ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between CITY OF PORTAGE, WISCONSIN (Police Department) And PORTAGE PROFESSIONAL POLICE ASSOCIATION, WPPA/LEER	)	**Decision No. 31005-A** Case 36 No. 63244 MIA-2573

Impartial Arbitrator

William W. Petrie
217 South Seventh Street #5
Post Office Box 320
Waterford, Wisconsin, 53185-0320

Hearing Held

January 28, 2005
Portage, Wisconsin

Appearances

For the Employer	THE HARDING GROUP LLC By David F. Bill Post Office Box 625 Chippewa Falls, WI 54729
For the Association	WISCONSIN PROFESSIONAL POLICE ASSN. By Thomas W. Bahr Executive Director 340 Coyier Lane Madison, WI 53713

BACKGROUND OF THE CASE

This is a *statutory interest arbitration proceeding* between the City of Portage, Wisconsin and the Portage Professional Police Association, WPPA/LEER, with the matter in dispute the terms of a two year renewal labor agreement covering January 1, 2004, through December 31, 2005. After they had been unable to reach full agreement in their negotiations, the Association on January 20, 2004, filed a petition with the Wisconsin Employment Relations Commission seeking final and binding interest arbitration pursuant to the Municipal Employment Relations Act. After an investigation by a member of its staff and the *Notice of Close of Investigation and Advice to Commission* on July 22, 2004, the Commission issued certain *findings of fact*, *conclusions of law*, *certification of the results of investigation* and an *order requiring arbitration* on July 29, 2004, and on August 16, 2004, it issued an order appointing the undersigned to hear and decide the matter.

A hearing took place in the City of Portage on January 28, 2005, at which time both parties received full opportunities to present evidence and argument in support of their respective positions. Both parties thereafter submitted comprehensive post-hearing briefs and, by mutual agreement, the record was reopened to allow the City to submit additional comment relating to the significance of an earlier interest arbitration decision for the parties rendered in 1978, which had then determined the composition of the *primary intraindustry comparables*, after the receipt of which the record was closed effective March 29, 2005.

THE FINAL OFFERS OF THE PARTIES

In their final offers, hereby incorporated by reference into this decision, the parties disagree as follows.

(1) The *Employer's final offer* includes the following changes.

> Modification of Article VI, Section 1, entitled **Wages**, to provide the following increases in wage rates for each classification: a 1.0% increase effective January 1, 2004, and a 1.5% increase effective July 1, 2004; and a 1.0% increase effective January 1, 2005, and a 1.5% increase effective July 1, 2005.
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> Modification of Article V, entitled **Retirement and Insurance-Hospital and Surgical Insurance**, to provide as follows: Employer payment of up to $812.06 per month for family plan and up to $329.27 per month for single plan, toward health insurance

premiums, effective July 1, 2004; Employer payment of flat dollar rates of $933.89 per month for family plan and $378.66 per month for single plan, effective January 1, 2005.

(2) The *Association's final offer* includes the following changes.

Modification of Article VI, Section 1, entitled **Wages**, to provide the following increases in wage rates for each classification: a 2.0% increase effective January 1, 2004, and a 1.0% increase effective July 1, 2004; and a 2.0% increase effective January 1, 2005, and a 1.0% increase effective July 1, 2005.

THE ARBITRAL CRITERIA

Section 111.77(6) of the Wisconsin Statutes provides that the Arbitrator shall give weight to the following arbitral criteria in reaching a decision and rendering an award in these proceedings:

"a. The lawful authority of the 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 these costs.

d. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding 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 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."

POSITION OF THE ASSOCIATION

In support of the contention that its offer is the more appropriate of

the two final offers, the Association emphasized the following summarized principal considerations and arguments.

(1) That arbitral consideration of various of the statutory criteria particularly favor selection of the final offer of the Association in these proceedings.

(2) The record establishes that *the Employer has the ability to legally meet the Association's final offer*.[1]

(3) The *stipulations of the parties* establish agreement on all issues except those contained in their final offers.[2]

(4) The *interests and welfare of the public* will best be served by an award selecting the final offer of the Association.[3]

(5) The Employer has *the financial ability to meet the costs* of the Association's final offer.[4]

(6) Comparison of wages, hours and conditions of employment of those in the bargaining unit with those of other employees in public employment performing similar services in comparable communities, favors arbitral selection of the final offer of the Association in these proceedings.[5]

(a) The primary intraindustry comparables should consist of Reedsburg, Baraboo, Sun Prairie, Beaver Dam, Ripon, Berlin and Stoughton; conversely, that the Employer proposed additional comparables of Antigo, Merill, Monroe, Rice Lake, Tomah and Marinette, should be excluded in these proceedings.

(i) The City based its proposed primary intraindustry comparables upon population of the city, either the county seat or the largest city in a county.[6]

(ii) The seven City proposed comparables included only two selected in a prior interest arbitration proceeding, in which prior case only Tomah and Baraboo had then been suggested as comparables by the Employer.[7]

(iii) Of the City proposed comparables, all but two are sufficiently distant to disqualify them (*i.e.*, Antigo, Rice Lake, Marinette, Merrill and Monroe); indeed, the only hint of commonality for these cities is population, which is *alone* insufficient to justify

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[1] Citing Section 111.77(6)(a) of the Wisconsin Statutes.

[2] Citing Section 111.77(6)(b) of the Wisconsin Statutes.

[3] Citing Section 111.77(6)(c) of the Wisconsin Statutes.

[4] Citing Section 111.77(6)(c) of the Wisconsin Statutes.

[5] Citing Section 111.77(6)(d) of the Wisconsin Statutes.

[6] Citing the contents of Employer Exhibit #1.

[7] Referring to *the decision of Arbitrator Frank P. Zeidler* in City of Portage, Case IX, No. 23096, MIA-386 (November 9, 1978).

their being considered primary intraindustry comparables.

(b) The final offer of the Association is supported by arbitral consideration of the primary intraindustry comparables.

