

BEFORE THE ARBITRATOR

In the Matter of the Final and Binding Interest Arbitration Dispute between

WISCONSIN PROFESSIONAL POLICE ASSOCIATION / LAW ENFORCEMENT  
EMPLOYEE RELATIONS DIVISION

and

CITY OF SUN PRAIRIE (POLICE DEPARTMENT)

WERC Case 41, No. 66059, MIA-2733  
Decision No. 32047-A

Appearances:

Mr. Thomas W. Bahr, Executive Director, Wisconsin Professional Police Association, Law Enforcement Employee Relations Division, 340 Coyier Lane, Madison, WI 53713, appearing on behalf of the Association.

Melli, Walker, Pease & Ruhly, S.C., by Thomas R. Crone, Esq., 10 E. Doty St, Suite 900, P.O. Box 1664, Madison, WI 53701-1664, appearing on behalf of the City.

ARBITRATION AWARD

The Association has represented a bargaining unit of police officers for many years. On July 10, 2006, the Association filed a petition with the Wisconsin Employment Relations Commission requesting arbitration with respect to the replacement for the parties' collective bargaining agreement which expired December 31, 2005. Following mediation by a member of the Commission's staff, the Commission determined by order dated March 16, 2007 that arbitration was required. The undersigned was appointed by Commission order dated April 16, 2007. A hearing was held in Sun Prairie, Wisconsin on July 17, 2007, at which time the parties were given full opportunity to present their evidence and arguments. Briefs were filed by both parties, a reply brief was filed by the City, and the record was closed on September 10, 2007.

**Statutory Criteria to be Considered by Arbitrator**

Section 111.77(6)

- (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) Comparisons of the 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 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.

**The Union's Final Offer**

Wages:

For employees at Police Officer I and Police Officer II at three (3) years of service:

- 3% 1/1/06
- 3% 1/1/07
- 3% 1/1/08

For employees at Police Officer II at four (4) or more years of service and for Detectives:

- |           |           |
|-----------|-----------|
| 2% 1/1/06 | 2% 7/1/06 |
| 2% 1/1/07 | 2% 7/1/07 |
| 2% 1/1/08 | 2% 7/1/08 |

**The Employer's Final Offer**

Increase wage rates as follows:

3% 1/1/06  
3% 1/1/07  
3% 1/1/08

Article VIII – Overtime. Amend Section 8.5 as follows:

Section 8.5 – Compensatory Time.

Overtime shall be paid in cash provided, however, that the employee may elect to take compensatory time off in lieu of cash subject to approval of the Chief of Police, or his/her designee. Cash/Grant funded overtime must be in pay and not compensatory time.

Department members may request in writing (~~memo~~ time off slip) directed to their immediate supervisor, a specific amount of time off (usually referred to as comp time off) for a given date(s). The requesting person must have accumulated enough compensatory time to equal or exceed the requested time off. Personnel should request time off in sufficient advance notice to ensure assignment continuity as determined necessary. Requests for time off should generally be made not less than seventy-two (72) hours in advance. Requests which result in overtime, which result in an unacceptable level of service, as determined by the Chief or his/her designee, or which contribute to a backlog in work for the requesting officer (e.g., report writing, special projects, etc.) will not generally be approved, absent exceptional circumstances. Such compensatory time off shall be in the proportion of time and one-half (1.5), that is one and one-half (1.5) hours of compensatory time for each hour of overtime. Each employee shall be allowed to accumulate ~~eighty (80)~~ sixty (60) hours on the books that can be taken off as compensatory time in lieu of overtime pay. Compensatory time on the books as of December 1st that is not intended to be used prior to the end of the month shall be paid on a separate check on the first pay period in December. Officers shall be allowed to carry time not to exceed forty (40) hours off ~~overtime~~ comp time into the new year if a written notice is given to the chief of police or designee prior to the 1st of December and approved by Management. ~~Officers shall have the option on each pay period to indicate on their respective pay slips in the comp time column, how many hours of accumulated overtime during that pay period they wish to be paid for in cash and how many hours should be placed in their comp bank as well as how many hours of accumulated compensatory time during that pay period they wish to be paid and how many hours should be retained in their comp bank (i.e. 10 total hours overtime, 5 pay, 5 comp, or 15 total hours over time, 5 pay, 10 comp retain).~~

