

STATE OF WISCONSIN

Before the Interest Arbitrator

In the Matter of the Petition

of

**Watertown Professional
Police Association,
WPPA/LEER**

**For Final and Binding
Arbitration Involving Law
Enforcement Personnel in the
Employ of**

City of Watertown

Case 56

**No. 506040 MIA-2180
Decision No. 29442**

**Raymond E. McAlpin
Arbitrator**

APPEARANCES

**For the Association: Richard T. Little, Bargaining Consultant
Thomas W. Bahr, Bargaining Consultant
Dayne Zastrow, Local President**

**For the City: James Scott, Attorney
Fred Smith, Mayor**

PROCEEDINGS

On September 17, 1998 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.77 (4) (b) of the Municipal Employment Relations Act, to resolve an impasse existing between Watertown Professional Police Association, hereinafter referred to as the Association, and the City of Watertown, hereinafter referred to as the Employer.

The hearing was held on January 16, 1999 in Watertown, Wisconsin. The Parties did not request mediation services and the hearing proceeded. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on March 29, 1999 subsequent to receiving the final briefs.

ISSUES

The following are the issues still in dispute between the Union and the City:

1. Duration of contract term:

UNION

2 Years

CITY

2 Years

2. Wages:

2% 1/1/98; 2% 7/1/98; 2% 1/1/99;

2% 7/1/99; 2% 12/31/99

2% 1/1/98; 2% 7/1/98; 2% 1/1/99;

2% 7/1/99

3. Insurance - Union:

Amend Article XXII, Section 12.01 to read:

The City agrees to pay during 1998 up to One Hundred Seventy-seven Dollars and Twenty-two Cents (\$177.22) per month toward the cost of a single health plan and up to Four Hundred Forty-eight Dollars and fifty-six Cents (\$448.56) toward the cost of a family health plan. Notwithstanding these limits, during 1998, the maximum employee contribution for family health coverage under either the Dean Care or Physician's Plus plans shall be Forty-five Dollars (\$45.00).

During 1999, the City will pay an amount equal to ninety percent (90%) of the lowest premium available from a state plan provider whose services are readily and substantially accessible

to the City of Watertown. The City will pay one hundred percent (100%) of the cost of the same plan's single coverage rate.

3. Insurance - City:

Revise Article 12.01(a) to read as follows:

The City agrees to pay during 1998 up to four hundred three dollars and seventy cents (\$403.70) per month toward the cost of the family premium and up to one hundred seventy-seven dollars and twenty-two cents (\$177.22) per month toward the cost of the single premium of health insurance provided by the City.

During 1999, the City agrees to pay up to _____ (\$ _____) per month toward the cost of the family premium and up to _____ (\$ _____) per month toward the cost of the single premium of health insurance provided by the City. Dollar amounts to be inserted at the time that the 1999 rates are available. The amount inserted will be one hundred percent (100%) of the lowest priced available plan for 1998 single coverage rates and ninety percent (90%) of the lowest priced available plan for 1998 family coverage rates.

4. Life Insurance - Union: Agreed

Life Insurance - City: Article XXI: Life Insurance: The City shall provide term

life insurance coverage for each employee in an amount equal to the employee's base annual salary.

- 5. Effective Dates - Union: Agreed
- 5. Effective Dates - City: All retroactive to January 1, 1998 except that the revision to Section 12.01(a) is effective upon award, and the revision to 21.01 on April 1, 1998.

BACKGROUND FACTS

The Parties have reached agreement in almost all of their negotiations except for 1990 and 1976. Indeed, in January of 1998 there was a voluntary agreement recommended by the bargaining committee and subsequently rejected by the Association as a whole. The Parties re-entered negotiations without success culminating in this interest arbitration.

The Parties do not dispute the choice of external comparables and there is no dispute as to cost of living information or the fact that the three remaining bargaining units voluntarily agreed to contracts with the City.

ASSOCIATION POSITION

The following represents the arguments and contentions made on behalf of the Association:

The Employer may legally meet the Association's final offer. No argument has been raised by either party that the Employer does not have the authority to lawfully meet the Association's final offer. Neither the Employer's exhibits nor testimony provided any indication that legal deficiencies exist, therefore, this criterion should not affect the decision.

