OPINION AND AWARDS

In the Matter of Arbitration
between

The Professional Policemen's
Protective Association

and

The City of Milwaukee

Case CXXI

No. 16175 MIA-19

Dec. No 11571

Appearances:

For the Professional Policemen's Protective Association:

Gerald P. Boyle, Esq., Counsel.

For the City of Milwaukee:

Thomas E. Hayes, Esq., Assistant City Attorney.

On January 29, 1973, the Wisconsin Employment Relations Commission designated the undersigned to serve as the Arbitrator to determine matters in dispute between the Milwaukee Professional Policemen's Protective Association, herein called the Association, and the City of Milwaukee, herein called the City, pursuant to Section 111.70(4)(jm) of the Wisconsin Statutes. On February 15, 1973 the Arbitrator met with representatives of the Association and the City to define the issues in dispute, to make arrangements for and to discuss the procedures to be followed in the hearing. The formal hearing began on March 1, 1973 and was conducted for 32 days between that date and May 17, 1973. A record of 7,192 pages was developed in the hearing. The Association submitted 66 exhibits and the City submitted 27 exhibits. Many of the exhibits were lengthy documents or reports that set out the history of the collective bargaining relationship between the Association and the City or detailed compilations of data dealing with salaries, fringe benefits, and operating practices, statistics on crime, per capita police coverage and expenditure that prevailed in police departments in the larger metropolitan areas of the United States, in the larger cities of Wisconsin and the suburban communities adjoining Milwaukee. Data about wages, fringe benefits and operating practices were presented for other employees of the City of Milwaukee and for employees in manufacturing and construction in the private sector of the economy for Milwaukee and the adjoining area. The City also presented extensive data about changing patterns in employment, housing, and household composition and incomes for Milwaukee and detailed analyses of existing City revenues and revenue sources, the tax burdens on Milwaukee residents and property owners and the numerous and varied budgetary constraints under which the City is currently operating.

On June 11, 1973 the parties filed post-hearing briefs summarizing their positions about the issues in controversy. The Association brief was 191 pages

and the City brief was 207 pages. On June 19, 1973 the parties presented oral argument before the Arbitrator in lieu of filing reply briefs and also responded to certain specific questions which the Arbitrator had directed to them. The transcript of the oral argument was received by the Arbitrator on July 2.

Historical Background

Although it is not essential for the resolution of the issues involved in the current dispute, the Arbitrator is persuaded that a brief description of the setting and a hurried sketch of the historical development of the relationship between the City and the Association are desirable for a full understanding of the issues in dispute, and more particularly, the attitudes and approaches of the parties to those issues.

For many years prior to 1961, informal consultative relationships about employment conditions existed between the City and groups of its employees. However, after 1961 when Section 111.70 of the Wisconsin Statutes[1] established administrative machinery to implement collective bargaining between municipal employers and their employees under certain prescribed conditions, these were transformed into more formalized collective bargaining relationships. This same pattern of development occurred in the relationship between the City and the Association representing the police officers even though the latter group, until recent years, had more limited rights under Section 111.70.

In 1963 an impasse developed between the City and the Association over salaries and working conditions. That impasse was consolidated with several others between the City and different groups of City employees for factfinding and recommendations. Hearings on these disputes before a Panel of Factfinders extended over a period of almost a year and resulted in breaking out police salaries from the overall City job classification system and adjustments in the police salary schedule for 1964 and 1965.

In 1966 the City and the Association again reached an impasse in their discussions and the Wisconsin Employment Relations Board appointed a factfinder to make findings of fact and recommendations for the resolution of the impasse. Extensive hearings were held at various times from October 1966 until May 1967. In June 1967 the factfinder made recommendations on the issues in dispute and for the salaries that should prevail through 1967 and 1968. These included a recommendation for an educational incentive program. These recommendations served as the basis for further discussions between the City and the Association which finally resulted in an agreement in early July 1967 which was to cover the employment relationship for the period January 1, 1967 through December 31, 1968. Substantial salary and benefit changes as well as amendments in working conditions were made in this agreement. In particular, an educational incentive program was adopted.

In early 1969 the City and the Association reached an agreement in direct negotiations over the terms of employment that were to prevail during calendar

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1. Section 111.70 was originally adopted in 1959 but at that time was limited to a declaration of public policy granting municipal employees the right to organize and bargain collectively.

years 1969 and 1970. This agreement provided for salary adjustments for both years, for amendments in the other employment conditions, and for major improvements in the retirement program including a provision whereby the City agreed to pay 6 of the 7% employee contribution to the Employees Retirement System.[2] However, one issue in those negotiations--the structure and operation of the grievance procedure--was left open for further discussion during the contract period. Discussions over this issue were not successful and ended with the submission of that question to a factfinder in late 1969. The factfinding procedure on this question extended over a period of many months, primarily because the parties tried again to work out a satisfactory solution themselves. A major problem in those discussions concerned the role of the Chief of Police in the grievance procedure. In July 1970 the factfinder issued his recommendations. These served as a basis for further direct discussions between the parties which finally produced an agreement.

The negotiations which ultimately produced the agreement for the period from January 1, 1971 through November 3, 1972 were long, complex, and, at times, stormy. They began in February 1970. They continued throughout the year, increased in frequency and intensity as the agreement expiration date approached and culminated in what has been described as a "blue flu," for a period of four or five days in early January 1972. The "blue flu" terminated as a result of court proceedings, and thereafter negotiations continued. No agreement was reached in these negotiations, so in May 1972, the City petitioned the Wisconsin Employment Relations Commission to appoint a factfinder to make recommendations to resolve the dispute. A factfinder was appointed and conducted extensive hearings during the months of June and July 1972. On November 4, 1972 the Factfinder issued his recommendations. Thereafter the City and the Association again carried on negotiations based on the Factfinder's recommendations. These negotiations ultimately resulted in an agreement in the chambers of Judge Ernest Watts who became involved in the negotiations because of the earlier court proceedings following the "blue flu" episode. The agreement was reduced to memorandum form and signed on December 22, 1971. The economic terms of this agreement required the approval of the Pay Board. As a result, from December 1971 through June 1972, City and Association representatives in various ways appealed to the Pay Board to act upon their agreement. On March 31, 1972 the Pay Board approved the economic proposals that were to be effective for 1971, and in June 1972 reduced the agreed-upon salary provisions for 1972 by .7% and as so reduced approved the economic terms for 1972. Thereafter the City and the Association executed a formal collective bargaining agreement that embraced all of the understandings previously reached except as they were amended by the Pay Board.

One important and difficult issue in the 1971-72 negotiations concerned a procedure for negotiating and administering rules affecting wages, hours, and working conditions that fell within the scope of the Chief of Police's authority to promulgate rules and regulations applicable to the operation of the Police Department under the provisions of Chapter 586, Session Laws of 1911 of the Wisconsin Statutes. In the 1971-72 Agreement, the parties negotiated a

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2. A few active police officers are covered by the Patrolmen's Annuity and Benefit Fund. The employee contribution to that Fund is 4 7/8% of salary. Apparently the City agreed to pay this employee contribution to that fund.

procedure to deal with such rules. This procedure provided for either the Chief of Police or the Association to propose rule changes, for discussion of the proposed changes, and for a grievance procedure to handle grievances over rules and regulations that affect wages, hours, and working conditions but with the express provision that the Chief of Police's decision on all such matters was to be final.

Negotiations Background to the Present Dispute

On August 9, 1972 the Association formally submitted its proposals for the 1973 Agreement to the City. These proposals included 30 major items many of which contained numerous subitems. For example, the Pension and Disability item alone contained some 30 subitems. These proposals were discussed very generally for approximately two hours in a formal meeting on August 29, 1972.

On October 13, 1972 a second meeting was held. In this meeting the City presented its proposals for the 1973 Agreement. These were 14 in number and also were very general in character. These proposals and a few of the Association items were briefly discussed in the meeting which lasted for approximately 3 hours.

On October 25, 1973 the Association sent the City a 65-page document in which it presented in specific language the general demands it had previously made. On October 31, 1973 the parties met to discuss the proposals already advanced. The Association inquired whether the City had a formal proposal to advance. The City representatives indicated they had none, but they did present the 1971-72 Agreement with hand-written amendments that reflected the changes the City was then proposing. The parties discussed various aspects of their proposals during the meeting which lasted for approximately 8 hours including a luncheon break and several short recesses for caucuses.

The parties met again at about 1:00 P.M. on November 3, 1973. Commissioner Zel Rice of the Wisconsin Employment Relations Commission was present as a mediator during the discussions. However, no progress was made in the negotiations, and at the end of the afternoon, the Association representatives stated that they believed an impasse had been reached in negotiations and that the Association would petition the Commission to initiate final and binding arbitration of the issues in dispute.

On November 6, 1972 the Association filed a petition with the Commission for that purpose. Thereafter the Commission submitted a panel of arbitrators to the parties and in due course the undersigned was formally selected to serve as the Arbitrator.

Without in any way attempting to find fault with either or both parties, the Arbitrator believes several observations can be made about the historical relationship and that they may shed light on the issues that are in dispute in the current controversy and on the parties' approaches to each other in dealing with them. These are

(1) The parties have not been able to develop a negotiating relationship whereby they jointly attack mutual problems and resolve them on the basis of a collective search for solutions that reflect their own experiences and concerns. Instead they have made very intensive use of third-party neutrals and administrative bodies to propose solutions for them.

(2) Running through these negotiations, and particularly those in more recent years, is the problem of coordinating responsibility for the negotiation and administration of the agreements on wages, hours, and working conditions as between the Common Council, the Chief of Police, and to a much lesser degree, the Board of Fire and Police Commissioners. Although the evidence is not conclusive on the point, there is at least a strong suggestion that this division of responsibility and uncertainty about authority to act, may have been a contributing factor to the parties' inability to work out solutions to problems in direct negotiations.

(3) Despite the very long and trying negotiations that finally culminated in the 1971-72 Agreement, the parties spent virtually no time in direct negotiations on the issues in dispute in the present case, but once again, left them for resolution by a third party.

The Institutional Setting

The most difficult problem in this proceeding has been to identify the "municipal employer" as that term is used in Section 111.70 of the Wisconsin Statutes and more particularly as it is applicable to the compulsory arbitration proceedings provided for in Section 111.70(4)(jm) of the Statutes, and to fix employer responsibility for carrying out the statutorily mandated collective bargaining negotiations over wages, hours, and conditions of employment between the "municipal employer" and the Association, the chosen representative of certain employees of the Police Department.

There are three municipal entities who have statutory responsibility for matters that fall within "wages, hours, and conditions of employment." The predominant entity is the Common Council of the City which has authority and responsibility for broadly defining the scope of the Police Department's activities and to provide the funds to undertake them. Because so many of the bargainable matters are either directly or indirectly economic in nature, and therefore readily within the Common Council's responsibility, negotiations have primarily involved the Labor Negotiator, the functional representative of the Common Council, and the Association. However, by careful statutory design set out in Chapter 586 of the Laws of 1911, two other municipal entities--the Chief of Police and the Board of Fire and Police Commissioners--also have defined responsibilities that embrace matters, primarily those that are more commonly referred to as working conditions, that come within statutorily defined "wages, hours, and conditions of employment." These are particularly critical in so far as they touch on the Chief of Police's broad authority to promulgate rules and regulations for the direction of police personnel and for the on-going, day-to-day administration of the Police Department in order to attain the prescribed statutory end--police administration free from political influence and outside intervention. This authority is understandably defined in general terms so that the Chief of Police can readily respond to changing conditions and circumstances. Yet that same generality creates uncertainty about the breadth of his authority and is a potential source of difficulty and tension in so far as negotiations over "conditions of employment" are concerned. In the case of the Board of Fire and Police Commissioners, the statutory responsibilities are much more narrowly and precisely defined and there is therefore less uncertainty about the matters which are subject to its authority and the degree to which they are "working conditions" subject to collective bargaining negotiations.

As the hearing progressed and testimony and documentary evidence about the issues in dispute and their historical background built up, the Arbitrator became increasingly aware of the very complex relationship that exists between the three municipal entities and their apparent inability to work out a functional procedural relationship that affords the eligible employees of the Police Department their full statutory rights to collective bargaining and also preserves for the respective municipal entities the special responsibilities defined for them under the law. The history of the relationship between the Association and the City disclosed instances of tension and conflict about the authority and responsibility of the different municipal entities which suggested that instead of taking steps to establish procedures whereby the municipal entities could develop a coordinated response to the Association through the Labor Negotiator of the Common Council and utilize his skill and experience in collective bargaining negotiations, there was a disposition to shift the responsibility for a response from one of the entities to another. This condition has given rise to litigation and possibly has been a factor in the extensive utilization of third party neutrals to resolve impasses in negotiations instead of solving them through face-to-face collective bargaining. That same condition runs through some of the major procedural and substantive issues that are involved in this dispute.

Even though he is aware of the legal complexities involved and the strong desire of the different municipal entities to maintain their unrestrained authority in order to fulfill their statutory responsibilities to the public, the Arbitrator is convinced that if the public policy of Section 111.70 of the Wisconsin Statutes is to be realized, steps must be taken to encourage these entities to coordinate those responsibilities and to present their response to the eligible police employees involved through one public employer spokesman. Obviously that spokesman cannot respond to issues without obtaining instructions and guidance from the different entities in prior conferences and discussions and without the advice and counsel of one of their representatives in the negotiations themselves. Yet such a coordinated response will more likely produce a result that will meet the goals of these different entities because it will represent a coordinated rather than a differentiated strategy. Hopefully, the Arbitrator's findings and determinations on some of the specific issues in controversy and particularly his determination about the dispute over the grievance procedure and the day-to-day administration of the Rules and Regulations of the Police Department which are under the control of the Chief of Police, will be steps in that direction.

The Question of Impasse

At the outset of the formal hearings and again in its post-hearing brief, the City contended that no impasse within the meaning of Section 111.70 had been reached in the negotiations between the City and the Association. It asserted that the document signed by the Labor Negotiator of the Common Council and the representative of the Association which the Association attached to its petition to WERC to initiate final and binding arbitration was in fact only a press release setting forth what the Association intended to do and was not a stipulation of fact that was to serve as a jurisdictional basis for WERC action. More particularly, the City argued that even if that document were considered to be a recognition of the existence of an impasse in the negotiations between the Common Council and the Association, it clearly did not apply to the negotiations over the Association demands that fell within the statutory responsibilities of

the Chief of Police and of the Board of Fire and Police Commissioners. Therefore, it argued, the Arbitrator does not have jurisdiction to make determinations at least with respect to these latter demands.

The Arbitrator simply notes that WERC has responsibility for administering the provisions of Section 111.70 and that in its order appointing him to serve, WERC found that an impasse had been reached. However, he notes further that the representatives of the Common Council clearly were not surprised that an impasse had been declared and had developed a detailed and full response to the Association's demands. Finally, he notes that throughout the hearing representatives of the Chief of Police were in attendance and that Inspector Ziarnek, a highly knowledgeable and informed supervisory official of the Police Department, testified in great detail about the Department's position on the Association demands that related to the Department's Rules and Regulations. It is thus clear that, whatever the state of the negotiations as to matters falling within the statutory authority of the Chief of Police may have been at the outset of the hearing, his representatives heard the Association's position about them developed in full at the hearing and had ample time to, and in fact did, prepare responses and alternative positions to them. Similarly, even though no specifically identified representatives of the Board of Fire and Police Commissioners were in attendance throughout the hearing, it is clear that Counsel kept representatives of the Board informed about the Association's demands that affected their statutory responsibilities, and later the Vice Chairman and the Executive Secretary of the Board testified at some length about those demands and fully developed the Board's position with respect to them. Consequently, neither the Chief of Police nor the Board was caught by surprise as far as the Association's demands are concerned or denied the opportunity to prepare a full response to them.

The Issues in Controversy

(A) General Approach

When the Arbitrator met with the parties on February 15, 1973 he was informed that there were about 150 items in dispute. It seemed obvious to him that some were minute and not of major significance whereas others were large in scope and consequences. At that time he urged the parties to try to reduce the issues and to sort those that remained into some related groups. The parties had a meeting between that date and the day on which the formal hearing began. Unfortunately they were not successful in coming to any agreement on items to be dropped or on groupings for those that remained. However, at the outset of the hearing the Association on its own reduced its demands to 44, some of which had multiple parts, and generally differentiated these as economic and non-economic demands, but deliberately made no differentiation between them with respect to the City entity that had statutory responsibility for them. It prepared its post-hearing brief on the same basis. The City responded to these demands in a different way and differentiated them in terms of the items that it felt came within the statutory responsibility of the different public employer entities--the Chief of Police, the Board of Fire and Police Commissioners, and the Common Council, and in turn grouped the last of these into four categories of benefits and a category of issues relating to the contract. Thus, although the approach is somewhat different, at least with respect to the matters which the City contends are within the authority of the Common Council, the Association and City approaches are not too different. The Arbitrator will generally follow

this approach but he will not differentiate the statutory entities as decisively as the City did.

(B) The Statutory Standards to be Applied

Subsections 4, 5, and 6 of Section 111.70(4)(jm) of the Wisconsin Statutes set out the matters that are subject to the Arbitrator's jurisdiction and the standards that the Arbitrator is to apply to issues that come before him. Although no extended reference to these standards was specifically made by the parties in the presentation of their cases, the Arbitrator believes it is useful to set out those provisions here.

> 4. In determining those terms of the agreement on which there is no mutual agreement and on which the parties have negotiated to impasse, as determined by the commission, the arbitrator, without restriction because of enumeration, shall have the power to:
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> a. Set all items of compensation, including base wages, longevity pay, health, accident and disability insurance programs, pension programs, including amount of pension, relative contributions, and all eligibility conditions, the terms and conditions of overtime compensation, vacation pay, and vacation eligibility, sickness pay amounts, and sickness pay eligibility, life insurance, uniform allowances and any other similar item of compensation.
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> b. Determine regular hours of work, what activities shall constitute overtime work and all standards and criteria for the assignment and scheduling of work.
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> c. Determine a seniority system, and how seniority shall affect wages, hours and working conditions.
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> d. Determine a promotional program.
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> e. Determine criteria for merit increases in compensation and the procedures for applying such criteria.
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> f. Determine all work rules affecting the members of the police department, except those work rules created by law.
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> g. Establish any educational program for the members of the police department deemed appropriate, together with a mechanism for financing the program.
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> h. Establish a system for resolving all disputes under the agreement, including final and binding 3rd party arbitration.
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> i. Determine the duration of the agreement and the members of the department to which it shall apply.
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> 5. In determining the proper compensation to be received by members of the department under subd. 4, the arbitrator shall utilize:

a. The most recently published U.S. bureau of labor statistics "Standards of Living Budgets for Urban Families, Moderate and Higher Level," as a guideline to determine the compensation necessary for members to enjoy a standard of living commensurate with their needs, abilities and responsibilities; and

b. Increases in the cost of living as measured by the average annual increases in the U.S. bureau of labor statistics "Consumer Price Index" since the last adjustment in compensation for those members.

6. In determining all noncompensatory working conditions and relationships under subd. 4, including methods for resolving disputes under the labor agreement, the arbitrator shall consider the patterns of employe-employer relationships generally prevailing between technical and professional employes and their employers in both the private and public sectors of the economy where those relationships have been established by a labor agreement between the representative of those employes and their employer.

7. All subjects described in subd. 4 shall be negotiable between the representative of the members of the police department and the city.

(C) The Parties' Approach to the Items in Dispute

Both the Association and the City developed questionnaires to determine what conditions and practices prevailed in the police departments of other large metropolitan areas with respect to the issues that are in dispute here. The Association sent its questionnaire to 24 large cities in the United States and Canada. The largest cities in the country were included among the Association's sample but some relatively smaller ones (Las Vegas and Windsor, Ontario) were also included. The City sent its queationnaire to the 27 cities in the United States with populations between 400,000 and 1,000,000. Both also sent questionnaires to and gathered information about communities surrounding Milwaukee, and the City developed some data about practices and conditions that prevailed in larger cities in Wisconsin. In addition the Association introduced and made reference to surveys about police employment practices made by the Police Departments of Philadelphia and Kansas City, and the City made reference to the data in the Kansas City survey. Finally, the Association called witnesses from New York, Chicago, Detroit, and Minneapolis who testified about specific benefits, practices, and conditions that prevailed in the police departments of those cities.

These data were used primarily in relation to the parties' positions about salaries and economic benefits and will be discussed in greater detail in the section of this Opinion which deals with those issues. Note is made of these data here because occasional references were made by the parties to comparable practices in their discussions of some of the non-economic issues which will be considered next.

The Non-Economic Issues

Introduction

There is an element of artificiality in attempting to divide issues into economic and non-economic categories since all issues, in varying degrees, raise questions about direct and indirect economic costs as well as questions about rights, principles, administrative responsibility, and efficiency and fairness. However, such a division tends to direct attention to the degree to which the economic or the rights and administrative aspect of the issue is at the core of the dispute and helps to develop tests and standards that can be applied in resolving them. Thus in approaching the so-called non-economic issues, more emphasis is customarily placed on the effect the selected resolution will have on the rights and administrative discretion and efficiency of the employees and the managers in the particular organization in which the issue prevails than on how those issues are resolved in comparable organizations elsewhere. Consequently, although not totally ignored, there is little emphasis on comparability in dealing with many non-economic issues.

Against this background we will examine the so-called non-economic issues which we have further divided into what the Arbitrator will call "institutional relationships" and "general working conditions."

Institutional Relationships

(1) The Appropriate Bargaining Unit

The Association requested that the classifications of Detective Lieutenant and Police Aides be included in the bargaining unit; the City opposed this request, and, in turn, asked that the classifications of Police Sergeant, Police Sergeant Garage, Administrative Police Sergeant, Police Identification Supervisor, Chief Document Examiner, Custodian of Police and Property Stores and Radio Mechanic Foreman, which are currently in the bargaining unit, be excluded from the bargaining unit.

In support of its proposal, the Association argued that the Detective Lieutenant position was created by the Board of Fire and Police Commissioners without negotiation with the Association and that thereafter some 21 persons previously classified as Detective Sergeants, who had been included in the bargaining unit, were promoted to the Detective Lieutenant classification and were thereby removed from the bargaining unit. It argues that these persons should be returned to the bargaining unit. The Association also argued that Police Aides are, in fact, trainee police patrolmen who have a clear and readily identifiable community of interest with those police officers who are in the bargaining unit and therefore should be included in the bargaining unit. The City disputed the Association's arguments about both these classifications. It contended that the reclassification of the Detective Sergeants resulted from a petition filed by a large number of the Detective Sergeants with the Board of Fire and Police Commissioners and was made only after a careful investigation of their duties and a public hearing on the question of their reclassification. That investigatory process established that the duties of the Detective Sergeants were comparable with those of the Police Lieutenants and therefore they were reclassified, and since they had clear supervisory responsibilities they were properly excluded from the bargaining unit. With respect to the Police

Aides, the City argues that the duties and responsibilities of the Police Aides are significantly different from those of police officers, that they are in a probationary period during their entire service as Police Aides, that they have no police powers, and that the training program is administered by the Board of Fire and Police Commissioners and is, in part, funded by LEAA federal funds. Consequently they do not have a community of interest with the police officers in the bargaining unit and should not be included in the unit. Finally, the City argues that the testimony of Inspector Ziarnek conclusively established that the Police Sergeants and the officers in the other classifications it now wishes to exclude from the bargaining unit, have supervisory authority in relation to officers in the bargaining unit and should be excluded from the unit to strengthen the management authority in the Police Department and also to avoid any possible charge that the City is engaging in a practice prohibited under Section 111.70 of the Wisconsin Statutes.

The Arbitrator is aware that the 1971-72 Agreement contained a provision that the parties would jointly petition WERC within 60 days after the execution of that Agreement for a determination of the question of the bargaining unit status of the Detective Lieutenants, but that was not done. Apparently one reason a petition was not filed is that a group of Police Department supervisory employees filed a petition for representation with WERC and requested that Detective Lieutenants be included in the unit for which they petitioned. Testimony of a City representative indicated that the status of some of the classifications the City seeks to exclude from the unit also was raised in that petition.

