STATE OF WISCONSIN

Before the Interest Arbitrator

In the Matter of the Petition **of** **Wisconsin Professional Police Association, SORD WPPA/LEER** **For Final and Binding Arbitration Involving Law Enforcement Personnel in the Employ of** **Town of Caledonia**	**Case 69** **No. 56286 MIA-2200** **Decision No. 29464-A**

APPEARANCES

For the Union:

Richard Little, Bargaining Consultant
Steven Urso, WPPA Executive Assistant

For the Town:

Victor J. Long, Attorney

PROCEEDINGS

On November 24, 1998 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.77 of the Municipal Employment Relations Act, to resolve an impasse existing between WPPA-SORD, hereinafter referred to as the Association, and the Town of Caledonia, hereinafter referred to as the Employer.

The hearing was held on March 4 1999 in Caledonia, 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 May 28, 1999 after the Parties determined not to file reply briefs.

ISSUE

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

ASSOCIATION	**TOWN**
Overtime is to be paid at 1 ½ times the sergeant's hourly rate.	**Status Quo.**

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 indicating that the Employer does not have the authority to lawfully meet either of the Parties' final offers. The exhibits or testimony do not indicate that any legal deficiencies exist. Therefore, this criterion should not affect the Arbitrator's decision.

The Parties have stipulated that all issues in dispute have been resolved with the exception of the overtime provision. The Association would note that most of the agreements

are merely housekeeping rather than substantive contractual improvements. Therefore, this factor should receive no weight.

When considering which final offer is more reasonable, the Arbitrator must give weight to the interest and welfare of the public. The only issue is that of overtime. If employees work outside of their normal scheduled hours, should they be compensated at straight time or at time and one-half. The Employer may argue that the public interest is best served by maintaining lower costs. The Association would note that, while the Employer has the ability to determine appropriate coverage, the employees have no right to refuse assigned hours. Employees are currently paid at straight time regardless of the number of hours worked. The Employer's position does not take into account the disruption of the individual's personal time. Exhibits indicate that employees have worked hundreds of hours outside of their scheduled duty shifts. There is nothing to suggest that any effort was made to reduce these hours. Without the adoption of the Association's offer, there is no incentive for the Employer to do otherwise. The exhibits also show that these employees have very difficult tasks and have to deal with difficult individuals. The crime levels in Caledonia are consistent with similar size municipalities. The maintenance of a high level of morale is imperative to the officers' well-being. Therefore, the Association offer must be deemed more reasonable.

The record shows that the Employer has a financial ability to meet the cost of the Association's final offer. In fact, this criterion has not been brought forth by the Parties as an issue. At no time did the Employer allege it does not have the economic resources.

With respect to the comparables, it is the Association's group of comparables contained in its Exhibit #7 that are most appropriate. Municipalities should be compared where they are substantially equal in population, geographic proximity, mean income, overall budget and total complement of relevant department personnel and wages and fringe benefits. The Association has provided information on law enforcement agencies in southeastern Wisconsin. The Employer exhibits seem to suggest that, due to the nature at hand, the comparables should be ignored. This simply cannot be justified. It is the Association's final offer that is supported by the comparables. Acceptance of either final offer will provide percentage wage increases in the lower third of comparisons for 1998 and 1999. In fact, the employees will lose one position in each of the two years. A clear majority of departments receive time and one-half for work performed outside of the regularly scheduled hours of work.

The Association understands that it must meet strict criteria in order to be successful in this change. The Association would argue that it has met those criteria. The Association's proposal includes the applicable industry standard of time and one-half, and the quid pro quo is contained directly within the Association's acceptance of the Employer's wage offer.

With respect to the cost of living, both Parties submitted information regarding cost of living. As Arbitrator Kirkland stated in his Merill Area Association decision, voluntary settlements are a better barometer of cost of living increases than Department of Labor statistics. Therefore, the Association's final offer is the most reasonable.

With respect to overall compensation and changes in the foregoing circumstances, neither one of these criteria would give rise for the Arbitrator to find the Association's position to be unreasonable.

TOWN POSITION

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

The Association's position for an increase in the rate of overtime is that virtually all the bargaining units in comparable municipalities pay overtime at time and one-half. The Town will stipulate that this is correct. However, it is the Town's position that the Association must show a compelling need to change a provision that was part of a voluntary agreement when the sergeants formed a supervisory bargaining unit in 1992. There is no difference between comparable communities now than that which existed in 1992. Without a significant change in circumstances or the offering of a quid pro quo, the Association should not be allowed to change the status quo through an arbitration award.

