BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between CITY OF OAK CREEK and OAK CREEK PROFESSIONAL POLICEMEN'S ASSOCIATION, LOCAL NO. 228	Grievance dated 4-21-94 regarding change in uniform policy Case 112 No. 51780 MA-8738

Appearances:

Mr. Patrick J. Corragio and Mr. Kevin W. Naylor, Labor Consultants, Labor Association of Wisconsin, Inc., 2825 North Mayfair Road, Wauwatosa, Wisconsin 53222, on behalf of the Association.

Mr. Robert H. Buikema with Mr. Michael Aldana on the brief, Davis & Kuelthau, S.C., 111 East Kilbourn, Milwaukee, WI 53202, appearing on behalf of the City.

ARBITRATION AWARD

The Wisconsin Employment Relations Commission designated the undersigned Marshall L. Gratz as Arbitrator to hear and decide a dispute concerning the above-noted grievance, arising under the parties' 1992-1994 Labor Agreement (Agreement).

A hearing was conducted at Oak Creek City Hall on February 22, 1995. The proceedings were not transcribed; however, the parties agreed that the Arbitrator could maintain a cassette tape recording of the testimony and arguments for the Arbitrator's exclusive use in award preparation. Following the parties' submission of briefs and the City's submission of a reply brief, the Arbitrator notified the parties on May 5, 1995, that the matter was fully submitted and ready for award issuance.

STIPULATED ISSUES

At the hearing, the parties authorized the Arbitrator to decide the following issue:

1. Is the work rule revision regarding the uniform policy that the Chief of Police put into effect on April 15, 1994 regarding the use of a dickey, unreasonable?

2. If so, what is the appropriate remedy?

PORTIONS OF THE AGREEMENT

Article 3 Management and Employee Rights

The City retains and reserves the sole right to manage its affairs in accordance with the applicable laws, ordinances, and regulations and all management rights repose in it. Included in this responsibility, but not limited thereto, is the right to determine the kinds and numbers of services to be performed; the right to establish work rules, the reasonableness of which shall be subject to the grievance procedure; the right to determine the number of positions and the classifications thereof to perform such services; the right to direct, assign and schedule the work force; the right to establish qualifications for hire, to test and to hire, promote and retain employees; the right to transfer and assign employees subject to existing practices and the terms of this Agreement; the right, subject to Police and Fire Commission procedures and the terms of this Agreement related thereto, to suspend, discharge, demote, or take other disciplinary action for just cause; the right to maintain efficiency of operations by determining the method and means and the personnel by which such operations are conducted and to take whatever actions are reasonable and necessary to carry out the duties imposed by law upon the City.

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Article 8 Grievance Procedure

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Step 4: Arbitration: Decision of the Arbitrator:

The decision of the arbitrator shall be final and binding upon the parties. The powers of the arbitrator are limited as follows: His/her function is limited to that of interpreting and applying the provisions of this Agreement; he/she shall have no power to add to, subtract from, or modify any of the terms of this Agreement, and it is agreed by the parties that any such action shall constitute a violation of Chapter 788, Wisconsin Statutes.

. . .

Article 25 Clothing Allowance

. . .

> A. Each plainclothes employe shall receive . . . for a clothing allowance. All other employees shall receive each year of the contract Three Hundred Seventy-Five Dollars (375.00) for a clothing allowance. The allowance shall be disbursed in two (2) equal installments. The installments shall be paid on the first pay day in January and July of each year.
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> . . .
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> Article 34 Amendments
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> This Agreement constitutes the entire Agreement between the parties and no verbal statements shall supersede any of its provisions. Any amendment or agreement supplemental hereto shall not be binding upon either party unless executed in writing by the parties hereto. The parties further acknowledge that, during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the areas of collective bargaining and that the understandings arrived at by the parties after the exercise of that right [are] as set forth in this Agreement. Therefore, the City and the Association, for the life of this Agreement, each voluntarily and unqualifiedly waive the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject may not have been within the knowledge and contemplation of either or both of the parties at the time they negotiated or signed this Agreement. Waiver of any breach of this Agreement by either party shall not constitute a waiver of any future breach of this Agreement.

BACKGROUND

One of the City's municipal functions is operation of the Oak Creek Police Department. The Association represents a bargaining unit consisting of sergeants, detectives, patrol officers, emergency service dispatchers and police steno-clerk/matrons employed by the City.