(i) That the primary external comparables should be determined as follows.

- It submits that all but two of the municipalities urged by the Employer as comparables in these proceedings, are so distant from Portage as to be disqualified as primary comparables; it concedes that while some of the proposed may compare on the basis of populations, this single criterion is insufficient to justify their inclusion as primary comparables.

- In 1978 the parties utilized the statutory interest arbitration process, incidental to which Arbitrator Zeidler determined that the cities of Reedsburg, Baraboo, Sun Prairie, Ripon, Berlin and Stoughton were primary comparables.

- In the case at hand, that the primary comparables should include the cities of Reedsburg, Baraboo, Sun Prairie, Beaver Dam, Ripon, Berlin and Stoughton.

(ii) That the issues in these proceedings are health insurance and wages.

- Not one of the municipalities submitted by either party has the health insurance premium arrangement that the City is seeking in these proceedings.

- Baraboo, the closest mutually acceptable comparable, has the same health plan as presently exists in Portage.[8]

- While the City has shown that it has suffered increased health insurance costs, it has failed to provide any comparative data suggesting that the increases are materially different than those of its suggested comparables.

(iii) It urges application of a three pronged test to determine if health insurance changes are needed, and urges as follows:[9] *first*, that the present contract language did not give rise to the conditions that require change; *second*, on the basis of the above, that it cannot be presumed that the City proposed change would remedy any adverse condition; and, *third*, that the City proposed change would create an

[8] Citing the contents of Association Exhibit #4G and Employer Exhibit #8.

[9] Citing the decision of *Arbitrator Robert L. Reynolds* in Edgerton School District, Dec. No. 25933-A (November 8, 1989).

artificial and unreasonable standard which would remove an incentive to address health care costs in the future.

(c) That arbitral consideration of internal comparables also supports the position of the Association, in that no other group of represented employees in the City have agreed to the Employer proposed change in health insurance.

(7) Consideration of *the cost-of-living criterion* favors selection of the final offer of the Association.[10]

(a) That settlements among the Union proposed comparables are consistent with the Association's final offer.[11]

(b) That the Association proposed wage increases are consistent with those afforded comparable departments.[12]

(8) Consideration of *the overall compensation criterion* favors selection of the final offer of the Association.[13]

(a) The overall compensation in the bargaining Unit compares with that in comparable bargaining units.[14]

(b) The City's final offer causes a dramatic decrease in the City's officers relationship to the average paid to comparable officers.[15]

(9) The Association is unaware of any material and relevant *changes in circumstances* relating to application of the arbitral criteria, which would affect the final offer selection process in these proceedings.

On the basis of application of the above referenced statutory arbitral criteria, the Association urges that its final offer rather than that of the Employer should be selected by the Arbitrator in these proceedings.

THE POSITION OF THE CITY

In support of the contention that its offer is the more appropriate of the two final offers, the City emphasized the following principal considerations and arguments.

(1) That arbitral consideration of various of the statutory criteria particularly favor selection of the final offer of the City of Portage in these proceedings.

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[10] Citing Section 111.77(6)(e) of the Wisconsin Statutes.

[11] Citing the *decision of Arbitrator Jos. B. Kerkman* in Merrill Area Education Association, Decision No. 17595-A (January 30, 1981).

[12] Citing the contents of Association Exhibit #4J.

[13] Citing Section 111.77(6)(h) of the Wisconsin Statutes.

[14] Citing the contents of Association Exhibits #4A-#4H.

[15] Citing the contents of Association Exhibits #4I-4K.

(2) That the City's health insurance proposal definitely impacts upon *the interests, if not the welfare of the public*.[16]

(a) Mayor Jeff Grothman testified that while health care costs are a national issue, they also have a direct effect locally, on both budgetary and fairness bases. He referred to inquiries from taxpayers failing to understand why City employees enjoy an insurance benefit which far surpasses their own, and he also noted increases in co-payments, deductibles and premium payments for his own coverage through his wife's place of employment.

(b) The City's proposal attempts to strike a balance between the interests of the public and the interests of its employees.

(c) Police officers serve the interests and welfare of the public, and in Portage they do so very well. Mayor Grothman testified to the Department's creativeness in controlling costs, and to its inability to meet the City's goal of not more than 3% budget increases in each of the last two years.

(d) Despite the exemplary record of the Portage Police Department, the Association has a blind spot when it comes to health insurance. Marc Harding testified to its refusal to discuss changes in the health insurance program and it filed for arbitration after only one substantive meeting, when it had become apparent that the City was serious in its desire to achieve changes in the program. This Union insistence upon maintaining the status quo ante is inconsistent with the mutual need of both parties to control spiraling health care costs.[17]

(3) That the City proposed intraindustry comparables should be utilized by the Arbitrator in applying the comparison criterion.

(a) The parties have each proposed a set of seven comparable cities, but only the City of Baraboo is common to both sets.

(b) Marc Harding, on the basis of his expertise and extensive experience, testified that cities in large urban areas tend to have higher wage levels than non-urban cities, and should not, therefore, be appropriate comparables for wage and benefit determination.[18]

(c) The City proposed comparables, *i.e.*, Antigo, Baraboo. Marinette, Merrill, Monroe, Rice Lake and Tomah, were selected on the bases of their *populations*, the fact that they were either a *county seat* or the *largest city in a county*, and they were *similarly situated and non-urban* in character.[19]

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[16] Citing Section 111.77(6)(c) of the Wisconsin Statutes.

[17] Citing the decision of *Arbitrator John W. Friess* in Pierce County Sheriff's Department, Decision #28187-A (April 24, 1995).

[18] Citing the contents of Association Exhibits #4J and #4K.

[19] Citing the contents of Employer Exhibit #1.

(i) The populations of the City proposed comparables range from 85% (Tomah and Rice Lake) to 117% (Marinette), and average 99% of the Portage population.[20] It urges that this is a reasonable population range to use in determine appropriate comparables.