The Parties' stipulations illustrate that agreement has been reached on all issues except for those contained within the final offers. There are several contractual changes that the Parties have agreed upon during negotiations. These are more in the matter of housekeeping than substantive contractual improvements, therefore, this factor should receive no weight.

The Association argues the interest and welfare of the public will be best served by an award in favor of the Association. The Association's offer recognizes the need to maintain the morale and health of its police officers and thereby retaining the best and most qualified officers. Overall working conditions must be desirable and reasonable. These officers work on a daily basis with officers of other departments and, therefore, their wages and benefits should be comparable.

Police and sheriffs departments must provide law enforcement services to the community 24 hours a day, 365 days a year. This provides a clear distinction between law enforcement employees and other municipal employees. Law enforcement officers have to deal with very difficult situations, unlike other municipal interest arbitrations. Crime levels in the City of

Watertown are consistent with similar size communities. Officers must perform their duties with a professional demeanor and under the utmost scrutiny by the general public and the department. These goals may be jeopardized through the implement of the Employer's final offer. The acceptance of the Employer offer will have the effect of creating the largest premium share expense for its employees for health insurance for any of the external departments viewed as comparable. The offer also gains no support from internal comparisons. Nothing in the Employer offer can be construed as a valid quid pro quo for this change. The morale of the unit will not be affected in a positive manner by the wage and health insurance proposal of the Employer.

The Employer has the financial ability to meet the costs of the Association's final offer. At no time did the Employer allege it does not have the economic resources to fund either of the final offers submitted by the Parties. The Association suggests that it is an unwillingness rather than an inability at issue here.

With respect to a comparison of those providing similar services, the comparables are not at issue in this matter, and the Association's final offer is supported by the comparables. The only difference in the wage proposal is an additional 2% effective 12/31/99 under the Association's proposal. The Association believes its offer to be more reasonable. Under either final offer the rankings would remain identical for both 1998 and 1999. There has been a gradual, but steady, decline in the Watertown base wages as compared to the average of other departments. While the Parties are in general agreement that an above average lift on base is acceptable, it will be accomplished with a below average cost to the Employer. It should also be noted that the package

cost of the Association's final offer falls below the estimated wage costs of the comparables for 1998. Only a limited number of settlements have been acquired in 1999. However, similar conclusions have been drawn. The additional 2% is justified by the decline in wages as compared to average.

With respect to health insurance premium, monthly premium costs of the Employer are not out of line with comparable municipalities, yet in 1998 the Employer offer provides that under one plan the employees will have the greatest out of pocket premium expense of any of the external comparables. For 1999 the Parties agree that the Employer will pay 90% of the lowest cost plan. However, the Association offer is based on 1999 rates and not the 1998 rates as indicated in the Employer offer. The testimony provided by the Employer at the hearing suggested that this was not their intent. However, this must be considered in direct conflict with the statute. The health issue has been a continuing bone of contention between the Parties.

Regarding the internal comparables, these should not be considered as primary comparables in this proceeding. However, even the internal comparisons lend support to the Association's offer. Even so, the Association argues that the internal comparables should be given limited weight. Citations were provided in support of this position. The record suggests that the Employer has followed a uniform bargaining process by providing wage increases to other internal bargaining units that are similar to its offer in these proceedings for 1998 and 1999. The Association would note that retirement costs for these employees have declined over the recent past. These savings should be recognized and these changes should be taken into account. To rely solely on internal

settlements would be to ignore the other criteria contained within the statute.

The average consumer price for goods and services supports the Association's final offer. The Consumer Price Index (CPI) has been found by arbitrators to be based voluntary settlements among comparable bargaining units. Both Parties' wage proposals exceed the overall cost of living CPI. However, when coupled with the standard set by the external wage settlements, this standard must favor the Association's final offer.

The overall compensation also favors the Association's offer. No benefit elevates the members of this Association to any position giving cause to find its offer unreasonable. In addition, there are no changes in the foregoing circumstances.