It is very clear to the Arbitrator that the contentions with respect to the composition of the bargaining unit raise questions of fact and law that can and should be resolved only by WERC which has both the responsibility and expertise to decide them. Each of the parties can have its contentions heard and determined by filing an appropriate petition with WERC. That being the case, the Arbitrator will not make any determination about the composition of the bargaining unit.

Even though the Arbitrator has determined that the question of the composition of the bargaining unit should be resolved by WERC, he has directed attention to the history of this question in order to make some determination about the conditions that should prevail for the contested classifications during the period in which that matter is being considered by WERC. He does so particularly because the evidence adduced at the hearing did not clearly establish that the classifications should be included or excluded from coverage under the Agreement pending a WERC determination.

Award

The composition of the bargaining unit shall remain as it was in the 1971-72 Agreement and the benefits and rights accorded to those included in that unit shall continue pending a determination of the appropriate bargaining unit by WERC on a petition filed by either or both parties, or as a result of the petition previously filed by the Police Supervisors Organization.[3]

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3. After this section of the Opinion was drafted, the Arbitrator received from WERC a copy of its Decision and Direction of Election in the Police Supervisors Organization case (CXI-No. 15168 ME 737). He decided to leave his Opinion intact

(2) The Liaison Positions

Under the provisions of the 1971-72 Agreement, two Association bargaining unit members were relieved from police officer duties on a half-time basis to serve in liaison capacity between the Association and the City and for the purpose of maintaining harmonious relations between the employees, the Association, the Department, and the City in the administration of the collective bargaining agreement. The Association seeks to increase the number of liaison positions to four on a full-time basis and to have the City pay the full cost of the maintenance of the positions.[4] The City seeks to have them eliminated in their entirety.

The present Association liaison officers testified at some length about the very heavy demands made upon them in carrying out their Association responsibilities and convincingly demonstrated that they spent many hours more in this work than those for which they were relieved. However, their testimony clearly established that many of their activities were not directly related to the administration of the collective bargaining agreement or in dealing with the day-to-day administrative problems that are rooted in the collective bargaining relationship.

The City noted that although the liaison officers are relieved from Police Department assignments, they are attached to the Labor Negotiator's office, are paid from funds appropriated to that office, and presumably are under the supervision of the Labor Negotiator. It then argues that this set of relationships is unsound and possibly unlawful, because it places the Association representatives under City Management supervision. It argues further that the activities of the liaison officers have gone far beyond those designed to administer the collective bargaining relationship and that, in effect, the City is subsidizing the Association's activities and thereby possibly providing unlawful financial support to the Association. Finally, the City argued that the City survey of prevailing practices in other cities shows that these positions exist in very few cities.

The testimony about the specific activities of the liaison officers and that adduced during the course of the entire hearing convincingly demonstrated that the Association is an extremely active organization that vigorously pursues its members' interests in many arenas of action beyond their direct employment relationship in the Police Department. These are commendable activities that

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because the question of the Police Aides is still not joined, the question of the continuing inclusion of the Police Identification Supervisor, the Custodian of Police and Property Stores and the Radio Mechanic Foreman in the present unit is apparently not yet answered, and the Chief Document Examiner has not been excluded from the present bargaining unit. Moreover, the Arbitrator believes that his Award will cover the rights of the contested employees, who were found to be supervisory employees, for the period between the expiration of the 1971-72 Agreement and the date of the WERC decision.

4. The Association discussed this issue under the heading of economic issues. The Arbitrator believes the issue is more one of principle than cost and therefore is considering it under the heading of non-economic issues.

warrant the members' support. They are, however, not directly related to activities that deal with the day-to-day relationships between the City and the Association and these, in the Arbitrator's view, should be financed and supported by the Association membership alone.

The Arbitrator firmly believes that the quality of a collective bargaining relationship is largely determined by the promptness and the spirit in which day-to-day difficulties and problems are resolved. Therefore, the City has a bona fide interest in fostering arrangements that will make the relationship effective and harmonious and may reap a benefit from support for such a relationship that is well worth the expenditure of City funds. However, the City also has a proper concern that such expenditures are made only for activities that may be of benefit to it and for that reason expressed concern about how the liaison officers spent their time. The latter obviously cannot so compartmentalize their activities so that they can respond only to bargaining relationship issues at certain hours and to inquiries or concerns about other Association activities at other hours. Such an arrangement would not even be in the City's interest in so far as responses to collective bargaining relationships are concerned. None the less, it is clearly possible for the liaison officers to devote an amount of time to the collective bargaining relationship equal to that for which the City compensates them and to conduct the other Association activities in such a way that they will not be construed as City-supported activities. Although the question of what constitutes financial support to an employee organization has not been precisely legally answered, the general rule is that support given to establish cooperative relationships is not looked upon as unlawful. The Arbitrator is persuaded that the liaison arrangement which currently exists can achieve its purpose and not be declared unlawful if the guides set out above are followed. Therefore he believes that the liaison officers shall be continued. However, the Association made no persuasive case for an increase in the number of such officers to handle the day-to-day collective bargaining relationship.

Award

The liaison officer arrangements which prevailed in the 1971-72 Agreement shall be continued.

(3) Time Off for Association Officers

The Association proposed that its Executive Board members be granted one day off each week with pay, to transact Association business. It also proposed that they be permitted to arrange their off days and vacation schedules so that they could attend conventions and meetings of the national police organization with which they are affiliated. The City opposed both of these proposals.

The Arbitrator has already noted and commented on the Liaison officer relationship provided for in the agreement. He also notes that provision is made for some released time for Association representatives for negotiations over the terms of new agreements and for representation of employees during the processing of grievances. The Association advanced no facts or persuasive arguments to demonstrate that these existing arrangements were not adequate to carry out those administrative matters for which the parties have joint responsibility and concern and which could therefore be paid for by the City, in

contrast to matters that are primarily of concern to the Association itself and for which the members alone should be held financially responsible. Similarly, no persuasive evidence was submitted to demonstrate that the Executive Board members had not been able to arrange their schedules either in advance, by trade, or by administrative action, to permit them to attend to Association business. Although no specific evidence was developed on the matter, the discussion about it clearly suggested that substantial flexibility in scheduling already prevailed to accommodate the needs of the Association representatives.

Award

The Association request that its Executive Board members be released one day a week with pay and that they also be permitted to arrange their off days and vacations so that they can attend conventions and meetings of the international organization with which the Association is affiliated, is denied.

(4) The Size of the Association Negotiating Team

In its October 31, 1972 proposals, the City proposed that the section in the Agreement dealing with the Association Negotiating Committee be amended to provide that no more than 3 Association representatives shall serve on the Association Negotiating Committee. The Association did not accept the City's proposal.

It is not clear exactly where that proposal stood at the conclusion of the hearing. Early in the hearing, City representatives testified that a reduction in the size of the Association Negotiating Committee would facilitate negotiations and might avoid the long stages of impasse that have been characteristic of this relationship. However, before the hearing ended, the City and the Association stipulated to language on this issue that is identical to that which prevailed in the 1971-72 Agreement, ". . . one or more representatives from the Association shall be paid regular base salary up to a combined maximum of 17 man-hours for time spent annually in negotiations. . . ." In its post-hearing brief the City again referred to its request for a limitation on the size of the Negotiation Committee and referred to the stipulated language in a way which suggested that the size of the Negotiating Committee was still in dispute. That position could be argued in the light of the stipulated language which simply provided for a limited payment to "one or more representatives" but does not fix the number on the Committee or the number to be paid.

No evidence was introduced that buttressed the City's contention that a reduction in the size of the Negotiating Committee would facilitate negotiations. Moreover, even if there had been such evidence, it could not be controlling in deciding the issue, since it is well-established, both in law and in practice, that the size and composition of its negotiation team, except for unusual and compelling circumstances, must be left to each party. Since no such compelling circumstances were demonstrated, the City's proposal to limit the size of the Association's Negotiating Committee must be denied.

Award

The City's request to limit the Association Negotiating Committee to 3 representatives is denied.

(5) The Grievance Procedure

(a) Introduction

The Arbitrator notes at the outset of the discussion of this complex issue that Section 111.70(4)(jm)4h of the Wisconsin Statutes expressly provides that the Arbitrator shall have the power to "Establish a system for resolving all disputes under the agreement, including final and binding 3rd party arbitration," but he also notes that, without question, the single most difficult and most troubling issue in this entire controversy is establishing such a system for resolving disputes that is, on the one hand understandable and workable, and on the other hand, can deal effectively and properly in an integrated fashion with the different City entities that have specific statutory responsibilities for different aspects of "wages, hours, and conditions of employment" within the meaning of Section 111.70 of the Wisconsin Statutes.

(b) Background

There are presently two separate grievance systems functioning in the Police Department. One is designed to deal with differences that arise under the collective bargaining agreement that was negotiated within the scope of the authority of the Common Council; the second is designed to deal with differences over the propriety of the application of those rules and regulations of the Department which affect the wages, hours, and working conditions of the Department personnel who fall within the Association's bargaining unit. The latter procedure is specified by Department Rule 29, Section 97 and was promulgated by the Chief of Police on February 21, 1972 in accordance with the overall settlement of the protracted negotiations and litigation that finally culminated in the 1971-72 Agreement.

The two procedures are identical in form through the first four steps which are essentially appellate procedures to higher levels of management within the Police Department and culminate with the Chief of Police. At this point there is a difference in the two procedures. In the case of differences over the application of Department Rules, if the difference has not been satisfactorily resolved there is no further appeal and the decision of the Chief of Police is final; however, in the case of differences over the interpretation and application of the collective bargaining agreement, unresolved differences may be submitted to final and binding arbitration before a third party neutral.

In addition to these two grievance procedures, there is also a procedure for a review of dismissals and suspensions for more than 5 days by the Board of Fire and Police Commissioners. Essentially this is a statutory procedure for review of cases involving severe disciplinary action imposed under the Department Rules.

(c) Numbers of Cases Handled Under These Procedures

Inspector Ziarnek testified that between February 21, 1972 and March 28, 1973 twelve grievances were filed under the Department system. Of these, three are still pending, three reached the Chief's level and were denied, two were resolved in favor of the grievants at the lower levels of the system and four were dropped or withdrawn at the lower levels. He testified further that between July 28, 1972, when the collective bargaining agreement was formally signed by the parties, and March 28, 1973 17 grievances were filed under the

contractual system. Of these 6 were still pending, 1 was resolved by the Chief in favor of the grievant, 3 were resolved at lower levels in favor of the grievants, 4 were dropped or withdrawn at lower levels and 3 were submitted to arbitration.

Mrs. Arlene Kennedy, Executive Secretary of the Board of Fire and Police Commissioners, testified that during the calendar year 1972, the Board considered two appeals of disciplinary action taken by the Chief of Police. It sustained his action in one case and reversed it in the second. She testified further that from 1960 through 1972, 28 cases involving disciplinary action were appealed to the Board. The Board sustained the Chief's action in 16 cases, reversed his action in 9, and 3 cases were withdrawn.[5]

(d) The Positions of the Parties

The Association basically is requesting a single, integrated grievance procedure under which it can process and resolve all differences over the application and interpretation of the collective bargaining agreement, all differences over the application of the Rules and Regulations of the Police Department promulgated by the Chief of Police and which affect wages, hours, and conditions of employment, and all differences over disciplinary actions taken by the Chief of Police including those which are subject to review by the Board of Fire and Police Commissioners. It also requests that any unresolved difference over any of these matters may be carried to final and binding arbitration except, that in the case of disciplinary action coming under the jurisdiction of the Board of Fire and Police Commissioners, it would require an employee who is contesting such an action to choose either the arbitration procedure or that provided by the Board of Fire and Police Commissioners but not both.

The Association contends that

(1) Both as a matter of law and simple fairness, the bargaining unit personnel are entitled to have final Departmental decisions that affect their working conditions and well-being reviewable by someone outside the Department and that such action is particularly appropriate for disciplinary actions that are not appealable to the Board of Fire and Police Commissioners;

(2) The present fragmented arrangement has permitted and encouraged buck-passing which in turn, has prompted extensive litigation and has impaired the development of a harmonious collective bargaining relationship;

(3) It accepted the present fragmented system in 1971 not because it was pleased with it but to bring a long dispute to an end;

(4) Experience under that system has neither relieved its concerns nor provided satisfactory answers to its rightful claims. Therefore it is requesting

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5. We should note that reversals could include a finding of fault but a reduction in the penalty imposed for the fault. We note further that in two cases in which the Board sustained the Chief, the complaining officer appealed the Board's decision to the Wisconsin courts in accordance with the statutorily prescribed procedure. In one case the Court reversed the Board and the second is still pending.

the integrated grievance system which, it argues, is workable and can fulfill the needs of all of the parties involved.

The City opposes any revision in the grievance procedures on numerous grounds. It contends that:

(1) The proposed amendment in the grievance procedure as it pertains to the Department was never submitted to the Chief of Police in accordance with the arrangements agreed upon in the 1971-72 Agreement for changes in Department rules dealing with wages, hours, and conditions of employment and therefore is not properly before the Arbitrator;

(2) The procedure presently in effect was agreed upon only after long and hard negotiations and it should not be changed until it has been tried and found wanting;

(3) The present Department procedure follows closely those that prevail in police departments in many other cities in the country and therefore the Association's proposal would represent an untried departure from prevailing practice without any justification;

(4) The structure of the grievance procedure proposed by the Association is unsound and unworkable because it would by-pass the direct supervisors at the lowest level of the procedure and the Chief of Police at the highest level;

(5) Finally and most important, the proposed structure would be unlawful because it would restrict the Chief of Police's discretion about decisions which are necessary and appropriate to carry out his statutory responsibilities under Chapter 586 of the Laws of 1911 by subjecting those decisions to third party review in arbitration.

(e) Analysis

The City's last contention about the grievance procedure clearly raises a threshold question that goes beyond the feasibility of the Association's proposed grievance procedure but raises a question about the Arbitrator's authority to make a determination on the issue at all. Therefore we must deal with that question first. However, rather than deal with the question in the abstract, the Arbitrator has decided it would be more useful to deal with it in relation to specific issue so that the scope and full impact of the question can be understood.

Section 1 (23) of Chapter 586 of the Laws of 1911 provides:

> 23. The chief engineer of the fire department and the chief of police of said cities, shall be the head of their respective departments and shall have power to regulate said departments and prescribe rules for the government of its members. The chief of police shall cause the public peace to be preserved and see that all laws and ordinances of the city are enforced. He shall be responsible for the efficiency and general good conduct of the department under his control. Each of said chiefs shall have the custody and control of all public property pertaining to said departments and everything connected therewith and belonging thereto.

> They shall have the custody and control of all books, records, machines, tools, implements, and apparatus of every kind whatsoever necessary for use in each of said departments.

The testimony at the hearing indicated that this legislation was adopted to remove the Chief of Police and the Police Department from political influence and to provide the Chief of Police with the necessary means and authority to carry out the broad responsibilities with which he is charged.

The City argues that any action which restricts the Chief of Police's discretion in carrying out these statutory responsibilities is not an appropriate subject for collective bargaining and is beyond the Arbitrator's jurisdiction. It goes on to argue that a determination by the Arbitrator that would permit unresolved grievances over Department Rules and Regulations that affect working conditions to be submitted to final and binding arbitration would limit the Chief's discretion and is therefore not subject to bargaining or within the Arbitrator's jurisdiction. The Arbitrator is compelled to disagree. Section 111.70 of the Wisconsin Statutes requires a municipal employer to bargain collectively with an organization that is the designated representative of employees in an appropriate bargaining unit about wages, hours, and conditions of employment. There is no dispute that the Association is such a representative, that a grievance procedure is a working condition, or that some entity--either the Common Council, the Chief of Police or the Board of Fire and Police Commissioners--is a municipal employer that is required to bargain about it. The City argues that in the case of a grievance procedure dealing with Police Department rules, the responsible entity for such bargaining is the Chief of Police. At this point, we shall put aside the question whether this fragmented arrangement can be completely maintained if the overall purposes of Section 111.70 and more particularly Section jm 4(h) of (4) of that Section are to be realized and accept the City's contention that the Chief of Police is the responsible municipal entity. In that case, the Chief of Police would be obligated to bargain about a grievance procedure and that obligation would include bargaining about a proposed terminal point of that procedure--final and binding arbitration. We turn then to the question of whether the requirement to bargain about the terminal point of the grievance procedure does in fact subvert the Chief of Police's authority to make decisions that are necessary to carry out the responsibilities imposed upon him by law.

The Arbitrator will begin by noting that a requirement to bargain about an issue is substantially different from a requirement to agree to a proposal advanced by a petitioning party. In this context, bargaining over a grievance procedure, including its terminal point, is simply another way for reaching a decision about what the Department rule or policy shall be. Admittedly, that process for reaching a decision may be more difficult than one in which members of the Chief of Police's staff are consulted about what the policy shall be, but it is nonetheless a procedure for reaching a decision about a policy on the issue. Nothing in that procedure requires the Chief of Police to agree to the proposal if after a good faith exploration of the merits of the proposal he believes it is unsound or that it would result in conditions that make it impossible for him to carry out his statutory responsibilities. Here, the Chief of Police apparently did not believe the proposed procedure is sound. As a result an impasse on that issue developed and under the compulsory arbitration statute, that impasse must be resolved on the merits by the Arbitrator.

The grievance procedure proposed by the Association simply provides that the application of rules dealing with working conditions shall be reviewable to

determine whether they have been properly applied, and for a final review of such application by someone outside the Department which promulgated the rule, if a systematic review of the application within the Department has not resulted in an agreed-upon solution. The procedure that prevails in the Department now provides for a systematic Departmental review and for a final review by the Chief of Police. The procedure proposed by the Association would maintain that basic procedure but would provide that in those few cases in which neither the Department's procedure nor the Chief of Police's final action resulted in an acceptable resolution of the difference, it can be submitted to an agreed upon (emphasis supplied) neutral for a review of the propriety of the disputed action. In essence that proposed arrangement simply provides for the possibility of an informed, neutral judgment about a difference over a rule which has been promulgated to accomplish some specific Department end or to achieve some defined Department objective. It is a procedural concept that runs through all of government and one that has been universally accepted in the industrial relations system in the private sector of our economy. It is the procedure which the Common Council has accepted for the final resolution of differences that arise between it and the Association in the area of employment relations for which the Common Council has responsibility.

The Arbitrator is persuaded that when the procedure of final and binding arbitration of unresolved differences over the application of Department rules is viewed in this context, it is quite clear that the proposal will not impair the Chief of Police's responsibility for the operation of the Department. That procedure does not challenge the Chief's authority to make proper rules for the administration of the Department or prohibit him from executing them in a fair and equitable manner. On occasion a difference over the scope of a rule or the manner in which it has been administered may arise. The number of instances in which those differences are not resolved by Departmental procedure has been and in all likelihood will continue to be, small. Admittedly the procedure will then permit a review of the propriety of the rule and a testing of the fairness of its application by an agreed upon, informed neutral and thus presents the possibility that the Chief's final action will be modified. But clearly this possibility, in the defined context, cannot be construed to constitute outside interference with the administration of the Department which Chapter 596 of the Laws of 1911 was designed to prohibit. On the contrary, such a procedure is an ultimate assurance against arbitrary or unjust Department action and will fortify community acceptance of the Department's administrative process.

On the basis of the reasoning set out above, the Arbitrator finds that the subject of the terminal point of a grievance procedure which includes a review of Department Rules and Regulations that affect wages, hours, and working conditions is a proper subject of collective bargaining. He also finds that the Association and the City have reached an impasse on that issue as well as the general structure of the grievance procedure and that Section jm 4(h) of Chapter 246 of the Laws of 1971 extends to the Arbitrator the authority to resolve the entire issue on the merits.

We turn then to the more specific City objections to the adoption of the Association's proposal. It is true that the present grievance procedure for reviewing the application of Department rules was adopted only after long and hard bargaining in 1970-71 and that it has not been in effect for a sufficiently long period of time to test its ultimate effectiveness. But it is also true that this question has been the source of much litigation and some strain in the collective bargaining relationship. There were three instances between February 1972 and March 1973 in which the Chief's action on a grievance was

unfavorable to the grievant. Whether any of those would have been appealed if the opportunity had been available is not known. In all events the Association seeks to change the procedure and to bring to an end the fragmented structures that now exist. For reasons already referred to in the General Background section of this Opinion, as well as those dealing with the merits of the specific issue, the Arbitrator finds that the present grievance procedures should be changed. However, he does not agree that the procedure submitted by the Association, particularly the proposed arrangement for review of dismissals and suspensions beyond 5 days, is appropriate. Therefore the specific elements of the grievance procedure must be considered. We shall analyze them using the present contract system as a reference and begin with the lowest steps of the procedure.

The Association would reduce the number of steps in the procedure from 4 to 3 and would eliminate the present first step appeal to the Sergeant on the ground that the sergeant is in the bargaining unit. The City opposes this on the ground that the Sergeant is the first-line supervisor, that he should have the opportunity to deal with a contested action in order to bring his informed judgment to bear on the issue and to maintain the chain of command. In view of the determination by the WERC that the Sergeant has supervisory authority over patrolmen, the Arbitrator agrees that the first step of the present grievance procedure should be maintained.

In the early stages of the hearing, the Association would have eliminated the Chief of Police from the grievance procedure entirely. However, in rebuttal it modified its position at least to provide for the Chief of Police's participation in disciplinary grievances. In its post-hearing brief the Association seemed to take an even more flexible position about who should participate in the procedure by stating, "We are not in any way concerned about who the intermediaries are in that grievance procedure, so long as a party who is not an agent of the City of Milwaukee has the right to review the action taken by the City, the Chief, or the Fire and Police Commission."[6] However, even if the Association had not modified its position on the steps of the procedure, the City's opposition to any change would be sufficient to bring the question of the participation of the Chief of Police before the Arbitrator.

The Arbitrator agrees fully that the Chief of Police must be afforded the full opportunity to participate in the grievance procedure so that he can carry out his statutory responsibilities and that he should do so in the interest of sound administration of the Department.

In view of the Arbitrator's determinations about the participation of the Sergeants and the Chief of Police in the grievance procedure, he concludes that no changes shall be made in the existing structure up to and including the Chief of Police.

We come then to the step beyond the Chief of Police. The present contractual arrangement provides for final and binding arbitration of differences over the interpretation, application or enforcement of the Agreement. That provision is not in dispute. However, as we have already noted, the Association

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6. Association Brief, Vol. III, page 26, 27.

would permit differences over the application of Department rules that affect wages, hours, and conditions of employment to be appealed to arbitration. The Arbitrator has already found that he has the authority to make such a determination and has indicated that a change in the present procedure for handling the latter category of differences and to eliminate the present fragmentation in the grievance systems is in order. He therefore determines that unresolved grievances over the application of Department rules at the Chief of Police's level, may be appealed to final and binding arbitration under the same arrangements and procedures that prevail for the appeal of unresolved differences under the contract and that the administration of that step of the procedure shall be conducted by the Labor Negotiator or his representative, except that the Chief of Police or his representative shall be permitted to participate in the arbitration hearing and to make a full statement of the Chief of Police's position about the difference in dispute.

The Arbitrator is persuaded that this arrangement will bring about an appropriate accommodation of City interests, will permit the City entities to utilize the expertise of the Labor Negotiator's office but will also preserve the authority and responsibility of the Chief of Police in the event the Labor Negotiator and the Chief of Police do not develop a common strategy for the presentation of the City's case. In addition, the contractual provision dealing with this arbitration arrangement shall expressly provide that in reviewing any difference over the application of a Department rule, the Arbitrator shall take into account the special statutory responsibilities granted to the Chief of Police for the administration of the Police Department.

The Arbitrator strongly suggests to the parties that they make arrangements for the appointment of a permanent umpire or a panel of three permanent umpires who, in their judgment, have the experience and insights that are necessary for the resolution of controversies that arise in police employment. Such an arrangement would assure expertise on any issue, but more importantly, it would encourage the development of a common body of background experience against which to resolve differences in a consistent manner.

The Association also proposed some amendments in the time periods which were to apply in the processing of grievances. The City opposed any changes. The Arbitrator believes that the effective administration of this amended procedure warrants some minor time changes in the present procedure.