(ii) The use of county seats and/or the largest city in a county, reflects similarity with Portage, which is both a county seat and the largest city in Columbia County. Sheriff's departments are located in county seats and the largest city in a non-urban area brings forth issues of mutual aid and coordination with smaller surrounding communities.

(iii) Five other county seats with populations that fall within the above described population range were not used because of their proximity to urban areas: Sparta is 20 miles from La Crosse; Hudson is part of the Minneapolis/St. Paul metropolitan area; Port Washington is part of the Milwaukee metropolitan area; Ashland is more than 300 miles from Portage; and Sturgeon Bay is not similarly situated since, unlike Portage, it is in the middle of a major tourist area. With these exclusions, the City used every other Wisconsin city which met its criteria.

(d) The Association proposed comparables, *i.e.*, Reedsburg, Baraboo, Sun Prairie, Beaver Dam, Ripon, Berlin and Stoughton, were selected on the bases of *location*, *population*, use of *full-time law enforcement personnel*, comparison of the *numbers of property offenses* and *violent offenses*, and their *equalized values*.[21]

(i) The Association proposed comparables are all within 55 miles of Portage, but distance alone cannot be the determining factor when its significance is outweighed by other factors.

(ii) Three other cities with comparable populations and located within 55 miles of Portage, *i.e.*, Waupun, Verona and Monona, were excluded by the Association for unknown reasons.

(iii) Four of the Association proposed comparables should be excluded, including Stoughton and Sun Prairie due to their proximity to Madison, and Berlin and Ripon due to their proximity to the Fox River Valley.

(iv) The Association proposed comparables range in population from 53% (Berlin) to 228% (Sun Prairie) of the City of Portage; three are more than 125% of the population of Portage, and they average 119% of the Portage population.[22] The Employer submits that this is too wide a range of population to constitute a set of primary intraindustry comparables.

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[20] Citing the contents of Employer Exhibit #1.

[21] Citing the contents of Association Exhibits #3A, #3B, #3C, #3D, #3E & #3F.

[22] Citing the contents of Association Exhibit #3B.

(v) The numbers of full-time enforcement personnel, property offenses and violent offenses are not helpful in determining the set of primary intraindustry comparables.

(vi) The wide disparity between the equalized values in the Association proposed set of comparables and Portage, is a significant deterrent to considering them as primary comparables.[23]

(4) In 2003, Portage was second only to Baraboo in the rate paid for top patrolmen, and the Portage rate exceeded the average of the comparables by $.37 cents per hour or 1.9%.

(a) The City's offer for 2004, reduces the above Portage differential to $.31 cents per hour and 1.6%, while the Association's offer increases it to $.41 cents per hour and 2.1%.

(b) The City's offer for 2004 would reduce the ranking from second to third, but only because of Rice Lake's inexplicable 4% increase.[24]

(c) There are not enough 2005 settlements to determine an appropriate range for the comparables.

(d) The City expects the Association to argue that the net wage increase under the City's final offer is too small, but when the impact of its proposed insurance change is factored in, this should not be a determining factor.[25]

(e) Based upon the above considerations it urges, *based upon available wage rates or settlement figures*, there is little to choose between the two final offers.

(5) That arbitral consideration of *the cost-of-living criterion* favors selection of the final offer of the City in these proceedings.[26]

(a) The extent of movement in the applicable CPI since the parties last went to the bargaining table (*i.e.*, for the 2002-2003 agreement), was no more than 4.3%.[27]

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[23] Citing the contents of Association Exhibit #3F, showing its proposed comparables averaging 145% higher *equalized values* than the City of Portage.

[24] Citing also the contents of Employer Exhibit #2, which indicates that the average 2004 percentage wage increases among its proposed comparables to be slightly above the City's final offer and slightly below final offer of the Association.

[25] Citing *the decision of Arbitrator Krinsky* in Whitefish Bay School District, Decision #27513-A (July 7, 1993), wherein he was dealing with a district which had previously been paying the full costs of health insurance, in contrast with the comparables, which resulted in a smaller net increase in conjunction with the District's health insurance being brought into line with the comparables.

[26] Citing Section 111.77(6)(e) of the Wisconsin Statutes.

[27] Citing the contents of Employer Exhibit 11, and Association Exhibit #2A.

(b) That the City's wage offer for 2004/2005 totals 5%, while that of the Association totals 6%. While both thus exceed movement in the CPI, the City's final wage offer is closer to movement in the CPI and is thus favored by consideration of this arbitral criterion.

(6) That arbitral consideration of *the overall level of compensation criterion* favors selection of the final offer of the City in these proceedings.

(a) Both parties have presented exhibits relating total compensation.[28]

(b) In the area of *sick leave*, Portage grants one day per month with unlimited accumulation, which is the same as Merrill, Monroe and Tomah, and better than the other primary intraindustry comparables.[29]

(c) In the area of *retiree insurance*, Portage allows a maximum of 150 days of unused sick leave to apply toward retiree insurance, which is less than Baraboo, potentially comparable to Monroe, and better than the remaining primary intraindustry comparables.[30]

(d) In the area of *paid holidays*, Portage has the best program among the primary intraindustry comparables.[31]

(e) In the area of *paid vacations*, Portage has the best program among the primary intraindustry comparables.[32]

(f) In the area of *health and dental insurance*, Portage has the best program among the primary intraindustry comparables, with the single exception of Baraboo, and only one of these comparables provides dental coverage.[33]

(g) While the City objects to Association proposed primary intraindustry comparables, the following such comparisons are interesting in the following respects: Beaver Dam is the only City other than Portage which provides *unlimited sick leave accumulation*; the only city with a potentially higher payout for retiree insurance is Beaver Dam; Portage is tied for the greatest number of holidays; Portage has the best vacation benefit; and five of the Association proposed comparables have either insurance deductibles or employee premium participation.[34]

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[28] Citing the contents of Employer Exhibits 4 through 9 and Association Exhibits #4C through #4H. In this connection it urges arbitral disregard of Employer Exhibit 22, as erroneous, and challenges the accuracy of Association Exhibits #4I, #4J and #4K.