Therefore, the Association has applied the specific statutory criteria and, as the Association's analysis has shown, its offer must be considered more reasonable and should be adopted by the Arbitrator. Therefore, the Association respectfully requests the Arbitrator to accept its offer as final and binding on the Parties.

The Association also responded to the City's brief as follows:

The City's offer with respect to insurance is clear. The City is attempting to modify its final offer in violation of the applicable statutes. The Association did not agree to allow the City to modify its offer. The Association asks the Arbitrator to accept either side's offer without modification in accordance with a recent circuit court and court of appeals ruling.

On other subjects the Association objects to the characterization of its exhibits. The Association cannot be held responsible for divining the intent of the Employer's offer. The Association notes that the Employer's exhibit contains an incorrect version of the expired contract.

CITY POSITION

The following represents the arguments and contentions made on behalf of the City:

With respect to health insurance, the City of Watertown has a lengthy history of requiring contribution from employees towards the cost of family health insurance coverage. In each case during 1998 and 1999 the City will pay 90% of the lowest cost premium plan offered under the state insurance plan. Participants are entitled to choose from five plans. During 1998 the least expensive plan was Dean Care. If employees choose one of the more expensive plans, they pay the difference. Entering negotiations leading to a successor agreement the Police Union was the only group with a cap on the amount of employee contribution. The police had the benefit of a \$45 cap on their contribution towards family coverage if they selected either Dean Care or Physicians Plus. In the tentative agreement between the Parties, the cap was increased from \$45 to \$50 and was to be applied only to the lowest cost provider.

The Union's final offer for 1998 requires the City to pay the full cost of Dean Care family health insurance coverage for 1998. During 1999 the proposal is consistent with language in the remaining contracts. The City's final offer is that the employees will receive \$403.70 towards the cost of family health insurance with the employee responsible for the balance. The dollar amount for single coverage is \$177.22, which is 100% of the cost of Dean Care. This offer is identical agreed upon by all the other bargaining units and non-represented employees. Furthermore, it is consistent with the 1996-1997 agreement. The City notes that eight (8) employees have the Physicians Plus family coverage and fifteen (15) have Dean Care family coverage. The Association's proposal for health insurance for 1998 constitutes a significant change in the status quo.

Regarding the final offers for 1999, one detriment of using 90% of the lowest priced health plan is that the plan that is lowest plan may vary from year to year. Thus, if the employees want to contribute no more than 10%, they may have to switch plans from year to year. When crafting its final offer, the City sought to protect employees from such uncertainty in 1999. The City's offer was an attempt to peg its contribution at 90% of the 1999 rate for the lowest priced provider in 1998. We know now that Dean Care is again the lowest priced provider for 1999. To remove any uncertainties, the City amended its offer to reflect the intent of the proposal. The effect is to make the Union and City offers identical for 1999.

The City's offer with respect to health care is clearly more reasonable. The Union's

proposal attempts to change the status quo in a dramatic manner. It seeks a windfall benefit for bargaining members who have already paid their contributions towards health insurance. The City's offer is consistent with the internal comparables and the Union makes no case for this one-year departure from the pattern.

Concerning wages, the Parties wage offers for 1998 are identical. The difference for 1999 is a 2% lift at the end of 1999. A review of the Association's exhibits contains little support for the end of the year bump for these employees. The City recognizes the effort put forth by these employees in performing a difficult job. The primary problem is with the extra bump for this group and the message it sends to all other collective bargaining groups, each of them firefighters, Department of Public Works, and police dispatchers, all agree to the identical wage increase offered by the City on a voluntary basis. The message is, "Don't voluntarily settle. The worst that can happen is that you will get the City offer anyway." There is no reason to grant these officers an additional 2% lift. We have no evidence of a relative decline versus the external comparables. Therefore, the City offer should be accepted.

Arbitrator William Petrie has frequently noted the primary focus of a Wisconsin interest arbitrator is to attempt to put the Parties in the same position they would have occupied but for their inability to achieve a complete settlement. The Union has made no case whatsoever for its wage increase and its health proposal dramatically departs from the status quo, therefore, the City's offer is clearly preferred.