The change in uniform policy referred to in ISSUE 1 reduced from November 1 - April 30, to December 15 - February 28, the time during which a uniformed patrol officer may opt, without requesting and obtaining daily supervisory approval, to wear a cloth dickey (i.e., a turtleneck-type collar that fits snugly against the neck), rather than a buttoned collar and tie as a part of the winter uniform. Officers are permitted to wear open collars without ties during May 1 - October 30.

The April 1994 changes also included addition for the first time of language expressly authorizing exceptions to the uniform as follows:

X. EXCEPTIONS TO UNIFORM POLICY

> Any deviation from the normally approved uniform for special assignments or due to extreme weather must be approved daily by the shift commander. These exceptions will be granted only under extreme conditions and will be subject to review by the shift lieutenant as well as the Chief of Police.

Additional factual background is provided in summaries of the parties' positions and in the DISCUSSION, below.

POSITION OF THE UNION

Both the way the Chief made the disputed change and the change itself violated the work rule "reasonableness" requirement of Agreement Art. III. The "reasonableness" standard in the Agreement and the applicable collective bargaining law require the City to discuss the elimination or modification of a working condition with the Association before it is implemented, which was not done in this case. The reasonableness standard also places the onus on the City to prove that the change was reasonably related to a legitimate objective of management, which it has not done.

The change was made in an arbitrary, capricious and hence unreasonable manner. It was not presented to the Association or discussed in collective bargaining. Discussing the matter with staff officers and a limited, non-representative group of other employes attending the bi-weekly staff meetings on their own time and with only limited notice that management's Policy Review Committee was "currently in the process of reviewing . . . the Uniform Policy," does not fulfill the City's contractual and statutory obligation to bargain with the Association before implementing changes in working conditions. Nor did the City give employes or the Association reasonable notice that management was contemplating so substantial a reduction in dickey use until the change was announced and implemented at the April 15 roll call.

The full extent of the Chief's research was to seek out the opinions of supervisory personnel who are not required to spend long periods of time exposed to the elements. The Chief aptly admitted in his testimony that he and the staff officers he consulted were not very scientific regarding the dates for wearing a dickey. Factors that should have been but were not considered include windchill, average temperatures, fluctuations between high and low temperatures, the possibility of snow, rain, sleet or a combination taking place during a shift, and the height, weight or gender of the officer.

The Association's proofs demonstrate that such information was easily obtainable at the public library and that there is a legitimate need for a dickey during the time periods at issue.

They show that during those time periods: officers routinely work in sub-zero weather conditions; the temperature in March can range from a high of 81 to a low of -10; and that the month of November has an average daily low of 30. The City and Chief have also failed to

explain why he chose 20 degrees (12 degrees below freezing) as the cutoff point in his offer to settle the grievance earlier in the grievance procedure. The optional use of a dickey and the ability to roll the dickey up or down allows the employe to better adjust to the weather conditions than can be done in a buttoned collar and tie.

The Association acknowledges the importance of officers projecting a professional image while on duty. Accordingly, the Association agrees there should be uniformity in colors, styles and manufacturers of dickeys worn by officers, It is also reasonable for the Chief to forbid use of a dickey during court appearances, public speaking engagements or when acting as a Department representative at official events. Because the officer is not exposed to severe weather in those settings, the dickey would serve no useful purpose as opposed to a tie.

The dickey does serve an important purpose of comfort and protection from the sorts of environmental conditions described above that are prevalent in Wisconsin during the periods in question. By contrast, there is no evidence that members of the public are offended or distressed by officers wearing a dickey during those periods or that they have difficulty identifying them as police officers due to the dickey. While the Chief testified that he likes the look of an officer wearing a tie, officers are not required to wear ties from May 1 - October 31. For the same reasons that the policy permits them to wear a dickey from December 15 - February 28, it is only reasonable that they be permitted to do so throughout the rest of the winter uniform period, as well.

The Arbitrator should therefore answer "Yes" to ISSUE 1 and, in addition to any other remedy deemed appropriate by the Arbitrator, direct the City to rescind the uniform policy changes announced on April 15, 1994, and to cease and desist from arbitrarily changing working conditions.

POSITION OF THE CITY

The disputed change was in a work rule which Agreement Art. 3 gives the City the right to establish and modify subject to the Association's right to grieve the reasonableness of the City's actions. By entering into the Agreement, the Association waived its right to bargain about what work rules will apply during the Agreement. The City and Association have never bargained about various previous changes in uniform policy and other work rules, and the City was not obligated to do so in this instance either. The Association did not even advance proposals concerning dickey use when the successor to the Agreement was negotiated during the pendency of the instant grievance.

