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**STATE OF WISCONSIN**

**Before the Interest Arbitrator**

**In the Matter of the Petition**

**of**

**Oshkosh Professional  
Police Association,**

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

**City of Oshkosh**

**Case 332**

**No. 60464 MIA-2417  
Decision No. 30312-A**

**APPEARANCES**

**For the Union:**

**Frederick Mohr, Attorney  
Brian Shuldes, Union President**

**For the City:**

**William Bracken, Coordinator Employee Relations  
John Fitzpatrick, Director Administrative Services  
David Erickson, Chief of Police**

## **PROCEEDINGS**

**On May 2, 2001 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 Oshkosh Professional Police Officers Association, hereinafter referred to as the Union, and the City of Oshkosh, hereinafter referred to as the Employer.**

**The hearing was held on August 1, 2002 in Oshkosh, 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 7, 2002 after the Parties filed reply briefs.**

## **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.**

**OSHKOSH PROFESSIONAL POLICE OFFICERS' ASSOCIATION**  
**SECOND REVISED FINAL OFFER**  
*February 25, 2002*

The Oshkosh Professional Police Officers' Association makes the following preliminary final offer. Except as noted hereinafter, existing provisions of the 1998-2000 contract shall remain in force.

**1. ARTICLE II. WORK WEEK. (*Association Proposal*)**

A. Delete the existing provision and substitute the following:

**"HOURS OF WORK.**

A. Non-Shift Employees: The work schedule for non-shift employees shall be five (5) days on, two (2) days off, Monday through Friday. The work day for non-shift employees shall be eight (8) hours. Non-shift employees shall be provided with sixteen (16) additional days to be taken as time off during the calendar year.

B. Shift Employees: The work week for shift employees shall consist of five (5) days on, two (2) days off, five (5) days on, three (3) days off in a repeating cycle. The work day for shift employees shall be eight (8) hours per day.

C. Shift Schedules: Employees shall be assigned to work fixed shifts through a posting procedure based on qualification and seniority. There shall be five (5) established shifts. The hours of the shifts shall be as follows:

Day shift: 6:30 a.m. - 2:30 p.m.

Afternoon shift: 2:30 p.m. - 10:30 p.m.

Night shift: 10:30 p.m. - 6:30 a.m.

Afternoon overlap: 8:00 a.m. - 4:00 p.m.

Night overlap: 8:00 p.m. - 4:00 a.m.

In addition to the foregoing schedules, non-shift employees shall have established shifts which may vary from the foregoing but are subject to the same restrictions and benefits as outlined in this article. Management retains the right to alter the above shift times upon giving the Association notification of such changes not less than sixty (60) days prior to implementation.

D. Overtime: Officers required to work outside of the hours of their scheduled shift shall be entitled to overtime unless otherwise provided for in this agreement.

1. **ARTICLE II. WORK WEEK. (Continued)**

E. Community Policing: Officers assigned to the community policing program shall be assigned flexible hours and not be subject to the shift schedules above.

F. Training: Officers assigned to attend training outside of their normally scheduled hours will not be entitled to overtime pay if it is a voluntary school. Officers assigned outside of their normally scheduled hours to attend training shall be paid overtime for mandatory schools. However, officers assigned outside of their normally scheduled hours to attend in service training in order to fulfill the minimum state-mandated requirements for training shall not be paid overtime for hours equal to or less than the normal work day. Hours in excess of the normal work day shall be entitled to overtime."

2. **ARTICLE VI. AUTHORIZED ABSENCE.**

A. Sick Leave:

- 1) Delete the second paragraph except retain the last sentence. Insert the following: (Effective upon ratification or arbitrator's award.) (*City Proposal*)

"An employee may use sick leave with pay for absences necessitated by injury or illness to the employee. Sick leave may also be used for employee doctor or dental appointments that cannot be scheduled other than during the employee's work day. At least three work days notice shall be required to apply for the leave for doctor or dental appointments which is subject to the approval of the supervisor for scheduling.

2. ARTICLE VI. AUTHORIZED ABSENCE. (Continued)

Up to five (5) days of an employee's sick leave accumulation may be used per year for illness, injury, doctor and dental appointments that cannot be scheduled other than during the employee's work day of the employee's spouse or dependent children. At least three work days notice shall be required to apply for leave for doctor and dental appointments which is subject to the approval of the supervisor for scheduling."

- 2) Amend the last paragraph of the sick leave provision by substituting the following: (*Association Proposal*)

"As an option, the employee may choose to have the total sick leave payout amount placed in a 457 (currently RC) account. In such case, the employee shall receive up to 180 days paid at one-half (beginning 1/1/2002 - 59%) the employee's rate in effect at the time of the retirement, death or disability as defined above. As another option, an employee, who is at least 50 years old, may choose to contribute up to 90 days of his/her accumulated sick leave payout amount (one-half of up to 180 days) (beginning 1/1/2002 - 59% of up to 180 days) in a 457 (currently RC) account for three (3) years. In such case, the employee shall receive said sick leave paid at the employee's rate in effect when deposit is made. Once this option is exercised, it shall be irrevocable. Furthermore, the employees maximum accumulation shall be reduced by the amount "cashed in." These options shall only be available to those employees who meet all rules, regulations and requirements of the 457 plan administrators."