DISCUSSION AND OPINION

As both Parties have noted, lawful authority is not at issue in this case, and the Parties have agreed to the stipulations that serve as a basis for this interest arbitration. The Arbitrator notes that the final offers contain a number of areas of agreement, however, they remain within the final offer.

With respect to the interest and welfare of the public, it is obvious that under most circumstances the public's interest would be best served by the most economic cost of government. However, in this case the Parties' economic offers are somewhat close, and the Association has brought forth an argument with respect to morale and duty, which the Arbitrator finds has some merit. Because of the foregoing, the Arbitrator has determined that neither side's position would prevail regarding this criterion and, therefore, the interest and welfare of the public is not determinative in this matter.

With respect to comparables, the City has brought forward a number of internal comparables, which without exception, demonstrates consistency of bargaining in terms of health care, contribution and wage percentage increases. The Arbitrator particularly notes that while relative rankings are not provided, the firefighters, which share with the police many similar working conditions, have settled for terms virtually identical to the City's offer. This Arbitrator has found in numerous other awards that while they should be considered, other City units, with the exception of the firefighters, and the non-represented group are not determinative in an interest arbitration. All in all, the Arbitrator finds that internal comparables favor the City's position.

The identity of external comparables has been agreed upon by the Parties and are contained in the record. The Association's arguments, while well taken, are not complete due to the lack of data provided for 1999 settlements. It may be true that, when all is said and done, the Watertown Police Department will have lost ground with respect to the external comparables, however, at this juncture that determination cannot be accurately and totally made. If this is the case, however, the Parties will have an opportunity during their next negotiations, which will be starting toward the end of this year, to take that into account. Given this set of circumstances, the internal comparables strongly favor the City's position and, in particular, the firefighter voluntary settlement, and the external comparables, while incomplete, somewhat favor the Association's position.

Given the record as a whole and comparing the internal and external comparables, the Arbitrator finds that the Association has asked to deviate from the status quo with respect to health care contribution and, to some extent, with the extra 2% across the board increase at the expiration of the current Collective Bargaining Agreement.

When one side or another wishes to deviate from the status quo of the Collective Bargaining Agreement, the proponent of that change must fully justify its position, provide strong reasons and a proven need. It is an extra burden of proof that is placed on those who wish to significantly change the collective bargaining relationship. In the absence of such showing, the Party desiring the change must show that there was a quid pro quo or that other groups were able to achieve this provision without the quid pro quo. In addition, in this case the vote of the members voided a voluntary

settlement. It is this Arbitrator's opinion that Interest Arbitrators have an obligation to foster voluntary settlements as the desired end point of collective bargaining. This comes under the "other factors" criterion in the statute and will be given great weight by this Arbitrator.

The problem in this case is that despite the Association's argument, it is the members of the Watertown Professional Police Association through their rejection that wish to most significantly deviate from the status quo. The Arbitrator finds that the members simply have not fully justified their position nor have they shown a quid pro quo, nor solid evidence that internal or external comparables have been able to achieve this without a quid pro quo. Therefore, the Association members have not proven their case to the extent that would allow the Arbitrator to find in their favor.

The Arbitrator has also considered the other criteria contained in the statute, that being the cost of living overall compensation, changes in the foregoing circumstances, and other factors, and finds none of them to be determinative in this matter. Therefore, an appropriate award will issue.

Prior to the award the Arbitrator would like to state for the record that the Associations arguments regarding the wording of the Employer's final offer regarding insurance is at best misleading and ambiguous. The Arbitrator is inclined to take the Employer at its word that this was an oversight and that the intent was to word the offer as noted in its arguments above. The Arbitrator specifically warns the Employer to be much more careful in wording its final offer to match its intent.

Under the circumstances of this case and despite the excellent arguments made by the Association the Arbitrator does not find sufficient grounds to rule in favor of the Association.

AWARD

On the basis of the foregoing and the record as a whole, and after full consideration of each of the statutory criteria, the undersigned has concluded that the final offer of the City of Watertown is the more reasonable proposal before the Arbitrator and directs that it, along with the stipulations reached in bargaining, constitute the 1998-1999 agreement between the Parties.

Signed at Oconomowoc, Wisconsin this 1st day of April, 1999.

Raymond E. McAlpin, Arbitrator