The Association bears the burden of proving that management's actions concerning the work rule were unreasonable. Citing, Entex, Inc., 73 LA 330, 333 (Fox, 1979) and Southern Bell Telephone & Telegraph, 74 LA 1115, 1116 (Duff, 1980). The evidence establishes that the disputed changes were reasonable in all respects.

The City's decision to restrict the months in which officers could wear dickeys was motivated not by whim or caprice, but by a legitimate management interest in projecting a uniform, professional image to the public. In a municipal police department, officers have frequent contacts with the public, whose confidence and trust is essential to the Department's effectiveness. The City could have but did not totally ban dickeys, choosing instead to permit their use during the coldest months of the year even though other articles of clothing in the winter uniform, such as a winter coat with fur collar, would provide similar protection against cold weather. Indeed, the City offered to settle the grievance by allowing each shift to allow the wearing of dickeys beyond the policy time lines whenever the temperature reached twenty degrees at Mitchell International Airport, but the Association would not agree.

The Association's contention that the change prevents officers from staying warm during the disputed periods is unpersuasive. The revised policy allows officers who want to wear a dickey to do so during the two and one half coldest months of the year. The Association seeks the option to wear a dickey a full six months of the year even though, for example, the average high and low temperatures in April are both above freezing.

The fact that the City did not conduct meteorological and medical research does not render the revised policy unreasonable. The management of the Department, all of whom have had extensive experience as patrol officers in Oak Creek or other Wisconsin communities and have lived and worked in Wisconsin, had sufficient collective experience to determine when the most severe weather occurs. In the Policy Review Committee and later in the broader staff meeting which was open to interested bargaining unit employes, the City considered when and how officers were using dickeys under past policies, considered their impact on the professional image of the Department, and gathered input of various department members concerning issues of image, comfort and uniformity. The Association has failed to present any scientific evidence that a dickey option for six months of the year provides better protection for the comfort and health of the patrol officers who wish to wear them. The fact that only a minority of officers have opted to do so under past policies except on the coldest of days would seem to indicate that most officers do not share the Association's concern and opinion in that regard.

The option to wear a dickey is a relatively recent addition to the City's uniform policy. The testimony indicates that dickeys were not allowed at all in 1980. They came to be used on the third shift in the mid-to-late- 1980s on an informal basis and were then formally identified as an

optional clothing item from November 1 - March 31. Although dickey use was a matter of continuing concern to some in management, a consensus was reached in 1992 that the period during which officers could opt to wear them should be expanded by a month to November 1 - April 30 as a part of a comprehensive set of modifications of the uniform policy. The Chief and other top level management personnel continued to have concerns about dickey use such that when the uniform policy was again reviewed, the Chief sought to eliminate the dickey option altogether. The management Policy Review Committee discussed various concerns including that dickeys present an informal and unprofessional appearance and that there was a lack of uniformity among colors and fabrics of the dickeys worn by officers opting to wear them. A consensus was again reached that the dickey should be retained as an optional winter uniform item but that its use would be restricted to the coldest period of the Milwaukee winter - from December 15 through February 28.

Management is entitled to a range of reasonable discretion where, as here, it is making, judgments about how to maintain the Department's professional image as regards the officers' frequent contacts with the public. The Association has not shown that dickeys do not diminish the Department's professional image or the public's confidence in the Department.

The City noted in the minutes of the February 1 and March 1, 1994 staff meetings (which minutes were read to or by various Association members including two Association officers) that the uniform policy was under consideration for revision and that there would be a change in policy limiting the use of dickeys. As with all other policies, input was welcome from bargaining unit members. Yet, no complaints or any other input about the contemplated changes were made before their issuance on April 15, 1994.

The Arbitrator should therefore declare that the disputed changes were reasonable and should deny the grievance in all respects.

DISCUSSION

ISSUE 1 calls for a determination as to the reasonableness of the revision put into effect on April 15, 1994. Accordingly, the reasonableness or lack thereof of the City's offer of settlement and of the Association's rejection of that offer are not relevant to the ISSUES and are not considered in this Award.

The agreed-upon language of ISSUE 1 confirms what would otherwise be quite clear in any event: the revised Directive 92-2 regarding uniform policy was a change in a "work rule" within the meaning of that term in Agreement Art. 3.