[29] Citing the contents of Employer Exhibit #4.

[30] Citing the contents of Employer Exhibit #5.

[31] Citing the contents of Employer Exhibit #6.

[32] Citing the contents of Employer Exhibit #7.

[33] Citing the contents of Employer Exhibits #8 & #9.

[34] Citing the contents of Association Exhibits #4D, #4H, #4C & #4G.

(h) Pursuant to the above, that *the overall level of compensation* criterion favors selection of the final offer of the city.

(7) That arbitral consideration of *the other factors criterion* favors selection of the final offer of the Employer in these proceedings.

(a) That a party protesting a change normally has the burden of proof as to *the need for such change*, but arbitrators have ruled that the impact of ever rising health insurance premiums had reduced this burden.[35]

(b) That several Wisconsin interest arbitrators have recognized that some types of proposed changes directed toward the resolution of mutual problems may require no *quid pro quo*.[36]

(c) The City of Portage has experienced significant cost increases in its health insurance program: premium costs have increased approximately 120%, with monthly family premiums climbing from $410.20 to $900.10; since the parties negotiated the 2002-2003 agreement, rates have increased by over 55%, with monthly family premiums increasing from $582.60 to $900.10; since the expiration of the prior agreement, the rates have increased approximately 27%, with monthly family premiums going from $710.70 to $900.10.[37]

(d) The above escalation in health insurance premiums is a mutual problem which the Association has not seen fit to address, and no *quid pro quo* should be required for its resolution.

(e) If a *quid pro quo* is needed, it may be found in wage increases in excess of increases in the CPI between 1994 and 2003, while the Employer was simultaneously absorbing the escalating costs of health insurance.[38]

(f) Adoption of the Employer's final offer would actually require affected employees to pay a portion of the premium for the last six months of 2004 and nothing in 2005, because of the timing of negotiations and rate renewals. The City in estimating 2005 premiums in June 2004, while assembling its final offer, estimated a 15% increase which would have resulted in a 2005 monthly family premium of $983.02, which was thus included in its final offer.[39]

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[35] Citing *the decision of Arbitrator John W. Friess* referenced in footnote 17, above.

[36] Citing *the decision of the undersigned* in City of Marinette (Police Patrolmen and Sergeants), Decision 30872-A (November 27, 2004).

[37] Citing the contents of Employer Exhibit #19.

[38] Citing the contents of Employer Exhibits #1 & #10.

[39] Citing the contents of Employer Exhibits #17 & #18.

(g) Despite the limited weight normally accorded unilateral adjustments for non-represented employees, such Portage employees received 2.1% wages increases for 2004, and then began paying 5.4% of their health insurance premiums on January 1, 2005.[40]

(h) The City has negotiated uniform expiration dates for all three bargaining units, and it has simultaneously proposed employee participation in health insurance premiums in all three units.

(i) Pursuant to the above, it urges that *the other factors criterion* supports selection of the City's final offer in these proceedings.

In summary and conclusion it urges that Sections 111.77(6)(a),(b), (d)(2) and (g) have no significant bearing upon this case, that neither final offer is favored by Section 111.7(6)(d)(1), but that arbitral consideration of all of the remaining statutory criteria, favors selection of the final offer of the City in these proceedings. Accordingly, it seeks arbitral selection of its final offer.

FINDINGS AND CONCLUSIONS

It is first noted that the parties differ on two impasse items: *first*, the *deferred wage increases* to apply during the term of the agreement; and, *second*, the matter of *employee contribution to health insurance premiums*. In arguing their respective positions, either or both parties principally emphasized the *interest and welfare of the public* criterion, the *comparison* criteria, the *cost-of-living* criterion, and the *overall compensation* criterion, each of which are separately addressed below.

The Significance and the Application of the Comparison Criteria in these Proceedings

In the absence of statutory prioritization comparisons in general are normally the most important of the typical arbitral criteria, and the most important comparison are normally so-called intraindustry comparisons.[41] The frequently determinative importance of the *intraindustry comparison criterion* in the interest arbitration process was recently described by the

[40] Citing *the testimony of Mr. Harding* and the contents of Employer Exhibit #13.

[41] While this terminology derives from long use in private sector interest proceedings it applies equally to public sector interest proceedings, where it normally refers to *similar units of employees performing similar services and employed by comparable units of government*.

undersigned, as follows, which description has equal application to the dispute at hand.

> "It has been widely and generally recognized by interest arbitrators for decades, that *comparisons* are normally the most frequently cited, the most important, and the most persuasive of the various arbitral criteria in the arbitration of wages, that the most persuasive of these are normally *intraindustry comparisons*, and that this criterion normally takes precedence when it comes into conflict with other arbitral criteria, including an impaired ability to pay. These considerations are well addressed as follows, in the still highly respected book by the late Irving Bernstein:
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> > 'Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the Union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill...Arbitrators benefit no less from comparisons. They have the appeal of precedent...and awards, based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.
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> > "a. *Intraindustry Comparisons*. The intraindustry comparison is more commonly cited than any other form of comparisons, or, for that matter, any other criterion. Most important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.
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> > A corollary of the preeminence of the intraindustry comparison is the superior weight it wins when found in conflict with another standard of wage determination. The balancing of opposing factors, of course, is central in the arbitration function, and most commonly arises in the present context over an employer argument of financial adversity." [Citing Bernstein, Irving, The Arbitration of Wages, University of California Press, Berkeley and Los Angeles (1954), pages 54 and 56. (footnotes omitted)[42]

Having identified the significant importance of the application of the intraindustry comparison criterion, it is next necessary to address *the dispute of the parties relative to the composition of this group*.