2. **ARTICLE VI. AUTHORIZED ABSENCE. (Continued)**

B. Holiday Leave: *(Association Proposal)*

1) Add a new paragraph:

"Effective January 1, 2003, employees shall receive one additional holiday as time off selected along with vacation picks and subject to the same rules and procedures as vacation selection. If this one holiday cannot be scheduled due to manpower constraints, the holiday will be paid out at straight time at the end of the year."

3. **ARTICLE VII. PAY PERIODS. (City Proposal)**

A. Change "every other Friday" to "every other Thursday unless extenuating circumstances exist." (Effective upon ratification or an arbitrator's award.)

4. **ARTICLE VIII. HOSPITAL MEDICAL INSURANCE. (City Proposal)**

A. Delete and insert the following:

"The Employer shall provide health coverage equal to a level of benefits available to employees under the City of Oshkosh Medical Benefit Plan Master Plan Documents effective January 1, 2000 and January 1, 2002. The City will implement a PPO, which will be effective upon ratification or as soon as administratively feasible after an arbitrator's award. The Plan will have a \$250.00 (single) and \$500.00 (dual and family) deductible. Effective January 1, 2003, employees will pay 3% up to a maximum of single - \$15.00; dual - \$30.00; and family - \$45.00 toward the cost of the single, dual or family plan premium equivalent. The Employer agrees not to reduce the benefits during the life of the contract. Changes in the participation of health care providers listed on any preferred provider list shall not be viewed as a reduction in benefits.

4. **ARTICLE VIII. HOSPITAL MEDICAL INSURANCE. (Continued)**

The City may, from time to time, change the medical benefit plan administrators, PPO provider, or method of funding for health coverage if it elects to do so. At least 30 days advance notice of any change in the medical benefit plan administrator, PPO provider or method of funding shall be provided to the Union. Whenever the City is considering any of these changes, the Union may provide input into the decision. This input is limited to advisory only and will not affect the City's responsibility to select a provider or administrator."

[NOTE: The Union has been provided a copy of the Master Plan Document noted above. The limited category will be combined with family.]

5. **ARTICLE VIII. LIFE INSURANCE. (City Proposal)**

A. Delete and insert the following:

"Effective January 1, 2002, the Employer shall pay 100% of the premium of the State's Group Basic Life Insurance Policy. Other amounts of coverage for the employee, and spousal and dependent coverage shall be available to the employee at his/her own expense."

[NOTE: This plan is dependent upon all City unions agreeing to same and meeting eligibility requirements.]

6. **ARTICLE VIII. NEW SECTION. SECTION 125 PLAN. (City Proposal)**

- A. The City shall offer a Section 125 Plan as allowed by law. Employees will be allowed to contribute premium contributions, unreimbursed medical expenses, and dependent care expenses into the plan subject to the plan's rules and regulations. (Effective upon ratification or as soon as administratively feasible after an arbitrator's award.)



**7. ARTICLE XX. RECOGNITION AND UNIT OF REPRESENTATION. (*City Proposal*)**

- A. Change the dates to provide for a three-year agreement on all items.
- B. Delete "sergeants" pursuant to a previous agreement between the parties.

**8. SCHEDULE A. POLICE PAY PLAN. (*Association Proposal*)**

- A. Increase all wage rates by 3.0%; 3.75%; 4.0% across the board in 2001, 2002, and 2003, respectively.
- B. Effective January 1, 2003, the classification of "police specialist" shall be eliminated. Employees in this classification shall be reclassified to the position of police officer at the rate of pay commensurate with such employee's departmental seniority.

**CITY OF OSHKOSH  
and the  
OSHKOSH PROFESSIONAL POLICE OFFICERS ASSOCIATION**

**Final Offer of the City**



**January 23, 2002**

The City presents the following final offer to the Oshkosh Professional police Officers' Association.

All provisions of the previous contract shall continue except for the following:

1. Article VI, Section A. Sick Leave, second paragraph - Delete second paragraph except retain last sentence. Insert the following: (Effective upon ratification or arbitrator's award.)

"An employee may use sick leave with pay for absences necessitated by injury or illness to the employee. Sick leave may also be used for employee doctor or dental appointments that cannot be scheduled other than during the employee's work day. At least three work days notice shall be required to apply for the leave for doctor or dental appointments which is subject to the approval of the supervisor for scheduling.

Up to five (5) days of an employee's sick leave accumulation may be used per year for illness, injury, doctor and dental appointments that cannot be scheduled other than during the employee's work day of the employee's spouse or dependent children. At least three work days notice shall be required to apply for leave for doctor and dental appointments which is subject to the approval of the supervisor for scheduling."

2. Article VI, Section C. Holiday Leave - Delete the last paragraph of the subsection and substitute the following: (Effective upon ratification or an arbitrator's award.)

"Any officer working on one of the eight (8) designated holidays shall receive time and one-half pay for hours worked on that day. In the event that the officer works in excess of his/her normal work day on the designated holiday, the officer shall be compensated at the rate of double time for hours worked in excess of his/her normal working day."

3. Article VII - Pay Periods - Change "every other Friday" to "every other Thursday unless extenuating circumstances exist." (Effective upon ratification or an arbitrator's award.)

