has committed, and is committing, prohibited practices within the meaning of Section 111.70(3)(a)5, Wisconsin Statutes.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

IT IS ORDERED that the Respondent City of Oak Creek, its officers and agents, shall immediately:

1. Cease and desist from violating the 1970-1971 collective bargaining agreement between the City of Oak Creek and the Oak Creek Professional Firefighters Association, Local 1848.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment

Relations Act:

- a. Make such financial transactions as are necessary to adjust the wages and/or salaries paid by the City of Oak Creek during the calendar year 1971 to patrolmen employed in its Police Department and to firefighters employed in its Fire Department, so that the difference between wages and/or salaries, including hazardous duty pay, paid at corresponding levels of experience for the calendar year 1971 is reduced to 50% of the wage and/or salary difference for such corresponding levels established for the calendar year 1970 by Ordinance No. 392 of the City of Oak Creek.
- b. Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the date of this Order as to what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the allegations of the complaint filed herein, insofar as they allege that the Respondent has refused to bargain collectively with the Complainant, he, and the same hereby are, dismissed.

Dated at Madison, Wisconsin, this 28th day of July, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
Marvin L. Schurke, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Union filed a complaint with the Commission on December 6, 1971, alleging that the City violated the collective bargaining agreement between the City and the Union on December 5, 1971. The Union cited the provisions of its agreement calling for a reduction of the disparity between Police Department and Fire Department salaries by 50% during 1971, and alleged that the City violated those provisions by granting hazardous duty pay to Police Department personnel in an amount almost equivalent to the amount of disparity eliminated from the base wage schedules. The City filed an answer on December 28, 1971 in which it admitted the existence of the collective bargaining agreement with the Union, but alleged full compliance with that agreement and denied that the hazardous duty pay granted to Police Department personnel was an attempt to nullify the agreement with the Union. As a matter of affirmative defense, the City alleged that its duty to bargain with the representative of its Police Department personnel required the City to conduct negotiations with such representative separate from the negotiations it conducted with the Union herein, and that the hazardous duty pay was the outcome of the negotiations between the City and the representative of the Police Department personnel.

A hearing was held in the matter at Milwaukee, Wisconsin, on January 5, 1972. Counsel for the parties made oral arguments during the hearing and the Respondent filed a post-hearing brief. During the course of the hearing the Union expanded the allegations of its complaint, alleging that the City's actions were in bad faith with respect to the Union and constituted a refusal to bargain. During the course of the hearing the Union also clarified its request for remedy in this proceeding, asking the Commission to order the City to pay each member of the Fire Department bargaining unit whatever sums necessary to reduce the disparity between Police Department personnel salaries, including hazardous duty pay, and Fire Department personnel salaries to 50% of the disparity which existed in 1970.

Statutory Obligations

The Wisconsin Statutes governing labor relations in municipal employment which were in effect in June, 1970, when the City and the Union entered into their collective bargaining agreement, did not provide that either a refusal to bargain 1/ or a violation of a collective bargaining agreement 2/ was subject to remedy in prohibited practices proceedings before the Commission. Ordinance No.

1/ City of New Berlin (7293) 3/66; Milwaukee Board of School Directors (6883-A) 3/66; LaCrosse County (7707-A) 6/67; City of Portage (8378) 1/68; City of Milwaukee (8410) 2/68; Wauwatosa Board of Education (8319-B) 6/68 and (8319-C) 7/68; Madison School Board 37 Wis 2d 483 12/67