~~A.) — To give the City permission and authority, by individual, to withhold pay earned and convert it to compensatory time.~~

~~B.) — To allow a person to decide if he/she wants to accrue hours on a compensatory time bank. A person can set his/her own limit of hours up to 80 (80) hours.~~

~~C.) — Determine, by individual, at the first of each year, the number of hours he/she intends to accrue for that year.~~

~~D.) — Require an employee to replace hours used, up to his/her chosen limits. For example, if an employee chooses to bank 20 hours and after accumulating his/her 20 hours uses 10~~

~~hours, the next 10 hours of overtime will be applied to his/her compensatory bank of 20 hours and overtime above the 20 hours will be paid.~~

Department members will receive a pay out of their comp bank as outlined:

- : First paycheck in December as indicated above.
- : Prior to receiving a promotion. All hours will be paid on the pay period prior to their promotional date.
- : Upon termination of employment as an officer with the Sun Prairie Police Department.
- : Officers may indicate on their timesheets a choice to pay out a minimum of 30 hours of comp time.

### **The Union's Position**

The Association's arguments are presented in order of the statutory criteria. The Association begins by noting that no testimony or evidence was presented to indicate that the Employer does not have the authority lawfully to meet the Association's final offer. With respect to the stipulations, the Association notes that a number of items were stipulated to by the parties as changes for the successor agreement, but that neither party has argued that there are significant costs involved in any of them. As to the interests and welfare of the public, the Association argues that its offer best maintains morale and health of the officers, and thereby serves the best interests of the public by helping to retain or recruit the best officers. And the Association argues that ability to pay is not a factor, as there is no evidence provided by the Employer indicating that it lacks financial ability to meet the costs of the Association's final offer.

Comparability, the Association notes, is at issue. The Association argues for the continuation of the pool of municipalities found comparable to Sun Prairie in the most recent decision between these parties, by Arbitrator Sinclair Kossoff in 1993. That pool consisted of Beaver Dam, Watertown, Oconomowoc, Fitchburg, Middleton, Stoughton, Monona and the Town of Madison. The Association argues that the City provided no testimony in support of its argument for a revised comparable pool, only one exhibit, and significantly, that the City did not raise this issue until the hearing. The Association also notes a 2006 arbitration award in one of the comparable cities, Beaver Dam, in which the arbitrator (in a non-police unit) noted that the parties had never been to arbitration before, but that the police unit had been to arbitration with that City, and accepted the 15-year-old comparable pool established at that time as valid for the other unit for 2006. The Association contends that the City does not take into account information relevant to comparability other than population and number of law enforcement officers, such as equalized value and financial resources of the municipality, and argues that the City's list should be rejected.

With respect to the compensatory time provision, the Association argues that the City is seeking extraordinary changes through arbitration, with no quid pro quo. The Association argues that the only rationale offered by the City for the lowered number of days which could be accrued is that the one other bargaining unit of the City is allowed to accrue less hours than the police officers. But the officers, unlike the other bargaining unit, are staffed and working seven days a week, 24 hours a day, the Union notes. The other changes have to do

with the officers' ability to turn in accrued compensatory time for pay. The Association argued that it is not possible to determine, based on the City's data, how many officers exceeded 80 hours accrual in 2007, and that officers accrued more than 80 hours only 20 times in 2005 and 12 times in 2006. The Association questions where management feels the real problem lies. The Association also argues that the City has failed to substantiate that the existing provision causes an unreasonable number of separate checks, or that it involves a significant administrative burden, and the Association further argues that except for the number of hours that can be accrued, the City has been living with the same language in the other bargaining unit as it objects to here.