4. Article VIII - Insurance Benefits, Hospital Medical Insurance - Delete and insert the following:

"The Employer shall provide health coverage equal to a level of benefits available to employees under the City of Oshkosh Medical Benefit Plan Master Plan Documents

effective January 1, 2000 and January 1, 2002. The City will implement a PPO, which will be effective upon ratification or as soon as administratively feasible after an arbitrator's award. The Plan will have a \$250.00 (single) and \$500.00 (dual and family) deductible. Effective January 1, 2003, employees will pay three percent (3%) up to a maximum of single - \$15.00; dual - \$30.00; and family - \$45.00 per month towards the cost of the single, dual or family plan premium equivalent. The Employer agrees not to reduce the benefits during the life of the contract. Changes in the participation of health care providers listed on any preferred provider list shall not be viewed as a reduction in benefits.

The City may, from time to time, change the medical benefit plan administrators, PPO provider, or method of funding for health coverage if it elects to do so. At least 30 days advance notice of any change in the medical benefit plan administrator, PPO provider or method of funding shall be provided to the Union. Whenever the City is considering any of these changes, the Union may provide input into the decision. This input is limited to advisory only and will not affect the City's responsibility to select a provider or administrator. "

[NOTE: The Union has been provided a copy of the Master Plan Documents noted above. The limited category will be combined with family.]

5. Article VIII - Life Insurance - Delete and insert the following:

"Life Insurance - Effective January 1, 2002, the Employer shall pay 100% of the premium of the State's Group Basic Life Insurance Policy. Other amounts of coverage for the employee, and spousal and dependent coverage shall be available to the employee at his/her own expense." [NOTE: This plan is dependent upon all City unions agreeing to same and meeting eligibility requirements.] [The Union has agreed to allow the City to implement this provision.]

6. Article VIII - New Article - Section 125 Plan - The City shall offer a Section 125 Plan as allowed by law. Employees will be allowed to contribute premium contributions, unreimbursed medical expenses, and dependent care expenses into the plan subject to the plan's rules and regulations. (Effective upon ratification or as soon as administratively feasible after an arbitrator's award.)

7. Article XX - Duration - Change the dates to provide for a three year agreement on all items.

8. Schedule A - Wages - Increase all wage rates by 3.0% effective the first pay period in 2001 and 3.0% effective the first pay period in 2002. Effective upon ratification or upon implementation of the City's PPO plan as described above, add to the wage rates currently in effect, an additional 0.75% of the 2001 wage rates. Increase all 2002 wage rates 4% effective the first pay period of 2003.

9. Appendix A - Wage Adjustment - Effective the first pay period in 2003, add the following amounts to the biweekly wage rate after the 4% wage increase is applied:

Police Officer	\$6.74
Police Specialist	\$6.86
Police Liaison Officer	\$6.95
Detective	\$7.04
Detective II	\$7.22

10. Article XX - Recognition - Delete "sergeants" pursuant to a previous agreement between the parties.

11. Article VIII - Insurance Benefits - Add:

Income Continuation Insurance - Effective January 1, 2003 or as soon as administratively feasible after an arbitrator's award, whichever is later, and subject to the plan's regulations, the City shall participate in the State's Group Income Continuation Insurance Program. The City will pay its employer's share.

[NOTE: Participant cost is based on the previous year's average monthly earnings and the employee selected elimination period of 30, 60, 90, 120 or 180 calendar days. At the 180 day elimination period, the participant shall have no cost to participate in the program. This plan is dependent upon all City unions agreeing to same and meeting eligibility requirements.]

12. Article VI, A. Sick Leave - Add as a new sentence in last paragraph:

"Effective upon ratification or an arbitrator's award, payment for unused accumulated sick leave shall be increased from "one-half of the employee's rate in effect" to "59 percent of the employee's rate in effect" in this paragraph under both options."

### **COMPARABLES**

The City has proposed comparables which include Appleton, Fond du lac, Sheboygan, Neenah and Menasha. The Union has proposed comparables that would include Appleton, Fond du lac, Green Bay and Sheboygan. Therefore, the Parties do agree on Appleton, Fond du lac and Sheboygan. In a previous interest arbitration between the Parties involving Arbitrator Oestreicher, the Arbitrator found that all of the above comparables were appropriate. Consistency of comparables helps to bring certainty not only to the interest arbitration process but also to the Collective Bargaining process. The Arbitrator finds no evidence within the record of this case that would allow him to substitute his judgement for Arbitrator Oestreicher. The Arbitrator finds that the comparables contained in that decision will be the comparables utilized in this interest arbitration. Therefore, the Arbitrator will reject both sides' attempts to modify the comparables in this matter. The Comparables shall be Green Bay, Appleton, Fond du lac, Sheboygan, Neenah and Menasha.

### **UNION POSITION**

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

With respect to hours of work, the Union's proposal attempts to consolidate various agreements and obligations to one point of reference. The Union argued that it does not attempt to change the status quo but only to clarify it. With respect to non-shift employees, the Union's proposal merely clarifies existing practice. Regarding shift employees, the proposal reiterates the existing contract language. The Union's proposal with respect to shift schedules merely incorporates departmental policies. The Union would note that of the four non-shift job classifications, the Union proposal allows management to schedule shifts and with respect to the community policing officers, they are specifically exempt from this schedule language. The Union proposal allows management to change shifts upon sixty (60) days advance notice.