2/ Janesville Board of Education (8791) 3/69

419 was enacted and the negotiations between the City and the representative of its Police Department personnel occurred during 1970 under the same statutes. Chapter 124, Laws of 1971, effective November 11, 1971, amended Section 111.70, Wisconsin Statutes, and created the present Municipal Employment Relations Act. Those amendments established, for the first time, refusal to bargain ^{3/} and violation of contract ^{4/} as prohibited practices in municipal employment. It is clear that all of the negotiations in both bargaining units and, therefore, any bargaining table conduct involved in the instant dispute occurred prior to the enactment of the Municipal Employment Relations Act. The only event of any significance which occurred after the enactment of the Municipal Employment Relations Act was the payment of hazardous duty pay to Police Department personnel on December 5, 1971, as scheduled previously. Decisions under the prior statutory provisions establish that "refusal to bargain" type conduct occurring while those statutes were in effect cannot be taken as part of a course of conduct forming the basis for a finding of interference, restraint or coercion under Section 111.70(3)(a)1 as it existed prior to November 11, 1971. ^{5/} The Union's claim that the City's action with regard to negotiation of hazardous duty pay with the Police Department representative constituted bad faith bargaining towards the Union herein invites the Examiner to consider the bargaining table conduct occurring during 1970 as a basis for a finding of refusal to bargain. Such consideration would clearly be inappropriate. The Examiner is not persuaded that the payment of hazardous duty pay subsequent to November 11, 1971, pursuant to a salary ordinance which was adopted prior to the enactment of the Municipal Employment Relations Act, constituted, per se, bad faith towards the Union herein, and therefore concludes that there is no merit to the Union's allegation concerning refusal to bargain. The affirmative defense asserted by the City, that reliance on the collective bargaining agreement which it signed with the Union herein as a bar to negotiations with the representative of the Police Department personnel could place the City in a position of committing a refusal to bargain as to the police, constitutes a recognition of the "damned if you do - damned if you don't" situation in which it is placed under current law. The Examiner concurs with the City that, under the provisions of the current Section 111.70, the City is now required to bargain in good faith with each and every labor organization representing the majority of employees of the City in appropriate bargaining units. However, the bargaining which led to the contract in dispute in this proceeding occurred at a time when the provisions of Section 111.70 did not place the City under such a duty to bargain. The subsequent enactment of a duty

^{3/} Section 111.70(3)(a)(4)

^{4/} Section 111.70(3)(a)(5)

^{5/} LaCrosse County Institutional Employees Local 227, AFSCME, AFL-CIO vs. WERC 52 Wis 2d, 295 1971; Board of Education, City of Green Bay, et al. (9095-E) 9/71

to bargain does not relieve the City of a contractual commitment which it apparently entered into with the Firefighters Union in 1970 in good faith.

Looking to the future, it is apparent that the type of contract entered into between the City and the Union in this case could easily lead to unfair labor practice proceedings. The Union signing such a contract and any other Union affected by such parity provisions would be likely complainants. A Municipal Employer entering into such a contract and relying on the contract as a basis for its refusal to negotiate concerning bargainable subjects with another labor organization representing its employees might be charged by such other organization with a refusal to bargain. On the other hand, it is clear that collective bargaining agreements are not lightly disregarded, and ignoring such a contract could lead to enforcement proceedings such as the instant case in which the Union party to the "favored nation" contract would seek to enforce the commitment given it by the Employer.

Hazardous Duty Pay

It has previously been held that overtime pay, shift differentials, paid holidays, paid vacations and severance pay constitute wages in the parlance of labor relations. 6/ It has also been held that a Christmas bonus, given regularly to employees over a period of years, also constitutes wages. 7/ One of the criteria in the latter determination was the uniformity in the amount of the bonus. In the instant case all policemen, regardless of their rank, duties, or responsibilities, receive hazardous duty pay accruing at a uniform rate of \$25.00 per month and paid in a lump sum at the end of the year. There is no apparent differentiation between types of hazardous duty, greater or less responsibility, or any other criteria. These facts strongly indicate that the hazardous duty pay is nothing more than a uniform general pay increase granted to all Police Department personnel but labeled as something different than a regular salary increase. The City has argued that the contract should be interpreted only to include increases in the base salary. The City has also argued and provided some evidence that the decision to give hazardous duty pay was based in part or in whole on some "classified" information possessed by the Police Department and the Mayor of the City at the time of the negotiations between the City and the representative of the Police Department personnel. These factors have been given due consideration, but have not persuaded the Examiner that the hazardous duty pay should be considered as a benefit separate and apart from the wages and/or salaries paid to policemen. The language of the Firefighters collective bargaining agreement appears to permit the City broad range to grant a general

6/ Singer Mfg. Co. 24 NLRB 444, 6 LRRM 405 (1940), enforced 119 F 2d 131 (CA 7, 1941); NLRB v. Adams Dairy 322 F 2d 553, 54 LRRM 2171 (CA 8, 1963), vacated, 379 US 644, 58 LRRM 2192 (1965), on remand, 350 F 2d 108, 60 LRRM 2084 (CA 8, 1965) cert. denied, 382 US 1011, 61 LRRM 2192 (1966)