As to the wage increases, the Association argues that the comparables support a wage lift of at least 3.35% in 2006, 3.38% in 2007, and 3.26% for 2008. The Association points out that the City has the largest contingent of police officers among its comparables, the largest increase of population in the last six years, and an extraordinary increase in equalized value. The Association characterizes the wage increases over the last five years as a pattern of voluntarily and cooperatively moving the top rate for patrol officers closer to the average, a trend which the Association seeks merely to continue. The Association argues that in 2000, the top patrol officers were paid \$.84 per hour behind the average, and that by 2005, the gap had closed to \$.39. The Association argues that while its offer does not exceed the average hourly rate paid to comparable officers in comparable cities, the City's offer would result in hourly rates ratcheting back to \$.93 per hour below the average by the conclusion of the contract.

The Association contends that its final offer is closer than the City's to the pattern of settlements among comparable employers, and that this demonstrates that it is also closer to the Consumer Price Index, as the comparables also take that into account. With respect to overall compensation, the Association notes that the record contains evidence with respect to other forms of compensation, but argues that none of the benefits elevates the employees' standing in relation to their counterparts such as to make the Association's final offer unreasonable. The Association finds no relevant changes in circumstance during the pendency of this proceeding.

## **The Employer's Position**

The City argues that the Association's proposal on wages is unreasonable because it provides for a 12% increase over the life of the agreement for the vast majority of officers, with no demonstrated need for that size of increase. At the same time, the City argues that its compensatory time proposal has no adverse effect on the economic package, but allows the City to be more efficient, and that any arguable adverse effect on employees is counterbalanced by other economic improvements in the stipulations.

The City agrees with the Association that there is no issue regarding the City's lawful authority and that the City has the ability to pay the costs of either offer. In the City's view, the interests and welfare of the community are not served by the Association's offer, however, because the City calculates inflation at an average of 2.5% and the City's proposal maintains the employees' position relative to the comparables. With respect to the comparables, however, the City argues for the addition to the 1993 list of Waunakee, Verona, Oregon and DeForest, and for the exclusion from the previous list of the Town of Madison. The exclusion of the Town of Madison is argued on the grounds that the Town has dropped in population by about 5% since 1993, making it by far the smallest community compared to the 1993 groups current populations, and that since 1993 the Town has a diminished status for another reason, as it is being slowly absorbed by the City of Madison and is to be completely absorbed by 2020. The addition of Waunakee, Verona, Oregon and DeForest is argued on the grounds that these four communities, like Sun Prairie, have experienced rapid growth since 1993, are geographically close to Madison, and are now larger than Monona as well as the Town of Madison.

Using its preferred comparables, the City argues that Sun Prairie currently ranks fifth in terms of the beginning officer rate and sixth at the top patrol officer rate, rankings which the City's proposal would maintain, while the Association's proposal would raise the ranking of the top patrol officer to fourth by 2008. The City argues that the difference in costs, negligible in the first year, increases to more than \$21,000 in the second year and almost \$44,000 in the third year, with further compounding presumably to come. The City argues that there is no justification for this in the settlements in comparable communities, calculating that most settlements are at 3% for each year and that the Association's proposal is matched in total lift only in Watertown, which pays far less to begin with and which in 2008 would still be \$1.76 per hour below the City's proposal here. The City also points to the internal settlement with the AFSCME unit at 3% for 2006 and 2007.