Regarding the overtime proposal, the Union does admit that its proposal expands the potential for overtime pay. The City, however, retains full control over the overtime allotted. The anticipated costs in the City Exhibit #8 are not supported by the evidence.

Concerning in-service training, the City estimated an additional cost of \$40,825. This is based on six (6) days of in-service training for each officer. The City acknowledged that not all officers receive six (6) days of in-service training and much of the firearms training occurs during normal work hours. A more realistic figure would be approximately \$4,500, assuming 2/3 of the shift officers would receive one additional day of in-service training. Voluntary training is specifically excluded from the overtime requirement which would include any special team voluntary training. The City claimed that special events overtime expense would

add over \$22,000 to the overtime budget. The Union would note that there would only be extra cost incurred if the City shifted regular on-duty officers' hours. In addition the City is reimbursed for overtime costs for some special events. For example, Water Fest would only cost the City perhaps \$138 of extra overtime. The City further claimed approximately \$31,000 of additional overtime as a result of shift shortages. By the City's own testimony there were few instances of this occurring and long term shift changes may be made without the occurrence of overtime.

With respect to the sick leave issue, sick leave use for family is identical in the two proposals. With respect to sick leave after retirement, the Union believed that it had a tentative agreement on this. The Union's proposal asked that it receive the same benefit as police supervisors, and the Union's offer is closer to the firefighter benefit. When reviewing the City's exhibit, the Arbitrator should remember that a portion of the cost would be attributed to the catchup factor since the officers have not had this benefit in the prior contract.

The Union asked for an additional holiday. This merely attempts to maintain parity with the increased benefits accepted by the three other protective service associations. The City's offer does not match the settlements with other units.

The Union's pay proposal is identical to the settlements reached with all other City units, except that the Union has asked for the elimination of the police specialist position. The

Union understands that it is the City's intention to phase out this position. This would save the City approximately \$5,600 and offset some of the costs pertaining to the hours of work. The City offer holds back the 3/4% premium until implementation of the PPO or ratification of the contract. The City never made a request to immediately implement the PPO plan. Therefore, the City stands to reap a substantial benefit by holding back this increase. In the Union's view, this would positively impact the City by approximately \$35,000. In addition, the City would reap the benefit of the PPO plan. All in all, the Union's offer is far closer to parity with the firefighter settlement.

With respect to the above, the City has established a consistent pattern of internal comparables. This factor takes precedent over all others. The most significant comparison is with the firefighter unit. The main stumbling block was the Union's proposal with respect to hours and shifts. There was a longstanding concern over management's subtle manipulation of officers' work schedules. The Union made a good faith effort to try to reach agreement with the Chief during the term of the contract without success. The City sought to dramatically change the health insurance benefits by adopting a PPO plan and demanding employees pay a percentage of the health insurance premium. It is unusual that both of these would be included in the same contract period. The main issue with the Union, the hours and shifts, merely is an attempt to clarify existing contract language, policies, directives and practices.

Of the four disputed items remaining, the Union would note that firefighters and



**clerical employees have fixed shifts and fixed schedules. The same holds true for professional employees. Therefore, the internal comparables heavily favor the Union.**

**With respect to the conversion of sick leave, the Union's proposal merely seeks parity with the Police Supervisory Unit. Firefighters already enjoy parity with their supervisory unit with respect to this issue. Because protective service occupation employees are allowed full retirement benefits at age 53, continuation of health care benefits is a critical issue. External and internal comparables favor the Union's proposal.**

**Regarding the additional day off, this is supported by internal comparables. The language requested is identical to that granted to the firefighters.**

**Concerning the health plan, the City offered different but comparable incentives to other bargaining units to obtain the concession on health insurance; therefore, the internal comparables strongly support the Union's position. Finally, the City's wage proposal does not match that granted other units. The City is holding back 3/4% until the PPO plan is implemented. The City appears to reap a \$35,000 windfall. The Union's offer to eliminate the specialist position would offset much of the cost of its hours proposal. Therefore, the Union's pay provision is the most compelling.**

**The Union had an opportunity to reply to the initial brief of the City. That reply is as follows:**

**The Union's hours proposal does not change the status quo. The City has a right to schedule employees and change that schedule but at a cost. The proposal is also not ambiguous. It is the current language which is ambiguous as evidenced by numerous grievances and arbitrations. The City further asked that this be left to the bargaining table. The City has made every effort to do this, and it is the City that has not negotiated in good faith.**

**The sick leave payout proposal does not remove the option of the employees to cash out their sick leave. For five (5) years the Union has merely sought parity with the Supervisory Police Unit. The cash payout paragraph is separate from the conversion paragraph. It is the City's intent only to amend that portion which deals with the conversion benefit.**

**Regarding the 3/4% increase in 2002, the Union only seeks the same treatment granted other City employees regarding a wage increase. The Union stated it would accept the City's health insurance changes prior to January 1, 2002. There is no evidence that continuation under the prior plan has added additional costs to the City.**

**It is the Union's position that the elimination of the police specialist position allows the City to accelerate a plan it is already implementing, and by doing so gives the City a quid pro quo for the extra cost of adopting the hours of work proposal.**

