

STATE OF WISCONSIN

Before the Interest Arbitrator

In the Matter of the Petition

of

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

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

City of Ashland

Case 78

**No. 59472 MIA-2362
Decision No. 30112-A**

**Raymond E. McAlpin
Arbitrator**

APPEARANCES

**For the Association: Gary Graveson, Business Agent
Thomas W. Bahr, Bargaining Consultant**

**For the City: Scott Clark, City Attorney
Dan Crawford, Chief of Police**

PROCEEDINGS

**On April 27, 2001 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 Ashland Professional Police Association, hereinafter referred to as the Association, and the City of Ashland, hereinafter referred to as the Employer.

The hearing was held on August 1, 2001 in Ashland, 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 October 3, 2001 subsequent to receiving the final briefs.

ISSUES

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

<u>CITY</u>		<u>Association</u>		
<u>Salary Increases</u>		<u>Salary Increases</u>		
1/1/2001:	3% ATB	<u>Effective:</u>	<u>1/1/01</u>	<u>7/1/01</u> <u>12/31/01</u>
1/1/2002	3% ATB	Sergeant	16.74	16.99 17.24
		Police Off.	15.86	16.01 16.16
		Police Off. performing special assignment*	16.30	16.45 16.60

Probationary Off.	15.06	15.21	15.36
<u>Effective:</u>	<u>1/1/02</u>	<u>7/1/02</u>	<u>12/31/02</u>
Sergeant	17.76	18.01	18.26
Police Off.	16.64	16.79	16.94
Police Off. performing special assignment*	17.10	17.25	17.40
Probationary Off.	15.82	15.97	16.12

Sick Leave

Sick Leave

Status Quo

17.02 Sick leave shall be accumulated in the following manner:

- 1) Employees, assigned to non patrol functions, shall earn sick leave at the rate of eight (8) hours for each month of employment up to ninety-six (96) hours per year. Employees, assigned to patrol functions, shall earn twelve (12) hours for each month of employment, up to one hundred and forty (144) hours per year;
- 2) Unused sick leave shall carry over and be added to the next year's accumulation until a maximum of nine hundred and sixty (960) hours of unused sick leave have been accumulated.

STATUTORY CRITERIA

111.7 (6). In reaching a decision the arbitrator shall give weight to the following factors:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

- 1. In public employment in comparable communities.**
- 2. In private employment in comparable communities.**

e. The average consumer prices for goods and services, commonly known as the cost of living.

f. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or

otherwise between the parties, in the public service or in private employment.

ASSOCIATION POSITION

Section 111.77 (6) of the Wisconsin State Statute sets forth criteria that the Arbitrator must consider when analyzing which of the two offers is more reasonable. With respect to the lawful authority, no argument has been raised by either Party that the Employer does not have the lawful authority to meet the Association's final offer. Therefore, this criterion does not apply.

The Parties' stipulation illustrates that an agreement has been reached on all issues except for wages and sick leave. Six items have been agreed upon by the Parties including a two-year duration for the current contract. Neither Party has attached a specific cost savings to any of these items, therefore, this criterion should not receive any weight.

The interest and welfare of the public would be best served by an award in favor of the Association by maintaining the morale and health of its police officers and thereby retaining the best and most qualified police officers. The comparison of law enforcement officers employed by the City to those employed by similar departments is the most prevalent comparison. Law enforcement officers function 24 hours a day, 365 days a year and, therefore, should be considered different than other types of City personnel. The maintenance

of a high level of morale is imperative to both the officers' and residents' well-being. Historically, the hourly rates of patrol and sergeant classifications have been well below comparable departments. While the trend over the preceding years was to reduce the disparity in the 1999-2000 Collective Bargaining Agreement, the gap again widened. With the City's offer it would widen again under this new contract. It is the Association's final offer which provides a fair wage increase to all members. It must be deemed more reasonable.

The Employer has the financial ability to meet the cost of the Association's final offer. At no time did the Employer allege that it did not have the economic resources to fund either of the final offers. The Employer Exhibit E contains information that is not directly comparable. The Association would also note that there is no basis of comparison other than the period of time the information covers. There is no benchmark that is made for comparative purposes. The Association would note that the per capita personal income in Ashland County rose significantly in the period 1993-1998. The rates for top patrol officers have not followed the same increase. The Association submitted Exhibit 78 which summarizes community accomplishments and identifies numerous areas where the City has improved, reorganized or upgraded. During the same period of time the City has dramatically reduced its mill rate and increased its total property tax collection. Aside from the distress scores, nothing in the record would indicate that the City is in dire financial straights.