(1) Urging that the primary comparables should consist of Wisconsin cities of *comparable populations* which are either *county seats* or the *largest cities* in their respective counties, and excluding those located in major metropolitan areas, *the Employer urges* that the cities of Antigo, Baraboo, Marinette, Merrill, Monroe, Rice Lake and Tomah should comprise the primary intraindustry

[42] See the decision of the undersigned in City of Marinette (Firefighters), Decision No. 30771-A, page 27 (December 21, 2004).

comparables.

(2) Urging that the primary comparables should consist of Wisconsin cities of *comparable populations* and *proximately located* to Portage, and noting the selection of six of its proposed comparables by Arbitrator Frank Zeidler in a prior interest proceeding between the parties, *the Association urges* that the cities of Reedsburg, Baraboo, Sun Prairie, Beaver Dam, Ripon, Berlin and Stoughton should comprise the primary intraindustry comparables.

In considering the composition of the primary intraindustry comparables in the case at hand, it is emphasized that interest arbitrators operate as extensions of the parties' contract negotiations process, and they will normally attempt to put the parties into the same position they might have reached at the bargaining table. For this reason, subsequent interest arbitrators are loath to abandon the wage history which the parties have utilized in their past negotiations, including prior arbitral identification of the *primary intraindustry comparables*. This principle is well described in the following additional excerpt from Bernstein's book:

> "The last of the factors related to the workers is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment, and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..."[43]

The above principles were also described, as follows, in the authoritative book originally authored by Elkouri and Elouri, which also identifies various of the factors normally considered by arbitrators or fact-finders when called upon to identify primary intraindustry comparables, including police bargaining units.

> "**A. Prevailing Practice**
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> Without question, the most extensively used standard in interest arbitration is 'prevailing practice.' In utilizing this standard, arbitrators, in effect, require the disputants indirectly to adopt the end results of other similarly situated parties...
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> * * * * *
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> In many cases, strong reason exists for using the prevailing

[43] See Bernstein, Irving, The Arbitration of Wages, University of California Press, Berkeley and Los Angeles (1954), page 66. (footnotes omitted)

practice of the same class of employers within the locality or area for the comparison. Indeed 'precedent' may be accorded arbitral stare decisis treatment and found to be the determining factor in the selection of an appropriate comparability group. ...

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It is not unusual for the parties to disagree on the array of communities to be considered and require the arbitrator to make the determination. Determining which cities are 'comparable' for purposes of arbitrable resolution of a dispute between a city and its police officers has been made on the basis of the following factors: (1) proximity to a large city; (2) population; (3) size of the police force; and (4) size of the police department budget. Of course, the Union status of the police department also may be a factor...

Selection of the 'appropriate comparability group' from among 25 counties offered by the parties for purposes of resolving percentage wage increases and medical insurance contribution issues has been made on the basis of three standards of comparability. They include close geographic proximity, population and its density, and union representation. In identifying those standards, one arbitrator explained:

> [A] close geographic proximity may signal shared characteristics such as climate, avenues of transportation...and possibly socio-political values of the population. ...[L]abor markets tend to have geographic boundaries ....[W]hat occurs in other counties within this range may be expected to affect the ability of Sioux County to employ or to retain workers and may affect the nature of the duties of secondary road employees.
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> ...[C]ounties with metropolitan areas will typically have a large tax base, and may have greater diversity of industry....Population therefore may be an important determinant of whether a county is comparable...with respect not only to ability to pay but also to the nature of duties required of secondary road employees.
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> Employee represented by a union have an effective vehicle by which to present their views on...salary and fringe benefits. ...Employees without such representation cannot be said to be similarly situated.....
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> * * * * *

A 1997 factfinding report by an arbitrator for a unit of police officers contained the following observations concerning the inherent difficulties in making comparable wage rate analyses:

> Both parties submitted lengthy lists of communities deemed comparable. The Fact-Finder observed that, not unexpectedly, the City's nominees tend to include departments offering terms less favorable than those available in Willowick. In contrast, the Union's candidates included, in the main, departments providing benefits more favorable than those available in Willowick.
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> The selection of representative communities is not easily made. This Fact-Finder believes that ideally comparable communities ought to be located nearby in the same labor market...be of similar territorial size and population density, draw upon similar resources and tax bases, have a similar mix of commercial, industrial and residential properties with similar need for police protection, and maintain similarly sized Police Departments.
>
> Unfortunately, developing a list of comparable communities which meets all of these criteria is seldom possible, and the selection process is further complicated because information relevant to disputed issues may not necessarily be available from

a community which does meet the criteria.[44]

In applying the above described principles to the dispute at hand, it is first necessary to decide whether the earlier decision of *Arbitrator Frank Zeidler* should be fully determinative with respect to the identity of the primary intraindustry comparison group. If the decision of Arbitrator Zeidler had been rendered in the recent past *or* if there was evidence of the parties' ongoing and continuing utilization of the primary intraindustry comparables identified by him in 1978, this decision would reflect the parties' wage history and any subsequent arbitrator would be loathe to ignore such history. In point of fact, however, there is little determinative evidence of conscious and continuing use by the parties of the Zeidler identified intraindustry comparables; indeed, no mention of the existence of the earlier decision came to light until the filing of the Union's post-hearing brief, which then resulted in agreement of the parties to allow the Employer to address the significance of the decision after the filing of its brief, which addendum to its brief was received by the undersigned on March 29, 2005.

On the above bases, the undersigned has concluded that since Arbitrator Zeidler's identification of the primary intraindustry comparables 27 years ago has apparently not been part of the parties' ongoing *wage history* in the intervening years (or their *bargaining history* or *prevailing practice,* which terms are frequently used interchangeably in this context), it is not entitled to full application by the undersigned in these proceedings. This does not mean, however, that the sound reasoning of Arbitrator Zeidler should be completely disregarded by the undersigned in determining the current composition of the primary intraindustry comparables.