**The costing of both hours shows that, with the exception of the 3/4% in the second year,**

**the costings of both hours are essentially identical. It is in the third year where the City's alleged additional costs are greatly overstated. The fact is that the percentage increase for the total package in 2003 would be 4.78%.**

**The offer which best matches the internal settlement pattern should be selected. The Union's offer mirrors the settlement pattern of all other internal units. The City's offer punishes the Union for attempting to exercise its fundamental right to bargain in good faith with respect to the hours to be worked by its officers. The City acknowledged the police and fire units have an interest which is unique compared to other municipal employees. The Union only asked for what the Fire Department already has in its hours proposal. In addition the same standards were granted to clerical and professional employees.**

**The City's offer fails to give the Union an equivalent quid pro quo for the concession on health insurance, particularly significantly less than the quid pro quo it offered the firefighters. The City stated that it does not have a history of frequently changing employees' hours on short notice. If this is true, then the impact of the hours proposal is insignificant. The need for clarification with respect to hours of work is compelling. Officers have family responsibilities that they need to meet. Changes on short notice can be totally disruptive, particularly where spouses are employed. There is also a deleterious effect on outside activities. The financial disincentive, therefore, is important to insure that the City will not change officers' schedules without a real need.**

**The City agreed to continue negotiations on the hours issues after this last contact negotiations. The City has failed to live up to its part of the bargain. Any attempts to discuss the matters with the Chief were rebuffed. The Parties spent two years at the bargaining table and not once did the City make a proposal to address the legitimate concerns of the employees. In addition the Union offered the concession to the City's request regarding the change in health insurance as a quid pro quo for its hours proposal. The health insurance was very important to the City. The hours issue was very important to the Union. The Union made an effort to link both proposals. There was no showing that the Union's proposal would have an impact on the needs or service to the public. Schedules are now only infrequently changed. Call-ins on short notice already receive overtime benefits and special teams can make training as a voluntary part of the program therefore eliminating overtime.**

**The external comparables, in particular Appleton, Fond du lac, Green Bay and Sheboygan, favor the Union's position. It is the existing language that has led to litigation. The Union is on record in this arbitration as to its interpretation of the concise and clear language of its proposal. This would virtually eliminate any dispute between the Parties regarding the application of its provisions.**

**Regarding the sick leave payout proposal and the wage proposal, it is the Union's position that is consistent with the internal wage settlements.**

**The City's proposal to add a small wage adjustment in 2003 is insufficient when**

**compared to the firefighters contract. This proposal will mean that there is no parity between the firefighters and the police officers in several areas. The City is attempting to short change and punish the Union.**

**The statutory criteria cited by the City is of little relevance to the present arbitration. With all of the other cities' unions settled, it is the internal comparables which are determinative. It is the Union's offer which best reflects the internal comparables settlement panel and, therefore, it should be adopted by the Arbitrator.**

#### **CITY POSITION**

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

**Since the Union has failed to introduce any evidence regarding the costs of the two final offers, the Arbitrator must accept the City's figures as accurate. Based on those figures the average additional cost during the term of the contract would be in excess of approximately \$3,100 per employee. In addition, the cost associated with the Union's work days/hours proposal is accurate. The department currently budgets approximately \$240,000 in overtime but spends approximately \$300,000. The additional cost to the department would be \$179,000 equivalent to three positions within the organization.**

**The City's offer best matches the internal settlement pattern. It should be selected on that basis alone. All the settlements between all employee groups are not exactly the same. The firefighters' settlement and police offer improve the sick leave payout. This was to offset the job reclassifications done for other employee groups. The Fire Department employees were behind their external comparables in terms of the number of holidays; so, an equivalent amount of holiday pay was added to the police officer's wages under the City final offer. This was done in fairness to other City employees that work a similar 8-hour shift as police. The 3/4% added to wages in 2002 was a quid pro quo for moving to the PPO. Since this has not occurred in the police contract as of yet, that 3/4% would be held in abeyance until the switch occurs. Internal comparables should be given great emphasis, and the City provided numerous arbitration citations in support of this position. Since there has been a pattern set by voluntary settlement, it would be inappropriate for this Arbitrator to discourage that process. Again, a number of citations were provided.**

**The Union's offer by including several major changes in the contract fails to meet its burden of changing the status quo that is required by arbitrators. The Union must show a compelling need for change, prove that its proposal reasonably addresses that need, and that the change provides a sufficient quid pro quo for the change offered. In none of the four proposals - hours of work, sick leave payout, wage proposal and police specialist position - did the Union meet any of the tests noted above. Again, numerous citations were provided. In addition, the Union is seeking through arbitration what it never would be able to achieve through voluntary bargaining. Arbitrators have found that there must be extremely**

**compelling reasons for this change. The Union has provided none in favor of its position.**

**The Union's hours of work proposal results in a fundamental restructuring of the Parties' relationship that should not be imposed by an Arbitrator but rather left to the Parties to negotiate. The Union's fails to meet the change in the status quo tests. There is no compelling need for the change. The City has not abused its right under the contract when it changes employees' shifts. Special events are beyond the Department's control and as much notice as possible is given to employees. Approximately 65%-70% of training is voluntary. Likewise, shift shortages are well beyond the Department's control. Previously these have been handled on a volunteer basis. The Union has recently, however, discouraged its members from volunteering for this change in their hours. Again, the City has not abused its rights in this area.**