With respect to comparability, the Association's proposed comparability group is preferable to that of the Employer. These departments were identified and relied upon in two

recent awards by Arbitrator Vernon and Michelstetter. Given that, the Association's final offer is supported by the comparables. The City's offer is 3% effective January 1st of each year. The Association's offer is a 3% increase effective January 1st each year along with a \$.15 per hour increase on July 1st and December 31st for patrol officers and a \$.25 per hour increase for sergeants. Both classifications are substantially below the average wage paid to officers in comparable departments. The general increase sought is at or below 6 of the 8 comparable departments, and the Association is trying to reverse the downward trend and close the gap of disparity in the average wage. Sergeants would successfully accomplish the task and patrol officers would move from \$1.22 below the average to \$1.04 below the average the first year. Assuming that the remaining departments will settle at around the cost of living, the average disparity would be \$.83 in the second year of the contract. In contrast, the City's final offer would increase the disparity.

The internal comparables submitted by the Employer should not be considered primary comparables in these proceedings. Arbitrators have given some weight to internal comparables. The Employer will assert a historical internal settlement pattern that has been established for its represented employees. These would be used to justify the acceptance of the Employer's final offer. Arbitrators have found that uniform bargaining may not serve the best interests of the Parties and the public. Likewise, they have determined that law enforcement personnel may be properly removed from internal comparisons. The City submitted Exhibit H which suggests that the City follows the uniform bargaining policy, but there is no showing as to where these individuals rank with respect to other comparable

municipalities. Therefore, internal comparables should be given limited weight. The burden of proof required to justify primary reliance on internal settlements rests with the Employer.

With regard to the cost of living, Arbitrators have found that the proper determination of the cost of living is what comparable communities have settled for. The record shows that comparable departments have experienced cost of living increases that exceeded the wage increases of most comparable departments. Therefore, the cost of living criterion, coupled with the standard set by external comparables favors the Association's position.

Regarding overall compensation, exhibits have been provided which show that the City of Ashland law enforcement employees compared to their law enforcement counterparts. No benefit elevates the members of the Association to any position which would give cause to find the Association's offer unreasonable. Changes in the foregoing circumstances have not occurred in this and, therefore, should not be considered.

The Association filed a reply brief in this matter. The Association concedes that it erred in the costing of retirement health and dental insurance. The City has correctly identified these costs in its amended Exhibits C and B.

The Association relies on prior arbitral decisions regarding the external comparable pool. In addition, it would note that in the Michelstetter award, he states, "However, the internal pattern of settlements is not an appropriate indicator of what the appropriate wage

rate would be for police officers. This is appropriately done by comparing police officers' wage rates with those in similar communities.” The City, for its part, states that internal settlements are very important and cites not a City of Ashland case but a City of Addison case. In that case the issues were far more complex.

The Association's proposed change for sick leave brings equality to the hours worked versus the hours compensated in the event sick leave was utilized. To do otherwise would penalize an officer when he or she is ill. The citation by the Employer relies on a School District of Barron case. That matter was involved with layoff language and is irrelevant to this matter.

Finally, the Association acknowledges that the list provided for in the wage proposal contained in its final offer exceeds the internal and external settlements. The timing of these wage increases minimizes the economic impact during the course of the Agreement. In light of the dramatic differences in the average wage earned by a police officer, the City of Ashland as compared to the average wage of comparable police officers in the area, suggests that the Association's offer is the most reasonable and, therefore, should be selected.

EMPLOYER POSITION

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

The final offer of the City of Ashland is the most reasonable under the circumstances and should be adopted by the Arbitrator. The City's offer of a 3% across the board increase on January 1 of both years of the contract is consistent with the salary increases provided for all other City of Ashland employees. It has been held by arbitrators that where a pattern exists among internal bargaining units, arbitrators often give control and weight to such settlements. The City cited a City of Ashland decision of 1984.

The relative cost of packages also favors the City's offer. The financial impact is 4.34% in 2001 and 5.92% in 2002. The Association has used erroneous figures in developing its package costs not only for the City offer, but also the Association's final offer. There are other errors in both the retirement and health care numbers. The total increased cost over the two years would be approximately 17%.

The interest and welfare of the public are best met by the City's offer. The City of Ashland has one of the highest distress scores per city in the State of Wisconsin. The City score is much higher than any of the other comparables except for the City of Burleigh. The distress scores show that the City of Ashland cannot be reasonably expected to meet the costs and demands of the Association's final offer. The City of Ashland should not be held as economically comparable to those less distressed units in the surrounding area. The City has

made an adequate offer to the Association. It is all that the traffic will bear under the current circumstances. The City has provided a City of Ashland case involving Arbitrator Rice.

With respect to the consumer price index, the City's package is well in excess of the consumer price index. The cost of the police Association's package is many multiples of the CPI.

The Police Association has demanded a modification and expansion of the sick leave accumulation. A modification has not been offered or agreed to by the City. This results in significant additional cost to the City. This Association has totally ignored the impact of this proposal. The status quo on the sick leave payout should be maintained. There is no quid pro quo or buyout for which the cost and impact and the City would be a fair offset. The City of Ashland respectfully submits that the City's offer is most reasonable under the circumstances and should be selected by the Arbitrator. The Police Association's demand is unrealistic and not supported by internal comparables. The Police Association demand, if selected, would be overly burdensome on the City which is an economically distressed community. It would also impact the morale of the four other City units and create unwarranted bargaining instability for the City with its others employees.