In 1991, sergeants' wages were $16.77 per hour compared to the top control wage of $15.53. That represents an 8% pay differential. All of the other benefits were the same. As a result of the 1992 negotiations, the longevity and educational allowance were rolled into the rate along with an increase which resulted in a differential of 19.5%. Removing all of those items, there was an approximate 8% premium for the reduction in the overtime rate. The

1997 rates show a similar differential. The records show that the sergeants' wage has actually been approved relative to the top police patrol wage rate. The Town would note that the differential is greater for those who would not have been eligible for the maximum longevity in educational allowance. This premium amounts to significantly more than the sergeants would have earned had they been paid time and one-half for overtime. The sergeants are substantially better off financially under their current contract than they would have been had they remained in the police association. In addition, the record shows that the sergeants also have an accelerated vacation schedule which is clearly an enhanced benefit.

With respect to the costs, both exhibits show an incremental cost of approximately 2.8%. The wage increases under both offers are 3%; however, the Association has included the reduction in the Wisconsin retirement contributions. This has the effect of lowering artificially the cost of both proposals. The only issue in dispute is the overtime premium payment.

With respect to the comparables, the Association has brought in a number of comparables which, based on population and size of department, do not belong in this group. In addition, other groups have no collective bargaining agreements, so there is little basis for comparison. While it is true that the agreed upon wage increase is less than that of the comparables, the percentage wage increase is not in dispute in this arbitration. Most comparable communities do pay their sergeants time and one-half. However, it is the Town of Caledonia's position that the sergeants have been paid an ongoing premium for the loss of

this overtime since they voluntarily formed an independent association in 1992. The Town would also note that the sergeants are paid based on 2080 hours even though their 5-2/5-3 schedule produces only 1947 hours of work per year. This results in 133 hours for which the sergeants are paid but do not have to work. Since the holidays are not additional paid days off, they should be deducted. This results in an additional 4 2/3 days that the sergeants are paid for but do not work. This is a premium not reflected in any of the Association's costing comparisons.

For all the reasons above, the Town respectfully urges that the Arbitrator adopt its final offer for the 1998-1999 contract.

DISCUSSION AND OPINION

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 this matter, it is clearly the Association that wishes to deviate from the status quo and, therefore, it is the Association that bears the burden in this case.

In reviewing the statutory criteria, the Arbitrator finds that the record shows that the lawful authority of the Employer, the stipulations of the Parties, the changes in any of the foregoing circumstances, and such other factors do not apply to this case.

With respect to the interest and welfare of the public, tax payers generally opt for low cost government yet the public will benefit from a high level of morale in the bargaining unit, therefore, these two concepts seem to, in this instance at least, cancel this part of the factor out. In addition, there is no showing that the Town is unable to meet the costs contained in the Association's proposal. Therefore, criterion C is not determinative in this matter.

Likewise, the average consumer price index seems not to be a determinative factor in that both sides' proposal are relatively close to the cost of living figures and the overall settlement of this round of bargaining compared to other like comparables is within the normal range.

This leaves us with the comparables and the overall compensation of the bargaining unit members. With respect to the comparables, the Town has admitted that the appropriate comparables based on size of department and population among those who are organized strongly favor the Association position. The Arbitrator finds that it would be inappropriate to consider all supervisory bargaining units within southeast Wisconsin, unless they are roughly comparable based on population and unit size. Even when eliminating the larger and non represented bargaining units, the comparables still strongly favors the Association's

position. It is the Town's position that during the 1992 negotiations, the time and one-half provision was traded off for an increase in compensation over and above that which would have resulted by rolling in the longevity and educational premiums into the rate. This assertion may or may not be accurate, but even if it is, a review of the overall compensation (factor F) shows that this bargaining unit is well within the range of overall compensation (even when including vacation pay and the 5-2/5-3 pay schedule) for like bargaining units when taking into account the time and one-half payment for overtime.

To say that the payment of time and one-half for overtime work is ubiquitous, would perhaps be an understatement. In the private sector under most circumstances it is mandated by law, and in the public sector it is almost universal. This is a penalty to the Employer for disrupting the personal life of its employees. The Arbitrator notes that the Employees in this bargaining unit have no choice but to work the required hours. The Association, therefore, has shown that, while there is no quid pro quo in its proposal (despite its argument that the 3% wage increase constitutes a quid pro quo), the fact of the matter is there is none. However, the Association has been able to demonstrate most convincingly that this provision has been achieved by like groups without the quid pro quo, and that the overall compensation of this bargaining unit would not be altered significantly vis-a-vis comparables even with its proposal. This is true even though the 5-2/5-3 schedule does result in a modest windfall to the bargaining unit.

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 Association 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 16th day of June, 1999.

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Raymond E. McAlpin, Arbitrator