Article 3 expressly recognizes that the City has "the right to establish work rules" subject to the right of the Association to challenge through the grievance procedure the "reasonableness" of work rules established by the City. By agreeing to that language and to the express waiver

language of Art. 34, the Association has waived its right to bargain with the City during the term of the Agreement about what work rules will be in effect during the term of the Agreement. The Association correctly asserts that the that the dickey use provisions of the uniform policy constitute working conditions, but they are working conditions about which the Association has waived its right to bargain as regards the term of the Agreement. The City therefore owed the Association no duty to bargain about the disputed work rule changes it made. Hence, the City could not and did not violate any such duty in this case.

The Association, of course, did have the right to bargain about mandatory subject work rules, including those concerning dickey use, when the parties bargained about a successor to the Agreement. The fact, that the Association chose not to make proposals concerning dickey use in those negotiations about a contract term beginning after expiration of the Agreement, does not affect the Association's Agreement Art. 3 right to pursue the instant challenge through the grievance procedure regarding the reasonableness of the work rule revisions that were put into effect on April 15, 1994.

Article 3 entitles the Association to challenge not only the reasonableness of the disputed work rule changes themselves, but also the reasonableness of the manner in which the City decided upon and implemented those changes. However, as the City argues, it is well-settled that the Association bears the burden of persuasion in a case of this kind.

For the following reasons, the Arbitrator is persuaded that the Association has not met that burden.

The evidence satisfies the Arbitrator that the City made the disputed changes in an effort to maintain and improve the professional image of the Department in the eyes of the public with whom officers frequently come into contact in the performance of their duties. Employment in a highly-disciplined work force such as a municipal police department typically and understandably involves greater demands for formality and uniformity of dress than many other lines of work. Management is entitled to considerable latitude in making judgments about how best to maintain and improve the Department's public image through its uniform policy. The facts that except on the coldest of days a majority of officers choose not to wear a dickey and that the City's policy regarding dickey use has been modified several times over the past 15 years indicate that there are a wide range of reasonable alternative ways that factors including professional image, employe protection from the weather, and employe comfort, and employe personal preference can be accommodated and balanced.

The work rule regarding dickey use that the City established on April 15 of 1994 is within the range of alternatives which management could reasonably adopt. It offers a dickey option during the coldest portion of the winter while continuing throughout the balance of the winter uniform season to afford fur-collared winter jackets, optional sweaters, and the possibility of special permission in extreme conditions to wear a dickey, scarf, stocking cap, or ski mask, etc.

The disputed rule change also reduces the period of time during which employes would have the option of wearing a dickey, thereby contributing to greater uniformity and greater formality, both of which appear reasonably related to the Department's professional image as perceived by the public.

For those reasons, the Arbitrator is satisfied that the disputed changes were reasonably related to legitimate objectives of management.

The City's reliance on its commanders' observations and recollections of many years of patrol duties in the Milwaukee or southeast Wisconsin areas, without consulting numerical weather journals and the like, was not arbitrary and did not produce an arbitrary outcome when assessed in light of the weather information submitted at the hearing by the Association. The disputed changes retain the dickey option during all or half of the three coldest months and eliminate it in the three mildest months during which it had previously been available. The City decision-makers also considered the extent to which employes have historically chosen not to wear a dickey and the extent to which employes opted to wear the dickey on days when it was obviously not needed for warmth or protection from the elements. While they could have reached other reasonable conclusions concerning when a dickey option should be permitted, the conclusion that management reached in this case was not outside the range of reasonableness properly to be accorded to them in deciding how best to balance the various factors involved in pursuit of the City's legitimate objectives noted above.

The policy review procedure used with regard to the uniform policy in 1994 was no different than that used by the City with regard to the various other Department policies that have been reviewed in the past several years. The City gave advance notice that it was contemplating changes of the sort ultimately implemented when it alerted a significant portion of the bargaining unit through the February minutes that the uniform policy was likely to be reviewed soon by management and through the March minutes that there would be a policy change that would "limit use of dickeys." Those notifications at least gave bargaining unit (including some Association officers) an opportunity to informally provide input to management in advance of the announcement and implementation of the changes. The "reasonableness" standard in Art. 3 does not require anything more of the City procedurally.

The Arbitrator is therefore not persuaded that the disputed changes were substantively or procedurally unreasonable.

DECISION AND AWARD

For the foregoing reasons and based on the record as a whole, it is the decision and award of the Arbitrator on the STIPULATED ISSUES noted above that

1. The work rule revision regarding the uniform policy that

the Chief of Police put into effect on April 15, 1994 regarding the use of a dickey was not unreasonable.

2. Accordingly, the subject grievance is denied and no consideration of remedy is necessary or appropriate.

Dated at Shorewood, Wisconsin this 14th day of August, 1995.

By Marshall L. Gratz /s/