**The Union has failed to prove that its proposal would remedy the problem. The Union has submitted a complex hours proposal full of exceptions and caveats and clarifications. Not only does the Union's proposal not remedy the problem, it makes it worse.**

**Finally, the Union has failed to provide a quid pro quo. The Union has sought to gain what all other employees have gained via collective bargaining, and on top of that, add an entirely new hours proposal. The Union has provided nothing to the City for this concession. This proposal is designed to overturn two recent grievance arbitration awards and one prohibited practice decision. The Union's offer would result in excessive costs that would**

**translate into less training for officers and lowering of service to the community. The Union's offer is inflexible, rigid and not responsive to the needs of the public.**

**The City's hours proposal best matches the prevailing practices among comparable cities, particularly with respect to the Appleton, Fond du lac, Sheboygan, Neenah and Menasha contracts. The City's proposal in practice is in the mainstream of how relevant comparables handle the scheduling of officers' hours. This proposal would catapult the City of Oshkosh to the top of the comparables for no justifiable reason.**

**Finally, the Arbitrator should reject the Union's offer because it would lead to future litigation. There are many problems in interpreting the Union's proposal. It is not to either side's advantage to have further litigation on ambiguous and internally inconsistent language as proposed by the Union. The Arbitrator should reject this language and uphold the status quo.**

**The Union never justified its sick leave payout proposal. The Union's offer strips officers of the option to "cash out" unused accumulated sick leave. The Union's offer exceeds the internal settlement pattern as established with the firefighters. The offer fails to meet the change in the status quo test and more than doubles that which the firefighters accepted. The Union claimed that its offer is the same as the police supervisors' offer. This is simply not true. The Supervisors' Association retained the "cash out" option. Supervisors receive only 150 days payout under the cash option and not 180 days as the Union proposes. There was never**



**a tentative agreement between the Parties in the last negotiations regarding this provision.**

**The Union's 3.75% wage increase in 2002 runs counter to the internal settlement pattern. This extra 3/4% was a quid pro quo for the PPO introduction. Police employees are still under the old health insurance plan which costs the City significant amounts of monies during the 2002 contract year. The Union stated it was prepared to adopt the PPO effective January 1, 2002. This is simply not supported by the evidence. In the past where the Parties wanted to implement a particular provision, they did so. The Union never contacted the City about its willingness to move to the PPO program until the arbitration hearing. By that time, of course, it was too late.**

**The Union's proposal to eliminate the police specialist position should be rejected by the Arbitrator. The Union's offer to eliminate this position is punitive and will result in a loss of income to several employees. The Union has claimed that this is quid pro quo for all of the other changes to the status quo. At best estimate this would save the City approximately \$5,600. This, compared to the additional costs in the Union's other proposals, simply does add up. The City has testified that the current police specialists would remain in that position absent some kind of performance deficiency. As with others, this offer fails to meet the change in status quo tests.**

**The City's proposal to add the equivalent of one holiday and pay is the preferred way to address this issue since the police already have a sufficient number of holidays based on**

**external comparables. It is true that the Union's proposal mirrors the agreement with the Firefighters Union. It is not the best way to handle this. Police officers are on an 8-hour schedule just like other contracted employees, and their holiday schedule should match.**

**The City's offer meets the status quo test based on the voluntary settlements reached with all other City employees and the fact that the Union agrees with many of the City proposed issues. Areas of sick leave, health insurance, life insurance, Section 125 plan, wages and income continuation insurance are all found in the other voluntary settlements.**

**The City's offer is in the best interest and welfare of the public because it promotes equity among all employees and promotes accountability. Were the Union's offer to be accepted, it would deviate from the internal settlement pattern and cause numerous problems with the City's other bargaining units. This can only lead to whipsawing by other employee groups in the future and would strongly send a message to other employee groups not to settle voluntarily. With respect to wages, the City's final offer is preferred when measured against the comparability criterion. The City offered competitive wages based on the external comparables. Its offer is comparable when looking at the settlement pattern. The City's offer is above the cost of living and should be preferred on this factor. The overall compensation strongly supports the City's offer. The Union in this matter is trying to have the best of all worlds - excessive wage increases and liberal and generous fringe benefits, not to mention the Union's proposal to receive the additional 3/4% wage increase without moving to the PPO. For all these reasons it is the City's offer that is most reasonable based on the criteria**

**contained within the statute.**

**The City also had the opportunity to respond in a reply brief to the Union's arguments.**

**That response is as follows:**

**There are four issues as identified by the Union - hours of work, unused accumulated sick leave, holiday leave and appropriate wage increase in addition to the elimination of the police specialist position. The analytical approach used by the Union does not use the methodology advanced by most arbitrators including the change in the status quo. The Union does not mention it because it does not support the Union's position. With respect to the hours of work, the City has noted that the Union wants to "have it all." That is, it wants all of the benefits that other bargaining units have voluntarily agreed upon plus its hours proposal on top of it. The Union recognizes that its proposal does expand the potential for overtime pay, however, the value it places on this is approximately \$5,000. This is a severe understatement of the financial impact. In addition, there are many flaws, ambiguities and inconsistencies in the language which only will serve to further litigation. The City believes that the true impact will be closer to its estimate of \$179,000. The Union has failed to justify its number adequately. In service training, special team voluntary training, special events and shift shortages all justify the City's position with respect to the cost of this proposal. With respect to sick leave after retirement, the Union's proposal is not the same as the police supervisors'. The Union's deletes the "cash out" option and the payout under the supervisors' contract is up to 150 days,**