With respect to the compensatory time provision, the City argues that the comparables compensatory time provisions vary, but that the vast majority do not provide for a payout in cash during the year. The City argues that the reduction to 60 hours is appropriate because as a practical matter it is very hard for an officer to schedule more than 60 hours of comp time, because in the absence of direct deposits, cutting separate checks is administratively awkward, and because the Association had initially proposed a 30 hour minimum payout. The City points to the evidence that 28 requests for payouts under 30 hours were made in 2005. The City also argues that the Association has offered no explanation for its objection. The City argues that the Consumer Price Index, at 2.62% for 2004, 3.64% for 2005, and 1.19% for 2006 is lower than either party's proposal, making the City's more reasonable,

and that nothing in the overall compensation picture demonstrates that the City is in any way coming up short compared to the comparables, also supported by the lack of any evidence of high turnover or difficulty in filling hiring needs. The City finds no changes during the pendency of this proceeding.

In its reply brief, the City argues that a modification of the comparables only makes sense, because it is well recognized that change in comparables can occur when there is a reason, and in this instance, rapid growth in neighboring communities has occurred since the 1993 list was established. The City notes that even in the 2006 Beaver Dam case cited by the Association in favor of stability, the arbitrator added one City to the previous 1991 list. In response to the Association's argument that equalized value and the municipalities' financial resources should be included in any such comparison, the City incorporates in its reply brief full valuation and per person valuation data for all 12 of its proposed comparables, plus the Town of Madison. The City argues that on a total valuation basis, the Town of Madison is by far the lowest in the Madison area, with only Beaver Dam lower, and that on a per person basis the four Madison suburbs proposed by the City for addition have valuations greater than some other comparables which both parties have proposed keeping. The City objects to the WPPA's claim that the parties agreed to move the officers pay closer to the average of the 1993 comparables, arguing that there is no testimony or other evidence in the record to this effect, and argues that the 2000-2005 wage increases represented the City's desire to maintain its rankings and relative position. The City argues that its proposal continues this pattern and that the Association's claim that the gap widens to \$.93 per hour in 2008 is based on skewed numbers, since two cities which are well behind Sun Prairie's wage rates have not settled for 2008. The City objects to the Association's calculation of the average lift, arguing that a wage freeze for one city in 2006 appears to have been left out, and finding average percentage increases of 3.0%, 3.30% and 3.25% even using the Association's comparables, even ignoring the possibility that the average percentage for 2008 will go down when all the settlements are in. In terms of the City's proposed comparables, the City finds average increases of 2.89% for 2006 and 3.03% for 2007 if the employers prevail in pending cases, and 3.16% for 2006 and 3.17% for 2007 if the unions prevail. For all of these reasons, the City argues that a 3% per year increase is more in line with the other communities. With respect to the compensatory time changes, the City argues that the Association has argued for the "three-pronged" test, but has not even argued that the City's proposed adjustment constitutes a burden on employees, while the City has shown that the lack of any limitation in the current contract creates a least a small administrative burden. Finally, the City argues that several small items in the stipulations are economic benefits to employees which more than offset any adverse impact of the City's comp time proposal, particularly an increase in the uniform allowance from \$35 to \$45 per month, an increase of \$100 in the armor allowance, and a doubling of longevity pay.

## **Discussion**

Comparables:

There is great value in stability of a comparable pool, for all of the reasons many arbitrators have noted over the years. Also, the City has not rebutted the Association's objection that

the City did not raise the comparables issue prior to the hearing. At the same time, the City is quite correct in asserting that several other Madison suburbs have experienced growth similar to that of the City of Sun Prairie since 1993. It seems arbitrary to continue to exclude them from the comparable pool, when four of those suburbs have now surpassed not just the Town of Madison but also Monona in population size; two of those have also surpassed Monona in economic base, whether that is calculated in terms of full valuation or on a per capita basis. (All four have also surpassed another comparable, Stoughton, on a per capita basis, and two of them have surpassed Stoughton on a full valuation basis.) At the same time, the Town of Madison, which the City seeks to exclude, may be a politically odd entity at this point (consisting of several islands, apparently in the process of being slowly absorbed by the City of Madison), but its proximity to Sun Prairie and the relatively small loss of population it has endured to this point suggest that although it is of marginal relevance, there is no pressing reason to remove it from the comparable pool.