Currently, grievances must be filed within 5 days of the occurrence of the disputed action. The Association sought to extend this to 30 days from the incident or knowledge of the fact giving rise to the grievance. The Arbitrator believes that 10 days from the occurrence of the incident should be adequate and so determines.

Also currently a grievance must be submitted to arbitration within 60 days of the action or occurrence which is to be submitted to arbitration. The Association would change this to provide that a decision to advance a case to arbitration must be made within 30 days of the receipt of the 4th Step Answer. The Arbitrator believes such a provision is realistic whereas the current one could create time pressures that may not be in the interest of resolving grievances. Admittedly, time periods can be extended by mutual agreement, but there may be occasions in which the feelings on the difference may be such that mutual agreement is not possible. Therefore, the Arbitrator

determines that the Association's request on this point should be adopted. In substance this determination continues the present time limitations, except that it would require the grievance to be filed within 10 days of its occurrence instead of 5 and would grant the parties 30 days after the receipt of the 4th Step Answer to appeal the difference to arbitration.

Discipline

The Association proposal would permit any disciplinary actions to be appealed to final and binding arbitration, except that in case of dismissals or suspensions for more than 5 days, which are subject to appeal to the Board of Fire and Police Commissioners, it would require the grievant to elect either final and binding arbitration or appeal to the Board but not both. Moreover, in cases of the latter type, if the grievant elected to choose final and binding arbitration, the arbitrator would be limited to reviewing the justness of the penalty imposed by the Chief of Police based on the record made before the Trial Board. If the arbitrator determined that new evidence or testimony should be heard, the arbitrator could not hear it but would have to refer the case back to the Trial Board for that purpose. In substance, the arbitrator could not determine whether there was cause for discipline but only whether the penalty was just. The City, and more particularly the Board of Fire and Police Commissioners, opposed this proposal or any amendment to the present procedures which are provided by statute.

The Arbitrator heard extensive testimony from Dean Mentkowski, Vice Chairman of the Board of Fire and Police Commissioners, and from Mrs. Arlene Kennedy, Executive Secretary of the Board, about the procedures followed by the Board in disciplinary appeal cases that came within the Board's jurisdiction. They both emphasized that a case before the Board was heard de novo, that each party before the Board was afforded right to counsel, and that a complete record was made by the Board on the contested action.

The Arbitrator is persuaded that the Board proceedings afford the grieving employee every protection that he would have before any arbitration tribunal and result in a decision by a tribunal that is as informed, as experienced, and as concerned about justice, as any arbitrator would be. On this ground alone the Arbitrator would be reluctant to adopt the Association's proposal even if it provided for a full hearing of the case by an arbitrator. But the Association's proposal is more limited and leaves an arbitrator with only the authority to consider the severity of the penalty on a record made by the Trial Board. The Arbitrator does not find that procedure appealing either in terms of a procedure for determining the merits of a case or in terms of administrative efficiency. Finally, the Arbitrator notes that there might be a question about whether he had the authority to provide an alternate mechanism for the one established by statute. In view of his conclusions about the merits of the proposal, it will not be necessary to consider that question. Therefore, the Arbitrator determines that the Association's proposal to permit employees who have been discharged or suspended for more than 5 days to elect to have their appeals heard either by the Board of Fire and Police Commissioners or by arbitration under limited conditions, is denied.

Award

The two grievance procedures shall be integrated.

Differences over the application of Department rules as well as differences over the interpretation, application, and enforcement of the collective bargaining agreement may be appealed to final and binding arbitration.

Differences appealed to arbitration shall be under the control of the Labor Negotiator or his representative on the City side, except that in any case involving a Department rule, the Chief of Police or his representative shall be permitted to participate in the proceeding and to state the Chief of Police's position on the controversy.

The contractual provision providing for final and binding arbitration shall expressly state that in any proceeding involving the application of a Department rule, the Arbitrator shall take into account the special statutory responsibilities granted to the Chief of Police for the administration of the Department.

The steps and time limits in the 1971-72 Agreement shall remain except that the time for filing a grievance shall be extended from 5 to 10 days from the date of its occurrence, and that an appeal of an unresolved grievance to arbitration must be made within 30 days of the receipt of the 4th Step Answer.

Differences over discipline involving penalties less severe than suspension for five days may be appealed to final and binding arbitration under the Department rules. Dismissals and suspensions beyond 5 days may be appealed only to the Board of Fire and Police Commissioners under the present statutory provisions.

These provisions are to become effective upon the signing of the Agreement.

(6) Bill of Rights

The Association proposed that a four-paged document entitled A Bill of Rights and which specified in great detail the rights and procedural safeguards to which police officers should be entitled in any investigations of the manner in which they perform their duties, should be included in the Agreement and made a contractual protection.

The City strenuously opposed the proposed Bill of Rights on the ground that it would substantially impair the authority of the Chief of Police responsibly to administer the affairs of the Department by granting police officers the right to refuse to cooperate with Department supervision in the conduct of investigations of charges and complaints about the manner in which they perform their duties.

The testimony about the proposal disclosed that the Bill of Rights was essentially a detailed charter of procedural and substantive rights that interested groups were advancing for legislative enactment at both the federal

and local government level, and because of the broad array of interests that were involved it is really a matter that is more properly the subject for evaluation and debate in the political arena than a matter for negotiation in the employment relationship. In its post-hearing brief the Association recognized the sweep of the Bill of Rights and indicated that its interest in having the proposal adopted as a contractual matter would be reduced if the grievance procedure would be enlarged to permit all disciplinary action to be reviewed for procedural and substantive propriety. In the previous section of this Opinion, the Arbitrator has dealt in detail with this issue and has made a determination about it which, in his view, is adequate to deal with the employment relationship aspects of this proposal. Therefore the demand to include the proposed Bill of Rights in the Agreement is not granted.

Award

The proposal to include the specified Bill of Rights in the Agreement is not granted.

(7) Separation of the Department Book of Rules and Regulations*

We have previously observed that there has been continuing controversy and litigation over the question of bargaining about and grieving over the Department Rules and Regulations which affect wages, hours, and conditions of employment. In an attempt to define its rights in this regard, the Association requested the Arbitrator to issue an Award directing that the Department rules be submitted to WERC and direct the Commission to determine which rules affect wages, hours, and conditions of employment and are therefore subject to negotiation with the Association. The City responded by inquiring why the Association did not petition WERC directly for such a determination if it felt such an action was proper, and went on to note that the Arbitrator clearly had no authority to direct WERC to do anything. In its post-hearing brief, the Association seemed to suggest that the extension of the grievance procedure, including final and binding arbitration, to questions about the propriety of the application of those Department rules that affected wages, hours, and conditions of employment would be an acceptable alternative to this Association request.

In the preceding section of the Opinion we have, in effect, acceded to the Association's request that the grievance procedure be fully extended to cover grievances over Department rules that fall within the scope of bargaining. That action admittedly will provide a mechanism for determining on a case-by-case, specific-fact basis, whether a particular rule affects wages, hours, and conditions of employment, and if it does, whether the rule was proper or appropriately applied in the context of the statutory responsibilities of the Chief of Police. However, in the Arbitrator's view, that step does not completely resolve the question which the Association has raised in this demand--which of the Department rules are negotiable under the provisions of Section 111.70 of the Wisconsin Statutes. But that question too should not be resolved in the abstract but should be dealt with on a specific-fact basis under conditions which all elements of the rule--its impact on the employees and the administration of the Department and the implications on both if a change is proposed--can be taken into account before a determination is made. On that ground alone, the Association request for a separation of the Book of Rules is not sound. In addition, the Arbitrator believes it is clear that nothing in Chapter 246 of the Laws of 1971 extends to him the authority to direct WERC to comply with the Association's request.

*See Addendum attached to the Opinion.

Award

The Association's request that the Arbitrator direct the Department to submit its Rules and Regulations to WERC and to direct the Commission to identify the rules that are subject to negotiation under the provisions of Section 111.70 is denied.

(8) Copies of Department Orders et al. To Be Made Available to the Association

The Association requested that a provision be included in the Agreement providing that "A copy of all Department Orders, Memorandums, Inspector of Police Memorandums, Commanding Officer Staff Meeting Minutes, Teletype Orders, Training Orders and Compensation Reports of all members of the bargaining unit reporting any and all injuries shall be made available to the Association." In support of this request, Association representatives testified that these items contained information that affected the working conditions of members of the bargaining unit and its availability would facilitate the Association's ability to respond to inquiries from members and to carry out its role in the administration of the Agreement.

The City opposed the Association's request on the ground that many of these items were management control devices that contained information that should be restricted to the Department supervision and also that it was not essential for the Association to carry out its collective bargaining functions.

The Association is clearly entitled to information that is necessary for the effective representation of its members and for the administration of the Agreement; however, no persuasive case was made for the delivery of such surprisingly broad and all-inclusive data to the Association. In fact, the evidence suggested that the submission of all these items would be too voluminous to be of help to the Association. The request is too broadly drawn, and even if granted might defeat the objective for which it was requested.

Award

The request for Department Orders et al. to be made available to the Association is denied.

(9) Uniform Committee

The Association requested that a uniform committee, made up of a representative appointed by the Chief of Police, a representative of the Board of Purchases and two representatives appointed by the Association, be established to review uniform and equipment requirements for Department personnel. In the event that committee deadlocks in its recommendations for a uniform or a piece of equipment, the difference should be submitted to final and binding arbitration by a person chosen by the committee or, in the event they cannot agree, to a person appointed by WERC.

The City opposed this proposal on the ground that the design and specification of the uniform and equipment is a matter that falls solely within the prerogative of the Chief of Police, and since the Department makes the uniform available at Department expense the question of its design is not a proper subject for collective bargaining and is outside the Arbitrator's jurisdiction.

Although the testimony and discussion about this issue was tinged with humor, the issue clearly is not a trivial one. Thus, whether the matter is or is not a bargainable matter, and the Arbitrator thinks it is, it is far less important than a recognition of its meaning to the employees. It is clear to the Arbitrator that a difference over uniform design and equipment is not the kind of question that can be submitted to a third-party neutral for a final and binding determination; however, it is equally clear that it is the kind of question that can and should be examined in a cooperative spirit by a group of individuals who have genuine interests in the decision that is reached. There are real questions of physical comfort, safety and health as well as cost that are involved. These can best be examined and weighed by a joint City-Association Committee such as the Association proposes. Therefore the Arbitrator will direct that a committee such as the Association proposes be established. However, the recommendations of that committee should not be self-enforcing but should be advisory to the Chief of Police who should have the final decision on the matters recommended to him.

The Association argues that in effect such a condition prevails now but the Chief of Police has not been receptive to proposed changes in uniforms or equipment and therefore nothing comes of committee recommendations. It is not clear from the record whether this is true. However, the Arbitrator has already noted that matters of this kind are not really amenable to the arbitration process and therefore he will not grant that Association request. On the other hand, if the committee is to be effective, there must be some assurance that its recommendations have been carefully considered and that persuasive reasons exist for the rejection of any or all of its recommendations. Therefore, the Arbitrator will direct that committee recommendations, whether unanimous or not, should be submitted to the Chief of Police and if the Chief of Police does not accept the recommendations, he shall set out in writing his reasons for rejecting them within 30 days after he has received the recommendations. The committee shall then review the Chief's reasons. If it agrees with his reasons, it shall adopt them as its own; if it does not or if it is divided on the matter, any member of the committee may make the committee recommendations and the Chief of Police's response public not earlier than 10 days after receipt of the Chief's response to the recommendations.

Award

There shall be established a Uniform Committee consisting of a representative appointed by the Chief of Police, a representative of the Board of Purchases, and two representatives appointed by the Association. The committee shall be advisory to the Chief of Police under procedures set out in the Opinion above.

General Working Conditions

(1) Off-Duty Restrictions

The Association presented a general demand to remove all off-duty restrictions on police officers. However, the primary focus was directed at the restrictions on (a) any outside employment, (b) on certain defined political activity, and (c) on residence outside the City of Milwaukee. These matters have been considered by the parties under the general heading of Off-Duty

Restrictions even though the residence requirement is different from the other two in that it is established as a condition of City employment that exists, with minor exceptions, for all City employees. We shall consider the issue in general but with particular emphasis on the three more specifically defined restrictions.

(a) Restriction on Outside Employment

Rule 29, Section 5 of the Department Rules states:

> SECTION 5. Members of the police force shall devote their whole time and attention to the service of the Department, and they are expressly prohibited from engaging in any other business or occupation.

The Association contends that this restriction on outside employment is clearly a "condition of employment" within the meaning of Section 111.70 of the Wisconsins Statutes and is therefore a negotiable matter. It proceeds then to argue that the restriction is improper in that it limits the off-duty life and, more importantly, severely limits the earning capacity of bargaining unit personnel.

The City argues that the restriction on outside employment clearly falls within the authority and responsibilities that the Wisconsin Legislature conferred on the Chief of Police to preserve the public peace, to enforce all laws and ordinances, and to protect the rights of citizens under law. It argues further that this restriction is necessary and appropriate for the Chief of Police to carry out his defined statutory responsibilities and therefore is not an appropriate subject for collective bargaining and consequently is beyond the Arbitrator's jurisdiction. Finally, the City argues, that even if this restriction is not beyond the Arbitrator's jurisdiction, he should not change it because the restriction prevents:

(1) the potential development of a conflict of interest in the employment relationship;

(2) fatigue, physical incapacity, and distraction from primary responsibilities and the consequent ineffectual performance of police duties;

(3) a subsidiary employment position that might tend to reduce the dignity and respect for the police officer.

In support of its position the Association introduced evidence compiled from the numerous surveys to which reference has already been made, showing that Milwaukee is the only city among the 30 or more largest cities in the United States that has a total restriction on outside employment.[7] It emphasized that this restriction not only limits the immediate earnings opportunities of the police officers but thereby also made it impossible for them to accumulate

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7. The Association introduced a section of the Agreement between the City of Milwaukee and the Milwaukee Professional Fire Fighters Association which provides that fire fighters may engage in outside employment up to 16 hours per week under conditions defined by the Fire Department. However, in its argument on the issue of outside employment it did not place much emphasis on this evidence.

Social Security System credits that would provide medical and health benefits after they have retired and would be eligible for those benefits. In its post-hearing brief, the Association emphasized at considerable length that it wanted this restriction removed, not as an end in itself but as a means whereby those officers who had special economic burdens could fulfill their secondary economic objectives, and stressed that if the restriction is maintained in order to fulfill the public ends emphasized by the City, that fact should be given great weight in determining the appropriate City compensation for the police officers.

A number of witnesses, including some called by the Association, acknowledged that very difficult problems involving conflicts of interest develop when outside employment is permitted. The same surveys which established that outside employment was permitted in other cities also indicated that limiting conditions for such employment prevailed, but not surprisingly they did not set out the details of the limitations or provide any insights into how the limitations were enforced or what problems arose in enforiing them. Dean Mentkowski, Vice Chairman of the Board of Fire and Police Commissioners, who has given much thought to this question and who, in the Arbitrator's judgment, has a broad public view about it, felt strongly that the restriction was sound and should be maintained.

The Arbitrator is frank to state that this issue has troubled him even more than the other off-duty restrictions. The Association's arguments are persuasive; the evidence about conditions that prevail in the other large cities of the United States are compelling. Yet the arguments that have been made to maintain the restriction which are differently premised and are directed at maintaining the integrity of public service, have great appeal, particularly at this time when our society is searching so deeply into the question of the integrity of public officers at all levels of government. To complicate the question more, there is another aspect of this problem which also troubles the Arbitrator. Is a decision on this issue to be made in the context of an employer-employee dispute by an arbitrator who does not even live in the community and who has not heard or taken the pulse of the many interest groups who may have views on this question, or is one that is more appropriately subject to the political processes of the community whereby different interest groups make their views known in a setting in which their views require further judgments, particularly with respect to cost, that go hand in hand with their conclusions?[8]

It is not clear from this record whether the restriction promulgated by the Chief of Police is one which could be influenced by the actions of the Common Council. For obvious reasons, the Arbitrator does not want to get into that thicket here; however, he would simply observe that whether such a condition prevails or not, does not mean that community sentiments on the question involved cannot be effectively expressed.

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8. The Arbitrator recognizes that this kind of question could be raised about almost any condition of public employment. The line between those that are definitely employer-employee issues and those that have a greater susceptibility to broader political influence is not easily drawn. The Arbitrator believes the one discussed here encompasses significant policy concerns and therefore is more readily subject to political determination.

The Arbitrator concludes that the question of restriction on outside employment is a condition of employment which must be negotiated about in good faith and that he has authority to make a determination on that question; however, on the merits of the issue and because he believes that any change in the restriction should be made through the political process, he is compelled to deny the Association's request to remove the restriction on outside employment.

(b) Restriction on Political Activity

Rule 29, Section 31, of the Department Rules states:

> SECTION 31. Members of the Department shall not solicit or make contribution in money or other thing, directly or indirectly, on any pretext, to any persons, committee, or association, for political purposes; nor shall they interfere or use the influence of their office for political reasons.

The Association contends that this restriction on political activity is a condition of employment under Section 111.70 and should be removed because it is unnecessary in the police officers' employment relationship, is unfair, and imposes improper limitations on their rights as citizens.

The City contends that the specific restriction on political activities contained in Rule 29, Section 31 are designed to remove a condition which might be construed or suggest that police officers could use their status to interfere with or to influence actions of the public for political reasons. It notes that citizens rely upon police officers for the protection of their lives and property and urges that they should not be put into a situation in which they might feel they have alienated a police officer by not responding to a political appeal. It notes further that many years ago the City very deliberately decided to remove the Police Department from political influence and that the contested rule is one of the means whereby that public policy objective is maintained. Finally, the City again argues, as it did with respect to the restriction on outside employment, that this restriction is necessary and appropriate to the fulfillment of the Chief of Police's direct responsibility and therefore is not bargainable or within the Arbitrator's jurisdiction.

The Association presented no detailed evidence or systematic argument to support its contentions on this matter. However, it suggested that the Common Council has expressed itself on the question of political activity and urged the Arbitrator to find that the City should incorporate those same political rights into the Agreement.

The Arbitrator believes that the question of a restriction on the political activity of public employees ia a particularly appropriate subject for control through the political process. He notes that the recent U.S. Supreme Court decision in the National Association of Letter Carriers case, decided June 25, 1973 supports that conclusion. Moreover, the evidence establishes that the Common Council has concerned itself with that issue. Again, the Arbitrator will refrain from any comments about the scope of the Common Council's authority on this question and simply notes that this issue is one particularly subject to resolution through the political process. Therefore, he will deny the Association request to remove the restriction on political activity.

(c) The Requirement to Maintain Residence in the City

Rule 29, Section 12 of the Department Rules states:

> SECTION 12. Members shall reside in the City of Milwaukee and shall not leave the City for more than seventy-two hours without the permission of the Chief of Police, except when on duty in the immediate pursuit of a criminal, when on vacation, or as otherwise provided in these rules. . . .

Charter Ordinance No. 226, with certain limited exceptions provides:

> Section 1. Charter Ordinance No. 157, passed August 1, 1950, is hereby repealed and recreated to read:
>
> Section 1. All employes of the City of Milwaukee are required to establish and maintain their actual bona fide residences within the boundaries of the city. Any employe who does not reside within the city shall be ineligible to employment by the city and his employment shall be terminated in the manner hereinafter set forth.

The Association seeks a contractual provision that would permit police officers to reside in any county contiguous to Milwaukee County.[9]

The Association contends that the restriction on residence is functionally needless since modern expressways make it possible for police personnel to respond promptly to any call to duty, that it limits recruitment of high quality personnel since many potential candidates refuse to apply for positions as officers because of the residence restraint, and that the requirement to reside in the City tends to invite officers to become involved in family disputes and neighborhood problems during their off hours. In addition, it contends that the residence requirement imposes an unconstitutional constraint on the officers' rights as citizens.

The City contends that the residence requirement is necessary since a police officer is expected and required to exercise the police power with which he is invested whenever disorder, crime, injury, or destruction occurs. Since the City of Milwaukee is compensating him, it is appropriate that this police power be concentrated in the City. It contends further that mere presence in the community, on the one hand serves as a restraint on unlawful conduct, and on the other hand develops knowledge and insights into community conduct and rapport with the citizens of the community which assist and support the police function. Finally, the City again advances the contention that the issue is not bargainable and beyond the Arbitrator's jurisdiction.

The Association introduced some evidence that indicated officers could travel from distant points in the County to Police Headquarters more quickly on expressways than they could from some residential areas in the City which required the use of regular City streets. It also suggested that the vacancies

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9. This provision could arguably be construed to prohibit residence in Milwaukee County outside the City limits. However, the intent of the provision is to permit residence anywhere in Milwaukee County or in counties contiguous to Milwaukee County.

that had existed on the Police Department in some past years reflected the reluctance of qualified candidates to apply for police officer positions because of the residence restriction. However, neither of these propositions was systematically developed. The City in turn demonstrated that, at least recently, the number of qualified applicants was substantially greater than the number of vacancies that existed. In addition some of its witnesses suggested that the presence of the police officer in the community enhanced the performance of the police function.

The Arbitrator does not believe that the evidence produced by either party conclusively established the points it was designed to make. This should not be surprising since the reason for vacancies in positions or applications for openings is affected by many factors, of which the residence may only be one, and the import and effect of police presence has not yet been statistically proven, even though it may well be significant if the appropriate elements to which presence is related can be isolated for measurement over periods of time.

However, in the last analysis the issue involved here is again one which is more amenable to the political process and the feelings and sentiments of the citizenry than it is to functional analysis, particularly since evidence on this count is so indecisive. In this regard, we note that the residence requirement for policemen is no more restrictive than that which pertains to all other City employees. This fact further supports the proposition that the question is more appropriately a matter of public policy and law rather than a condition of employment to be determined through collective bargaining or to be decided by an Arbitrator in a proceeding designed to resolve an impasse in bargaining. Therefore the Arbitrator will deny the Association request.

Award

For reasons set out in the Opinion, the Arbitrator denies the Association's request for the elimination of all off-duty restrictions in general, and for the elimination of the restrictions on outside employment, political activity, and the elimination of the requirement to reside within the City, in particular.

(2) Seniority

The present Agreement contains a clause providing for the application of seniority in the event of lay-offs from the Department. There was a minor dispute over the language in that provision but during the hearing the parties stipulated to language changes in the provision which resolved that dispute.

The Association proposed a new clause that, in effect, would provide that seniority would prevail with respect to assignments to district, bureau, shifts, beats, or squads, to scheduled overtime assignments, and for the choice of vacations, and that senior officers would be permitted to reject an assignment without any explanation. The Association also proposed that the Association Board of Trustees and Shift Representatives should be given top seniority in their respective districts or bureaus during their incumbency in office and that they not be transferred out of their bureaus or districts or off their shifts without their consent.

The City vigorously opposed the Association's demand on the ground that it would severely limit the Department's discretion in utilizing the experience, skill, physical ability, and ethnic and racial qualities of the force, either singly or in combination, to accomplish the policing functions most effectively.

In support of its demand, the Association argued that the senior personnel should have their preferences recognized when assignments are made and that unscheduled overtime assignments should be offered on the basis of seniority. It also suggested that there had been occasional instances of unfairness and favoritism in making particular assignments and that a seniority system would prevent such abuses in the future. However, it did not present detailed testimony to support its contentions or develop systematically how its proposed seniority system would function.

Inspector Ziarnek, on the other hand, explained in detail how assignments are presently made. Seniority is currently the primary factor in making assignments to the day shift and is given consideration, along with the appropriate mix of experience, in making assignments to the early and late night shifts. Seniority is also given preference in making assignments to districts and bureaus, and within the limits of the effective use of the manpower, is considered in making all other assignments. In addition, seniority is given preference in the selection of vacation dates.

The assignment and effective utilization of the particular strengths of its personnel is a very important matter in the administration of a complex Police Department. The manner in which this is done should not be changed unless a persuasive case has been made to demonstrate that a modification is necessary to get the Department's work done or to meet some clear and pressing need of the personnel. The evidence produced in this record does not establish a persuasive case for a modification.