As described above, arbitrators called upon to identify primary intraindustry comparables normally use a variety of criteria in making such decisions, including but not necessarily limited to *geographic proximity to one-another* (normally indicating a shared labor market), *similarity of resources and tax bases*, *proximity to large cities*, *population density*, and,

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[44] See Ruben, Allan Miles, Editor in Chief, *Elkouri & Elkouri* HOW ARBITRATION WORKS, Bureau of National Affairs, Sixth Edition - 2003, pages 1407-1411. (footnotes omitted)

in police arbitrations, such additional factors as *department size*, *population characteristics and density*, as they bear upon the need for police services.

(1) In applying the above considerations to ***the primary intraindustry comparables urged by the Employer***, it is noted that few, if any, of the above criteria are met. While it is innovative in urging that county seats within a reasonable population range should be utilized, with the exclusion of those which are located in close proximity to larger cities or metropolitan areas, it ignored such essential considerations as shared labor markets due to reasonable proximity to one another, in addition to other frequently applied tests of comparability. With the single exception of Baraboo, the remaining City proposed comparables are many miles away from Portage and thus well outside the normally requisite parameters of a *shared labor market.*[45]

(2) In next applying the above described considerations to ***the primary intraindustry comparables urged by the Association***, it is noted that six of its seven proposed comparables had previously been selected as such by Arbitrator Zeidler. By way of contrast with the cities proposed by the City, all of the Association proposed comparables lie within approximately 55 miles of Portage, they are similar in various law enforcement characteristics, and all are thus clearly within or very close to the requisite parameters of a shared labor market.[46] It is also noted at this point that the Cities of Reedsburg, Baraboo and Ripon, proposed as comparables by the Union in these proceedings, had apparently been accepted as comparables by Portage in the parties' earlier arbitration, and that Tomah, proposed as a comparable by the City in these proceedings, had previously been rejected as a comparable by Arbitrator Zeidler.

(3) Despite the identification of Sun Prairie and Stoughton as comparables in the parties' earlier arbitration, the Employer has persuasively argued that they should be excluded as *primary intraindustry comparables* in these proceedings, due to their relatively high growth rates, when considered in conjunction with the very rapidly expanding Madison metropolitan area.

On the above described bases the undersigned has preliminarily concluded that with the single exception of the City of Baraboo, none of the Employer proposed cities should be included in the *primary intraindustry comparables*, and that with the exception of the cities of Sun Prairie and Stoughton, the cities proposed by the Union should comprise the *primary intraindustry*

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[45] Following are the approximate distances from Portage of the Employer proposed primary intraindustry comparables: Antigo (139 miles), Baraboo (17 miles), Marinette (171 miles), Merrill (126 miles), Monroe (85 miles), Rice Lake (203 miles) and Tomah (68 miles).

[46] See the contents of Association Exhibit #3A, indicating the approximate distances from Portage of the Association proposed primary intraindustry comparables: Reedsburg (32 miles); Baraboo (25 miles); Sun Prairie (34 miles); Beaver Dam (40 miles); Ripon (53 miles); Berlin (55 miles); and Stoughton (50 miles). See also the *law enforcement characteristics* of these communities summarized in Association Exhibits #3B, #3C, #3D & #3E.

comparables. In other words that the cities of Reedsburg, Baraboo, Beaver Dam, Ripon, Berlin and Portage comprise the *primary intraindustry comparables* in these proceedings.

In next considering the *wage increase proposals of the parties* it is noted that both parties proposed *split increases* in each of the two years of the renewal agreement, with the Employer proposing 1% increases each January 1, and 1½% increases each July 1, for *lifts of 2½% each year*, and the Association proposing 2% increases each January 1, and 1% increases each July 1, for *lifts of 3% each year*. These components of the final offers of the parties compare with the following increases agreed upon and implemented among the comparables.

(1) The Start Rate Patrol comparisons are as follows:

(a) The City of Baraboo increased from $16.68 per hour in 2003, to $17.18 in 2004 (+2.8%), and to $17.70 in 2005 (+3.0%);

(b) The City of Berlin increased from $16.22 per hour in 2003, to $16.75 in 2004 (+3.3%), and to $17.25 in 2005 (+3.0%);

(c) The City of Beaver Dam increased from $16.20 per hour in 2003, to $16.84 in 2004 (+4.0%), and to $17.34 in 2005 (+3.0%);

(d) The City of Ripon increased from $15.66 per hour in 2003, to $16.21 in 2004 (+3.5%), and to $16.69 in 2005 (+3.0%);

(3) The City of Reedsburg increased from $14.50 in 2003, to $14.90 in 2004 (+2.8%), and to $15.35 in 2005 (+3.0%).[47]

(2) The Top Patrol Officer comparisons are as follows:

(a) The City of Beaver Dam increased from $21.63 per hour in 2003, to $22.50 in 2004 (+4.0%), and to $23.18 in 2005 (+3.0%);

(b) The City of Ripon increased from $20.75 per hour in 2003, to $21.48 in 2004 (+3.5%), and to $22.18 in 2005 (+3.0%);

(c) The City of Berlin increased from $19.97 in 2003, to $20.62 in 2004 (+3.0%), and to $21.24 in 2005 (3.0%);

(d) The City of Baraboo increased from $19.74 per hour in 2003, to $20.33 in 2004 (+3.0%), and to $20.94 in 2004 (+3.0%);

[47] See the contents of Association Exhibit #4I.