If the sudden addition of four new comparables, without the City giving notice to the Association prior to the hearing, appeared likely to “stack the deck,” fairness might dictate continuing their exclusion at this time. Neither Sun Prairie’s relative ranking nor the balance of wage increases appears significantly affected by adding these four comparables, however, for the reasons below. And as a matter of reality, they now appear more similar to Sun Prairie than they once were, and now easily bear comparison with, for example, Monona and Stoughton. Accordingly, I will include them in the table which follows, though primarily in order to recognize that the comparables for Sun Prairie appear to have changed for the longer term.

Compensatory time:

I note that the 2005-2007 agreement between the City and its AFSCME-represented bargaining unit (of general City employees) specifies the following, in pertinent part under “compensatory time”:

“...Employees shall each pay period indicate on their payslips in the comp-time column how many hours of accumulated overtime during that pay period they wish to be paid for in cash and how many hours they wish placed in their comp time bank. Employees may be allowed to carry time not to exceed forty (40) hours of compensatory time into the new year.”

The fact that the City chose to pursue structural changes in the compensatory time provision for the police bargaining unit to the point of arbitration while leaving the substantively similar AFSCME language in place is unexplained. At the same time, the Association is correct in pointing out that the City has proposed a structural change involving some degree of loss to employees (though in terms of flexibility rather than actual amounts earned) and has proposed no quid pro quo; I do not accept the City’s belated argument that because a number of tentative agreements were reached, some of them with cost implications, these necessarily constitute a quid pro quo. (There is nothing in the record to indicate any such intent in formulating the list of tentative agreements, and there was no discussion of the tentative agreements at the hearing, so for all that is visible in the record, it remains possible that they could contain their own obscure internal trade-offs.) And this is the type of benefit which characteristically varies widely from one otherwise similar employer to the next, with the range of variation in the external comparables here that one might associate with that



pattern. Accordingly, neither the internal nor the external comparables favor most of the Employer's proposal on this issue, nor does the level of inconvenience the Employer is enduring (from what admittedly must be a somewhat awkward system to manage) appear so remarkable that a change would reasonably carry no quid pro quo at all. I conclude that the Association's status quo proposal is more reasonable.

#### Wages:

With or without the addition of the four new comparables, the pattern is clear. There is nothing in the record to support the Association's assertion of a standing agreement between the parties to raise wages of top patrol officers over a long period; yet wages for top patrol officers in this bargaining unit have gone up relative to the comparables since 2000. Under the circumstances of changing comparables, relative ranking is a potentially more arbitrary criterion than comparative percentage increases, so I treat that criterion with caution here; but the fact remains that the relative rank of Sun Prairie does not change markedly under either offer, no matter whether the proposed new comparables are admitted or not. (Sun Prairie would move up by one if the Town of Madison were excluded, but I have declined to exclude it for the reasons above.)

The table which follows shows where Sun Prairie's senior patrol officers stand at the outset of the contract under dispute, and in terms of comparative wage increases thereafter:

Top Patrol Officer, 2005 rate and 2006-2008 percentage increases  
(including final offers, where no agreement.) New comparables shown in italics.

City	2005	2006	2007	2008
Beaver Dam-U	23.08	3%	3%	
Beaver Dam-E	23.08	1%	1%	
Fitchburg-U	25.87	2+1%	3%	3%
Fitchburg-E	25.87	2%	3.5%	
Madison (Town)*	25.38	3%	4%	3%
Middleton	24.49	2+2%	3.41%	3.49%
Monona	24.35	3%	2%	2%
Oconomowoc	25.71	3%	3.74%	3.75%
Stoughton	23.57	3%	3%	
Watertown	21.51	2+2%	2+2%	2+2%
<i>DeForest</i>	<i>22.19</i>	3%	3%	3%
<i>Oregon</i>	<i>21.74</i>	3%	4%	4%
<i>Verona</i>	<i>24.91</i>	<i>2.75%</i>	<i>2.75%</i>	
<i>Waunakee</i>	<i>21.99</i>	3%	3%	
Sun Prairie-U	23.78	2+2%	2+2%	2+2%
Sun Prairie-E	23.78	3%	3%	3%

\*Calculated from Association Exhibit 6C. Other numbers derived from Employer's brief, which appears generally consistent with the Association's exhibits.