The Employer asked that its offer be found more reasonable based on the arguments and statutory criteria.

DISCUSSION AND OPINION

Of the two items in dispute, from this Arbitrator's standpoint, it is the Association's proposed change in the sick leave that is the easiest to dispose of. Interest arbitration is essentially a conservative process. When one side or another wishes to deviate from the status quo of the previous Collective Bargaining Agreement, the proponent of that change must fully justify its position and provide strong reasons and a proven need. This Arbitrator recognizes that this extra burden of proof is placed on those who wish to significantly change the Collective Bargaining relationship. In the absence of such showing, the Party desiring change must show that there is a quid pro quo or that comparable groups were able to achieve this provision without quid pro quo. It is the Association that wishes to alter the status of the Collective Bargaining relationship with respect to the sick leave item. Essentially, there is nothing in the record that would allow this Arbitrator to make a finding that the Association has shown strong reasons and a proven need, a quid pro quo or even that comparable groups were able to obtain such an item without a quid pro quo or proven need. Therefore, the Arbitrator finds that, with respect to the Association's sick leave proposal, the record in this case strongly favors the status quo. However, the Arbitrator would also note that, in the great scheme of things, this is not an item that would dramatically change the Collective Bargaining relationship.

With respect to the wage proposals, both sides have determined that wage increases are appropriate for the bargaining unit. The question, then, before the Arbitrator is which

proposal most closely meets the statutory criteria. Statutory criteria, A, B, G and H are not in dispute and, therefore, will not be determinative in this decision.

Regarding the interest and welfare of the public, it is obvious that, under most circumstances, the public's interest would be served by a government that operates economically. However, the Association has brought forth an argument with respect to long term morale of the bargaining unit which, the Arbitrator's finds, has some merit. There is no showing in the record, despite the claim of the Employer that they have a very high distress score analysis, that the City would be unable to fund either offer without undue hardship.

With respect to the comparables, the City has brought forward a number of internal comparables which demonstrate consistency of bargaining. The City has argued that to disturb this pattern would chill the negotiation process. This would be true if the Arbitrator finds that a catchup situation is unwarranted. If a catchup situation is warranted, this would not affect other bargaining units. The City has not provided any information as to the relative rankings of these internal bargaining units with respect to their own external comparables. This Arbitrator has found in numerous interest arbitrations involving police and firefighters that these are unique bargaining units, both in terms of working conditions and personal risk. The events of the last several weeks have certainly borne out that finding. The City has noted that its firefighter unit did settle for the 3%/3% wage settlement for a two year contract. Again, however, there was no showing as to relative rank of the firefighters as compared to other comparable firefighters. Given the above, the Arbitrator finds that the internal

comparables somewhat favor the City's position, although enough data is not available to make a true determination.

With respect to external comparables, certainly the record shows that both in terms of wages and indeed overall compensation, the record in this case strongly favors the Association's position. This is particularly true with respect to patrol officers. Historically, patrol officers have lagged behind the comparables. However, for a significant period of time they were gaining some ground with respect to patrol officers in comparable communities. This trend reversed during the current Collective Bargaining Agreement and, given the City's proposal in this case, would continue to decline over the term of the new contract. The Arbitrator notes that we have very little data for 2002, however, given the trends, it is a reasonable conclusion that on the basis of the City's proposal, in particular patrol officers, which make up the bulk of this unit, would decline even further. Therefore, the external comparables strongly favor the Association's position that this group deserves a catchup situation. Again, the Arbitrator would note that there is no such showing for other bargaining units within the City of Ashland. Therefore, the Arbitrator would find that this should not disturb the bargaining relationship but is merely an anomaly. External comparables strongly favor the Association's position.

Regarding the consumer price index, based on raw data the City's offer would be slightly favored. However, this Arbitrator agrees with many other interest arbitrators in Wisconsin that external comparables are the best guide to the cost of living factor. In any

event, neither offer deviates excessively from the cost of living statistics one way or another. Therefore, this factor does not significantly favor either Party's proposal.

Given the above, this Arbitrator finds that the Association has shown by more than a preponderance of the evidence that this bargaining unit deserves a catchup in its compensation level, again particularly true of patrol officers. As we normally find in these kinds of situations, the Association proposal is somewhat in excess of what this Arbitrator would find appropriate for a two year contract. Where employees have fallen significantly behind for whatever reason, the catchup provisions should be spread over a significant period of time so as to not unduly burden the taxpayers of the City of Ashland. Added to this mix is the Association's sick leave proposal that is, in this Arbitrator's opinion, not justified by the facts of this case. However, when compared to the City's proposal, particularly noting the fact that the patrol officers would continue to decline in relationship to their fellow officers in comparable communities, the Arbitrator finds that he had no choice but to rule that the Association's proposal most closely meets the statutory criteria.

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 2001-2002 agreement between the Parties.

Signed at Oconomowoc, Wisconsin this 2nd day of November , 2001.

Raymond E. McAlpin, Arbitrator