(e) The City of Reedsburg increased from $19.01 per hour in 2003, to $19.53 in 2004 (+2.7%), and to $20.12 in 2005 (+3.0%).[48]

(3) The Top Detective comparisons are as follows:

(a) The City of Beaver Dam increased from $22.97 per hour in 2003, to $23.87 in 2004 (+4.1%), and to $24.58 in 2005 (+3.0%);

(b) The City of Berlin increased from $21.05 per hour in 2003, to $21.73 in 2004 (+3.0%), and to $22.38 in 2005 (+3.0%);

(c) The City of Baraboo increased from $20.24 per hour in 2003, to $20.83 in 2004 (+2.9%), and to $21.45 in 2005 (+3.0%);

(d) The City of Reedsburg increased from $20.12 per hour in 2003, to $20.67 in 2004 (+2.7%), and to $21.29 in 2005 (+3.0%).[49]

In reviewing the above data it is clear that the Association proposed 3% wage lift each year, places it within the range of the comparable wage increases for all three of the above categories, and that the City proposed 2.5% wage lift each year places it below the comparable wage increases for the three categories. Arbitral consideration of the wage increases implemented by the intraindustry comparables, therefore, clearly favor the wage increase component of the final offer of the Association in these proceedings.

It is next noted that the health insurance premium payment practices of the intraindustry comparables are as follows:

Reedsburg: Employee pays $15/month premium share, $100/single/year, $200/family/year deductible. $4.00/generic/$5.00 brand name prescription co-pay.

Baraboo: State Plan - Employer pays up to 105% of the lowest qualified plan.

Beaver Dam: Effective 2003, employees pay 7% of premium cost for HMO or POS plan.

Ripon: Effective 2004, employees pay not more than $30/month toward premium costs.

Berlin: Employer pays 100% of premium for POS plan. $100/single, $300/family deductible.

Portage: State Plan - Employee pays up to 100% of the lowest cost qualified plan.[50]

As noted above, three of the five primary intraindustry comparables to

[48] See the contents of Association Exhibit #4J.

[49] See the contents of Association Exhibit #4K.

[50] See the contents of Association Exhibit #4G.

the City of Portage have adopted some form of employee contribution toward the cost of health care premiums, which reflects growing recognition of the very significant *mutual problem* of spiraling health care costs. Those in the bargaining unit have apparently enjoyed excellent and fully paid health insurance for an extended period of time, but when the costs of such coverage escalate significantly in excess of what might have been anticipated by both parties, it represents a problem that should be constructively addressed by both parties in the collective bargaining process, including, as necessary and appropriate, the interest arbitration process.

It is undisputed that the health insurance premiums paid by the City of Portage have very significantly increased over the past decade, and that the rate of increase has recently escalated; monthly premiums for *single coverage* increased from $204.90 in 2000, to $367.90 in 2005, the same period within which the monthly premiums for *family coverage* increased from $525.20 per month to $900.10 per month.[51] These escalating costs are a significant *mutual problem* and growing numbers of employers and unions are agreeing to cooperate in controlling such increases, including some forms of cost-sharing. When faced with proposed modification or elimination of previously negotiated benefits, interest arbitrators have traditionally required an appropriate *quid pro quo* to accompany selection of offers containing such proposals; because significant and unanticipated health care cost escalation is a *mutual problem*, however, offers containing reasonable cost sharing proposals may require either none or substantially reduced *quid pro quos*.[52] In Wisconsin's *final offer selection process*, however, offers containing proposed health care changes will be selected *only* where application of the statutory criteria justify selection of such final offers in their entirety, which in the case at hand includes both the wage and the health insurance impasse items.

In looking to *internal comparables*, the Employer noted that it has

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[51] See the contents of Employer Exhibit #10.

[52] For a more complete discussion of the so-called *quid pro quo* requirement in various types of health care impasses, see the decision of the undersigned in City of Marinette (Police Patrolmen & Sergeants), Decision No. 30872-A, pages 15-18 (November 27, 2004).

instituted health insurance changes for non-represented employees similar to those proposed by it in these proceedings, and that it has similar offers pending in its other bargaining units. While internal comparison with the health insurance of its non-represented employees thus favors selection of the health insurance component of the Employer's final offer in these proceedings, such unilateral changes for non-represented employees are entitled to relatively little weight in the final offer selection process.

The Interests and Welfare of the Public and the Ability to Pay Criteria

It is well established that both professional and effective police services and adequate and reasonable compensation to police professionals for providing such services, serve the interests and welfare of the public; in the case at hand no questions have been raised relative to the professionalism and effectiveness of those in the bargaining unit, and the questions of their wages and levels of employer provided health insurance coverage are before the undersigned in these proceedings. Under such circumstances, the criteria contained in Section 111.77(6)(c) are normally entitled to *determinative* or to *significant* weight in the final offer selection process, only in the cases of inability or impaired ability to pay, respectively, on the part of a covered employer.

On the above bases, the undersigned has determined that application of *the interests and welfare of the public and the ability to pay criteria*, as described above, cannot be assigned significant weight in the final offer selection process in these proceedings.

The Cost-of-Living Criterion

As has been emphasized by many Wisconsin interest arbitrators in the past, the weight to be placed on cost-of-living changes varies significantly with the state of the local and national economies. During periods of rapid movement in the consumer price index, it may be one of the most important criteria in the final offer selection process, but during periods of relative price stability, it declines significantly in relative importance. In light of the recent stability in the CPA since the last time that the parties went to the bargaining table, the undersigned has determined that this criterion is

not entitled to significant weight in the final offer selection process.

The Overall Compensation Criterion

Section 111.77(6)(f) directs arbitral consideration of the overall compensation presently received by employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity of employment, and all other benefits received, and such arbitral consideration was urged by both parties in these proceedings.