In this connection the Arbitrator is also compelled to observe that the application of seniority in the administration of any organization is an extremely complex matter. If it becomes the subject of negotiation it should be systematically discussed so that its intent is clear, its proposed application is understood and its impact on and implications for administration are fully developed. This demands face-to-face discussion by those who are intimately acquainted with all aspects of the organization's operations. The testimony in this hearing showed very clearly that no discussion of this kind occurred and that the bare rudiments of the system proposed by the Association were only developed in the discussion of the issue in the Arbitration hearing. The Arbitrator believes this approach to such a significant problem does not provide an adequate body of information for making a sound finding and he has taken this factor into account in making his determination.

The Arbitrator's determination to leave the present system for making assignments unchanged does not mean there is no recourse if there is, in fact, favoritism and unfairness in making assignments. The grievance procedure provides a mechanism for investigating and airing the basic fairness of the administration of the Department's Rules and Regulations governing personnel utilization. The Arbitrator emphasizes, however, that his observation does not mean that the question of seniority can be made an issue in the grievance procedure, but it does mean that the fairness of the application of the existing procedure can be tested. In such a situation, the burden obviously would be on the grievant to establish his contention of unfairness or of favoritism.

The Association presented no evidence and made no argument in support of its request for, what in effect, would be super-seniority for its Board Members and Shift Representatives. Consequently no grounds have been established for a determination in support of that proposal, and it will be denied.

Award

The Association requests with respect to seniority are denied.

(3) Working Conditions Coming Within the Particular Responsibility of the Board of Fire and Police Commissioners

The Association presented a number of proposals that fell within the particular responsibility of the Board of Fire and Police Commissioners. These were never discussed directly with the Board but were simply advanced by the Association it its brief negotiations with the Labor Negotiator. The absence of direct negotiations with the Board has prompted the City to argue, as it did in the case of the issues that fall within the particular responsibility of the Police Chief, that no impasse was reached on these matters. In addition, the City argues that the Association proposals concern matters that come within the particular statutory responsibilities of the Board and are therefore not negotiable. Therefore it contends that on both counts those proposals are not properly before the Arbitrator and are beyond his jurisdiction.

The testimony in this regard, as in the case with the issues involving the Chief of Police, clearly established that the Board of Fire and Police Commissioners became fully informed about the Association proposals that were of particular concern to the Board and through the testimony of Mrs. Arlene Kennedy, Executive Secretary of the Board, and Dean Mentkowski, Vice-Chairman of the Board, fully developed the Board's positions about the merits of those issues. The Arbitrator also believes and therefore finds that the particular items included in the Association's proposals are conditions of employment within the meaning of Section 111.70 and are therefore properly before him for determination on the merits.

(a) No New Positions and Classifications and No Reclassification of Positions Without Association Consent

One of the major responsibilities of the Board of Fire and Police Commissioners is to classify all positions in the Police Department. It has adopted rules to accomplish that objective and, as a matter of rule and policy, it never takes any action on creating new classifications or reclassifying existing ones without formal hearings at which all interested groups have an opportunity to express views about the proposed actions. Moreover, these proposed actions are not initiated by the Board on its own motion but by entities outside the Board who wish to change the existing classification structure.

The Association proposed that no new positions or classifications should be established and that no existing positions should be reclassified without the Association's agreement. The City opposes this proposal on the ground that it would give the Association veto power over the creation of new positions and the adaptation of existing ones to changing Department and community needs. In

effect, the City argues, such veto power would give the Association control over the most basic management function and responsibility.

The Association's testimony and evidence on this matter indicates rather clearly that the proposal is a response to the reclassification of the Detective Sergeant position to that of Detective Lieutenant and the controversy that followed about whether the Detective Lieutenants should be removed from the Association bargaining unit. In its post-hearing brief the Association states that it "makes this demand to preclude diminution of the bargaining unit by creating positions within the Police Department outside the bargaining unit." (Association Brief, Vol. III, page 35.)

The Arbitrator understands the Association's concern but believes its proposal to attack the problem is misdirected and far too sweeping to accomplish its purpose. The decision to create positions is clearly a matter that must rest with the Common Council which has the responsibility for determining what goals the Department should have and for providing the resources to achieve them. Once that decision has been made, the Board of Fire and Police Commissioners have the responsibility for drawing the specifications for the positions that are to be created and to properly classify them so that the duties entailed in positions are correctly described and the positions are appropriately related to positions in other classifications.

In this setting, the Association has no recognizable interest in the question of whether the positions are to be created, but it may have an interest in whether the positions are properly classified in relation to those occupied by persons the Association represents and in whether those positions fall within the Association's bargaining unit on the basis of the duties and responsibilities described in the classification.

As far as the first interest is concerned, the evidence persuasively shows that hearings are held by the Board of Fire and Police Commissioners before the classification is approved. It also shows that the Association keeps itself fully informed about these hearings and participates actively in the hearing and the classification process. With respect to the second interest--whether the positions created by the new classification should be included in the bargaining unit--there is an existing contractual provision for including them in the unit if the parties are in accord that this should be the case. If they do not agree, the parties have ready access to WERC for a statutory determination of the question. What has been said about the creation and classification of new positions is equally applicable with respect to the reclassification of positions, at least as far as the structure of the bargaining unit is concerned. Therefore, the Association's proposed means to attain its objective of protecting the bargaining unit is not necessary.

But going beyond the bargaining unit question, one could argue that the proper classification or reclassification of a position that falls within the bargaining unit is a negotiable matter under Section 111.70 and therefore the Board of Fire and Police Commissioners and the Common Council, insofar as the proper rate of pay for the position is concerned, have an obligation to bargain about the propriety of the classification and the rate of pay established for it. In a technical sense the Board of Fire and Police Commissioners has not in the past formally bargained with the Association about classifications; however in a real sense, the Board's procedures and the Association's participation in

them has afforded the Association ample opportunity to make its position known and to effectively represent its interest. But even if the technical view were adopted, the appropriate remedy for that shortcoming would simply be to require the Board of Fire and Police Commissioners to bargain about the classification issues and not to grant the Association veto power over the creation of positions and over classifications and reclassifications of them. The effects of granting the proposal are completely out of proportion to the problem toward which it was directed. Therefore the Arbitrator must deny the request.

Award

The Association request that no new positions and classification, and no reclassificatcns of positions may be effected without the Association's consent is denied.

(b) Promotions

The Board of Fire and Police Commissioners has the responsibility for developing rules and procedures directed to the merit selection and promotion of employees in the Police Department. To that end it has made determinations about what positions in the Department are to be filled by examination and to prepare and administer those examinations, and what positions shall be exempt from examinations but filled on some other identifiable merit basis.

The Association proposed that all positions that come within the bargaining unit should be filled only from eligible lists established after a competitive examination administered by the Board. The testimony indicated that the Association's objective in advancing this proposal was to open the eligibility roster for the detective classification and to eliminate the exemption from examination that now exists for a number of specialized and technical positions.

Detectives are currently appointed to their positions on the basis of examination; however, only patrolmen (commonly referred to as acting detectives) who have been assigned to the Detective Bureau for one year are eligible to take the examination and the patrolmen positions in the Bureau are filled on a regular assignment basis. The Association argues that this arrangement permits the supervisors who make the patrolmen assignments to the Bureau to limit the eligibility roster for promotion to Detective and that on occasion this discretionary action has resulted in favoritism or cronyism. The exempt positions such as Identification Technician, Police Alarm Operator, Document Examiner, Radio Mechanic, are filled from the patrolmen ranks but these positions, as their titles indicate, are technical positions that require specialized skills and experience and for that reason have been exempt from competitive examination and have been filled on a discretionary but merit basis. The Association argues that the exemption for these positions should be removed and that examinations be constructed for them so that all patrolmen who pass the examination will have an opportunity to advance to them.

Dean Mentkowski and Mrs. Kennedy testified at some length about the Board's recent review of the eligibility requirement for the Detective position and the continuation of the exempt positions. They also testified that the Association representatives took an active part in these processes and made their views on them known. Dean Mentkowski indicated that the Board was troubled about the eligibility requirement for the detective position because they recognized the

desirability, on the one hand, to limit the selection from among those who had demonstrated the capacity to carry out what is a specialized function, but on the other hand, to make certain that no favoritism prevailed in the selection process. He testified further that he and the Board were opposed in principle to exempt positions but also recognized that the technical and specialized positions that were exempt required experience and talents for which valid, job-related examinations could not be easily constructed.

Inspector Ziarnek testified that the exempt positions required special talents and expertise, and in some instances licenses, and that the Department filled them from among those patrolmen who had indicated an interest in developing the required expertise, or in a few instances, by personnel who were on limited duty status.

The testimony conclusively established that the Board of Fire and Police Commissioners were actively and searchingly examining the questions involved in the proposals the Association presented to the Arbitrator. It also established that the Association has the opportunity actively to participate in that examining process and that it does so.

The Arbitrator believes it would be unwise for him to make a determination on a question which has been and continues to be reviewed in some depth by a competent and experienced public body through a procedure in which the Association actively participates, on the very limited evidence presented to him by the Association in this hearing on that same question. This determination is buttressed by the absence of any evidence that indicates the favoritism which is potentially available in these circumstances does in fact prevail.

The Association also proposed that its concurrence should be required in determining which persons were to be eligible to compete in the promotion examinations. This demand apparently grew out of a controversy over the eligibility of officer Kleismet, who was at the time a Liaison Officer attached to the Labor Negotiator's office, to take an examination for the Sergeant classification. Whatever the merits of that particular case may have been, the issue involved clearly does not warrant so severe a limitation on the long-standing merit principle that eligibility for an examination should be established by rule, with the right to contest a determination made under the rule through procedures established for that purpose.

Finally, the Association proposed that no educational requirement beyond that required for appointment to the Department should be established for any position in the bargaining unit. Presumably this demand is directed against the possibility that the Board of Fire and Police Commissioners might require some specialized academic preparation as a condition of eligibility for promotion to the more technical positions in the Department. Dean Mentkowski testified that the Board opposed this proposed limitation on the ground that it might restrict the development of special skill and expertise through academic training which could be pursued during employment as a patrolman.

Although the Arbitrator has some sympathy for the Association's desire to avoid the rigid requirement of additional educational preparation as a condition for promotion, he believes Dean Mentkowski's observations about the needs for special training for technical and demanding positions cannot be rejected.

However, on this matter too, the Arbitrator believes that it would be unwise for him to make a determination on a question which the Board continually and systematically considers, on the basis of the very limited evidence presented to him about it in this hearing.

As the Opinion reflects, the Arbitrator has in effect deferred to the experience and judgment of the Board of Fire and Police Commissioners on promotion issues raised by the Association. He hopes and believes he has set out persuasive reasons for that deferral; however, he feels compelled to observe that the issues the Association raised are serious ones that warrant the Board's continuing attention and he recommends that the Board continue its search, difficult as it may be, for examining mechanisms that will, on the one hand, isolate and measure the particular qualities that are directly related to the performance of the detective assignment and the specialized exempt positions but that, on the other hand, will leave open the right of those who may have acquired or developed those relevant qualities in some capacity other than on a Department job, to be considered for those positions. The number who would be eligible under those circumstances may be very small but the opportunity for all who believe they possess the requisite qualities to be considered, will eliminate or at least reduce the contention that favoritism may prevail in the promotion system. Similarly, the Arbitrator urges the Board to leave open the possibility for a candidate for a technical or specialized position to demonstrate he or she possesses the equivalence of the expert knowledge or training that is desired, if an additional educational requirement is established for promotion eligibility.

Award

The Association requests for changes in the promotion procedures must be denied. However, the Arbitrator requests that his comments on this issue be formally brought to the attention of the Board of Fire and Police Commissioners by the parties jointly.

The Economic Issues

Introduction

We already have noted that there is an element of artificiality in attempting to divide issues into economic and non-economic categories but that there is some utility in doing so particularly in relation to the tests or standards that are customarily applied in evaluating the issues that have been so categorized. We also noted that in approaching the so-called economic issues a great deal of emphasis is placed on comparability--how do the salaries and benefits in dispute compare to those received by employees performing comparable tasks elsewhere. But, even though the concept of comparability is accepted, numerous substantial questions arise in applying the concept as a standard in a particular dispute. Some of these are set out below to illustrate the complexity of the application of comparability.

A. What is a comparable task in the case of a police officer in Milwaukee?

1. The Police tasks in other cities of the United States? Regardless of size or location?

2. Security and protective services tasks performed in the public or private sector in the same or different geographic areas?

3. Tasks in both the public and private sector that generally require the same intelligence, skills, training, and physical ability and which the police officer might select as an alternative to police work?

4. Tasks in other City of Milwaukee departments that make similar contributions to the community's well-being?

B. What is comparable compensation?

1. Is it base salary alone or total compensation made up of base salary plus allowances and money benefits that constitute direct income?

2. Should income maintenance provisions and deferred income benefits be considered as part of compensation or should they be compared separately?

3. Should certain premium payments for work performed under different from normal circumstances, such as overtime or off-day work, and payments for time not worked, such as holidays and vacations, be considered as part of compensation or should these too be compared separately?

C. What is the appropriate period for comparison?

1. Should the same selected items be compared at the same moment in time or over a period of time to demonstrate relative stability or change in them?

But comparability, however defined, is not the only factor that is considered in approaching disputes over economic issues. In addition to comparability, it is customary to give consideration to changes in the cost-of-living and changes in the general patterns of salary adjustments that have occurred elsewhere since the last adjustments in compensation were made. On occasion, consideration also must be given to the changing relative demand for and importance of the tasks being performed by the personnel whose salaries and benefits are in dispute. And finally, consideration must be given to the capacity of the employer to meet the demands in the light of budgetary flexibility, revenue sources, and the competing demands for available resources. Some facet of each of these standards was vigorously advanced by the Association or the City in their presentations on and arguments about the various economic issues in dispute.[10]

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10. The compulsory arbitration statute directs the Arbitrator to utilize certain U.S. Bureau of Labor Statistics data with respect to changes in the Consumer Price Index and also the Bureau's Urban Family Budgets "in determining proper compensation." In view of the general awareness, among laymen as well as industrial relations specialists, that many other factors in addition to changes in these two indicators must be taken into account in wage or salary determination, the Arbitrator does not construe that direction as a limitation on the factors he should consider in making a determination but simply a caution about factors that he should not ignore but should deal with affirmatively.

Before turning to the specific issues, it might be helpful if the Arbitrator made a few general observations about how he believes the issues in dispute should be approached in general and about his approach to the standards or tests against which the specific issues will be measured.

The final and binding arbitration procedure in this case is prescribed in the larger framework of a public policy declaration encouraging collective bargaining and postulating the worth of decision-making, through negotiation by the parties directly involved, about issues that are of primary concern to them. We have already observed that this goal has not been realized, in this particular relationship; but instead, there has been a repeated referral of unresolved issues to outside neutrals. Note is made of this not to find fault, but to point out that this kind of conduct transfers decisions about issues to relatively uninformed neutrals, without defining priorities of concerns or directing the use of limited resources to those matters which will produce maximum satisfaction to those involved.

An analysis of collective bargaining agreements generally discloses that contract terms vary, sometimes substantially, to reflect this kind of ordering of priorities and uses of resources. Thus contracts have acceptability on the basis of their entire interrelated set of benefits and conditions. The Arbitrator emphasizes this point to make clear to the parties that in making his determinations, in a collective bargaining context, he believes he must try to keep in mind the totality of his determinations instead of simply making specific awards on each specific issue on the basis of how that particular issue is dealt with in a comparable group. Of course, he must make determinations on specific issues but in doing so he must also consider it in relation to his determination on other items. In effect, he believes his determinations must be something more than a collection of the best, or the average, or some mechanical combination of what prevails in the comparable group.

Some General Comments About the Standards

(a) Comparability

The Arbitrator has already noted that in support of its position on the economic issues, the Association introduced the results of a survey it made among 24 large cities in the United States and Canada and 2 New York City municipal authorities. It also introduced a survey it conducted among municipalities surrounding Milwaukee and the Kansas City and Philadelphia Police Department surveys of salaries and benefits that prevail. In addition, it called witnesses from Chicago, Minneapolis, Detroit, and New York who testified about prevailing salaries and benefits in those cities. Its primary emphasis was on the salaries and benefits that prevailed in Detroit, Chicago, and Minneapolis on the ground that these cities, together with Milwaukee, constituted an identifiable, comparable group of large cities in the north-central section of the United States in which police responsibilities and duties were essentially the same. The City, on the other hand, introduced the results of its own survey among 27 cities in the United States ranging between 400,000 and 1,000,000 in population, a survey among large cities in Wisconsin, and one among metropolitan communities surrounding Milwaukee. In addition, it submitted exhibits and developed detailed testimony about salaries and benefits that prevailed among 13 of the selected 27 cities that covered approximately the same geographic area covered by Milwaukee, and among 9 of the selected 27 cities

that were within the radius of the distance between Milwaukee and Kansas City on the ground that this group of cities covered an appropriate area of the middle United States. (7 of the selected cities fell in both of the more narrowly defined groups.) In addition to these surveys, the City also introduced exhibits to demonstrate a comparison between salaries and benefits of police officers and Milwaukee building trades craftsmen, general factory operatives, and other employees of the City of Milwaukee, and to show how these relationships have changed over the period between 1960 and 1972.

These various surveys were not designed to produce an agreed-upon body of information to be used in attacking the issues in dispute and, not surprisingly, they produced voluminous data from which the parties and the Arbitrator could draw support for any number of either compatible or contradictory conclusions. Therefore the Arbitrator believes it would be useful to make some general findings and conclusions about these data.

(1) He believe it is clear that the data with respect to the earnings of skilled craftsmen and production worker operatives are of little use in this proceeding because they are not definitive and are incomplete. Any significance they may have would be, at most, limited to an indication of the general upward movement of the rates of pay for these classifications over a longer period of time.

(2) He believes the data about compensation and benefits for police officers in other Wisconsin cities and in the metropolitan communities surrounding Milwaukee, with the possible exception of those related to the police personnel for Milwaukee County, are not significant both because of the relative size of the police forces and the absence of any showing that movements in their compensation and benefits exercised any stimulating or restraining influence on Milwaukee compensation and benefits. Similarly, but less clearly and particularly with respect to Milwaukee County personnel, the evidence suggested that because of the size of the Milwaukee Department and the apparent origin of changes in benefit, the compensation and benefits in Milwaukee tend to spread to the surrounding metropolitan areas from Milwaukee rather than the other way around.

(3) On the basis of our previous observations, we are pushed in the direction of concluding that comparability should be directed primarily to the salaries and benefits of police officers in large metropolitan cities. There is additional support for this proposition in testimony that was adduced which suggested that the large metropolitan communities have similar demographic, housing, income, cultural, and sociological patterns which tend to demand a common set of policing requirements. Thus, the evidence, although not totally free from doubt, at least suggests that the jobs that should be compared are those of police officers in the large metropolitan areas in the United States.

(4) Some of the surveys produced data about these groups of police officers, but those surveys, while usable, were by no means complete. They produced information about starting rates and maximum rates of pay, about the period of time that elapsed before the maximum was reached, and in some instances, information about whether the maximums included longevity increases. But they did not produce conclusive information on these points. Moreover, the surveys did not always indicate when changes were last made and, more important, what other income payments were available. The Arbitrator

mentions these limitations, some of which are inherent in survey processes that are not designed to generate information solely for one purpose, simply to indicate that these surveys do not produce a single, compelling answer on comparability.

(5) If the comparable tasks are those of police officers in large metropolitan cities, neither the Association nor the City's selection of cities to be used in making the comparison is completely convincing. The largest cities, which are not included in the City's survey, may have some relevance as the Association suggests; but similarly a restriction of the comparison group to Minneapolis, Chicago, and Detroit, two of which are substantially larger than Milwaukee, likewise ignores conditions that prevail in other comparable cities.

Having determined that the appropriate comparison group should be the police officers in the large metropolitan cities because their tasks seem to be comparable, we come to the next and more difficult question. Are the police officers in all of these communities comparable in the manner in which they perform the comparable tasks?

The Association argued vigorously that the skill and quality of the Milwaukee police officers was demonstrably superior to that of their counterparts in the other large metropolitan areas. In support of this position it introduced evidence about the relatively low crime rate and the clearance rate of crimes in Milwaukee. It also called numerous distinguished judges and informed students of police work who testified that, at one time or another, they had the opportunity to compare the performance of the Milwaukee personnel with that of personnel from other cities, and they found it consistently superior. They testified further that not only was their performance superior but their reputation for integrity and honesty was equally superior.

The City acknowledged that the performance and reputation of the Milwaukee Department was superior; but it suggested that this was, at least in part, the result of the competence and quality of the Department's management personnel, as well as social and cultural standards of the entire community, and not just the result of the police officers' efforts.

During the course of the hearing, there was also a good deal of testimony adduced about the degree to which factors such as the number of police officers, their geographic coverage, their compensation, and similar matters were the prime determinants in protecting life and property and reducing or controlling criminal activity. It is not surprising that the testimony did not produce conclusive statistical proof of a tight relationship between the factors studied and the postulated results. However, this obviously does not mean there is no relationship; and it clearly does not mean that quality in the Department personnel is not significant.

The Arbitrator has reviewed and considered the statistical record of criminal activity and clearance and all of the testimony about the competence and the integrity of the Department, and even if allowance is made for some testimony that tended to be self-serving, he believes there is abundant support for a conclusion that the Milwaukee Police Department is of superior quality and that the competence and integrity of the police officers contribute significantly to that result. It follows that this is a factor that should be taken into account in establishing their compensation and benefits.

(b) Items To Be Included in Determining Comparable Compensation

In the more generalized discussion about comparability we noted that there was a problem in determining whether base salaries or salaries and other direct income should be used in making salary and benefit comparisons.

In the present proceeding, the City argued that the comparisons should be made on the basis of total compensation rather than salaries alone and submitted tables that compared the total labor costs (salaries, allowances, pensions, insurance, etc.) for all the cities included in its surveys. The Association did not specifically address itself to this question but, in effect, it tended to support its positions on the specific issues by comparisons on each item in dispute among the cities it included in its survey.

The Arbitrator believes that neither approach is totally acceptable. He is more disposed to the total compensation concept than the item-by-item approach because it comes closer to reflecting the priority-ordered benefits sought in collective bargaining; but it is inadequate because the data from which the aggregate result is obtained are too uncertain and because some items that are included can be more carefully and critically evaluated on a sub-group basis. Therefore, he shall approach the salaries and benefits issues on a more compartmentalized basis. The discussion of salaries will not be limited to base salaries but will include consideration of the educational allowance and the payment of virtually the total pension costs by the City. However, payments for work at other than regular hours, payments for time not worked, retirement benefits, and insurance and income-maintenance items will be considered as separate categories. The Arbitrator notes that the City adopted this general approach in the arguments it advanced in its post-hearing brief.

(c) Time Periods for Comparisons

Although it is customary to compare changes that have occurred in the cost-of-living and changes in the general wage patterns that have occurred elsewhere since the last adjustment in compensation, and this will be done in this case, the Arbitrator believes it also is essential to look at changes over longer spans of time in order to determine whether the police officers have been properly sharing in the economy's development and how they have been faring in relation to other employees in general. Therefore some consideration will be given to salary movements over longer periods of time, but with a note that the selection of the base for comparison can significantly affect the resulting comparison.

(d) Changes in Importance of Police Tasks and Demand for Police Personnel

There is considerable evidence that the difficulty and importance of police tasks have increased substantially during the past 10-15 years. That change, however, has not been confined to Milwaukee but seems to have been country-wide. There also is some evidence to indicate that turnover and vacancy rates tended to be higher in Milwaukee during the period 1965-1967 than over a longer time span, but that in the last few years these rates have noticeably decreased. Brief reference will be made to these developments in the discussion about salaries.

(e) The Ability to Pay

In the course of the presentation of its case, the City stated that the original Association demands would have increased the City's police payroll costs by approximately $19 million for the calendar year 1973.[11] During the course of the hearing, the Association dropped some demands and amended others. As a result, the City estimated that these amended demands would cost approximately $9.4 for the 1973 calendar year but would escalate costs in later years. In its post-hearing brief the City argued that even these revised figures were understated because the testimony of the actuaries and insurance specialists clearly demonstrated that the cost estimates for the pension programs and insurance programs were substantively understated.