**not 180 days. In addition, the firefighters' payout rate is approximately 22-23%. The Union proposed a 47% increase. Therefore, the Union's proposal is not supported by the internal settlement pattern.**

**Concerning holiday leave, the City added the equivalent of one holiday to the wage rate of police employees. It did not increase the number of holidays because they already receive a comparable amount when compared to external comparables. The value of one holiday to a firefighter is greater than one holiday to a police officer. The City, however, should not be penalized for the unique schedules between the two protective services group. The City did attempt to provide the equivalent of one holiday to both police and firefighter employees.**

**With regard to the elimination of the police specialist position, the Union argued that this will save the City \$5,600. This is woefully inadequate as a quid pro quo for all of the other things that the Union is asking for - the hours proposal, the delay in implementing the PPO. Therefore, the Union is not entitled to the 3/4% increase on January 1, 2002.**

**The Union admitted that the City has established a consistent pattern of internal comparables. The Firefighter Bargaining Unit should not be considered the most significant comparison. All of the other internal settlements are as relevant. This is particularly true when considering fringe benefits. The City has not manipulated the employees' work schedule and has been found to have acted appropriately through two grievance arbitration cases and one prohibitive practice case. The only time officers' hours are changed is when the City is**

compelled to do so. In fact, it is the Union that is the only bargaining unit that has not accepted the internal settlement pattern, and for this reason alone, the City's offer should be selected. The Union can cite no external comparable that has such a comprehensive clause as being proposed by the Union. The Union wants top wages along with the most restrictive hours proposal. This is clearly unreasonable. With respect to hours, it is simply not possible to compare the firefighters' work schedule with that of police officers. Some City employees may have specific hours listed in their contracts, but they do not have three shifts as do police officers. This is not the same as police officers providing 24-hour 365-day services.

The City has tried to balance all the ingredients in making a Collective Bargaining Agreement that would be comparable to all its represented and unrepresented employee groups. The City was successful in reaching a voluntary settlement with all groups and, where possible, it is particularly comparable to the firefighters' contract. Therefore, it is the City's offer that is the most reasonable and meets the criteria of the statute.

### **DISCUSSION AND OPINION**

The role of an Arbitrator in interest arbitration is substantially different from that in a grievance arbitration. Interest arbitration is a substitute for a test of economic power between the Parties. The Wisconsin legislature determined that it would be in the best interest

of the citizens of the State of Wisconsin to substitute compulsory interest arbitration for a potential strike involving security officers. In an interest arbitration, the Arbitrator must determine not what the Parties would have agreed to, but what they should have agreed to, and, therefore, it falls to the Arbitrator to determine what is fair and equitable in this circumstance. The statute provides that the Arbitrator must pick in all areas of disagreement the total last best offer of one side over the other. The Arbitrator must find for all open issues which side has the most equitable position. We use the term "most equitable" because in most, if not all, of last best offer interest arbitrations, equity does not lie exclusively with one side or the other. The Arbitrator is precluded from fashioning a remedy of his choosing. He must by statute choose that which he finds most equitable under all of the circumstances of the case. The Arbitrator must base his decision on the combination of 8 factors contained within the Wisconsin revised statute (and reproduced above). It is these factors that will drive the Arbitrator's decision in this matter.

Prior to analyzing each open issue, the Arbitrator would like to briefly mention the concept of status quo in interest arbitration. 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 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 is a quid pro quo or that other groups comparable to the group in question were able to achieve this provision without the quid pro quo. In addition to the above, the Party requesting change must prove

that there is a need for the change and that the proposed language meets the identified need without posing an undue hardship on the other Party or has provided a quid pro quo, as noted above. In addition to the statutory criteria, it is this concept of status quo that will also guide this Arbitrator when analyzing the respective positions.

Some have argued that the Arbitrator has more latitude when dealing with “non-economic” proposals. The Arbitrator has found over the years that the line between economic and non-economic is very blurred. An effective argument can be made that most of these “non-economic” proposals can and do have economic consequences. In addition, interest arbitration is set up to encourage voluntary settlement. This Arbitrator has concluded that in the absence of the most extraordinary circumstances it is the Parties that should determine their respective proposals either of which would then be included in the Agreement.

Prior to the analysis of the various items in dispute in this case, the Arbitrator would note for the record that it is clear from the Union’s proposal that the bargaining unit has felt that over the years it has been severely disadvantaged by the Hours provision. The Arbitrator would, however, say to the bargaining unit that interest arbitration is an essentially conservative process. The Arbitrator is bound by the criteria placed upon him by the State of Wisconsin and the Parties respective positions. The criteria for change, as noted in the above paragraphs, are difficult to achieve. Quantum leaps in interest arbitration are, therefore, difficult to attain. The Collective Bargaining/Interest Arbitration process in the

public sector is generally one of small steps over a period of time to achieve an overall goal except under the most extraordinary circumstances.