As has frequently been noted by the undersigned in other interest arbitration proceedings, it should be understood that while *this factor may be initially used to justify or to maintain differential wages or individual benefits*, in the event, for example, of negotiated trade-offs, it generally has little to do with the application of general wage increases thereafter, which principle is very well explained in the following additional excerpt from Bernstein's book:

> "...Such 'fringes' as vacations, holidays, and welfare plans may vary among firms in the same industry and thereby complicate the wage comparison. This question, too, is treated below.
>
> * * * * *
>
> ...In the *Reading Street Railway* case, for example, the company argued strenuously that its fringes were superior to those on comparable properties and should be credited against wage rates.
>
> Arbitrators have had little difficulty in establishing a rule to cover this point. They hold that features of the work, though appropriate for fixing differential between jobs, should not influence a general wage movement. As a consequence, in across-the-board wage cases, they have ignored claims that tractor-trailer drivers were entitled to a premium for physical strain; that fringe benefits should be charged off against wage rates; that offensive odors in a fish-reduction plant merited a differential; that weight should be given the fact that employees of a utility, generally speaking, were more skilled than workers in the community at large; that merit and experience deserved special recognition; and that regularity of employment should bar an otherwise justified increase...
>
> The theory behind this rule is that the parties accounted for these factors in their past collective bargaining over rates.[53]

While it is clear that the parties have *previously negotiated* a very adequate overall level of compensation for those in the bargaining unit, the

[53] See The Arbitration of Wages, pages 65-66 and 90. (The cited case, authored by *Arbitral Chairman William Simpkin*, can be found at 6 LA 860.)

overall compensation criterion cannot excuse arbitral disregard of either an otherwise justified level of wages, or an otherwise justified method of payment for health insurance premiums. This criterion cannot, therefore, be assigned significant weight in the final offer selection process in these proceedings.

Summary of Preliminary Conclusions

As addressed in more significant detail above, the Arbitrator has reached the following summarized, principal preliminary conclusions.

(1) In the case at hand, the parties differ on two impasse items: *first*, the *deferred wage increases* to apply during the term of the agreement; and, *second*, the matter of *employee contribution to health insurance premiums*.

(2) In arguing their respective positions, either or both parties principally emphasized the *interest and welfare of the public* criterion, the *comparison* criteria, the *cost-of-living* criterion, and the *overall compensation* criterion.

(3) In addressing *the significance and the application of the comparison criteria*, the undersigned has determined as follows:

(a) It is generally recognized that comparisons in general are normally the most important of the typical arbitral criteria, and the most important comparison are normally so-called intraindustry comparisons.

(b) The cities of Reedsburg, Baraboo, Beaver Dam, Ripon, Berlin and Portage comprise the *primary intraindustry comparables* in these proceedings.

(c) Arbitral consideration of the wage increases implemented by the intraindustry comparables clearly favors *the wage increase component* of the final offer of the Association in these proceedings.

(d) Three of the five primary intraindustry comparables to the City of Portage have adopted some form of employee contribution toward the cost of health care premiums, which reflects growing recognition of the very significant *mutual problem* of spiraling health care costs.

(i) Escalating health care costs are a significant *mutual problem* and growing numbers of employers and unions are agreeing to cooperate in controlling such increases, including some forms of cost-sharing.

(ii) Due to the *mutuality of the problem*, offers containing reasonable cost sharing proposals may require either none or substantially reduced *quid pro quos*.

(iii) In Wisconsin's *final offer selection process*, however, offers containing proposed health care changes will be selected *only* where application of the statutory criteria justify selection of such final offers *in their entirety*, which in the case at hand includes both the wage and the health insurance impasse items.

(e) The Employer has instituted health insurance changes for non-represented employees similar to those proposed by it in these proceedings, and it has similar offers pending in its other bargaining units. While *internal comparisons* with the health insurance of its non-represented employees thus favors selection of the health insurance component of the Employer's final offer, such unilateral changes for non-represented employees are entitled to relatively little weight in the final offer selection process.

(4) In addressing *the interests and welfare of the public and the ability to pay criteria*, the undersigned notes as follows:

(a) It is well established that both professional and effective police services and adequate and reasonable compensation to police professionals for providing such services, serve the interests and welfare of the public.

(b) No questions have been raised relative to the professionalism and effectiveness of those in the bargaining unit, and only the questions of their wages and levels of employer provided health insurance coverage are before the undersigned in these proceedings.

(c) Under the above circumstances, the criteria contained in Section 111.77(6)(c) are normally entitled to *determinative* or to *significant* weight in the final offer selection process, only in the cases of inability or impaired ability to pay, respectively, on the part of a covered employer.

(d) The application of *the interests and welfare of the public and the ability to pay criteria*, as described above, cannot be assigned significant weight in the final offer selection process in these proceedings.

(5) In addressing the *cost-of-living criterion* the undersigned notes as follows:

(a) The weight placed on cost-of-living changes varies significantly with the state of the local and national economies; during periods of rapid movement in the consumer price index, it may be one of the most important criteria in the final offer selection process, but during periods of relative price stability, it declines significantly in relative importance.

(b) In consideration of recent stability in the CPI since the last time that the parties went to the bargaining table, this criterion is not entitled to significant weight in the final offer selection process in these proceedings.

(6) In addressing *the overall compensation criterion*, the undersigned notes as follows:

(a) While it is clear that the parties have *previously negotiated* a very adequate overall level of compensation for those in the bargaining unit, the *overall compensation criterion* cannot excuse arbitral disregard of either an otherwise justified level of wages, or an otherwise justified method of payment for health insurance premiums.

(b) This criterion cannot, therefore, be assigned significant weight in the final offer selection process in these proceedings.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, including arbitral consideration of all of the statutory criteria contained in Section 111.77(6) of the Wisconsin Statutes, in addition to those particularly emphasized by the parties and elaborated upon above, the undersigned has concluded that the final offer of the Association is the more appropriate of the two final offers, and it will be ordered implemented by the parties. This decision is clearly indicated by the failure of the wage increase component of the final offer of the Employer to reasonably comport with the intraindustry comparables.

By way of *dicta* the undersigned will merely observe that the escalating costs of health insurance are an *ongoing and mutual problem*, which the parties would be wise to *jointly* address and resolve in their forthcoming contract renewal negotiations.

AWARD

Based upon a careful consideration of all of the evidence and arguments and a review of all of the various arbitral criteria provided in Section 111.77(6) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Portage Professional Police Association is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the Association, herein incorporated by reference into this award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Arbitrator

June 3, 2005