We do not here have to consider whether the City's estimated costs of the Association demands are correct. It is sufficient to note that they are substantial and then turn to the City's argument about its ability to pay all or any portion of them.

The City presented a vigorous and serious argument that it did not have the ability to pay, either in the short run because budget commitments and tax levys for 1973 had already been set, or in the longer run because of statutory limitations on the mill tax rates, the relatively small anticipated increase in the assessed value of property because of the changing physical and demographic structure of the City, the relative decline in revenue from federal and state sources and the increasing property tax burden borne by Milwaukee property owners to meet the expanding demand for community services.

The Arbitrator is not knowledgeable about the intricacies of municipal taxation and finance or municipal development. However, he was impressed with the detailed and systematic arguments of the City witnesses on these questions, and he believes and finds that they were not just routine responses to employee demands but were seriously advanced to point out the dilemmas of the metropolitan city caught in the vise of a real limitation on its ability to raise revenue and an expanding demand for services, often enjoyed by those who do not pay for them, at least directly.

In these circumstances, the "ability to pay" is real and cannot be dismissed or ignored. However, it is not a sufficient answer to the question of what is the proper level of compensation and benefits for those who are called upon to supply municipal services. In any one period of time, the inability to pay may have to be taken into account in determining what should be granted at that time; but it cannot be a longer term standard premised on the proposition that the existing level of employment at existing salaries and benefits will have to be maintained. If additional revenue cannot be raised, then the difficult and painful process of adjusting the levels of employment and the priorities of services to be rendered will have to be undertaken and decisions will have to be reached about the quality and quantity of services and personnel the City decides to maintain. Thus the ability to pay must be taken into account,

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11. The total salary payroll for the Police Department for 1972 was approximately $28.5 million. (PPPA Exhibit 58A, page 63.)

particularly in the very short run, but it cannot be the sole determinant in evaluating what the compensation and benefits of a particular group of essential employees shall be.

Salaries

The Association originally requested a minimum across-the-board salary increase of $1300 for a one-year agreement,[12] but during the course of the hearing it stated it would not oppose a two-year agreement provided an appropriate adjustment in salary was included for the second year. The City opposed any general increase in salary and proposed a three-year agreement with cost-of-living adjustments, in accordance with a defined formula, in the second pay period following the publication of the February 1973 Bureau of Labor Statistics Consumer Price Index for Milwaukee, to reflect the changes in that index between November 1972 and February 1973, and a further cost-of-living adjustment to be made in the 14th pay period in 1974 to reflect changes in the same index between May 1973 and May 1974. The details of the City's cost-of-living proposal were not developed at the hearing, but the Arbitrator is constrained to point out that neither the formula itself nor the periods for which it would be applied would produce a result that would maintain the purchasing power of the police officers' salaries from the time of their last salary adjustments on January 1, 1972 to the dates on which the cost-of-living increases would become effective.

The Association basically contends that a $1300 adjustment is necessary to compensate the police officers for the increased danger and complexity of their tasks and for the additional skills and qualities demanded of them to carry out those tasks; that the salary for the Milwaukee police officer at the top of the regular salary schedule ($11,586 at the end of four years) is lower than the maximum salaries paid to police officers in the largest cities in the United States and particularly so in comparison with the maximum salaries for police officers in Detroit, Chicago, and Minneapolis; and that when these facts are considered in conjunction with the changes in the cost-of-living, as well as increases generally granted other employees since the last adjustment in salary on January 1, 1972, and the demonstrated quality of the Milwaukee police force, the requested adjustment is fully warranted.

To support its argument about the relative position of the Milwaukee police officers, the Association submitted its survey results which indicated that the maximum salary for patrolmen in 11 large U.S. cities exceeded that paid in Milwaukee. It also produced documentary evidence and direct testimony that indicated that as of January 1, 1973 the salary of a police officer in Chicago at the end of 5 years of service was $14,124 and that longevity payments are payable in addition to that top base salary; that as the result of an arbitration award, the salary for a police officer in Detroit at the end of 4 years of service was $13,300 as of November 1, 1972 and would increase in four incremental steps during 1973 and 1974 to $15,000 as of March 1, 1974, and that longevity allowances were payable in addition to these top rates; and that as of January 1, 1973 the salary of a Minneapolis police officer at the end of 7 years of service

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12. A $1300 salary increase equals 11.2% of the top patrolman's salary of $11,586. The average salary in the bargaining unit is approximately $11,600. Therefore the proposed increase would equal approximately 11% of the average salary.

was $13,020 which increases to $13,860 at the end of 25 years of service as a result of small annual longevity payments.

The City contends that the Association was highly selective in the cities it included in its salary comparisons and that its more representative sample of cities between 400,000 and 1,000,000 in population established that the Milwaukee police officer salary was well above the average salary of police officers in those cities even if longevity allowances are taken into account; that the Milwaukee police officer position in that grouping of cities is even more favorable if allowance is made for the educational and pension payments granted by Milwaukee; that the Milwaukee police officers have received large increases over a period of years to compensate them for the increasing dangers and demands made on them; and finally, that given the City's current inability to pay, no increase beyond the proposed cost-of-living adjustment is either proper or can possibly be paid except at serious cost to police and other public services.

In support of its position, the City introduced its survey tables which indicated that Milwaukee ranked 8th in its table of 28 cities on a straight salary basis, but ranked 6th in that table on a total compensation basis, and 4th in a table that reflected the police officer's pay after deductions. This latter table heavily reflected the full payment of pension contributions by the City. It also introduced a table which indicated that the police officer's maximum salary increased 94.7% between January 1960 and January 1972, the date of the last salary adjustment, and that during the same period of time, the cost-of-living increased 36.8%, the average salary for other City of Milwaukee employees increased 75.3%, and wages for Milwaukee production workers increased 65.9%. It argues that this table clearly demonstrates that the police officers' salaries have been adjusted to reflect the increasing demands made on them, that their salary increases have substantially exceeded the increases in the cost-of-living and therefore have resulted in a substantial real value increase, and that police officers have bettered their position in relation to other City of Milwaukee employees and other employees in the community. The City also pointed out that this same table indicates that increases granted in more recent years (1965 and thereafter) revealed these same improvement characteristics but in a more intense form.

The Association called Dr. Peter L. Danner, Chairman of the Department of Economics at Marquette University, and the City called Dr. Francis W. Gathof, Professor of Economics at Beloit College, as expert witnesses. Each had reviewed some of the massive data that had been introduced at the hearing in order to present their findings and conclusions about the data. The Arbitrator believes that the most faithful manner in which to present their conclusions is to quote from their summary statements.

Dr. Danner concluded his testimony as follows:

> I think that I can reasonably conclude that the present request of the Police Association of $1,300 will barely maintain the real income that they enjoyed in January, 1971, (sic) if the present inflation continues. It will not. . . maintain their relative position vis-a-vis semi-skilled and some skilled workers in industry. It certainly does not seem to keep pace with respect to the increasing demands and the hazards of the job. It does not recognize the realization that Milwaukee experiences as a

result of the superior performance of Milwaukee Police in maintaining civil order and in controlling crime. I do think that Milwaukee enjoys a police bargain, (and) . . . that there is a greater reduction in . . . crime for every dollar expenditure on police. (Tr. 7128)

Dr. Gathof concluded his summary, in two sections, as follows:

The conclusion is quite apparent from the tables and the graph. Milwaukee stands at a quite high position in terms of total cost, in terms of total compensation. It is well above the average, with, of course, the exception . . . of Washington, D.C. which causes the averages to move substantially, but by and large, on the basis of all of this evidence, my conclusion is that Milwaukee is well above average. . . and among the highest half dozen or so of the largest cities and certainly pre-eminent in the Wisconsin cities. (Tr. 6797)

. . . In summary then, it appears that Milwaukee does have a police force that is manned by expensive employees, and furthermore, that the City of Milwaukee has an inordinately large number of such employees. . . . The financial burden of Milwaukee municipal services, particularly the excessive growth of the police budget was indicated in the Hawkins exhibit. These have contributed to Milwaukee being a high tax cost city.

Of course, given the constraints imposed by the State on sources of revenue, there appear to be no market reasons for continuing to pay such costs.

Milwaukee has demonstrated that it can get the police it needs for the money it is now paying, and unless there is a convincing argument for a larger police force on grounds other than criminal rates, then the usefulness of the large force must be questioned.

This is particularly so because police work is largely response in nature, and therefore the larger the force, given the amount of response work to be done, the less work per man there is, and so on a productivity basis the less ought to be the pay.

Conversely, the higher the pay, the smaller must be the force in order to get value received. This final point will, of course, be forced upon the city as was amply demonstrated by Ellis' Item 53 which shows the comparative cost of the dollar increases in various cities and by the testimony of Whitney and Heaps that there is practically no unexploited taxable capacity open to the City of Milwaukee which it can tax to meet increased costs. (Tr. 6887-6888)

The Arbitrator has already indicated he has reservations about the sample of cities used by each of the parties. He repeats here his earlier observation that he can find no persuasive reason to limit his analysis to the four major cities selected by the Association nor to eliminate from consideration the salaries paid in the very large cities as the City suggested. This is particularly true if the Arbitrator is correct in his conclusion and finding that what a police officer does is very much the same in all large metropolitan areas. However, the inclusion of the largest cities in a survey table does not drastically change the Milwaukee patrolman's relative position but it would put

him closer to the middle of the salary array. If allowance is made for the additional income the Milwaukee police officer receives because the City pays virtually the full pension contribution, the Milwaukee police officer's position obviously moves up on that table, but even so the salary schedule in a substantial number of cities would still exceed the schedule in Milwaukee. What is significant, but not surprising, as one reviews such a table is the indication that all these salaries are moving upward. Testimony in the hearing confirmed changes in the salaries for police officers in Detroit, Chicago, and Minneapolis and indicated that negotiations or proposals for increases were in progress in an additional number of the cities that would be included in such a survey table. Press accounts indicate that a settlement was reached in April in Seattle which will provide sizeable increases, and that upward adjustments have just been made in Indianapolis. The developments which were reported in the press were not included in the record but the Arbitrator believes they reflect developments to which references were made at the hearing and that he can and should take judicial notice of them. The testimony at the hearing also clearly established that the cost-of-living has increased since January 1, 1972 and that wage adjustments are being made generally throughout the economy and were made for certain other City of Milwaukee employees.

All of this evidence persuasively demonstrates that an adjustment in the salaries for the Milwaukee police officers is warranted; the question is the amount of that adjustment. In this connection we note that the Association vigorously urged that the increased responsibilities and duties of police officers be given particular consideration in determining the adjustment that should be made.

The issue of special recognition for the increased demands on the police officer in today's society has been discussed in the negotiations between the Association and the City for a period of almost ten years. The record in this hearing indicates that this question was one of the major issues in the fact-finding procedure in 1963-64, in which the Association asked that the police salary structure be broken out of the regular City job classification system and that the police job classifications be accorded the special recognition that the police duties entailed. The Panel in that case stated:

> In recent years, the duties of the Policeman, as the custodian of law and order in community life, have become more arduous, more varied, and more hazardous, with increasing need for independent judgment. (p. 18)
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> The Panel takes judicial notice of the fact that the public, and rightly so, is demanding increased police protection,--though seemingly reluctant at times to foot the bill for the Policemen's improved training and performance required to do the job--and that the Policeman, and rightly so, is restless under a program which finds him classified with such occupations--no offense meant--as Book Binder, Meter Repairman III, and Weights and Measures Inspector, at a salary which does not adequately compensate him for his routine duties, to say nothing of his increased and increasing responsibilities. (p. 19)
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> Recommendations
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> 1. That the City grant the request of the Policemen to be "broken out" of the overall classification system, so as to be free to concentrate on their own special problems in future collective bargaining negotiations.

2. . . . . and bargain out a new and realistic system of compensation and working conditions reflecting the character and importance of the Policemen's duties in 1965, A.D. and not B.C. (p. 20)

In the factfinding proceeding in 1966-67 the question of police responsibilities was again discussed and the factfinder made the following comments about that matter:

In the last analysis I am convinced that police work is so complex and presently puts such demands upon those who undertake the work that the necessary quality cannot be attracted unless the community is willing to pay the bill. (p. 13)

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The realities of life, including the tight job market, lead me to conclude that salary is certainly a most important factor in insuring the recruitment of qualified men and the fostering of a morale which will insure that the public will enjoy good law enforcement.

I do not feel that current salaries or those offered by the City for 1967 and 1968 will accomplish the desired end. (p. 14)

In the factfinding in 1970-71, the issue was again extensively discussed and some of the same distinguished jurists and scholars who testified in the present proceeding testified in that factfinding proceeding. In that case the factfinder stated:

The nature and analysis of a city policeman's work as described in the testimony of the five learned and experienced judges and in that of George L. Kelling, the scholarly graduate student in the area of criminal justice, may be summarized as follows: that the qualities required of a policeman include coolness, courteousness, civility, quietness, attentiveness, zealousness, patience, discretion, firmness, energy, respectfulness, efficiency, dignity, honesty and courage; that a policeman must, without the benefit of supervision, make important decisions in connection with the preservation of life and the defense of person and property; that from day to day he deals with the public at all levels and often in difficult circumstances. (p. 70)

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The Fact Finder does not disagree with the Association's picture of the nature of a policeman's work, particularly in modern metropolitan areas, the dangers inherent in such work, the drawbacks, the qualities which a policeman must demonstrate in order to perform this work in its manifold and varied aspects with that very high degree of efficiency for which it calls, and actually demands. On this aspect of the case it is not necessary to enlarge. However, it may be added that, at long last, society is beginning to consider the nature and the responsibilities of the policeman's position as distinctly professional. . . . (p. 71)

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The relevance of the Association's picture of the nature of a policeman's work particularly in modern metropolitan areas, the dangers inherent in such work, the qualities which a policeman must demonstrate to perform this work, its manifold and varied aspects, with that very high degree of efficiency for which it calls, cannot be effectively denied.

To this Fact Finder, the relevance is obvious, particularly to the issues of salaries and wages. (p. 72)

The evidence indicates that these findings and comments influenced the factfinders' recommendations and the final agreements about salaries that were reached in the negotiations that followed these findings and recommendations.

The Arbitrator also believes and finds that the evidence about changes in salaries set out in the tables that reflect police officer salary advances since 1965 in relation to changes in the cost-of-living and to the advances granted to other City employees and production employees in the Milwaukee area reflect the observations and judgments made by the factfinders. Thus, the evidence as a whole convincingly demonstrates that there has been a recognition that the police officers' duties have become increasingly demanding and complex and that new skills and expertise are demanded to perform them. It also indicates that special adjustments in the police officers' compensation were therefore warranted and granted.

The Arbitrator is not ready to state that the adjustments heretofore made have removed whatever inequities may have existed or that none exist today; however, he is persuaded that the issue has received careful and extensive consideration and a significant response. Therefore that issue is not a new one that requires intense, special consideration in this case.

Before turning to the question of the specific amount of adjustment which should be made in the present case, the Arbitrator believes some brief comment should be made about the conclusions advanced by the economists for the parties. He agrees with Dr. Danner's general concern about the erosion of the immediate past salary adjustment as a result of the changes in the cost-of-living since that adjustment was made. However, he does not believe and therefore does not agree that Dr. Danner demonstrated that the adjustment demanded by the Association would barely maintain the real income the officers enjoyed in January 1972,[13] or maintain their relative position with other categories of employees in Milwaukee, or keep pace with the increasing demands of the job. He believes his observations about the prior recognition of the increasing demands on the police officer and his comments below about cost-of-living changes will provide grounds for his disagreement. The Arbitrator also does not agree with Dr. Gathoff's conclusion that Milwaukee is manned by expensive employees, that there appears to be no market reason to continue to pay the costs involved in their employment, and that Milwaukee "can get the police it needs for the money it is now paying." The record has established that Milwaukee has a quality police force. In relation to the pay of police officers in other cities, that quality clearly is not expensive since Milwaukee salaries are not out of line with salaries paid in other cities. Finally, and most important, there is a real question whether officers of comparable quality could be hired or the present officers retained if either the applicants or the incumbents concluded that the salary recognition accorded in the past would not be continued.

The last salary adjustment for police officers occurred on January 1, 1972. The published Consumer Price Index for Milwaukee that appeared closest to that date was the index for November 1971[14] which registered 120.9 (1967=100). The

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13. Dr. Danner referred to January 1971 as a base period. The Arbitrator believes it is clear that he was referring to January 1972.

14. The index for a particular month customarily appears about the middle of the second following month.

index for November 1972, which did not appear until January 1973, registered 125.0, an increase of 4.1 points or 3.4% over that for November 1971. Thus the cost-of-living for the period of November 1971 to November 1972 increased 3.4%. Several additional consumer price indices have appeared since January 1973, the most recent being that for May 1973, which appeared in July 1973, and registered 130.0, an increase of 9.1 points or 7.5% over the index for November 1971. Thus it could be argued that as of May 1973 an increase of 7.5% would be necessary to maintain the purchasing power of the January 1, 1972 salary.

But this is not the only way in which one can look at these kinds of data since such a short-run analysis may not reveal longer term adjustments. In the settlement that was reached in the long-drawn-out negotiations for the 1971-72 Agreement, substantial adjustments were made in the police officers' salaries. The total adjustments in the top salary for police officers during that two-year contract period was $1866 which represented a 19% increase in the top salary rate ($9720) which prevailed during the last half of the calendar year 1970. However, during the period from January 1, 1971 to the present time (July 1973) the cost-of-living index for Milwaukee increased from 117.8 (November 1970) to 130.0 (May 1973), an increase of 12.2 points or 10.2%.[15] Thus even though the most recent salary adjustment was diluted by recent increases in the cost-of-living, the adjustment over the longer period represented a real gain in the police officers' compensation.

The Arbitrator is persuaded that both of these rates of change must be considered in determining what salary adjustment is appropriate. He also believes that he must consider the adjustments that are being made in the economy in general (which now seem to be falling in the 5% - 7% range); the general wage guide lines (which still use 5.5% as a guide for wage decisions); the settlement made with other City of Milwaukee employees; the apparently real budgetary constraints that exist in the City, at least in the short run; and finally the fact that the police officers are not permitted to earn income at outside employment.[16]

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15. In oral argument the City contended the figures were 20.9% and 9.7% respectively. The Arbitrator believes the City used the average salary that prevailed during 1970 as its base and the average cost-of-living figure for 1970. The Arbitrator believes his method of computation more accurately reflects changes from the time of the adjustment and the index which appeared at that time. The City also measured the change in cost-of-living only through 1972 and thus did not include the early 1973 figures.

16. The Arbitrator is aware that Chapter 246 Laws of 1972 provides that in determining the proper compensation for police officers, the Arbitrator was to utilize increases in the cost-of-living, as measured by the Consumer Price Index of the Bureau of Labor Statistics, since the last adjustment in compensation and also the Bureau's most recently published Standards of Living Budgets for Urban Families, Moderate and Higher Level.

As previously noted, the Arbitrator construes the word "utilize" to mean that he shall give consideration to these documents but not as a command to apply them mechanically. The Opinion demonstrates that the Consumer Price Index was utilized but makes no specific reference to the Standard of Living Budgets. However, the Arbitrator has studied the most recently published Budgets (June

The Arbitrator must frankly state that he knows of no procedure or mechanism that can take all of these factors into account and to distill from them a set of figures that is precisely correct. He has reviewed all of the enumerated factors and has tried to weigh them as best he can in the light of the evidence and the arguments made by the parties and to produce a result that takes into account the recent changes in the cost-of-living; protects the previous gains from erosion; establishes salary rates that tend to be on the favorable side in order to keep the Milwaukee police officers, who cannot earn outside income, in a clearly defensible relationship, in the light of the quality of the force, to their counterparts in other large cities; but on a cost basis that recognizes the City's present budgetary constraints. He therefore determines that the specified adjustments should be made on the designated effective dates set out in the Award.

Award

Effective

(a) the first pay period beginning on or after November 3, 1972, a 3.5% increase over the rates that prevailed immediately prior to that date;

(b) the first pay period beginning on or after May 3, 1973, an additional 3.5% increase over the rates that prevailed immediately prior to November 3, 1972;

(c) the first pay period on or after November 2, 1973, a 3% increase over the rates that prevailed immediately prior to November 2, 1973; and

(d) the first pay period on or after May 3, 1974, an additional 3% increase over the rates that prevailed immediately prior to November 2, 1973.

Longevity

The Association proposed that in addition to their regular compensation, police officers should be granted longevity pay at the rate of 2%, 4%, and 6% of base salary after 8, 12, and 16 years of service. In support of its proposal, the Association argued that a longevity payment is a recognition for the additional competence and experience a police officer brings to his assignment

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1973). He notes that "The budgets illustrate. . . different levels of living based on estimates of costs for different specified types and amounts of goods and services rather than actual expenditures by families," and further that "the budgets do not represent how families of this type actually spend their money. Rather, they reflect the assumptions made about the manner of living at each of the three levels." Thus, the budgets are estimates of what a hypothetically defined set of outlays would cost in different cities rather than studies of what is in fact spent. The annual cost of an intermediate budget for a 4-person family in Milwaukee in the autumn of 1972 was $11,962, and the annual cost of a higher budget for a similar family was $17,226 in the autumn of 1972. When appropriate allowances are made for retirement and health coverage items included in these budgets, as well as other police officer income, the Arbitrator believes the determined salary meets the statutory standard. Moreover, he notes that the change in these budgets on a national basis, from 1971 to 1972, was 4%.

by virtue of his continued service. It argued further that the principle is recognized in many other cities and cited the fact that in 19 of the 24 cities included in its survey, longevity payments are made.

The City opposed the proposal on the ground that such a proposal simply rewarded personnel for length of service without regard to their productivity or effort to improve their contribution to the Department's tasks. It contrasted this kind of payment with educational payments, which it supported.

There are a number of problems involved in this question. Police work is varied and complex. An alert, thoughtful officer undoubtedly can and does perform that work more effectively as he gains experience and develops insights about the situations in which he functions. But the key words here are "alert" and "thoughtful." They represent elements of effort and action toward improvement and not mere passivity by the officer. It is this point to which the City directs its argument and illustrates its point by noting that the Educational Program makes a demand for an active effort on the part of the officer to improve his capability, but mere passage of time on the job does not. This general proposition has merit but it also has limitations. It makes no allowance for the officer who does think and reflect about his work and tries to perform it better, except when he undertakes some formal training, which may or may not result in improved performance. Since the Milwaukee force is a quality force and has strong management direction, the Arbitrator is disposed to believe that, in general, experience on the job will be beneficial just as additional educational training will be.

There is a second and different facet to this problem. There are lines of promotion in the Police Department which are open to police officers but the number of openings is realtively small by the very nature of the Department's structure and function. Therefore, the opportunities for salary and status recognition for superior performance appears to be limited, and it is quite common for the police officers to spend their entire service in one rank. In those circumstances, once an officer reaches the top of his rank after four years of service, he receives no further adjustments in salary except those that come about through general increases.

The Arbitrator believes that some recognition for the general likelihood of some improvement in performance for on-the-job experience is desirable. He notes also that provision for longevity increases prevail in 16 of the 27 cities surveyed by the City, in 19 of the 24 surveyed by the Association, and in 20 of the 29 included in the Philadelphia survey. However, the Arbitrator does not believe the recognition should be granted on the basis of length of service without regard to rank, but on the basis of length of service in rank after the top of the rank has been reached. Under these conditions there will be recognition for experience and expertise acquired over time that is not otherwise recognized. Therefore he determines that longevity payments should be awarded. These should be dollar sums payable on an annual basis in the same manner that the educational payments are made and should not be included in the determination of overtime premium pay or in the calculation of pension benefits. The first payments shall be made as soon as possible after December 31, 1973 and each year thereafter for service status in rank as of the close of business, on December 31, 1973 and each December 31 thereafter.