Finally, before the analysis the Arbitrator would like to discuss the cost of living criterion. This is difficult to apply in this Collective Bargaining context. The weight placed on cost of living varies with the state of the economy and the rate of inflation. Generally, in times of high inflation public sector employees lag the private sector in their economic achievement. Likewise, in periods of time such as we are currently experiencing public sector employees generally do somewhat better not only with respect to the cost of living rate, but also vis-a-vis the private sector. In addition, the movement in the consumer price index is generally not a true measure of an individual family's cost of living due to the rather rigid nature of the market basket upon which cost of living changes are measured. Therefore, this Arbitrator has joined other arbitrators in finding that cost of living considerations are best measured by the external comparables and wage increases and wage rates among those external comparables. In any event, both sides have agreed that the wage increases for this bargaining unit would exceed the cost of living percentage increases no matter what source.

On the surface this seems to be a complex case with numerous proposals on both sides; however, upon analysis there really are only two issues that severely divide the Parties - on the Union's side, the hours proposal and on the City's side, the timing of the implementation of the 3/4% add-on.



The easier of the two to resolve is the 3/4% issue. The City argued and, in the Arbitrator's opinion, rightly so that the 3/4% increase which the Union wants to be effective January 1, 2002 and the City wants to be effective upon the implementation of the PPO program, is a clear quid pro quo for the PPO implementation. Contrary to the Union's argument, the Union may have been willing to implement the PPO pending the outcome of the interest arbitration; however, the facts are that it did not even make that proposal though there is evidence in the record that the Parties have agreed to similar requests in the past. In fact, in one area that the Union neglected to include in its offer the City did to its credit remind the Union of this oversight and it was added to the stipulations reached in bargaining. All in all it is the City's position that is most favored with respect to this proposal. It is clearly a quid pro quo and it would not be proper to implement that portion of the wage proposal until that for which it is a quid pro quo is also implemented.

The hours proposal is much more difficult. This is obviously a very, very important matter to the bargaining unit and to the City. The Union argued that this is merely an attempt to put into the contract what has been practiced by the Parties for a number of years. The record in this case simply does not support this argument. Policies and directives are much easier for the Employer to adapt and change than contract language. In any event the Union's proposal does change the status quo. The Union also stated that, in its view, the cost of the implementation of its hours proposal would be between \$5,000 and \$6,000 per year. The City for its part stated that the cost would be over \$170,000 per year. The record in this case simply does not support either estimate. However, even if the Union's estimate were accepted by the

Arbitrator, not only would it be incorrect, but also it would merely serve to trivialize what is again an extremely important matter for both sides.

The Union has argued that it has met the criteria for changing the status quo (as noted above) and that its willingness to eliminate the police specialist position would pay for the change in the hours language. In fact, this is not true. While the Arbitrator does not believe that this language would cost the City \$170,000, it would certainly result in an extremely significant expenditure on the part of the City and not at all covered by the elimination of the police specialist position. The City will undoubtedly find itself in circumstances where it has no choice but to change schedules and/or incur overtime. Also the record shows that the City has not abused its prerogatives. In addition, the Union simply has not proven the other elements required for the change in the status quo; and, therefore, the Arbitrator will find that this proposal strongly favors the City's position.

Having said that, the Arbitrator would say to the City it appears to him at least that this issue is not going to go away. It would be to the advantage of both sides were the City to sit down and try to work through some of the issues raised by the Union particularly the effect of changes in work schedules on employees' personal lives. We certainly in all venues expect a lot of our police, and it would behoove the City in this case to expend some significant effort in trying to work a solution to this difficult problem.

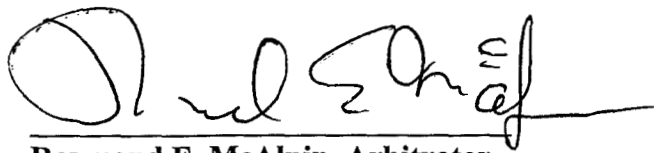
With respect to the remaining issues, they are either so close or so insignificant to the

overall labor contract that they would not be determinative. The Arbitrator is convinced that the unused accumulated sick leave proposal by the City is the most appropriate and meets the tests of the internal and external comparables. The holiday leave by the City also meets these tests. The Arbitrator would note for the record that the hours proposal and the holiday proposal, are areas where it is very difficult to compare firefighters and police officers. Having said that, the Arbitrator does not agree with the City's position that firefighters' settlements are just one of many internal settlements and all should be given identical weight. Over the years this Arbitrator has found that there is a special relationship between firefighter and police contracts and, therefore, should be given special status when making this comparison. Unfortunately for the Union they have picked areas that are extremely difficult to compare because of the very different schedules that both groups operate under. Finally, the elimination of the police specialist position is not justified in the record. Therefore, the Arbitrator will find that it is the City's proposal that most closely meets the statutory criteria and an award as such will issue.

**AWARD**

**The undersigned has concluded that the final offer of the City is the most reasonable proposal along with stipulations reached in bargaining and will constitute the January 1, 2001 to December 31, 2003 Agreement between the Parties.**

**Signed at Oconomowoc, Wisconsin this 4<sup>th</sup> day of November, 2002.**

A handwritten signature in black ink, appearing to read 'Raymond E. McAlpin', written over a horizontal line.

**Raymond E. McAlpin, Arbitrator**