7/ NLRB v. Wonder State Mfg. Co. 344 F 2d 210, 29 LRRM 2065 (CA 8) 1965

wage increase to the protective services in any amount, possibly including a zero increase. The language appears to leave open the possibility that the City might negotiate with the Police for a fringe benefit change, a change of hours or a change of working conditions which could be something for the Police only and not a uniform general pay increase for the Police Department personnel. The record does not have a significant amount of first hand testimony concerning what went on in the Police Department negotiations. The possibility remains that the hazardous duty pay may have been an attempt by the Police Department personnel to obtain a fringe benefit separate and apart from the wage schedule. Looking at the intent of the Fire Department contract and the structure of the hazardous duty pay provision of the salary ordinance, the Examiner has concluded that if such an intention was present it was a weak attempt and has not succeeded in creating a benefit for the Police Department which was not a uniform general pay increase. The Examiner has considered several factors as conclusive in ruling that the hazardous duty pay is a uniform general wage or salary increase as contemplated by Article V of the agreement. Those are: (1) the fact that it is given to all policemen regardless of their function; (2) the fact that the same amount is given to all policemen regardless of their rank, exposure to hazards and/or any other criteria and (3) that the total amount of hazardous duty pay accruing to a police officer approximates the reductions in disparity contemplated in the Fire-fighters agreement.

Two arguments asserted by the Union have not been considered as determinative in this ruling, but are worthy of comment. The Union alleged in its complaint that it is obvious that a fire fighter's job is more hazardous than a police officer's job and adduced some evidence at the hearing to support that claim. The comparison of relative hazards is not necessary to the decision interpreting the collective bargaining agreement, and the Examiner has made no determination as to the relative hazards affecting the employment of firefighters and police officers or as to the merits of granting "hazardous duty pay" to either group. The Union has also argued that the fact that the hazardous duty pay is taxed as wages by the state and federal governments should be conclusive in determining that the hazardous duty pay is a wage or salary increase. Many bonuses, benefits and premium pay provisions are clearly not uniform general wage provisions, but are taxed as wages under federal and state laws. Such benefits do not meet the criteria indicated above and would not appear to fall within the language of this collective bargaining agreement. Taxation status is therefore not a sound guide. On the other hand, the lack of taxation of such a benefit would tend to serve as evidentiary that the benefit is not a part of wages or salaries and is a fringe benefit separate and apart.

Remedy

The Examiner has carefully calculated the amount of wage and salary increases indicated at the starting, one, two and three year experience levels for Police Department Patrolmen and Fire Depart-

ment Firefighters, 8/ the amount of disparity existing at such level in 1970, 50% of such disparity, and the amounts by which the increase given to Firefighters for 1971 failed to reduce the disparity between Police Department patrolmen's wages, including hazardous duty pay, and firefighter salaries at corresponding levels. It appears that the City calculated the 1970 disparity at the three year experience level, determined 50% of that disparity, and applied such amount to all experience levels of Firefighters. Since the disparity at the starting, one year and two year experience levels was less than that existing at the three year level this would have amounted to an overpayment of Firefighters, according to the terms of their contract, if base salaries alone were taken into consideration. Under these computations the overpayments ranged from \$123.20 at the starting level to \$43.20 at the two year level. When hazardous duty pay is included as part of wages for the Police patrolmen, these "overpayments" serve to reduce the amount by which the City is in violation of its agreement with the firefighters. The remedy in such a situation must be to enforce the contract and to require the City to bring itself into compliance with its contractual commitment to the Firefighters Union and the employees it represents. There is some testimony in the record that the City reserved the right to delete payment of hazardous duty pay to Police personnel, but the Police Department contract is not in evidence before the Examiner, and the Examiner has no basis for determining the effect of the inclusion of hazardous duty pay in Ordinance No. 419. Whether by the reduction of police salaries, supplemental payment to Firefighters or some combination of the two methods, the City of Oak Creek must, and is ordered to, bring itself into compliance with its agreement to reduce the disparity between Police and Firefighters for 1971 by 50% of the disparity existing in 1970.

Dated at Madison, Wisconsin, this 28th day of July, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
Marvin L. Schurke, Examiner

8/ The Union failed to show what ranks were covered by its agreement or what Police Department ranks correspond to Fire Department ranks of Lieutenant and above. The reference in the recognition clause of the collective bargaining agreement to a certification of representatives issued by the Commission is not helpful, since the Commission's records indicate that no such certification has been issued. Therefore, no violation of the collective bargaining agreement has been found and no remedy has been ordered except concerning the patrolman and firefighter classifications.