Uniform Allowance

The 1971-72 Agreement provides a uniform allowance in the amount of $155.00 per year for all bargaining unit personnel whether or not they wear a designated uniform. The Association requested this allowance be increased to $200.00 per year on the ground that uniform replacement, cleaning, and maintenance costs had increased. The City opposed the request primarily on the ground that the records of actual expenditures for uniforms indicated that police officers did not spend amounts even approximating the allowances.

Inspector Ziarnek testified that officers are required to report uniform purchases and that these records showed that actual purchases equalled less than 10% of the allowances paid and that the amounts expended over the past few years had not increased significantly.

The Arbitrator believes and finds that even if cleaning and maintenance are taken into account, actual expenditures for uniform replacement and maintenance do not even come near to the allowance granted for that purpose. Under these circumstances the allowance is misnamed and becomes a payment in lieu of salary. The Arbitrator believes the adjustment already proposed in the salary structure is appropriate and should not be amended by an increase in the uniform allowance that is not related to its purpose. Consequently the evidence does not support the Association's demand, and it should not be granted.

Award

The Association's request for an adjustment in the Uniform allowance is denied.

Gun Allowance

During the negotiations for the 1971-72 Agreement the Association proposed that a gun allowance be paid to the police officers. The City opposed the proposal. However, in the intense negotiations that took place just before a settlement was reached, an agreement was made to grant a gun allowance to clean up a number of miscellaneous items. In the current negotiations, the Association proposed that the gun allowance be increased to $1.00 per day on the ground that police officers were required to be armed at all times whether on or off duty.

The testimony established that a gun is made available to each officer as part of his required equipment. There is no officer expenditure to replace or maintain it. Therefore, the allowance, like the excessive uniform allowance, is in effect an indirect salary payment. For reasons already expressed on this point under the Uniform Allowance item, the Arbitrator believes such payments should be avoided. In any event, no persuasive evidence was submitted to warrant an increase in the Gun Allowance and therefore it will not be granted.

Award

The Association's request for an increase in the Gun Allowance is denied.

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Award

The Association's request for an increase in the Gun Allowance is denied.

Auto Allowance

The 1971-72 Agreement provides that when an employee is expressly authorized to utilize his privately-owned vehicle for Department business, the City will provide liability and collision insurance.

In the present negotiations the Association made a request that in similar cases of the utilization of a private vehicle the officer should be reimbursed 14¢ a mile for the use of the car. The City opposed the request on the ground that City cars and public transportation are available to police officers for all official transportation and that authorization for the use of a privately-owned vehicle was only made for the personal convenience of the officer.

Candor compells the Arbitrator to observe that this issue is hardly worth the time the parties devoted to it. If the City is correct that utilization is for the convenience of the police officer, the demand is hardly one which the Association should get aroused about; conversely, if the utilization is limited to situations in which expressed authorization is granted, then the Department can end the matter by directing its supervisors not to authorize such utilization. Logically the merit of the case falls to the Association, but the Arbitrator does not believe and cannot find that the evidence about the problem demonstrated that the record-keeping that would be necessary to deal with the matter warrants a change in the present arrangements.

Award

The Association proposal for mileage compensation is denied.

Auto Parking

Although this issue is not strictly an allowance issue, it will be treated in this section of the Opinion because the Association presented this issue and the Mileage issue together.

The Association requested that the City make available 200 parking stalls in the publicly-owned parking structure in McArthur Square, which is adjacent to the Police Administration Building, for police officers who must come to the area for court and police work. The City opposed the request on the ground that the McArthur facility is the only public parking facility in the public building area and that setting aside the requested units would seriously curtail the use of the facility for the public. In addition, it contends that it makes facilities available for personnel who have continuing need for parking, particularly at unfavorable hours.

The evidence indicated that parking space in the central city area is in very short supply and that police officers, like members of the public, find it difficult on occasions to find parking space easily. However, the testimony did not demonstrate that the problem of finding parking space for police officers, particularly in the light of alternatives, such as public transportation, which are available, is of such urgency that almost 20% of the total space available in the McArthur Square facility should be set aside for police officer parking.

Award

The Association request for 200 parking stalls in the McArthur Square parking facility is denied.

Holidays and Vacations

The Arbitrator believes these two items should be considered together since they represent by far the most significant compensation for time not worked and they can be measured in terms of total days of compensated time off.

Police officers now receive 11 days off during the year in lieu of paid holidays. In addition, like all other city employees, they receive vacations in accordance with the following schedule:

10 scheduled duty days off for employees with at least 1 year of service
15 scheduled duty days off for employees with at least 8 years of service
20 scheduled duty days off for employees with at least 18 years of service
25 scheduled duty days off for employees with at least 25 years of service

The Association requested one additional day off in lieu of paid holidays and a reduction in the years of service for the 15, 20, 25 scheduled duty days off to 5, 10, and 20 years, respectively.

The Association argued that its holiday request was warranted because other City employees had time off on the holidays celebrated and that most of them also received more days off because of the "09" days granted to them. Similarly, it argued that its vacation request should be granted because of the uncertainty of police officers' vacations and the nature of their duties.

The City considered both of these items together and argued that its survey of 28 cities indicated that, either singly or jointly, Milwaukee was above average in holidays and vacations for employees with brief or moderate service and well above average for employees with long service. It then emphasized that these days off were costly items since policing services had to be performed at all times and that any reduction in compensated time off required either additional personnel or work on an overtime basis at premium pay.

The Arbitrator has reviewed all the surveys that were introduced in the hearing. Milwaukee is above average, but by no means at the top, in holidays or in vacations for employees with 1 to 8 years of service, and then moves toward the top of the scale for employees with 18 and 25 years of service. In addition, the evidence indicates that most other City employees do have more than 11 holidays. The evidence also indicates that some additional benefits in the holiday/vacation area are being negotiated for police officers in comparable large cities as well as for the public employees. Therefore the Arbitrator determines that 1 additional day off in lieu of holidays and that the years of service for entitlement of 20 scheduled duty days off for vacation be reduced from 18 to 15 be granted in the second year of the Agreement.

Award

In the contract year November 1973 through November 1974, 1 additional day off in lieu of holidays shall be granted, and the years of service for entitlement of 20 scheduled duty days off shall be reduced from 18 to 15.

Premium Pay for Work Assignments

Although all police officers are on 24-hour duty status, they are regularly assigned to 8-hour shifts in accordance with a rotating set schedule of consecutive on and off days.

Under the 1971-72 Agreement, assignments authorized by the Department outside the set scheduled 8-hour shifts are defined as overtime. Some of these overtime assignments, such as Court Time, Training Time, Proclaimed Civil Emergency Time, assignments made outside the set schedule with one week's advance notice, and the first 4 hours of overtime in each two-week pay period, are compensated, either in cash or time off, at the officer's straight time rate; all other overtime assignments are compensated, either in cash or time off, at a premium rate of 1½ times the officer's straight time rate.

The Association made a number of proposals concerning the rate of pay for assignments that fell outside the set schedule. In support of these proposals, it argues, in general, that officers who are called upon to perform services outside their regular schedules are inconvenienced, at times seriously so, and therefore they should be compensated for that inconvenience just as other City employees and employees in private industry are. The City, in general, argues that the inconvenient assignments are inherent in police work and recognition of them is reflected in the generally higher level of pay received by police officers. The City argues further that since these kinds of assignments are inherent in the tasks police officers are called upon to perform, the Department has very little control over them beyond that which it has already exercised to keep the inconvenience to the bare minimum.

(a) Overtime

The Association originally proposed that all authorized Department assignments outside the set schedule of 8-hour shifts should be compensated at 1½ times the straight-time hourly rate either in cash or compensatory time off at the discretion of the affected police officer. During the hearing, the Association modified its position to exclude Proclaimed Civil Emergency Time from payment at premium rates. The Association's amended proposal would in effect require all Court Time assignments performed outside an officer's regular shift, all Training Time, all time spent in Roll Call, and all time spent on any assignment without regard to advance notice, outside the officer's regular schedule to be paid at premium pay.

In addition to its general argument against such payment, the City argues that its survey of practices in the 27 cities indicates that Milwaukee has more favorable arrangements, either for compensation for certain activities such as Roll Call or Court Time which the Association would include for premium compensation, or for overtime in general, than most of the comparable cities. It argues further that the Police Department already has a disproportionate portion of all City overtime and that this should not be increased.

The survey data about what assignments constitute overtime and whether and how all of these assignments are compensated, is not complete and does not establish any clear prevailing practice. For example, the City survey indicated that some cities do not have roll call at all. Among those that do (25), a substantial number include roll call in the regular tour of duty (15), but a large number (10) include it as an addition to tour duty and do not provide any compensation for the time so spent. Similarly, the City survey indicated that a few cities (7) provided premium payments for Court Time overtime assignments, but most (20) compensated for such assignments either at straight time or on some moderate fixed-sum basis. Overall the City survey indicated that 13 cities paid 1½ for some assignments and 14 paid straight time for some assignments, but

what assignments were included or excluded from coverage was not clear. The Association data, which included some cities not in the City survey, were incomplete but indicated considerable variation in practice.

In the absence of any clear Police Department practice in other cities, the Arbitrator believes the determination of this issue should be made on the basis of an analysis of the Milwaukee conditions and experience.

Court Time, Training Time, and Roll Call Time are inherent in the Milwaukee Police system. The first two items were expressly recognized in the preceding agreements, and the third, Roll Call, apparently was taken into account in establishing the 4-hour bank of overtime in each pay period which is compensated at straight time. Although the point was not developed in detail in the record, it seems clear that all police officers do not have assignments that require Court Time, Training Time, or Roll Call, at least on a regular basis. Obviously, many have Court Time and Roll Call assignments but not all do. To some extent then, the 4-hour bank in each pay period permits, and may therefore result in the performance of up to 4 hours of regularly scheduled kinds of assignment outside the regular schedule at a straight time rate. Whether this occurs on short notice with any degree of regularity was not established in this record. If it does, some incentive to keep such assignments to a minimum is not out of order. On the other hand, there are undoubtedly conditions, known in advance, that may require some adjustment in the regular police officer schedules in order to provide maximum police coverage for those conditions. However, if those assignments are scheduled sufficiently in advance, the police officers can arrange their own and their family affairs so as not to be inconvenienced by them.

The Arbitrator has tried to evaluate all these factors in the light of the prevailing Milwaukee practice. In addition he has taken judicial notice of proposed Fair Labor Standards Act amendments now actively before the U.S. Congress which may affect police officers. On the basis of his evaluation of all these factors, the Arbitrator has concluded that Court Time, Training Time, Roll Call, and out-of-shift assignments made pursuant to at least one week's notice shall be construed as overtime assignments but shall be compensated at the assigned officer's straight-time rate of pay. All other overtime assignments shall be compensated at the premium pay rate of 1½ times the officer's straight-time rate of pay. Since the parties by stipulation agreed to exclude Proclaimed Civil Emergency Time assignments from payment at premium rates, no determination on that point is necessary.

Award

Effective upon the signing of the Agreement, Court Time, Training Time, Proclaimed Civil Emergency Time, Roll Call, and out-of-shift assignments made pursuant to at least one week's notice shall be compensated at straight time rates. All other assignments outside the regular scheduled shift shall be compensated at 1½ times the officer's straight-time rate.

(b) Court Time

In addition to its general proposal for overtime, the Association proposed that the Court Time minimum payment of 2 hours be computed at 1½ times the straight time rate.

In the preceding section we declined to adopt the Association's proposal to compensate Court Time assignments outside the police officer's regular schedule at 1½ times his straight time rate. As a result we are now required to examine whether the minimum payment should be changed either in terms of the minimum hours guaranteed or the rate of pay for the guaranteed hours.

The City presented data about Court Time spent during calendar year 1971. These data indicated that 7443 Court Time appearances, approximately 22% of all court appearances, involved an expenditure of less than 2 hours time. In 77% of these appearances less than two hours were spent at the appearance and the average time spent in attendance was 1 hour and 16 minutes. These data indicate that, at least on the average, the minimum payment compensates the police officers at a rate slightly higher than 1½ times their straight time rate. In the light of these data the Arbitrator does not believe a persuasive case has been made to increase either the minimum hour guarantee or the rate of pay for the minimum hour guarantee.

Award

The request for an amendment in the Court Time Minimum Payment is denied.

(c) Special Duty Pay

From time to time police officers are called upon to fill the post of their immediate superior officers.

The Association proposed that whenever an officer in the bargaining unit is called upon to fill a superior officer's post, he should be compensated at the maximum rate of pay for the classification of the rank to which he is temporarily assigned. In support of its proposal, the Association argues that under the Department's Rules and Regulations, the assigned officer is responsible for the performance of the higher classification in which he is functioning and therefore he should be compensated for that responsibility. The City opposes the proposal on the ground that assignments of this kind are generally limited to situations in which a regular police officer is assigned a desk sergeant task, under conditions in which the officer is not called upon to perform all the Desk Sergeant duties and a Lieutenant is present to assume responsibility and give directions if a problem should arise. In addition, the City argues that this kind of assignment provides training that will be useful to those who may seek promotion to a supervisory position.

The kind of proposal which the Association advanced is common in industry in the private sector. However, the Arbitrator is not persuaded that this particular practice should be transferred to a public sector area in which increasing professionalism is demanded and the opportunity for expanding understanding of all of the police functions should be encouraged. Moreover, there is no indication here that the arrangement is used in an attempt to keep down the number of superior officers or to get superior officer tasks performed on a reduced-salary basis. Therefore the Arbitrator cannot find that a persuasive case was made to grant the Association's proposal.

Award

The Association request to compensate an officer temporarily assigned to a higher ranked classification at the maximum salary of the higher classification is denied.

(d) Working Out of Shift

The Association proposed that if a police officer is required to work outside the hours of his regular scheduled shift he should be compensated at 1½ times his straight time rate for those hours and, in addition, he should be guaranteed the total hours of his regular scheduled shift. Its primary argument in support of its proposal was that the affected officer should be compensated for the inconvenience of the changed assignment.

The City opposed the proposal on the ground that out-of-shift assignments are essential from time to time to carry out necessary police functions, and that there is no evidence that the Department has made such assignments except when they were essential. Therefore, it argues, the limited inconvenience to the police officer is a function of his police officer's duties.

The Arbitrator believes and finds that there is merit to the Association's proposal. An officer, who on very short notice, is required to report early for an assignment or who is asked to work at hours beyond the end of his normal shift is inconvenienced. His transportation plans may be changed and his family arrangements may be disturbed. Obviously, the shorter the notice, the greater the likelihood of inconvenience. Therefore, the Arbitrator will grant the Association request that hours worked outside an officer's regular scheduled shift shall be compensated at 1½ times the officer's straight time rate of pay. However, the Arbitrator is not persuaded that the Association's request that the officer also be guaranteed the hours of his regular shift is warranted, since the premium pay for the off-shift hours compensates him for the inconvenience of a change in the shift. That premium should not be expanded into a provision that would in effect require mandatory overtime. Whether the additional hours should be worked is a decision that should be reserved to the Department. The Arbitrator notes further that the adopted Association proposal obviously would not be applicable if a temporary shift change were announced at least one week in advance.

Award

Effective upon the signing of the Agreement, the Association request that hours worked outside a regular shift and not announced at least one week in advance, shall be compensated at 1½ times the straight time rate. The Association request that the regular shift hours also be guaranteed is denied.

(e) Cancelled Off-Days and Vacation Days

The Association proposed that if a police officer is required to work on a regular off-day or on a day during his scheduled vacation, the officer should be compensated at 2 times his straight time rate for the hours worked.

This is essentially a proposal that would require a higher premium rate of pay (double time) for particular overtime assignments. The Association's argument in support of it is essentially one of the fairness in some compensation for inconvenience. The Arbitrator has already made a determination that overtime on a regular kind of assignment shall be compensated at 1½ times the officer's straight time rate unless one week's advance notice of such an assignment has

been provided. No persuasive evidence was adduced to support a higher premium or a more restrictive practice. However, the Arbitrator is persuaded that an assignment on a vacation day, even with advance notice, should not be made unless very compelling reasons for such an assignment exists, and therefore he determines that a shift assignment during an officer's vacation except in the case of a Proclaimed Civil Emergency, shall be compensated at 1½ times the officer's straight time pay. We should note here also that compensation may be in compensatory time off in accordance with existing practice.

Award

Effective upon the signing of the Agreement, a shift assignment during vacation except in the case of a Proclaimed Civil Emergency, shall be compensated at 1½ times the assigned officer's straight time rate. The request for double time for assignment on an officer's scheduled off-day is denied.

(f) Premium Pay for Work on Holidays

As we already have observed, police officers are assigned regular shifts of duty on a shifting schedule. As a result some officers are assigned to work on the observed national holidays. Under the provisions of the 1971-72 Agreement, officers assigned to work on Independence Day and Christmas Day are paid 1½ times straight time pay for assignments on those days.

The Association proposed that officers assigned to work on Memorial Day, Labor Day, and New Years Day be compensated 1½ times their straight time rate of pay. The argument in support of the proposal is simple and straightforward--these holidays are special occasions on which activities and visits with friends and family are particularly attractive. Therefore, any officer who is required to work on those days should be granted some extra compensation, over and above alternative days off, because he must work on observed national holidays.

The Arbitrator believes the Association's proposal is persuasive. Of course, police activities must be carried out on national holidays as well as on other days; however, there is a special burden in being required to work on them. He thinks that burden is probably slightly greater on Labor Day and New Years Day than on Memorial Day, and he therefore shall award payment at 1½ times straight time rate for assignments performed on New Years Day and Labor Day effective during the contract year beginning in November 1973.

Award

Effective during the contract year beginning in November 1973, assignments on New Years Day and Labor Day shall be compensated at 1½ times the assigned officer's straight time salary rate.

Insurance

(a) Life Insurance

Under the terms of the 1971-72 Agreement police officers are eligible for life insurance coverage equal to 1½ times the officer's annual base salary. The City paid the full cost for the first $10,000 ($9000 in 1971) and shared the cost for the remainder of the insurance. The employee paid 21¢ per thousand

for the remainder and the City paid approximately 40¢ per thousand--the difference between the quoted rate and the employee payment.

In its original demands the Association proposed that the City increase the life insurance coverage to $50,000 and pay the entire cost. Later it amended its proposal to provide that the City pay the total cost of life insurance equal to 1½ times the officer's base salary. The City proposed that the life insurance amounts and cost arrangements that prevailed in the 1972 Agreement be maintained, but desired to include a provision whereby the City could offset from the life insurance obligation any benefit that might be made available to police officers as a result of state or federal legislation.

Very little testimony or evidence on this issue was developed in the hearing and no argument about it was set out in either party's post-hearing brief. The survey evidence introduced by the City indicated that the amounts and cost arrangements for life insurance that prevailed in Milwaukee compared favorably with those that existed in other cities. Toward the end of the hearing, the City's Labor Negotiator testified that in the recently concluded negotiation with Council 48, AFSCME, the City agreed to increase by $1,000 the amount of life insurance for which the City would pay the full cost.

On the basis of the survey data and the local negotiation development, the Arbitrator believes and finds that police officers should continue to be eligible for life insurance equal to 1½ times their base salaries, that the City shall pay the full costs for the first $11,000 of that amount and that the cost for the remainder be shared on the same basis that prevailed in the 1971-72 Agreement.

Award

Police officers shall be eligible for life insurance in an amount equal to 1½ times their base salaries. The City shall pay the full cost of the first $11,000 and the cost of the remainder shall be shared by the police officers and the City in accordance with the formula that prevailed in the 1971-72 Agreement.

(b) Health and Hospital Insurance

Under the terms of the 1971-72 Agreement, the City provided a comprehensive health and hospitalization insurance program for all police officers and their dependents and paid the entire cost of the insurance. The Association proposed that the City continue that program for active police officers and their dependents and to extend it to all retirees and their families. The City proposed that the amount which it was contributing to the cost of the health insurance program should be continued and that the employees should absorb the additional costs of the coverage which resulted from both increased utilization and rising costs for the services provided and opposed extension of any additional coverage to retirees.

We shall discuss the extension of the health insurance program to retirees and their families in another section of this Opinion, and limit our discussion here to the program as it affects active employees and their families.

In support of its position the City argued that the City health insurance program was significantly better than that provided by most cities covered in its survey since the City paid the entire cost of the program for both the police officers and their families whereas in most of the surveyed cities the officers paid some portion of the insurance either for themselves or their families. It argued further that if the police officers paid for part of the insurance, they would be more fully aware of the heavy incidence of costs and would keep utilization within necessary bounds.

The testimony established that the premium costs for the health insurance program were increased by 19% for the policy year beginning in April 1973. The increased cost for the police officer group alone would amount to approximately $218,500 which is equal to slightly more than $100 per year for each officer. Clearly that is a significant amount. However, although the testimony suggested that partial payment of the cost by employees might help to keep down utilization, the testimony did not establish that the increase resulted from abuse of usage by the police officers but rather that it was the result of increasing hospital and health costs that were occurring nationally. The testimony also established that the City had continued the health insurance coverage at full cost to the City for other City employees. There is thus no sound or equitable basis for failing to do so for the police officers.

Award

The City shall continue to pay the full cost of the health and hospitalization program for active police officers and their dependents.

Miscellaneous Economic Issues

(a) Liability Indeminification

The Association proposed that the Agreement include a provision guaranteeing every bargaining unit employee indemnification for all liability which might arise against him during the good faith performance of his duties and for representation by the City Attorney's office in any such proceeding. The City opposed the provision on the ground that existing Wisconsin Statutes provide full protection for liability and expenses arising out of good faith performance of police duties, and that the Association proposal raises some question about protection for malicious and willful acts. It also opposed the Association proposal on the ground that it would require the City Attorney's office to represent an officer in certain cases before the Board of Fire and Police Commissioners which is represented by the City Attorney's office and thereby create a conflict of interest condition.

The details of this proposal were not fully developed in the hearing. At one point, the Association complained that reimbursements for legal counsel engaged by a charged officer were not paid promptly and suggested that this was a factor underlying its request.

It is undisputed that police officers are currently indemnified for liability and expenses incurred in defense of actions taken in the good faith performance of police duties. It is also undisputed that police officers who are involved in proceedings before the Board of Fire and Police Commissioners are reimbursed for counsel fees in such proceedings. The reason given for a

change in these existing arrangements is not persuasive and opens a new set of issues that were not developed and that could become troublesome. Moreover, it does not even assure correction of the alleged fault. Therefore, the Association proposal for changes in the existing arrangements on this matter will not be granted.

Award

The Association proposal for amended liability indemnification is denied.

(b) Injury Pay

The 1971-72 Agreement provided that a police officer who was temporarily, totally or partially, disabled would receive his full salary in the form of injury pay, in lieu of workmen's compensation benefits, for a period up to one year.

The Association proposed that the period for full payment of salary be extended without limit except that the injury pay would terminate when a disability pension was granted; that the injury pay be granted without medical determination; that all medical expenses due to the injury be paid by the City; and finally, that unused sick leave should not be charged for a duty disability.

The City originally proposed that the 1971-72 injury pay provision be deleted and that police officers injured on duty be granted whatever benefits they would be entitled to under the provisions of the workmen's compensation laws. Later, it apparently withdrew that proposal, and proposed that the provisions in the 1971-72 Agreement be continued.

The Association did not present a detailed exposition of the reasons for its proposals or examples of hardships or inequities that resulted from the present quite favorable injury pay provisions. The City on the other hand presented detailed testimony that persuasively demonstrated that a determination about whether a disability is temporary or permanent can be and is always made within a period of one year; that medical determinations about an injury is necessary, and that the decision to use or not use sick leave is not mandatory but is left to the employee's judgment. The evidence also disclosed that the injury pay provisions in the 1971-72 Agreement are more favorable for police officers than for other City employees even though the injury rate for some other City departments is greater than it is for the police force. On the basis of the testimony, the Arbitrator believes and finds that no persuasive case was made for granting the Association request except with respect to the request for the maintenance of an officer's sick leave if he returns to active duty after an injury. However, since no change will be granted in the one-year duration of injury pay, the sick leave question would only arise if an officer returned to active duty after he had been placed on a disability pension at the conclusion of the one-year injury pay period. That particular issue will be considered in another section of the Opinion which will deal with disability pension issues. Since the record is not clear as to the City's position about a continuation of the 1971-72 injury pay provisions, the Arbitrator determines that they should be continued.