I agree with the City that the settlements for 2008 are too sparse to allow a fair comparison of ranking or actual wages. But to the extent that 2008 settlements exist, that year continues a pattern in which 3% is the predominant level of settlement (though the average of the other settlements is somewhat higher in 2008, as the City argues this might simply reflect that employers which were inclined to pay more were settling more easily.) The average "lift" in the settlements for 2006 excluding DeForest, Oregon, Waunakee and Verona is 3.33%, and for 2007 it is 3.36%. Including those communities, for 2006 the percentage average is 3.175%, and for 2007 it is 3.29%. The average lift among the settled communities, excluding the four new comparables, for 2008 is 3.25%, and including the additional settled two among those it is 3.32%.

There is no basis here on which to find the Association's proposal as close as the City's to the long-term effective average of the settlements. Even including an assumption that the pending union proposals prevail for both years in Beaver Dam and Fitchburg, the average of those two proposals over 2006-2007 is below what the Association seeks here, and the one union proposal for 2008 is equal to what the City offers here; so including them would if anything slightly reduce the apparent reasonableness of the Association's proposal. The internal settlement with AFSCME also favors the City's final offer. With no evidence that wages in Sun Prairie must make up for any shortfall in benefits, and no visible reason why the last six years' pattern of percentage increases above the level of other comparables should continue indefinitely, the City's proposal emerges as unambiguously the more reasonable on wages.

### **The Statute's Weighing**

The lawful authority of the Employer is not at issue, and there is nothing about the stipulations of the parties that would markedly affect the balance of reasonableness of the proposals. The City clearly has the financial ability to meet the costs of either proposal. The interests and welfare of the public are better served by the relative economy of the City's proposal, since it is far from parsimonious enough to have the adverse effects on morale and turnover argued by the Association. External comparables are unpersuasive either way with respect to the compensatory time issue, but clearly favor the City's proposal on the wage issue; internal comparables favor the City on the wage issue and favor the Association on the compensatory time issue. Private-sector employment was not argued as a comparable. The CPI is lower for the trailing three years than either party's proposal, but closer to the City's, and the CPI therefore favors the Employer. The overall compensation factor does not include anything which would affect the balance of the other factors discussed here. No relevant changes took place during the pendency of this proceeding, and the only other factor which is relevant is the lack of a compelling reason for the compensatory time change urged by the City, or of a quid pro quo offered for that change.

### **Summary**

The balance which must be weighed here includes a compensatory time issue which clearly favors the Association's final offer and a wage issue which clearly favors the City's. Of the two, however, I conclude that the wage issue is the more important. While the Employer has put forth a poorly justified proposal on the compensatory time issue, all of the changes have to do with the marginal aspects of that plan, and it is difficult to envision the officers being seriously harmed by these changes. The wage difference, however, represents "real money," and while the City's proposal of 3% in each year on all classifications is well within the ballpark of what comparable employers are agreeing to, the Association's proposal adds up to a 12% wage lift by the end of the contract, equal to the highest wage lift in any of the comparables, and well above the average. This is unjustified in terms of anything in the record, and is of significantly bigger importance economically than the compensatory time issue. Accordingly, I conclude that the City has the more reasonable final offer overall.

For the foregoing reasons, and based on the record as a whole, it is my decision and

**AWARD**

That the final offer of the City shall be included in the 2006-2008 collective bargaining agreement.

Dated at Madison, Wisconsin this 30<sup>th</sup> day of October, 2007

By \_\_\_\_\_  
Christopher Honeyman, Arbitrator