Award

The injury pay provisions in the 1971-72 Agreement shall be continued. The Association's request for amendments in these provisions is denied except as its request with respect to sick leave is recognized in the section of the Opinion dealing with Disability Pensions.

Retirement and Disability Benefits

Introduction

There are presently two systems under which currently active police officers will receive retirement and disability benefits. One is The Policemen's Annuity and Benefit Fund of Milwaukee, hereafter referred to as the PABF, and the other is The Employees Retirement System of the City of Milwaukee, hereafter referred to as ERS. The PABF covers only police officers who were hired before July 29, 1947 whereas the ERS covers police personnel hired since July 29, 1947, who are evaluated as a separate actuarial group and who have a separate benefit schedule, but who receive their benefits through the system covering all City employees.

All police personnel covered by the PABF may retire after 25 years of service without regard to age under two benefit formulas, one for personnel hired before May 17, 1945 and the other for personnel hired between May 17, 1945 and July 29, 1947. The former receive 2% of their highest annual salary at the time of retirement for each year of the first 25 years of service and 2% of the average of their three highest annual salaries for each year of service beyond 25. The latter receive 2% of the average of their three highest annual salaries for each year of service.

Police personnel covered by the ERS may retire after 25 years of service provided they have attained age 52. They receive 2.25% of the average of their three highest annual salaries for each year of the first 25 years of service and 2.4% of the average of the three highest annual salaries for each year of service beyond 25. Police personnel covered under the ERS also have an option of electing a 5% reduced pension benefit to provide 50% of that reduced pension benefit for their surviving spouses for the remainder of their lives.[17]

Since we have set out some of the basic differences between these retirement plans, we should also note that the amounts prescribed for employee contribution under these plans are different. Under the PABF, 4 7/8% of the employee's salary is allocated to the PABF retirement fund as the employee contribution and none of that amount is now contributed by the employee. Under the ERS, 7% of the employee's salary is allocated to the ERS fund as the employee contribution of which 1% is now contributed directly out of the employee's salary.

The Association made a series of proposals to amend both the retirement and disability benefits that are available under the two plans. Since the duty and ordinary disability benefits, which are separately funded under each of the plans, are basically the same, we will consider them together in a later section of the Opinion..

17. Although the record is not clear on the point, this same provision apparently does not prevail for personnel covered under the PABF.

Retirement Benefits

The Association made proposals for five major changes in retirement benefits under both systems. However, since the PABF is a closed system (at the conclusion of the hearing there were only 133 active members of the Police Department covered by it and a substantial proportion of these were not members of the Association bargaining unit), the primary focus of these proposals was on amendments in the ERS benefits but with an accompanying proposal that these same changes be made, as applicable, to the PABF system.

The Association proposed that

(1) There be no minimum age for retirement eligibility after 25 years of service. This provision is presently applicable to the PABF plan but under the ERS a minimum age of 52 is required.

(2) The service retirement allowance be increased to 2.5% of salary for each year of service, in contrast to the different percentage allowances that currently prevail under the two plans.

(3) The salary to which the service allowance is to be applied be the annualized, highest regular salary attained by an officer prior to his retirement even if that salary were paid for only one pay period.

(4) There be no reduction in the retiree's pension benefit for the election of the spouse option.

(5) The health insurance program that is presently made available to active employees and their dependents be extended to retirees with 25 years of service and their dependents at full cost to the City.

The Association argued vigorously that its proposals are fully justified by the special demands that police assignments make on the officers. These assignments, it contends, are as dangerous and physically demanding as military assignments from which retirement after 25 years of service, without any age limitation, is accepted, and for that same reason, similar eligibility provisions prevail in many other police departments in the United States. It argued further that the requested service retirement allowance and the salary against which it is computed are necessary to provide a retirement allowance of 60% - 70%, which the pension experts who testified in this case defined as desirable, and they are particularly necessary in a period when inflation is eroding the value of that retirement allowance; that protection for the health care of the retiree and his dependents, which are rapidly increasing in cost, are essential to provide security for the retiree and his dependents and to protect the value of the retirement allowance; and finally, since the overwhelming majority of the police officers are married and retire at an earlier age than other employees, that it is essential that some protection be afforded their spouses without cutting into the regular retirement allowance.

The City opposed these proposals because of the very heavy costs any or all of these proposals will entail under any circumstances, but particularly opposed them now when competing demands have a higher priority for the limited resources the City has available. It also opposed them on the ground that they are not compelling on their face. It argues that the testimony of informed

witnesses established that a police officer can still render several years of effective service after age 52, the present minimum retirement age. To remove that requirement would permit some police officers to retire at an even earlier age and seek employment elsewhere. However, if that is done there is no reason why the City should provide that officer with what would approximate a postulated desirable retirement allowance while he is working elsewhere. Similarly it argues that the present service retirement allowance, coupled with the average of the three highest salaries, produces an acceptable retirement allowance in relation to the standard of living to which the officer has become accustomed at the time of his retirement. It readily admitted that health care costs were increasing but argued that the survey evidence indicated Police Departments in the United States provided such protection primarily for its active employees, that only a few police departments made comprehensive health care insurance available to active employees and their families, as Milwaukee did, and virtually none provided such coverage for retirees. Hence a fulfillment of that proposal is completely out of line with prevailing practice and bearable costs. Finally, the City argued that the present 5% reduction in the retiree's pension benefit to provide a reduced pension for the surviving spouse is already far more favorable than the actuarial reduction of such pension benefit, which is between 15% and 20%, and therefore discriminates against unmarried retirees. The elimination of that already favorable benefit would only magnify that discrimination.

(a) Discussion

It is clear to the Arbitrator that there were no issues in this hearing to which the Association attached greater importance than it did to these proposals for improvements in retirement benefits. The proposals were prepared with care and in great detail. The Association Trustees in attendance at the hearing observed the development of each aspect of these benefits with intense interest. It called its own actuary, John G. McLaughlin, to review and to cost the particular benefits on the basis of the prevailing actuarial assumptions. It developed evidence to try to demonstrate that police departments in some other cities were contributing a substantially larger percentage of payroll costs than Milwaukee is to provide police pensions. It also emphasized that since Milwaukee police officers were not permitted to engage in outside employment, they were unable to earn sufficient Social Security credits to obtain the Medicare benefits of that system and therefore had extra burdens to bear to provide health insurance in retirement. It produced testimony that some police officers who were presently eligible for retirement, did not retire because they were concerned about their ability to provide health care from the amount of their retirement benefit. Before the hearing closed, it called a special meeting of the Association membership, apparently to review some of the prospective costs of the proposals, and in an effort to obtain them offered, as a last step, to absorb part of the costs of these benefits by agreeing to deduct up to 4% from their salaries for that purpose if the Arbitrator awarded the $1300 across-the-board salary increase which it requested. Finally, it argued that the three actuaries, its own and the two called by the City, were in general agreement that all of the benefits which it proposed, except for the health insurance coverage, could be financed by an increase of between 5% and 6% of payroll costs under the actuarial assumptions which were currently being used by the ERS Annuity and Pension Board and that its proposal of absorbing up to 4% of this amount therefore made its proposals realistic and economically tolerable.

In the succeeding sections of this report, the Arbitrator will set out the different estimated costs of each of the specific Association proposals. However, before we turn to them, the Arbitrator believes he is obligated to make some more general comments about the retirement proposals, particularly because the Association has so earnestly pursued them and apparently developed some high expectations about results of those efforts.

The first reports from all the actuaries were disarming, since they all agreed that the improvements the Association sought could be financed by an increase of 5% - 6% of payroll (a not insignificant amount in itself) on the basis of the presently utilized actuarial assumptions. But rigorous examination and questioning demonstrated that there was not just a difference but a gulf between those estimated increases in cost and estimates that more adequately reflected contemporaneous experience. The Association's own actuary, John McLaughlin, stated that although the present level of benefits were costed and funded at about 18.2% of current payroll, he thought more realistic actuarial assumptions would raise them to 34.5% of payroll. He indicated further that even though the Association proposals could be financed on a 5% - 6% increase in payroll, his own estimate on more realistic assumptions was a 9.7% increase in payroll, which in turn would raise total payroll costs on the basis of his realistic assumptions from 18.2% to 44.2%. One of the actuaries called by the City, Robert Barnes, who is now serving as actuary for the Annuity and Pension Board of the ERS, also testified that the Association proposals could be financed for approximately 5% - 6% of payroll on the basis of the current actuarial assumptions, but readily agreed that these costs would increase by from 50% - 100% if more contemporaneous data were used on which to make the actuarial assumptions. This estimate is not significantly different from the estimate reached by McLaughlin. The second actuary called by the City, Charles Moore, testified primarily about the costs that the Association proposals would impose on the PABF Fund. His estimates also indicated that the Association proposals would have heavy and long-standing cost implications for the small number of active employees still covered by the PABF Fund, and on questioning by the Arbitrator, cautiously observed that the costs of the Association proposals would be quite substantial. John Weitzel testified that if the proposed health insurance coverage were made applicable to all who were currently retired, whether between the ages of 52 and 65, or 65 and over, or both, the costs would be very heavy, and even if the proposal was made applicable only for new retirees, the cost in the first year or two would not be great, but would escalate significantly in a few years simply because the cost of such a program was high and in a few years it would extend to a substantial number of retirees.

In pursuit of its goal, the Association again and again argued that it did not make the actuarial assumptions upon which the retirement funding was based, and that it was appropriate for the Association to advance its arguments, and for the Arbitrator to accept them, on the basis of the given actuarial assumptions. In its post-hearing brief, for example, it argued, "the present system would not become unsound by virtue of giving the Association its pension demands" (Association Brief, Vol. 2, page 36) and later "If they have not funded for those benefits, then they are to be held responsible for their lack of action, for their inefficiency, for their mistake or their negligence. The employee cannot be held responsible." (Association Brief, Vol. 2, page 44) The Arbitrator admires the skill of this advocacy, but does not believe that it is sufficiently persuasive to relieve him of his obligation to make sensible

judgments about important and costly matters. Pensions are in the forefront of current concern in employer-employee relationships. The Congress is presently seriously scrutinizing them in the private sector; other bodies are carefully evaluating retirement systems in the public sector. Exaggerated positions are probably being taken in both. Suffice it to say, the Arbitrator believes that if changes in benefits are to be made, they must be directed at solving general problems within manageable means. He hopes his conclusions on the issues in controversy meet that test.

Before turning to the merits and costs of the proposed changes in benefits, the Arbitrator believes some preliminary observations about the comparability of the Milwaukee retirement plans to those that prevail in other cities is appropriate. For this purpose we shall use the ERS plan which, in the Arbitrator's opinion, is more favorable for retirees than the PABF plan, because it defines the benefits for the great majority of the police officers in the bargaining unit. If all the survey data is used for pusposes of making a comparison, numerous instances can be found in which retirement is possible at an earlier age, or at a higher salary level, or under a more favorable service benefit formula than that which prevails in Milwaukee; however, when these plans are compared in their totality, the Milwaukee benefit plan, while not at the top, is clearly among the better plans and well above the average.

In relation to this observation, the Arbitrator also believes it is important to concentrate on the guaranteed level of benefits under a plan, which will either be paid for currently or on a deferred basis, rather than the estimated or current percent of payroll that is contributed by a city for retirement payments at any one time. The latter figure may be an important indicator of the level of benefits, but it may also simply indicate that lesser contributions were made at an earlier time.[18] Therefore the appropriate comparison should be on the level of benefits that are provided, and by this standard, as we have noted, the Milwaukee plan is favorable.

It is against this background that we must consider the merits and costs of each of the proposed changes.

The Association requested the elimination of the minimum age requirement (52) for eligibility to retire after 25 years of service. It premised its argument for this proposal on the demands that police assignments make on police officers. However, in its demand for longevity pay it suggested that experience on the job more than offset the potential decline in physical capacity to respond to the demands of the tasks. Although thses positions are not in direct conflict, since the Association proposed longevity payments for years of service well short of 25, the thrust of the proposals do go in opposite directions. But more important, Inspector Ziarnek persuasively testified that under the Association's proposal some officers would be eligible for retirement as early as age 46 and his experience indicated that police officers could effectively perform their tasks well into their middle 50's. It also seems clear that officers who would retire in their late 40's would seek other employment and draw on their retirement benefit at the same time. All of the

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18. The data submitted about the Minneapolis plan are illustrative--a high current contribution is required because funding of the plan had been neglected in earlier periods.

actuaries testified that this provision would increase the costs of the plan but were not certain how much, because the cost increase would be a function of how many would elect to retire at the earliest possible date. Barnes estimated that the cost for this item would range between $190,000 and $212,000 per year under the existing actuarial assumptions and would be higher if more realistic assumptions were used. McLaughlin also agreed that the elimination of the minimum age for retirement would increase costs, even though his major disagreement about the retirement age assumptions was directed at the current assumption about retirement age under the age 52 minimum. In connection with this issue, the Arbitrator notes that the survey evidence indicated that Detroit has abandoned the no-minimum-age requirement for new police officers because of its costs, and he takes judicial notice of the movement in this direction in the State of New York which is presently examining public employee pension plans in great detail. On the basis of this evidence, the Arbitrator cannot find that this particular issue presents a compelling demand to which clearly limited resources should be directed.

The actual retirement benefit is a function of both the service retirement allowance and the salary to which it is applied. The Association seeks amendments in both. All of the actuaries agree that these amendments would be the most costly items. Barnes testified that adoption of the 2.5% per year allowance would cost $431,000 per year under the existing actuarial assumptions but that this figure would be increased 50% - 100% if more realistic assumptions were utilized. Moore testified that if this service allowance were used for the PABF plan the cost for that small group alone would be $250,000 per year. McLaughlin gave no detailed figures on this item but agreed it would raise the annual costs substantially. All of the actuaries also agreed that the adoption of the final salary figure as the base against which to apply the service allowance would raise the costs of the plan but the extent would depend upon the movement of the salary schedule over a period of time. Barnes stated that if the current actuarially adopted salary schedule were used the cost of this proposal would be approximately $111,000 per year; however, he noted that if the average salary adjustments for the past three years were used as the projected salary increase schedule over time, the cost of this item alone would be $783,000 per year. McLaughlin gave no precise figure for this item alone but he indicated that he believed the current actuarial assumption about the slope of the salary schedule was low and therefore the real cost would be higher than the actuarially assumed cost. Moore stated that the cost for the PABF group would be approximately $70,000 per year if a 5% salary increase were adopted as the average for that Fund and would be $120,000 per year if the last three-year average of 8% would be adopted.

The evidence on both these points demonstrates quite conclusively that the adoption of the Association proposals would be costly and very substantially higher than the costs projected on the current actuarial assumptions. We shall return to one of these points later in the Opinion.

Barnes testified that the removal of the 5% reduction in the retiree's benefit in order to grant the 50% spouse benefit would cost $365,000 per year under the present actuarial assumptions. McLaughlin likewise agreed that the elimination would be costly, but did not give any cost estimate on that item alone. Barnes and Moore both testified that the existing formula was already very favorable to the retiree because the actuarial reduction of a retiree's pension benefit to provide a benefit to the surviving spouse would fall between 15% and 20% depending upon the ages of the spouses. Both also indicated they

felt the elimination was discriminatory against unmarried officers and felt that no sound case could be made for adopting it. The Arbitrator believes and finds that no persuasive case was made to warrant directing resources into this area, particularly in the light of the evidence about the favorableness of the existing provision.

We turn next to the request for health insurance for the retirees and their dependents at full cost to the City. The evidence established that the City is presently making the existing plan available to any retired police officers between the ages of 52 and 65 and is currently subsidizing that plan by paying a portion of the employee and dependents' costs for those who elect to come under the plan. The estimated cost of that subsidy in 1973 is approximately $80,000. The City also makes available a conversion policy after age 65 for retirees and their dependents at the retiree's cost. Thus the City has given some recognition to what is clearly a problem for retirees.

The evidence indicated that the extension of the existing health insurance at full City cost to retirees between the ages of 52 and 65 would cost approximately $294,000 per year and if the City were to extend the existing policy to all retirees and their dependents over 65 years of age excluding those who are eligible for Medicare, the cost would be $400,000 for 1973. If the existing health insurance plan would be extended only to new retirees, the annual cost in the first year would be $29,500 but in 5 years the cost would be $214,000 and in 10 years, $662,000. The evidence is thus quite clear that the cost implications of the extension of the health insurance program are substantial. However, the evidence also indicated that how such a plan might be integrated or coordinated with Medicare for those who were eligible for Medicare coverage, and how it might be coordinated with coverage by another employer if the retiree accepted other employment after retiring from the police force, or how and to what degree some protection would be afforded if the retiree's spouse had coverage as a result of employment, were not systematically examined or costed. In addition, the survey data conclusively established that very few cities provide health insurance coverage for retirees and their dependents; in fact, very few provide coverage except on some limited and participating basis for the retirees alone.

There is thus substantial evidence to demonstrate that the proposal to extend the health insurance program to retirees is costly and not commonly done in other police systems. Moreover, the evidence indicates that no detailed analysis about the administration of such a program has been undertaken. Under these circumstances the Arbitrator cannot find that the Association proposal that the City provide full health insurance coverage for retirees and their dependents is warranted at this time.

Throughout the extended hearings on these proposals, two facts became clear to the Arbitrator. The first is the Association's concern about the erosion of the retirement allowance of the retirees because of the continuing inflation in our economy. The second, which is related to the first, is the cost of health care which retirees must bear in this period of inflation and the resultant dilution of the retirement allowance for other living costs incurred by the retirees. The Association demands for improvement in the formulas that establish the allowance and for the health insurance reflect this concern. The Arbitrator believes these problems need to be attacked in detailed and systematic form but under conditions in which some relief for the current pressures is provided. He

therefore determines that the Association and the City should establish a Pension Study Committee made up of four members, two to be appointed by each party, who will request the ERS Annuity and Pension Board to ask its actuaries to prepare and deliver to it not later than July 1, 1974 a detailed Study and Report, under a number of varying assumptions, of the cost and feasibility of (1) providing an adjustment over time in the pension allowance to reflect, in whole or in part, the erosion of that allowance as a result of the continuing inflation, and (2) providing in whole or in part some health insurance for retirees alone or retirees and their dependents under conditions which would coordinate or integrate such insurance program with existing alternative insurance coverage.

The Arbitrator is aware that the Annuity and Pension Board is an independent body that is not subject to direction by either the City, the Association, or both. Therefore, if that Board declines to respond to the petition of the Pension Study Committee, the Committee should engage the same actuaries, if possible, or other equally competent actuaries if the first actuaries are unable to serve, to prepare the Study and Report. The cost of the Study and Report shall be borne by the City.

The purpose of the Study and Report is to provide the interested parties with relevant data about existing concerns. Although it will be available in time for use in negotiations for a labor agreement to follow the 1973-74 Agreement, no implications about the acceptance or rejection by either party of any findings or conclusions in the Study and Report are to be drawn by the circumstances of its preparation.

In order to deal with some of the current pressures that have been alluded to, the Arbitrator believes the salary base against which the service retirement allowance is applied should be changed from the average of the three highest salaries to the highest annual regular salary attained by an officer prior to retirement. Such a provision will eliminate inequities that now exist between the two different groups of employees covered by the PABF and will also provide some immediate protection against erosion of the retiree's standard of living, that is based on his salary in the year of and in the immediate years before his retirement. This factor might well be taken into account by those who prepare the Report for the Pension Study Committee.

Award

The Association proposals to eliminate the minimum age requirement for eligibility to retire after 25 years of service, to increase the service retirement allowance, to eliminate the 5% reduction in the retirement allowance for the election of the spouse option and to provide health insurance for retirees and their dependents are denied.

The Association proposal that the annualized highest regular salary of a police officer be used to compute the retirement allowance is modified to provide that effective upon the execution of the labor agreement for 1973-74, the highest regular annual salary shall be used to compute a retiree's retirement allowance.

As soon as practical after the execution of the labor agreement for 1973-74, a Pension Study Committee consisting of four members, two to be appointed by the City and two to be appointed by the Association, shall initiate action to have a Study and Report prepared in accordance with the Opinion.

Duty Disability Benefits

The Association made several proposals for amendments in the duty disability benefit provisions that were in effect under the 1971-72 Agreement.

(a) Seniority and Sick Leave

The Association proposed that police officers who return to active duty after having been on duty disability pensions should be given seniority credit for service and pension entitlements for the period they were on disability pension and also should have all sick leave they used up before going on disability pension restored to them upon their return to active duty. In support of its proposal, the Association noted that during 1972 six members were called back to duty from disability status. Some of these six had been in disability status for as long as seven years. None of those who returned received any service credit for vacations or for retirement for the time they were in disability status and all returned without any sick leave because they had used it before applying for disability. As a result they were subject to payless days for time lost because of illness after they returned to work and before they had again accumulated sick leave on which to draw.

The City opposed the restoration of sick leave on the ground that the use of sick leave before applying for a disability pension was left to the discretion of the disabled employee and he should be obliged to abide by the decision he made. It developed no detailed response to the seniority proposal during the hearing, but in its post-hearing brief urged the Arbitrator that if he were disposed to grant length of service (seniority) credit to police officers for the period during which they were receiving disability pensions, he should also require that at their normal retirement date the disability pension should be discontinued and the regular pension benefit should then be paid to them.

The issue which the City raised was not discussed during the hearing and consequently the Association did not have the opportunity to present any evidence or argument against that proposal. Although the practical effect of the Association's proposal would be to grant seniority credit for officers on disability pension, it would be operative only if they returned to work. However, the City's suggested arrangement would be operative for all officers who were disabled whether they returned to work or not and would, in effect, reduce the benefits of the disabled officers at their normal retirement date. There may be some merit to such a proposal, particularly if it were to be effective at the mandatory retirement date, but it was not argued in the hearing and therefore goes beyond the bounds of the issue that one or the other party raised before the Arbitrator.

On the basis of the evidence developed, it seems only fair to grant an officer who returns to active duty after a duty disability service credit for the time he was on disability for vacation and related benefits and for service credit for retirement. Therefore, the Arbitrator believes and finds that seniority credit shall be granted to police officers who return to active duty from duty disability for the period of their disability.

The sick leave issue is more difficult. The evidence indicates quite clearly that even though police officers are not required to use up sick leave before applying for a duty disability pension, all of them so situated do so because, at that time, the return to active duty does not seem likely and the duty disability pension benefit will be less than the sick leave payment. Therefore sick leave is used up before the disability pension is put into effect.

However, as a result of this action, in the few cases in which the disabled officer is able to return to active duty, he has no sick leave to draw upon under circumstances in which he may be particularly vulnerable to sickness. Although it probably would be possible to compute the value of the number of days of sick leave used as well as the value of the disability pension for that same period, for each officer who is placed on disability pension and later returns to active duty, and to then adjust the sick leave account and charge the duty disability account for those values, the Arbitrator believes a practical, minimum solution to this problem is called for. Therefore he finds that in the case of an officer who has used up his sick leave before applying for a duty disability pension and who later returns to active duty, the amount of sick leave to which he is entitled for one year of service shall be credited to his account. If it is possible to determine the cost of this allocation, and if it is otherwise possible, the cost should be charged to the duty disability pension account.

Award

Effective upon the signing of the labor Agreement

(1) A police officer who is placed on a duty disability pension and later returns to active duty shall receive service credit for the period in which he was on duty disability;

(2) A police officer who used up his accumulated sick leave before being placed on a duty disability pension, shall have sick leave equal in amount to that granted for one full year of service, credited to his account if he returns to active duty. If it is administratively feasible to do so, the duty disability account shall be charged with the value of the reinstated sick leave.

The City's proposal for amendment in the formula for the payment of duty disability pensions is denied.

(b) Duty Disability Pension Benefits--Outside Earnings

Under the provisions of the 1971-72 Agreement, police officers who are disabled while on duty receive duty disability pension benefits, depending on the severity of the disability, equal to 75% - 90%, of the regular salary of the classification in which they were at the time of their disability. However, there is a provision in the disability benefit program that if they have outside earnings while they are disabled and these earnings together with their pension benefits exceed the salary of their police officer classification, the disability pension benefits shall be reduced so that the combined earnings and pension benefits will not exceed the salary of their classification.

The Association proposed that this duty disability pension benefit provision be amended to prohibit any deduction of outside earnings from the duty disability pension benefit. The City opposed the proposal on the ground that the removal of outside earnings was in conflict with the concept of providing income maintenance for those who are disabled and that it would remove any incentive for disabled officers to return to active police service.

The testimony at the hearing noticeably demonstrated that this issue is emotionally charged, particularly in regard to those officers who are most severely disabled. The Association successfully sponsored a bill in the Wisconsin Legislature which eliminated any deductions in disability pensions because of outside earnings. The Common Council, under "home rule authority," refused to accept the application of that legislation and thereby made it inoperative in Milwaukee. The Association also argued that disabled officers do not receive the allowances of their fellow officers and are also, in effect, denied any fruits of possible promotion. The City countered by noting that these officers had no need for outlays for the items for which the allowances are granted and that they also receive certain tax advantages that their fellow officers would not receive.

Conceptually, the City is correct. The disability benefit provision is designed to maintain the disabled officer's income and not to enrich him or provide an incentive not to try to return to duty. However, whatever merit there may be to the latter argument, it is clearly not applicable to those officers who are so severely disabled that they could not return to duty under any circumstances.

The Arbitrator believes that, at least in the case of the most severely disabled police officers, their disability pension benefits should not be reduced because of outside earnings.

Award

Effective upon the signing of the labor Agreement, there shall be no deductions from the duty disability pension benefits of those officers found to be eligible for 90% disability benefits because of outside earnings.

(c) Duty Death Benefits

The Association proposed that the Duty Death Benefits now being paid and those that will be paid hereafter shall be increased, on an annual basis, to reflect changes in the cost-of-living as measured by changes in the Bureau of Labor Statistics Consumer Price Index for Milwaukee between the date of the first award of a duty death benefit and the date of the annual payment of the benefit.

This proposal is designed to overcome the erosion of the duty death benefit over time because of inflation. The Arbitrator has already commented on this problem in relation to all pension benefits. He can find no overriding reason to select this payment as against all other pension benefits for particular treatment. This problem, like its related ones, will be subject to examination by the Pension Study Committee.

Award

The Association proposal to amend the duty death benefit by providing cost-of-living adjustments in the benefits on an annual basis is denied.

Ordinary Disability Benefits

In its original demands, the Association proposed that ordinary disability benefits be adjusted over time to reflect changes in the cost-of-living between the date of the award of a disability pension and the annual payment of the benefit.

The record indicated that the Association withdrew that proposal; however, the City referred to it in its post-hearing brief as being a continuing issue. To make certain that the issue is resolved, the Arbitrator will find that a cost-of-living provision shall not be included in ordinary disability benefits. He also finds that effective upon the execution of the 1973-74 Agreement, the final salary on which the ordinary disability benefit is based shall be the highest annual salary of the disabled officer at the time of his disability.

Award

Effective with the signing of the Agreement, there shall be no cost-of-living adjustment in ordinary disability pension benefits. The final salary for purposes of computing ordinary disability pension benefits shall be the highest annual salary earned by the disabled officer at the time of his disability.

Survivorship Benefits

In addition to the provisions for benefits under the ERS system, there is an additional program for survivorship benefits for the spouses and children of deceased police officers. That program is financed by equal contributions by the City and the police officers and is administered, as a separate fund, by the Annuity and Pension Board of the ERS. The present benefits under this program are $115 per month for a surviving widow without children under age 18 and $230 per month for a surviving widow with one or more children under age 18, and similar benefits for other dependents.

The actuary's report about the survivorship benefit fund indicates there is a surplus or reserve in the survivorship account. Therefore, the Association proposed that the benefits be increased from $115 and $230 to $140 and $280. The City opposed this adjustment in the benefits on the ground that the reserve or surplus was necessary to cover severe fluctuations in mortality rates.

The actuary for the ERS Fund, Robert L. Barnes, testified that the benefits could be increased in the amounts requested by the Association but such action would eliminate the reserve or surplus. However, he indicated that if the mortality rate continued as it had in the past, the current contributions would be adequate to fund the increased benefits.

The Arbitrator takes special note that the Charter Ordinance dealing with this benefit makes special provision that in the event the increases in benefit that previously were granted necessitated additional contributions to cover the increased benefits, the employees and the City would make them. The testimony in the present case indicates that the additional benefits could be granted without increased cost and the Arbitrator determines that they should be granted; however, to provide protection against unfavorable mortality experience, he will

provide that the existing Charter Ordinance safeguards to cover possible increased contributions shall be continued.

Award

The benefits in the survivorship plan shall be increased from $115 and $230 to $140 and $280, but with the maintenance of the Charter Ordinance safeguards to cover possible increased contributions.

General Contract Issues

(a) Duration of Agreement

Originally the Association proposed a one-year agreement to run from November 4, 1972; however, at the hearing it indicated a willingness to accept a two-year agreement if an appropriate adjustment in salaries was included for the second year. The City proposed a three-year agreement on the ground that some stability in the relationship was necessary.

It is clear that a one-year agreement would provide no stability in this relationship. In fact, negotiations for another agreement would have to get underway as soon as the Opinion and Awards in this case are received. On the other hand, the great economic uncertainties that prevail make a three-year agreement undesirable. The Arbitrator believes and finds that a two-year agreement will best meet the needs of the parties for stability and still afford them the opportunity to adjust to changing economic conditions with some degree of promptness. He therefore will award a two-year agreement. However, the Arbitrator urges the parties to consider seriously making a three-year agreement with a reopening at the end of the second year for a consideration of wages and pensions in the third year. The Arbitrator also observes that in the past, agreements ran for calendar years. Apparently because of Pay Board problems, a departure arose during 1972. If the parties believe that it would be useful to have the agreements coincide with the City's fiscal years and budget-making procedures, the Arbitrator would willingly amend this Award to extend the agreement to January 1, 1975.

Award

The Agreement shall run from November 4, 1972 through November 2, 1974.

(b) Retroactivity

The Association originally proposed that all awards in this proceeding be made retroactive to November 4, 1972; however, it later amended this proposal to provide that any general salary adjustment should be made retroactive to November 4, 1972 but that the effective date of other adjustments should be determined by the Arbitrator. The City opposed retroactivity in any form and urged that the effective date of all items be no earlier than the date of the execution of the Agreement.

The Arbitrator believes and finds that the effective date of the various Awards should be made on an item-by-item basis and will so award.

Award

The effective date of each Award will be specified in the Award.

(c) Dues Check-Off

The 1971-72 Agreement contained a section providing for a dues check-off. That section also provided that an employee who wished to withdraw from the check-off arrangement had to pay a fee of $2.00 to the City Treasurer to obtain a card to withdraw the check-off arrangement and that the withdrawal would become effective four pay periods after it was filed.

The Association proposed that this arrangement be continued but that its application be extended to any member of the Association whether or not the member was in the bargaining unit. The City proposed that the arrangement be withdrawn in its entirety because the "fair share" section of the Agreement provided adequate security for the Association. The City also argued that the extension of coverage beyond the bargaining unit might be a prohibited practice.

A check-off provision is more than an Association security arrangement; it is also an administrative mechanism whereby the contractual Assocation-security requirement is effected as a matter of convenience for the employees as well as for the Association. No persuasive case was made by either the Association or the City to change an arrangement that existed not only in the 1971-72 Agreement but in the 1969-70 Agreement as well. Therefore the Arbitrator determines that the clause shall not be omitted or changed.

Award

The Dues Check-off clause shall be continued in the form in which it appeared in the 1971-72 Agreement.

(d) Sub-Contracting

The Association proposed that the following provision be included in the agreement: "The City shall not contract with any private or public agency to provide any police or security protection." The City opposed the provision on the ground that it would represent a dilution of the authority to sub-contract which it has reserved to itself under the Management Rights Clause in the 1971-72 Agreement, but more particularly because the Association advanced no good reasons to justify the provision.

In support of its position the Association introduced evidence and developed testimony about plans for fencing in an area in the Milwaukee Harbor region and for providing guard protection for that fenced-in area. Inspector Ziarnek testified that the planned harbor security project would not in any way reduce the regular police protection and patrolling in the area, and that any guards who were hired to protect the facilities in the fenced-in area would not have police powers and would not take over any functions now being performed by Police Department personnel. In its direct presentation the Association acknowledged this to be the case. Inspector Ziarnek testified further that the Department does not contemplate sub-contracting police-power activities and would oppose such action. Finally, he noted that during his 23-year tenure there had never been a lay-off in the Department.

The Arbitrator finds that the evidence about the condition which gave rise to the Association's concern as well as the general conditions about the job

security of the Police personnel does not support the Association's demand and therefore does not warrant a charge in the sub-contracting section of the Management Rights clause.

Award

The demand for a contractual provision limiting sub-contracting is denied.

(e) Savings Clause

Both the 1969-70 and the 1971-72 Agreements contained Savings Clauses. The clause in the 1969-70 Agreement provided for negotiations if any section of the Agreement should be held to be invalid; the clause in the 1971-72 Agreement limited that provision to matters under the control of the Common Council. During 1972 the Pay Board disallowed .7% of the salary increase negotiated for 1972. The Association thereupon asked for negotiations pursuant to the Savings clause. Substantial differences developed between the parties about what the clause entailed and some litigation followed. Apparently this controversy has influenced the positions the parties have taken on this issue.

In the present negotiations the Association asked that the clause which appeared in the 1969-70 Agreement and which would be operative if any provision of the Agreement were held to be invalid, be included; the City disagreed and proposed a provision that is different from both the previous provisions. In particular it wished to continue to limit the clause to matters under the exclusive control of the Common Council, to remove the requirement to negotiate about the article or provision held to be illegal and to add the following sentence: "Any decision of a court, board, or judicial or quasi-judicial tribunal or legislative enactment of a State or Federal body which enlarges the rights of the Association or its members or increases the City's costs, shall entitle the City to make, after advising the Association, appropriate offsets in other cost items."

In several earlier sections of this Opinion, the Arbitrator has expressed his views about the undesirability of fragmenting the administration of the Agreement between the different municipal entities that have statutorily-defined responsibility for certain functions. He repeats here what he has observed before--the responsibilities cannot and should not be abandoned by the respective entities; instead their coordination should be encouraged for the purpose of effective bargaining about them. The collective bargaining agreement should reflect the total agreement between the Association and the various City entities and should also provide a coordinated guide for its administration. In any event, if this end cannot be achieved in one negotiation, steps in that direction should be encouraged. If this objective is appropriate, and the Arbitrator obviously believes that it is, the Savings Clause proposed by the Association, which would pertain to <u>any</u> provision of the Agreement without regard to the municipal entity that <u>had</u> primary responsibility for it, is more in keeping with the end sought than the City's proposal for limiting it to matters for which the Common Council has clear responsibility.

The second area of difference involves the matter of negotiation about the clause or provision found to be invalid. The Association seeks a provision that would require negotiation for a replacement; the City desires a provision that

would simply hold the remainder of the Agreement intact. The difficulties that arose under the 1972 Agreement shed some light on the positions of the parties on this issue. After the Pay Board denied .7% of the negotiated pay increase, the Association sought to negotiate a non-economic item to replace the denied portion of the salary item. The Arbitrator believes that such a request went beyond the meaning and spirit of the Savings Clause. Although that specific issue is not before us in this proceeding, the concept is. The Arbitrator believes that the idea of a Savings Clause is to maintain the Agreement and, if a provision is found to be invalid, that a good faith effort be made to deal with the issue or problem covered by the invalid provision instead of opening the whole Agreement for renegotiation. The Arbitrator also believes that if a provision of the Agreement is found to be invalid, it may not be sufficient to achieve the ends of the Agreement by simply maintaining that which remains. The matter covered by the invalid issue may have to be dealt with. Therefore the Arbitrator finds that the Association proposal providing for negotiation about the invalid provision is meritorious and should be granted with the clear recognition that the negotiation should be confined to the problem with which the invalid provision was concerned.

The City did not develop the details of its proposed additional sentence to the Savings Clause, explain its reasons for seeking its inclusion, or indicate how the proposed ends of that provision would be attained. On its face, it bristles with potential conflict because of its uncertainty. The Arbitrator believes it is potentially an invitation for friction and therefore should be denied.

Award

Effective with the signing of the Agreement, the Savings Clause proposed by the Association shall be included in the Agreement.

(f) Miscellaneous Contract Matters

There are a number of miscellaneous contract matters that require either clarification or determination. Because they have been so classified is not meant to suggest they are not important. However, in a proceeding of this magnitude, categorizing issues is a useful device to make certain that all issues presented in the proceeding have been dealt with. We turn now to some of these remaining contractual matters.

(1) No Greater or Lesser Benefit

The Association proposed the inclusion in the Agreement of a clause which would provide

> "In no event shall the City or any of its employees agree with a member of the bargaining unit that such member shall receive any greater or lesser benefits contrary or inconsistent with the terms of any agreement between the City and the Association, except as otherwise provided for in this agreement."

In support of its proposal, the Association asserted that it believed such a provision would make the Agreement whole and would prevent private negotiations between the Department and some of the employees. It presented no

detailed evidence to support its assertion that there had been any private negotiations nor any systematic argument to demonstrate that such a provision provided a protection or guarantee that was not available to it under the grievance procedure or the Wisconsin Statutes. Moreover, the proposed language, and particularly the last phrase, is ambiguous, in the Arbitrator's judgment, and therefore a potential source of conflict. Consequently, the clause serves no constructive purpose and therefore it will not be granted.

Award

The Association's proposal is not granted.

(2) Rights Under Section 111.70

The Association proposed that a clause be included in the Agreement to provide that "All rights guaranteed pursuant to Section 111.70 of the Wisconsin Statutes are hereby acknowledged by the City and its agents and are guaranteed to the Professional Policeman's Protective Association."

The Association asserted that such a provision was in essence a counter-provision to the City's Management Rights clause, and that it was necessary contractually to assure the employees the rights available to them under the Wisconsin Statutes. The City opposed the inclusion of the provision on the ground that it was redundant and that it might be construed to grant the Association the right to negotiate about any bargainable matter that had not been fixed in the collective bargaining agreement.

The Association described no specific problems that had arisen in the relationship to which this specific proposal was directed nor any detailed argument in support of its demand. In its post-hearing brief it stated "We want everyone to know that we have our rights under Section 111.70 and the way to do that is by the printed word." (Association Brief, Vol. III, p. 36)

The Arbitrator believes that Section 111.70 defines and guarantees the rights the Association is claiming. It also provides the administrative and legal machinery for their realization. The Arbitrator agrees that "the printed word" assures those rights, but he is persuaded that "the printed word" of the statute is the real guarantee for them and that it must also be the ultimate source for resolution over differences about their meaning. In view of this conclusion, and particularly in the absence of a sharply defined problem which gave rise to the demand, the Arbitrator finds no persuasive grounds for awarding the clause proposed by the Association.

Award

The Association's proposal is not granted.

(3) Maintenance of Present Benefits

In its post-hearing brief the City asserted that the Association made a formal demand that a clause "to the effect that the Association shall retain all benefits presently in existence" be included in the Agreement.

The Arbitrator has reviewed the original Association proposals and carefully reviewed Association Exhibit 3A, which constituted the Association demands

at the beginning of the presentation of evidence on the issues in dispute, and has not been able to identify such an Association proposal. During the presentation of its case a City witness testified that he understood such a past practice clause had been advanced (Tr. 3333) and that the City opposed such a clause. At that time the Association did not state no such proposal had been advanced; however, in its post-hearing brief the Association made no reference to such a proposal and consequently advanced no argument with respect to it. Whatever the fact may be about whether a formal proposal on the issue had been advanced or whether some passing reference was made to such a proposal, a review of the record demonstrates that no detailed proposal or systematic development of reasons in support of such a proposal were made. In view of this fact and because of his general awareness that maintenance of standards clauses can be and have been the source of difficulty in contract administration, the Arbitrator would not award such a proposal without persuasive evidence that it constituted an appropriate solution to a demonstrated problem.

Award

If the Association, in direct or indirect fashion, presented a proposal to include a maintenance of standards or past practice clause in the Agreement, the proposal is not granted.

(4) No Change in Work Content of Classification

In its post-hearing brief (page 45), the City asserts that the Association made a formal proposal which would prohibit the Department from changing the work content of the positions of any members of the bargaining unit, and expressed vigorous disapproval of such a proposal.

The Arbitrator has reviewed the record on this question and notes that a demand of this kind was included in Association Exhibit 3 but during the course of a very brief statement about the issue by Mr. Kliesmet (Tr. 137), the Association indicated its proposal in this regard would be clarified in the course of the development of other demands. Later, when Association Exhibit 3A, an up-dated list of its demands, was introduced, the specific proposal about change in the work content of a classification was omitted. However, some testimony on this general topic was developed in conjunction with the exposition of the Association's position about creating new jobs, new classifications and changed classifications which have been discussed in some detail above. On the basis of this review, the Arbitrator concludes that the issue that was of concern to the Association was considered and disposed of in the Arbitrator's determination of the issue dealing with No New Positions and Classifications and No Reclassification of Positions. If any aspect of this proposal has not been covered under the identified heading, no detailed evidence to deal with it beyond that considered under that heading has been advanced and therefore it will not be granted.

Award

The basic issue in this proposal was covered in the determination made on the issue of No New Positions and Classifications and No Reclassification of Positions. Any aspect of the proposal not disposed of under that issue is not granted.

(5) Contract Language vs. City Ordinance

There is a provision in the 1971-72 Agreement under the heading of Ordinance and Resolution References that coordinates the Agreement and ordinances and resolutions which relate to wages, hours, and conditions of employment. That same provision of the Agreement provided, "In the event of any conflict in language between the summarization and the ordinances or resolutions themselves, the specific language of the ordinances and resolutions shall control."

The Association proposed that the clause determining which instrument should prevail in the event of a conflict should be changed to provide that "the contract shall control." The City proposed that the language of the 1971-72 Agreement be maintained.

In support of its proposal the Association argued that it had no responsibility for drafting ordinances or resolutions and therefore it could not fully protect the Agreement which it negotiated if differences over the agreed-upon provisions would be tested against the ordinance or resolution dealing with the difference rather than the Agreement. Therefore it proposed that the Agreement should be controlling. The City countered by stating that as a matter of policy, the Agreement was never formally signed until the ordinances had been drafted, submitted to hearings, and approved, and therefore the Association had ample opportunity to make certain that the Agreement and the ordinances and resolutions were identical.

The Arbitrator has not been persuaded that this specific issue is one of great magnitude in the light of the procedures that are followed in preparing both instruments. However, he believes that to declare one or the other primary, invites a second dispute in the event a difference arises. He therefore concludes that the clause should be omitted in its entirety. He has been influenced in coming to this determination by the fact that the omission of the clause will not in any way change the appropriate frame of reference for resolving differences and that no reference is made to the primacy of either instrument in the Agreement between the City and Council 48, AFMCS.

Award

The sentence that appeared in the article entitled Ordinance and Resolution References in the 1971-72 Agreement dealing with the question of whether the Agreement or the Charter shall prevail shall be omitted from the article in the 1973-74 Agreement.

Management Rights

The 1971-72 Agreement contained a number of integrated clauses defining and specifying certain management rights that were reserved to the City so that the different municipal entities could direct the personnel and carry out programs necessary for the performance of the statutory duties entrusted to them. The City and the Association were unable to agree on the language of the Management Rights section of the Agreement because of their disagreement over some of the substantive issues in this controversy that in effect would require some amendments in those defined rights. The City feels strongly that

the Management Rights provisions should be retained; the Association does not oppose a Management Rights provision as such as long as the specific rights and benefits it bargained for and attains in this proceeding are not diluted or negated by such provisions.

The Arbitrator believes that the Management Rights provisions in the 1971-72 Agreement should be retained except as the Awards in this proceeding require amendment in those provisions to make the language of the Management Rights provision consistent with those Awards.[19]

Award

The Management Rights provision of the 1971-72 Agreement shall be continued except as the Awards on certain issues in this proceeding require amendment in those provisions so that the language conforms with other contractual language that implements those Awards.

Subordination to the Charter

Aid to the Construction of the Agreement

The 1971-72 Agreement contained provisions under these two headings. The parties were unable to agree on language about these provisions, at least in part, because of their differences over certain specific negotiable issues which were related to these provisions. The Arbitrator has made Awards on those issues. He believes the language of the provisions under these headings can be and should be amended as necessary to reflect his Awards on the relevant issues.

Award

The language of the provisions dealing with Subordination to the Charter and Aid to the Construction of the Agreement shall be retained but shall be modified to reflect the Awards made on the issues that are relevant to these provisions.

Stipulated Language and Language to Cover the Disputed Issues

During the course of the hearing the parties stipulated to language on various sections of the Agreement and to some sections of the Agreement dealing with the disputed issues. These stipulations are set out in City Exhibit 1 (a). This stipulated language will be adopted and made a part of this Opinion and Award.

The Arbitrator is hopeful that his Awards, and the Opinion set out in conjunction with them, are sufficiently clear that the parties will be able to

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19. At one point early in the negotiations the Association made a proposal that disputes over Management Rights should be subject to the grievance procedure and final and binding arbitration. The City made reference to this proposal in its post-hearing brief. However, the record disclosed that the proposal was withdrawn before the formal hearings in this proceeding got under way. Therefore, no determination will be made on that issue.

draft appropriate language to put the Awards into contract form. However, as a precautionary measure, the Arbitrator will retain jurisdiction of this controversy so that he may, if necessary, express his comments on language difficulties if they should arise.

August 15, 1973
Champaign, Illinois

The following addendum has been prepared for inclusion with the Opinion on the issue that appears on page 24 of the Opinion.

Book of Rules Addendum

Even though the Arbitrator has denied the Association's proposal that the Department's Book of Rules and Regulations be separated so that those rules which "affect wages, hours and conditions of employment" could be identified for purposes of collective bargaining, he is compelled to observe that another problem related to negotiations over those Department rules remains undefined, and he believes he must comment about it here.

In addition to the proposal for the separation of the rules, the Association advanced a number of proposals for specific changes in rules, which in its judgment even without the separation, affected working conditions. The City advanced a general objection to any consideration of these proposals by the Arbitrator on the ground that they fall within the exclusive responsibility of the Chief of Police and therefore should have been negotiated directly with him in accordance with the procedure set out in the 1971-72 Agreement for negotiating rule changes, and that no formal impasse had been reached in negotiations between the Association and the Chief of Police. The Arbitrator has already commented in general terms on this question in the general background section of this Opinion, and also has made specific findings on these contentions in his determination on the Association request for a change in the grievance procedure as it affected the Department rules.

However, the practical result of this approach is that those matters which arguably affected wages, hours and conditions of employment and were of concern to the Association at the time the negotiations for the 1972-73 Agreement got underway, were in effect presented to the City in these arbitration hearings without regard to which City entity had responsibility for responding to them. Instead of seeking out three separate entities for negotiation about bargainable matters for which lines of responsibility may not have been precisely drawn, the Association raised them collectively in the brief negotiations that ended in the Arbitration hearing, and the City responded to them in the Arbitration hearing on a coordinated basis. The Arbitrator has dealt with them on this same basis. In doing so, he feels compelled to point out this procedure afforded the Association full opportunity to raise all matters that are negotiable under Section 111.70 that were of concern to it at the time of the negotiations and to get a complete response to them in this proceeding. The opportunity to do so, however, also means that determinations having once been made on those matters are binding for the term of the agreement and are not subject to continued negotiations. That result therefore pertains to Department rules as well as to those matters that come within the responsibilities of the Common Council. Of course, this does not mean that rule changes cannot be made by mutual agreement, or that the Chief of Police may not propose changes in rules which are necessary for the administration of the Department, provided they do not violate specific provisions of the collective bargaining agreement, and provided further that the Association is afforded the opportunity to negotiate with him about them unless they fall within his unfettered management functions. And finally, this does not mean that any rule promulgated after such negotiation but without agreement may not be tested by the Association under the grievance procedure for a determination of the validity of the rule under the Agreement or the propriety of its application.